(2013) 04 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

STATE BANK OF INDIA — APPELLANT

Vs

OM PRAKASH — RESPONDENT

Date of Decision : 25-04-2013

Acts Referred:

Citation : 2013 0 NCDRC 302 : 2013 3 CPJ 186

Hon'ble Judges : V.B.GUPTA , Rekha Gupta J.

Advocate : S.L.GUPTA

Judgement

1. REVISION no. 2092 of 2012 has been filed against the order dated 14.02.2012 passed by the Haryana State Consumer Disputes Redressal Commission, Panchkula (''the State Commission '') in First Appeal no. 2213 of 2007 upholding the order passed by the District Consumer Disputes Redressal Commission, Panipat (''the District Forum '') in complaint no. 116 of 2006.

2. THE brief facts of the case as given by the respondent/complainant are as follows: That the respondent/ complainant had purchased a tractor and obtained loan for purchasing the tractor and thresher from the petitioner bank. The said tractor was hypothecated with the SBI Bapoli District Panipat. But due to the mechanical defect in the tractor the instalment could not be deposited in time hence, the petitioner bank filed the civil suit for recovery of the balance loan amount titled SBI vs Krishna etc., in the civil court, Panipat. The respondent/ complainant had come into compromise with the petitioner and deposited the entire agreed loan amount settled the compromise. The petitioner has issued the clearance certificate to the respondent/ complainant on dated 19.07.2005. The respondent/complainant has been enjoying the saving bank account in the petitioner bank bearing account no. 01190015033. The respondent/ complainant had deposited the amount in the said account but the petitioner without the consent and knowledge of the respondent/ complainant had withdrawn the amount of Rs.25,000/- from the account of the respondent/ complainant and has committed deficiency in service.

Petitioner/OP bank has submitted that ''the present complaint is not maintainable against the answering respondent, as the respondent/complainant failed to repay the loan of the Bank within the given period and violated the terms and conditions of the tractor loan, getting no alternative the Bank has to file suit for recovery against the respondent/ complainant. During the pendency of the suit, the respondent/ complainant entered into compromise with the Bank and as per bank policy pertaining to N P Accounts relief of interest of Rs.25,000/- was given to the respondent/complainant detailed as under: Principal Rs.1,24,650/- Interest from 01.12.1999 to 22.07.2005 Rs.1,85,030/- Court Fee Rs.17,627/- Insurance Rs.4,293/- TOTAL Rs.3,31,600/- Relief Rs.25,000/- Total Balance Rs.3,06,000/- Amount received from complainant On 19.07.2005 Rs.2,81,600/- Balance Rs.25,000/-

3. IN this manner the amount of Rs.25,000/- remained balance as on 22.07.2005, the respondent/complainant requested the Bank for another relief of interest of Rs.25,000/- which was beyond the power of the compromising authority but the respondent/complainant requested the Bank that he will try at his level best moving to the higher authorities for further relief of Rs.25,000/- and deposited a sum of Rs.25,000/- in his saving Bank account and requested the Bank to mark lien on his account and to issue conditional no dues certificate. In case the respondent/complainant fails to get further relief from the higher authority, the amount of Rs.25,000/- kept under lien adjusted in his loan account to adjust the amount in full and final. In this manner the then Branch Manager Shri Pale Ram issued conditional no dues certificate marking lien in saving Bank Account of respondent/ complainant. Meanwhile, Shri Pale Ram was transferred by the Bank and the lien in saving Bank Account remained as it is. The respondent/ complainant failed to get further relief from higher authorities, instead of informing the Bank moved the present application. Thus the present complaint is liable to be dismissed on this score only.

4. AS the then Manager was transferred and after coming to know of the facts while the respondent/ complainant filed the above said false and baseless complaint, the Bank has adjusted the lien amount in the loan account being interest amount of the respondent/complainant with the Bank. The District Consumer Disputes Redressal Forum, Panipat (''the District Forum '') vide its order dated 05.07.2007 has stated as follows: "After having gone through the complaint, contents of the reply and the no dues certificate issued by the OPs, we are of the opinion that the petitioner has already paid the dues pending towards him and nothing remains to be paid by him to the Bank. Further, in the no dues certificate/ letter dated 19.07.2005 there is no condition mentioned therein. Meaning thereby the no due certificate/ letter dated 19.07.2005 indicates that nothing remains to be paid by the petitioner to the OPs. Now the OPs are estopped by their own act and conduct from claiming any amount with regard to the tractor loan of the petitioner. Therefore, the OPs are found gross negligent in their services and it is clear that the petitioner has been subjected to mental harassment and has been compelled to file the present litigation. For the reasons recorded above, we accept the present complaint and hold the OPs are

negligent in their services. Therefore, we direct the OP Bank to allow the petitioner to with draw the amount standing in the savings account of the petitioner by him. Further, we hold that there remains nothing to be paid by the petitioner towards the tractor loan. The OPs are further directed to pay the compensation of Rs.5,000/- to the petitioner on account of mental harassment and Rs.3,300/- as litigation. The OPs are further directed to make the compliance of this order within a period of 30 days from the date of receipt of copy of this order ".

Aggrieved by the order of the District Forum, the petitioner filed an appeal before the State Commission. After hearing the learned counsel for the appellant and perusing the case file, the State Commission stated as follows: "It has also not been disputed that pursuance to the payment of the amount by availing scheme, the bank issued a No Due Certificate to the complainants on 19.07.2005 and also addressed a letter to the Tehsildar concerned for releasing their charge over the agricultural land of the complainants. The plea of the OP appellant was that on oral requests a conditional No Due Certificate was issued. This plea of the OP is apparently contrary to the record and appears to be an after-thought. The letter written by the Bank to the revenue authorities on 19.07.2005 does not indicate any such conditional no dues and is reproduced below:

Bapoli To Tehsildar Bapoli Sir, Removal of loan on tractor loan AC No. ATL 2/359 Rs.1,70,100/- We advise that Shri Kishana @ Kishan Chand and Om Prakash son of Sarjeet vill. Shimla Sujram has cleared his tractor loan account. So nothing is due against him. Please remove our lien on ATS land measuring 49 K 6 M Regd. No. 1013/1 dated 12.03.1998,______ no. 210 dated 14.03.1998. Yours faithfully, Sd/- Branch Manager

5. ONCE the matter has been settled between the parties in civil suit and the complainants have paid the amount and pursuance to which the suit stood disposed of and bank issued ''No due Certificate ''), the withholding of the amount lying in the saving bank account of the complainants was certainly an act of grave deficiency on the part of the bank official and thus District Forum rightly allowed the complaint of the complainant and also imposed compensation for mental harassment. We do not find any ground to interfere in the impugned order. Hence, the appeal is dismissed. The statutory amount of Rs.17,500/- deposited at the time of filing of the present appeal be refunded to the appellant against propose receipt and due verification as per rules on the subject, after the expiry of period of appeal and revision, if any, filed in this case ". Dissatisfied by the order of the State Commission the petitioner filed the present revision petition before us.

6. WE have heard the learned counsel for the petitioner and have also gone through the records carefully. The grounds for the revision petition are as follows: On 19.07.2005, the respondent approached the petitioner Bank for some relief/ concession in the interest and offered to liquidate the entire dues in the account. The then Branch Manager of the Bapoli Branch, District Panipat advised

the respondent that concession of only Rs.25,000/- has been granted to him by the competent authorities of the Bank. At that time, the total amount payable by the respondent was Rs.3,31,600/- and after the relief of Rs.25,000/- the balance payable was Rs.3,06,000/-. The respondent then pleaded to the Branch Manager that he will take up the matter with the higher authorities of the Bank for another relief of Rs.25,000/- and deposited the amount of Rs.2,81,600/- in the loan account and Rs.25,000/- in his Savings Bank Account on the understanding that the Bank may mark the lien on the said amount and in case, the higher authorities do not agree to the request of the respondent for the waiver/relief of another sum of Rs.25,000/-, the same may be adjusted by the Branch. It was further represented by the respondent that he required the ''No Dues Certificate '' on an ''urgent basis '' as he has to deal with the property. The ''No Dues Certificate '' was required by the respondent for getting the entry of mortgage removed from the revenue records.

The petitioner Bank filed its detailed reply detailing all the correct facts in the matter. It was further pleaded that the ''No Dues Certificate '' was issued by then then Branch Manager under good faith and on the deposit of Rs.25,000/- in the savings bank account by the respondent/complainant. It was further pleaded that the amount of Rs.25,000/- has been deposited by the respondent/ complainant on 19.07.2005 when the amount of Rs.2,81,600/- was deposited in the loan account. The petitioner bank also filed the statement of the loan account showing the deposit of Rs.2,81,600/- on 19.07.2005, the relief/ concession of Rs.25,000/- credited in the account and the account still shows the debit balance of Rs.25,000/-. It was also the plea of the petitioner Bank that the respondnent/ complainant is not a consumer. In evidence, the petitioner Bank filed the affidavit of Shri Pale Ram who was the Branch Manager at Bopali Branch, where the respondent/complainant had the account and the Saving Bank Account who had issued the No Dues Certificate. The said Manager of the petitioner Bank stated on oath, the actual facts of the matter and the circumstances in which the ''no dues certificate '' without mentioning the balance amount of Rs.25,000/- payable has been issued. The loan account was not settled, the suit was not withdrawn and the same was decreed by the Court of Shri Jagdish Singh, Civil Judge, Panipat on 28.04.2008 after hearing the counsel for the petitioner Bank and the Counsel for the respondent. The decree was passed for Rs.2,73,298/- with interest @ 13.77% per annum with half-yearly rest from 20.11.2003 till the date of payment.

7. THE State Commission and the District Forum failed to appreciate that the petitioner Bank has not issued any letter or communication granting relief of Rs.50,000/- to the respondent/ complainant and in the absence of the same, the complainant/borrower is liable to pay the entire amount with interest, cost and charges. The State Commission and the District Forum failed to appreciate that the amount of Rs.25,000/- was deposited by the respondent/complainant in the Savings Banks Account on 19.07.2005, in the loan account. All this proves that the deposit of Rs.25,000/- in the Savings Bank Account was connected with the

repayment of the loan. The State Commission and the District Forum failed to appreciate that the petitioner Bank has fairly credited the amount of Rs.2,81,600/- in the loan account on 19.07.2005 and on the same date, has also credited Rs.25,000/- as concession granted and further that the loan account is still showing the debit balance of Rs.25,000/- which is payable by the respondent/ complainant.

8. THE State Commission and the District Forum failed to appreciate that the ''no dues certificate '' dated 19.07.2005 issued by then Branch manager, Shri Pale Ram, only in good faith, and after the deposit of Rs.25,000/- by the complainant in the savings bank account and after marking the lien, over the said amount. The State Commission and the District Forum failed to appreciate that the higher authorities of the petitioner bank at the zonal office has not approved any further concession to the respondent and the concession granted to the complainant remained at Rs.25,000/- the benefit of which was already given to the complainant. The State Commission and the District Forum failed to appreciate that the effect of the ''no dues certificate '' is that the mortgage property stands redeemed and however the said letter does not affect the rights of the bank to recover the amount. It is an undisputed fact that the respondent was a consumer of the petitioner bank having a savings bank account no. 01190015033. The amount of Rs.25,000/- was in the balance in the account of the respondent. When the respondent wanted to withdraw the above said amount, the clerk declined and stated that the account was seized by the Manager of the Bank on account of non-payment of the loan towards tractor. The respondent had cleared the loan amount of the tractor and to this effect the respondent had issued letter dated 19.07.2005 to the Tehsildar Bapoli for clearance of the loan and for changing the mutation in the revenue record. However, a reading of the no due certificate does not support this claim. Petitioner has stated that on an oral request conditional no due certificate was issued. This however, is contrary to the record and appears to be an after-thought. The letter written by the Bank to the revenue authorities on 19.07.2005 does not indicate any such conditions to the no due certificate issued.

9. IN the facts and circumstances of the case mentioned above, we find no reasons to disagree with the order of the State Commission. In view of this we find that there is no jurisdictional error, illegality or infirmity in the order passed by the State Commission warranting our interference. The revision petition is accordingly dismissed with cost of Rs.10,000/- (Rupees ten thousand only). Petitioner is directed to deposit the cost by way of demand draft in the name of ''Consumer Welfare Fund '' as per Rule 10 A of Consumer Protection Rules, 1987, within four weeks from today. In case the petitioner fails to deposit the said cost within the prescribed period, then it shall be liable to pay interest @ 9% per annum till realisation. List on 31st May 2013 for compliance.