(2012) 05 NCDRC CK 0085

In the National Consumer Disputes Redressal Commission

State Bank of India APPELLANT

Vs

Good Earth Synthetics RESPONDENT

Date of Decision : 04-05-2012

Acts Referred:

Citation : 2012 0 NCDRC 169 : 2012 2 CPJ 686

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Advocate : Buddy A.Ranganadhan , Richa Bhardwaj

Judgement

1. THIS Revision Petition has been filed by the State Bank of India, Securities and Service Banking Division (Opposite Party No.2 before the District Forum) and the State Bank of India, Main Branch Shakti Colony, Karnal (Opposite Party No.3 before the District Forum). The parties would be referred to by their original status before the District Forum. FACTS:- Good Earth Synthetics Ltd., Opposite Party No.1 floated Zero coupon secured bonds series "C" debenture certificates (in short, "the certificates") showing the State Bank of India, Opposite Party Nos. 2 & 3 (Petitioners herein) as trustee and arranger respectively for the said Bond. On the basis of the advertisement issued by the Opposite Party No.1, Complainant (Respondent No.2 herein) applied for purchase of 15 certificates @ Rs. 5000/- each and accordingly sent draft No. 023577 dated 12.7.1996 for Rs.75,000/-. He was allotted 15 certificates on 15.1.1997. The said certificates were to mature after 17 months and 29 days of the allotment and the maturity amount of each certificate was Rs.6838/-. It was alleged that the Opposite Party No.1 failed to despatch the said certificates to the Complainant within the reasonable period of 30 days in terms of the provisions of Indian Companies Act, 1956. That the Complainant was assured that the bonds would be redeemed on maturity and interest on the application money would be paid at the time of redemption but instead of sending the certificates, Opposite Party No.1 shifted its registered office from Bombay to Gujarat. According to the Complainant, Opposite Party No.2 Bank was the trustee of the Opposite Party No.1 for the bond in question and the Opposite Party No.1 had mortgaged its property in favour of the Opposite Party No.2 so Opposite Party No.2 was bound to return

the amount of the bonds to the Complainant by selling the said property of the Opposite Party No.1. Complainant wrote repeated letters to the Opposite Party Nos. 2, 4 and 6 but they did not take any action and simply forwarded the same to the Opposite Party No.1. Complainant, being aggrieved, filed the complaint before the District Forum seeking a direction to the Opposite Party Nos. 1 to 5 and Opposite Party Nos. 7 to 11 to pay Rs.75,000/- towards the redemption amount of bonds along with interest, Rs.1,00,000/- as compensation for mental agony and harassment and Rs.25,000/- towards costs of litigation. Opposite Party Nos.1 and 6 to 11 did not appear and proceeded ex-parte.

2. STATE Bank of India, Securities and Service Banking Division and the STATE Bank of India, Main Branch Shakti Colony, Karnal, Opposite Party Nos. 2 & 3 (Petitioners herein), on being served, put in appearance and filed their joint written statement stating that the Opposite Party No.2 never stood trustee for the bonds in question and it had no authority to sell the mortgaged property of Opposite Party No.1. That the complaint filed on 7.6.2000 was barred by limitation as the cause of action arose in favour of the Complainant on 15.1.97. PNB Capital Service Ltd., Opposite Party No.4 filed its reply stating that it was the arranger to the issue of the bond in question and after the close of the said issue, it was not liable to pay the matured value of the bonds to the Complainant. Punjab National Bank, Opposite Party No.5 filed its written version taking the preliminary objection that the complainant is not a "consumer" qua it. Opposite Party No.6, The Securities and Exchange Board of India contested the complaint on the ground that it being a statutory body established under the Securities and Exchange Board of Indian Act, 1992, the complainant is not a "consumer" qua them as he has not hired their service for any consideration. District Forum allowed the complaint in the following terms:- " For the reasons recorded above, we hold that OP-1 has not dispatched the bonds in question to the complainant till the filing of the present complaint so it amounts to deficiency in service on its part. Accordingly, we hold that OP-1 and OP-2 (being the trustee of OP-1 for the issue of bond in question) are jointly and severally liable for non-issuance of bonds in question to the complainant. OP-4 and OP-5 are just arranger for the issue of bond in question so they have no role to play and no liability can be fastened upon them. As the complainant is entitled to the matured amount of above said 15 bonds so we direct OP-1 and OP-2 to refund an amount of Rs.1,02,570/- (Rs.6838 x 15) to the Complainant along with interest @ 10% p.a. from the date of maturity till payment. The order shall be complied with within 30 days of the receipt of the copy of this order. There shall be no order as to costs."

Opposite Party Nos. 2 and 3 (Petitioners herein), being aggrieved, filed the appeal before the State Commission. However, Opposite Party No.1 company whose bonds were purchased by the Complainant as well as the other Opposite Parties did not prefer any appeal against the order of the District Forum.

3. STATE Commission dismissed the appeal by observing as under:- " Ld.

Counsel representing the appellants has assailed the findings of the District Forum primarily on the ground that the District Forum has not construed the terms of the notice Ex.C-4 dated 25.05.97 correctly because it did not refer to any word on "Zero Coupon Board" at all and did not take into account that without obtaining the consent of the appellants-opposite parties No.2 & 3, the Opposite Party No.1 had submitted the information in the memorandum Ex.C-1 which cannot be construed as binding upon the appellants. When confronted with the factual position it was admitted by the Ld. Counsel representing the appellants-opposite parties No.2 & 3 that there was no communication and proposal to the effect whereby the appellants-Bank vide letter No.SBD-ET-886 dated 15.5.96 had agreed to act as agent and trustee for the debenture holders of the fully secured redeemable non-co0nvertible debentures upto Rs.15 crores, but that was not acted upon because it was never agreed by the opposite party No.1. This submission, as such, cannot be accepted because during the course of trial of the case no evidence could be led from the side of the appellants-opposite parties no. 2 & 3 from which it could be established that any fraud and misrepresentation was played by the opposite party No.1 upon the opposite party No.2, in this regard. Disowning of the liability and the issuance of the advertisement without any basis, as such, has no bearing whatsoever qua the rights of the investors. The interse liability of the opposite party no.2 qua the appellants in this regard does not in any manner effect the rights of the complainant and other investors in this regard. Therefore, the submissions made from the side of the appellants-opposite parties No.2 & 3 while assailing the order of the District Forum, as such, is without any basis and are rejected. Under the circumstances of the case, no fault can be found with the findings of the District Forum. "

Learned Counsel for the Petitioners contends that in the written statement filed by the Petitioners it was specifically stated that they had neither been appointed nor acted as trustee/arranger for Opposite Party No.1. In view of the written statement filed by them, the burden was on the complainant to prove that the Petitioners were appointed and acted as trustee/arranger for Opposite Party No.1. That there is no document on record to show that the Petitioners had either been appointed or agreed to act as trustee/arranger for "Zero coupon secured bonds series "C" debenture certificates". That the State Commission relying upon Ex.C-4 has wrongly concluded that the Petitioners were the trustee/ arranger for Opposite Party No.1 and were liable to pay the redemption amount to the Complainant. As against this, Complainant appearing in person supports the order passed by the fora below.

4. WE find substance in the submissions made by the Ld. Counsel for the Petitioners. State Commission has committed an error in putting the negative onus on the Petitioners to prove that they were not the trustee/arranger for Opposite Party No.1. On the contrary, burden was on the complainant to prove that the Petitioners had acted as trustee/arranger for Opposite Party No.1. Since the Complainant has failed to prove that the Petitioners had agreed to act as

trustee/arranger for Opposite Party No.1, complaint filed by him could not be allowed against the Petitioners. State Commission relying on Ex.C-4 has erred in holding that the Petitioners were liable to pay the redemption amount to the Complainant. Notice Ex.C-4 dated 26.05.97 does not refer to any word of ""Zero coupon secured bonds series "C" debenture certificates". The said letter has been written by the lawyer of the Petitioners and does not bind the Petitioners. There is no binding contract executed between the Petitioners and the Opposite Party No.1 wherein the Petitioners agreed to act trustee/arranger. In absence of such contract simply on the basis of the letter " Ex.C-4 it cannot be held that the Petitioners had agreed to act as trustee/arranger for Opposite Party No.1. Moreover, Ex.C-4 does not pertain to the "Zero coupon secured bonds series "C" debenture certificates. For the reasons stated above, it is held that the Petitioners had neither been appointed nor acted as the trustee/arranger for "Zero coupon secured bonds series "C" debenture certificates floated by the Opposite Party No.1 and the complaint qua them is dismissed. Since the other Opposite Parties have not challenged the order of the District Forum, Complainant would be at liberty to execute the decree as against the other judgment debtors.

