(2000) 08 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

State Bank of India APPELLANT

Vs

JAI NARAIN SHARMA RESPONDENT

Date of Decision : 23-08-2000

Acts Referred:

Citation : 2001 1 CPC 322 : 2001 1 CPJ 10

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal has been filed by the State Bank of India against the judgment and order dated 15.7.1994 passed by District Consumer Forum, Kanpur Nagar in Complaint Case No. 425/1992.

2. THE facts of the case stated in brief are that the complainant Sri Jai Narain Sharma had taken a loan of Rs. 60,000/- from State Bank of India for purchase of a Fiat Car. Accordingly Fiat Car No. UMT-1641 was purchased by the complainant. THE entire money consisting of loan and the interest accrued thereon was paid back to the bank. As per rules of the bank, the car was hypothecated to the State Bank of India and the papers relating to the vehicle were also in the possession of the said bank. As per the agreement, when the entire loan was cleared all the papers in regard to the vehicle should have been released by the bank and information to this effect should have been sent to the R.T.O., Kanpur, complainant had been repeatedly requesting the opposite party for release of the papers and letter of release to the R.T.O., Kanpur but to no avail. After the loan was repaid, the bank had no right to retain the papers of the complainant as a charge inasmuch as the charge of the bank was over immediately after the loan was repaid. THE complainant sold the car in question to one Sri Shukla but the transfer of the same could not be made on account of the fact that the b ank continued to keep the papers of car. This has resulted into the illegal and unwarranted harassment of the complainant resulting into his mental torture and the bank is liable to pay the compensation. THE complainant, therefore, lodged a complaint with the District Consumer Forum for awarding

compensation of Rs. 15,000/- and for directing the opposite party to release all the papers in respect of the Fiat Car. The case of the opposite party before the District Consumer Forum was that the opposite party had given a loan of Rs. 60,000/- to the complainant for purchase of Fiat Car. The opposite party admitted that the amount of loan alongwith the interest has been repaid by the complainant but the complainant is a partner in the firm, M/s. B.L. Industries and the opposite party had also given loan to the said firm. The complainant had guaranteed the repayment of the loan and dues outstanding against the said firm, M/s. B.L. Industries. The said firm committed a default in payment of bank dues and, therefore, the opposite party filed a Suit 1029/87, The State Bank of India v. M/s. B.L. Industries, which is pending in the Court of Addl. District Judge. Since the complainant is liable to pay the bank''s dues not only as a partner but also as a guarantor of the loan to M/s. B.L. Industries, the bank had a legal right to exercise its charge/lien over the assets of the complainant which are with the bank and, therefore, the vehicle cannot be released in favour of the complainant. The bank had a charge on the said vehicle and any such transfer by the complainant is illegal and not binding on the bank. The RTO has rightly not transferred the vehicle to the alleged purchaser.

The District Consumer Forum, after hearing the case, ordered the State Bank of India, the opposite party that papers relating to the car in question be released and information be given to the RTO, Kanpur.

3. AGGRIEVED of this order, the State Bank of India, the opposite party has come in appeal and has challenged the correctness of the order. We have heard the Counsels of the two parties. The learned Counsel for the appellant has argued that the complainant was a guarantor for the loan which has been given by the appellant to M/s. B.L. Industries. The complainant was also a partner of the said firm. On the other hand, the learned Counsel for the respondent has argued that the loan was taken for the personal reasons for purchase of a car and the industry of which he is the partner has nothing to do with this loan. The learned Counsel also placed reliance on the opinion of the Legal Adviser of the Bank who advised the State Bank of India to return the papers once the loan was repaid. This advice (Page 25) of the affidavit filed by the respondent was not adhered to by the bank. The Legal Adviser of the bank M/s. Devendra Swaroop and Co. has advised the bank that in case the party has deposited the balance amount in the Taxi Account, he can claim the return of the papers relating to the taxi and also for withdrawal of the charge. The bank can exercise its right against the other assets of the party only on two conditions, either the bank obtains decree then the papers can be retained or attached or the bank can exercise its lien. Since the case against M/s. B.L. Industries has not been decreed, the bank cannot retain the papers or attach the taxi. It appears that the bank did not agree with the advice of its Legal Adviser and did not accede to the request of the complainant to return the papers of the vehicle in question. In the replication of the complainant before the District Consumer Forum, the complainant in para 2 has admitted that he is a partner of M/s. B.L. Industries and also admitted that

the loan was given to M/s. B.L. Industries by the opposite party. The complainant also admitted that he is a guarantor for the payment of the loan to M/s. B.L. Industries but in the same replication, it was stated that M/s. B.L. Industries was not a defaulter in the payment of dues to the bank and the dispute was only in regard to the rate of interest charged by the bank on the loan advanced to M/s. B.L. Industries. The fact is that a civil suit was pending in regard to the recovery of loan in the Civil Court was also not denied by the complainant who is the respondent in this case. Alongwith the memo of appeal, there is a deed of hypothecation of vehicle. This deed has been signed by the complainant and verified by the bank. A perusal of these papers will go to show that the complainant had taken the loan from the bank not only for purchase of the car but also stood guarantor for the loan advanced to M/s. B.L. Industries of which he was one of the partners.

4. NOW the question to be decided is whether the bank was authorised to withhold the documents in respect of the car against which the amount of loan which was sanctioned had already been recovered alongwith the interest. Since the complainant is also a partner of M/s. B.L. Industries has stood as a guarantor for the loan advanced to M/s. B.L. Industries by the same bank then the bank had a right to set of the mortgage deed in order to satisfy the liability of M/s. B.L. Industries. Legal position in regard to this, has been made clear in a judgment and order of this Commission where the circumstances were similar in Appeal No. 1067/SC/99 and Appeal No. 1068/SC/99, The Branch Manager, State Bank of India, Ranipur, Hardwar v. M/s. Desh Rakshak Aushadhalaya, Hardwar and Branch Manager, State Bank of India, Ranipur, Hardwar v. M/s. Shivalick Drugs, Hardwar, respectively. It was held by this Commission that as per provisions of Section 171 of Indian Contract Act, 1872, the bankers have a right to retain the title deed as general lien over such securities of bills received from the customer in the ordinary course of banking business and has a right to use the proceeds in respect of any balance if due to the bank from the customer by way of deduction of customers debit balance. The Hon''ble Supreme Court of India, AIR SC-1066 has held as under : "Where the covering letters executed by a customer having overdraft facilities, while obtaining bank guarantee in favour of High Court as per direction of Court on security of two fixed deposit receipts after duly discharging them, contained the recital that the customer agreed that the deposits and renewals shall remain with the bank so long as any amount on any account is due to the bank from the customer, the recital in the letter clearly went to show that a general lien is created in favour of the Bank in respect of the FDRs. The Bank had a right to set off in respect of the FDRs if there was a liability of the judgment-debtor due to the bank. As such, when the bank guarantee was discharged by order in appeal, the general lien created did not come to an end merely because the FDRs were also furnished as security for the issuance of the bank guarantee. In such a case, the words on the back of the FDRs. "Lien to BG 11/80" did not make any difference. However, the banker''s lien would not by itself be a bar for such attachment of FDRs in execution

proceedings against the customer. What is attached is the money in deposit account. The banker as a garnishee, when an attachment notice is served has to go before the Court and obtain suitable directions for safeguarding its interest. This becomes clear from the perusal of Order 21, Rule 46(a) of the Civil P.C. The Court in such a situation has to take into account the banker''s lien over the securities or deposits regarding which garnishee notice is issued. But as the Bank had the liberty to adjust from the proceeds of the FDRs towards the dues to the Bank if there was any balance left after such adjustment that will not be the amount which would belong to the depositor namely the judgment-debtor and only such amount, if any, can be attached in discharge of a decree." In view of the above findings, we find that the State Bank of India, the appellant had a right to with-hold the papers of mortgage hypothecation in respect of the car for which the loan was advanced although it was paid, as the complainant was also a partner of M/s. B.L. Industries for which the loan was advanced by the same appellant State Bank of India. Section 25 in connection with the liability of a partner as provided in the Partnership Act reads as follows : "Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner." This section of the Partnership Act lays down the foundation of the liability of the partner to the third parties. The partner who is the respondent in this case has admitted partnership and guarantee given by him for the loan advanced. The bank was, therefore, within its powers to hold the lien of the papers relating to the car for this transaction which is in dispute and is under consideration of the Civil Court and unless the Partnership Firm is cleared of all the liabilities by any judgment and order of the Civil Court, the appellant bank is perfectly justified in retaining the hypothecation papers and the mortgaged property. In view of these facts, we find that the judgment and order dated 15.7.1994 passed by the District Consumer Forum, Kanpur Nagar deserves to be set aside and the appeal is liable to be allowed. Order The appeal is allowed. The judgment and order dated 15.7.1994 passed by District Consumer Forum, Kanpur Nagar in Complaint Case No. 425/92 is set aside and the complaint is dismissed. There will be no order as to the cost. Let copy of this order be made available to the parties as per rules. Appeal allowed.

