(1995) 11 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

STATE BANK OF INDIA — APPELLANT

Vs

JAWAHAR LAL — RESPONDENT

Date of Decision : 06-11-1995

Acts Referred:

Citation : 1995 0 NCDRC 59 : 1995 3 CPR 632 : 1996 1 CPC 69 : 1996 1 CPJ 293

Hon'ble Judges : V.BALAKRISHNA ERADI , B.S.YADAV , S.S.CHADHA , R.THAMARAJAKSHI , S.P.BAGLA J.

Advocate : S.L.GUPTA , RAJIV SHARMA , D.T.Deshmukh

Judgement

1. THIS Revision Petition arises out of the Order dated 6th October, 1994 passed by the State Consumer Disputes Redressal Commission, Maharashtra. By the impugned order, it dismissed the appeal filed by the Revision Petitioner, State Bank of India. It may be mentioned here that the Revision Petitioner, was opposite party in the complaint filed by the present respondent-Jawaharlal, before the District Forum, Amarawati.

2. ACCORDING to the allegations in the complaint, the complainant had a Savings Bank Account with the opposite party-Bank. He withdrew Rs. 20,000/- from that Account and deposited the amount with the opposite party-Bank in two term deposits of Rs. 10;000/ - each on 9th April, 1995 vide Term Deposit Receipts Nos. 718633 and 718634 each for Rs. 10,000/-. At the time of these term deposits the Branch Manager of the Bank is said to have told the complainant to add one more name to the name of the depositor because if at the time of maturity of the deposits the complainant did not survive, then in that case, the person whose name was added would be able to recover the amount of these deposits. Accordingly, at the time of making the term deposits the complainant had added the nameof hisbrother, Jaglal Chunnilal Karanjekar. The date of maturity of the term deposits was show as 9th April, 1992 and the maturity amount in respect of each term deposit was shown as Rs. 21 -. On 9th April, 1992, the complainant approached the opposite party-Bank and requested

the Manager for the refund of the amount of the term deposits. The Officers of the Bank flatly refused to make the payment to the complainant by saying that there is a loan outstanding against Jaglal amounting to about Rs. 20,000/-. The complainant told the Manager of the Bank that there is no connection between the amount of loan due against Jaglal and the amount to which the complainant was entitled and these two transactions were totally different and that the name of Jaglal was mentioned in the term deposit receipts only on the asking of the Branch Manager of the Bank. The complainant was the owner of the amount and so no amount should be deducted for adjusting towards the Joan of Jaglal. The Officers of the Bank did not pay any attention the explanation and request made by the complainant. The complainant''s father is suffering from malignancy and it was essential for the complainant to take him to Bombay for further treatment for which rupees about 40,000/- were required. The complainant asked the Manager of the Bank to settle the matter immediately. However, the Bank did not settle the matter. Therefore, the complainant filed the complaint before the District Forum, Amarawati claiming the matured amount of the two Term Deposits plus interest plus expenses and compensation for mental torture, paid and agony and Rs. 35,000/- were also claimed towards the loss of health of the father of the complainant. In all he claimed Rs. 96,000/-.

3. THE Bank filed a counter contesting the claim of the complainant. It denied the allegation that the Branch Manager had persuaded the complainant to include the name of Jaglal also in the term deposits receipts. It was further pleaded that when the complainant approached the Bank to receive the maturity amount of the term deposits he was told by the Bank Manager that the term deposits were in the joint names of the complainant and his brother, and his brother jaglal had taken a loan from the Bank which was outstanding against him and, therefore, 50% of the term deposits amount would necessarily be adjusted towards the loan account of Jaglal. The complainant did not agree with the said proposal.

4. THE main contention of the Bank is that under general principles of general lien embodied in Section 171 of the Indian Contract Act the Bank had the Banker''s lien over the amount of the term deposits and to adjust 50% of the above towards the loan taken by the complainant''s brother, Jaglal, which was about Rs. 20,000/-. The District Forum, Amarawati, before whom the complaint was filed held that the complainant and his brother were separated and the complainant was having an independent separate savings account which was maintained and operated by him and the complainant had withdrawn the amount from his Savings Bank account for depositing in the term deposits. He was the owner of the terms deposits and as the amount on maturity was payable to either or the survivor, the complainant was entitled to get the amount. About the general lien of Bankers it was remarked that both the terms deposits were not bailed nor even pledged or assigned for any loan. Therefore, the Bank was not entitled to appropriate the same towards the loan of Jaglal. The District Forum, therefore, held that the complainant was entitled to Rs. 42,750/- plus Rs.

1,500/- on account of expenses for visiting the office of the opposite party and thus in all he was entitled to Rs. 51,945/-. It appears that the complainant has received half of the amount of the terms deposits i.e. Rs. 21,375/- and the District Forum held that the complainant was entitled to Rs. 30,570/- with interest at the rate of 20% per annum from the date of the order till the payment.

5. FEELING aggrieved, both the parties filed appeals before the State Commission. The State Commission believed the contention of the complainant that the name of Jaglal was introduced on the suggestion of the Branch Manager of the Bank and the motive behind this was that the Manager wanted to obtain security for the loan of Jaglal which he had obtained for the purchase of a Matador vehicle. It was further held that as these the two term deposits were not bailed towards the security for payment of the loan obtained by Jaglal, Section 171 of the Contract Act was not attracted in the circumstances of the case. According to the State Commission no money could be withheld from the complainant''s account for the loan of Jaglal. Accordingly, the Bank''s appeal was dismissed. The appeal filed by the complainant was allowed to the extent that interest was made payable from the date of the refusal of the Bank to pay the amount on the two term deposits to the complainant. With that modification the appeal of the complainant was disposed of.

6. WE have heard the Counsel for the parties and have gone through the records of the case. Copies of the term deposit receipts are at pages 43 and 44. The receipts were in the joint names of the complainant and his brother and the amount wras payable to either or survivor. Learned Counsel appearing for the Petitioner argued that if the Branch Manager wyas to make any suggestion to the complainant then under the Banking Regulations he would have suggested the nomination in the term deposits instead of inclusion of the name of any third party and therefore, the plea of the complainant that the name of Jaglal was introduced in term deposit receipts at the suggestion of the Branch Manager cannot be believed. It was further argued that in any case, according to the term deposits, the amount on maturity was payable to either or survivor and, therefore, the Bank was entitled to adjust half of the amount towards the loan due from Jaglal in view of the Banker''s Lien embodied in Section 171 of the Contract Act. We are inclined to accept the argument of the Petitioner that even if any security is not expressly pledged or made a security for a loan, even then, a Banker can appropriate the amount in his hands towards the loan amount due from the party to whom the amount under some other account is payable. In the present case, as noticed above, the amount on maturity of the term deposits was payable to the complainant or to his brother i.e. either or survivor and therefore, the Bank was within its rights to adjust the amount due from Jaglal from the proceeds of the term deposits.

7. HENCE , in view of the above discussion we hold that the State Commission exercised its jurisdiction with material irregularity by overlooking the provisions contained in Section 171 of the Indian Contract Act. We, therefore, accept the

present Revision Petition, set aside the orders of the State Commission as well as that of the District Forum, and dismiss the complaint. We will make no order as to costs.

