(1997) 11 NCDRC CK 0030

In the National Consumer Disputes Redressal Commission

State Bank of India — APPELLANT

Vs

NARAYAN DAS MISHRA — RESPONDENT

Date of Decision : 19-11-1997

Acts Referred:

Citation : 1998 2 CPC 132 : 1998 2 CPJ 212 : 1998 2 CPR 294

Hon'ble Judges : Saroj Rajwade , N.K.Vaidyas J.

Final Decision : Appeal dismissed with costs

Judgement

1. THIS is an appeal filed by opposite party against order dated 28.8.1995 passed by Consumer Disputes Redressal Forum, Chhatarpur in their Case No. 30/94 wherein the Forum has directed the opposite party to pay to the complainant amounts of Rs. 1,03,230/- and 68,820/- being the maturity values of two TDRs alongwith interest at the rate of 18 from the date of maturity and Rs. 2,000/- as compensation and Rs. 200/- as Advocate''s fee.

2. HEARD the arguments of both the parties and perused the records of the case. The arguments of the appellants are as under: (1) That the TDRs matured on 20.5.1991 and 27.5.1991 and the complaint was filed on 25.5.1994 i.e. after more that two years and therefore the complaint was liable to be dismissed on the. ground of limitation according to the amended provisions of Act. (ii) That since two civil suits inter alia in regard to recovery of money wrongly received and converted into TDRs by respondent No. 1 are pending Civil Courts at Chhatarpur, hence the Forum has no jurisdiction to entertain this complaint. (iii) That the appellant Bank has statutory right in nature of lien to adjust proceeds of credit balance of TDRs against advance taken by respondent No. 1 towards the Court fees etc.

So far as the question of limitation is concerned, the Hon''ble National Commission has held in 1991 CPR P. 419 that when the cause of action arose before coming into force of the. Amendment Act 50 of 1993 inserting Section 24-A in Consumer Protection Act, regarding limitation, the general law of limitation of 3 years will apply. In the instant case, cause of action arose on 26.5.1991 and the Amendment Act 50 of 1993 itself came into force more than two years later on 18.6.1993. As such in this case according to general law of limitation, the complaint should have been filed within three years and complaint having been filed on 25.5.1994 was within limitation.

Second argument of the appellant is regarding jurisdiction to entertain the complaint in view of pending civil suits. The said civil suits have nothing to do with TDRs. They are for recovery of Advocate''s fee. Court fee etc. from the complainant, paid to him by the Bank for pleading Bank''s cases as an Advocate. As such the Forum had full jurisdiction to entertain the complaint.

3. THE third argument is in respect of Bank''s statutory right in nature of lien to hold back the payment. Under Section 171 of the Contract Act. the Bankers have a right only to "retain, as a security for a general balance of account, any goods bailed to them". In the instant case, the complainant did not bail out the concerned TDRs for payment of Advocate''s fee or Court fee etc. paid by the Bank to respondent No. 1. Whatever Advocate''s fee or Court fee etc., the Bank paid to respondent No. 1 was paid to him in his capacity as Bank''s Advocate without any security of TDRs. Obtaining TDRs was a separate transaction by him as a "Consumer". As a "Consumer" he bailed nothing to the Bank for the Advocate''s fee or Court fees and therefore with-holding of payments due to him, on maturity of TDRs is gross deficiency on the part of the Bank. Rather it is arbitrary and oppressive. The act of with-holding payment was not bona fide and the complainant deserved to be adequately compensated.

4. WE therefore find no reason to interfere with the order of the District Forum and dismiss the appeal. The appellant shall pay Rs. 2,000/- to the respondent, as cost of this appeal. Appeal dismissed with costs. ______________

