(2014) 05 NCDRC CK 0013

In the National Consumer Disputes Redressal Commission

State Bank Of Mysore Maddur Branch Maddur Karnataka APPELLANT

Vs

Amitchandra RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Citation : 2014 0 NCDRC 277 : 2014 3 CPJ 5

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

Advocate : S.L.GUPTA , C.B.GURURAJ

Judgement

1. REVISION Petition no. 1402 of 2011 has been filed under section 21 (B) of the Consumer Protection Act, 1986 against the order dated 05.01.2011 passed by the Karantaka State Consumer Disputes Redressal Commission, Bangalore (''the State Commission '') in Appeal no. 2890 of 2010.

2. THE brief facts of the case as per the respondent/complainant are that respondent ''s father late Dr S K Chandrashekar was an account holder of the petitioner - Bank. The respondent submits that his father passed away on 04.01.2008. Petitioner is a Banking company and is having its branches at various places. Complainant submits that his father had sold his property in old Maddur, in the year 2006 and on the pressure and advice of the petitioner ''s Manager, had kept fixed deposit of Rs.2,00,000/ - in his name and Rs.1,00,000/ - in the name of respondent ''s mother K S Parimala and Rs.1,00,000/ - in the name of respondent ''s sister M S Swetha in the State Bank of Mysore, Maddur Branch.

3. RESPONDENT further submits that the Bank Manager collected cash from his father from his residence and made them to sign on some pay -in -slip and other challans and form, as his father was bedridden, the respondent went along with the said Manager to the Bank and collected the fixed deposit Bonds from him.

4. RESPONDENT ''s father expired on 04.01.2008 and as the respondent had incurred loans for the treatment of his father, he immediately approached the Bank and submitted the death certificate of his father and gave requisition dated

07.02.2008, to close the fixed deposit of his father and to pay the deposited amount along with the interest. The Manager of the Bank started dodging the matter on one pretext or the other and finally he denied having collected any money. As the respondent was in urgent need of funds, he gave requisition dated 29.02.2008 to the complaint cell, Head Office, State Bank of Mysore, Bangalore, through a lawyer with a copy to the Maddur Branch. The respondent did not receive any reply to the above said requisition or legal notice and finally the complaint cell gave a reply dated 13.03.2008, stating that the matter has been sent to Mysore Zone Office and they will enquire into the matter and inform the respondent.

5. THE respondent again did not receive any communication or information from the Mysore Zone and hence, he issued a second legal notice dated 10.04.2008, through his lawyer to the complainant cell of the Petitioner - Bank.

6. PETITIONER - Bank finally on 16.04.2008 sent a reply after a lapse of two months cooking up a story that the respondent has not paid the money towards the fixed deposits and they had issued the Fixed Deposits Bonds without collecting the money. It is pertinent to submit that after receiving the legal notice the respondent approached the Ombudsman Authority in Bangalore, requesting them to enquire into the matter and to release his money. But even that authority without even giving any hearing to the respondent has unilaterally replied that they have confirmed that the deposits were issued without funding the same.

7. IT is pertinent to submit that at the first instance, how the petitioner Bank issued the Fixed Deposit Bonds without collecting the money for the same and kept quiet for two longs years and now at the time of paying the amount they are giving all lame excuses. To show how casually Bank was taking the suffering of the common people this is the best example.

8. THE respondent has produced the copy of the requisition which the Bank has denied in its reply notice. A fraud has been played by the petitioner - Bank, which is a public office with the respondent. Otherwise, what stopped the respondent from informing the respondent ''s father about the payment of the money and till the respondent requested for the closure of the Fixed Deposit there was not a single communication to the respondent or his father about the payment of the money to the deposit. Now after two years after issuing the Bonds, the petitioner - Bank came up with this story to cheat the respondent. The contention of the Bank that they had forgotten about the collecting the money from the respondent ''s father cannot be believed as the Bank is a registered company and is under the RBI and there must be regular internal audit and hence, the story of the Bank that they have not collected the money is unbelievable. Petitioner - Bank has issued the Fixed Deposits Bonds only after collecting the money and after getting signatures of the deposit holders on some forms and now if they bring some lame excuses and rules to hide their act and to grab the money of the respondent. The petitioner Bank having covenanted and

assured and having collected the amount from the respondent ''s father are deficient in rendering the service to the respondent. Petitioner is a Banking company in the business of Banking and the respondent is a consumer, whose father had deposited the amount for fixed period of five years with the Bank. The petitioner has rendered deficiency in service by not closing the deposits and releasing the cash to the respondent.

9. THE petitioner is a very experienced in Banking business and is very old. Hence, the Bank is aware of the Banking practice and RBI rules and regulations.

10. IN their written statement before the District Consumer Disputes Redressal Commission, Mandya (''the District Forum ''), the petitioner Bank have stated that the father of respondent - Dr S K Chandrashekar was an account holder in the Bank. But the Bank was not aware of the date of death of Dr S K Chandrashekar. The allegations made that upon the pressure and advise of the petitioner - Bank ''s Manager, his father had kept the fixed deposit of Rs.2,00,000/ - in his name and Rs.1,00,000/ - each in the name of K S Parimala and M C Swetha respectively who are the mother and sister of the respondent in the year 2006 was absolutely false and baseless.

11. THE allegations made that the Manager of the Bank collected the cash from his father from his residence and made them sign on some pay -in -slips and other challans and Forms as his father was bedridden, and that the respondent went along with the Manager and collected the Fixed Deposits bonds from him are all absolutely false and untenable.

12. THE petitioner admitted that a requisition was given on 29.02.2008 to the Head Office. It is also a fact that a reply was given to this respondent on 13.03.2008. The allegations made that the Petitioner Bank had issued the fixed deposit bonds only after collecting the money and after getting signatures of the deposit holders on some forms and that now lame excuses and rules are being given to hide their act and to grab the money of the respondent are all absolutely false and myth. It is utterly false to state that the Manager of the Petitioner - Bank collected the amount from the respondent ''s father, since there was no collection of money the question of deficiency in service to the respondent does not arise. Since there was no deposits as alleged by the respondent, the question of closing the deposits and releasing the cash to the complainant does not arise.

13. THE case of the Petitioner/ opposite party - Bank is as follows: -

14. IT is submitted that Dr S K Chandrashekar, his wife K S Parimala and daughter M C Swetha are the account holders of the petitioner Bank. SB Account nos., of Dr S K Chandrashekar is 54025501463, SB account of Parimala K S is 54025517768 and account number of M C Swetha is 64004217866. All the three account holders had sufficient credit balance in their S B Accounts to the extent of Rs.3,28,754/ -, Rs.3,23,729/ - and Rs.2,82,856/ - respectively as on 24.08.2006. On 25.08.2006 father of the respondent and his mother came to the Bank and expressed their intention to keep money in fixed deposits to the extent

of Rs.2,00,000/ - in the name of Dr S K Chandrashekar and Rs.1,00,000/ - each in the name of M C Swetha and Parimala K S. Considering their desire, the branch officers prepared the necessary debit slips to the concerned accounts for Rs.2,00,000/ -, Rs.1,00,000/ - and Rs.1,00,000/ - to transfer the amount to the fixed deposit account from their respective S B Accounts and by keeping the slips, the concerned officers issued the deposit certificates, since father of the respondent was not so doing well and they expressed their urgency to return back to their home, and since the father, mother and sister of the respondents were good customers to the Bank, the Bank officers trusted them and issued the certificates. Thereafter, due to some problem in connectivity and server of the computers the amount was not transferred to the fixed deposit accounts from the SB accounts of all the three and due to inadvertence and due to the rush of work it was forgotten to transfer the amount from S B accounts to fixed deposit accounts of all the three. As per the procedure and RBI norms the deposits amount exceeds Rs.50,000/ - cash will not be entertained and only transfer of amount from S B account to fixed deposit account is permissible. Since there was no funding to the fixed deposit account no transfer was made from SB accounts due to the above said reasons and thereafter knowing fully well the entire balance is in the S B account, the father, mother and sister of the respondent have withdrawn the amount through ATM and through cheques and they have not at all intimated anything to the Bank with regard to not transferring the amount from S B account. There was no practice of procedure in the Bank to go to the residence of the customer and collecting the money. If at all if any amount was paid then deposit receipts are issued and the transaction should be entered in the receipt scroll of the Bank which is maintained at all the counters of the Bank. The receipt scroll of the particular day was produced along with this counter which clearly goes to show that no cash was received from the father, mother and sister of the respondent. After receipt of the reply notice from the Bank, the respondent has set up a new theory stating that the Manager of the Bank went and collected the cash. In fact the Manager of the Bank has not at all visited the respondent ''s house and has not collected any money. As a matter of fact the respondent came to the Bank with the receipt and requested the Branch manager to close the RID and to pay the money. At that time the branch was searched out the accounts and came to know that there was no funding made to the RID accounts from the SB Accounts and it was satisfactorily/ explained to the respondent with regard to the things happened and the reasons for issue of RID receipts without funding. At that time the respondent had agreed and undertaken to return the RID receipts within a week or two. Believing the words of the respondent the petitioner - Manager did not pressurise him to return the receipts for cancellation. Thereafter the respondent visited for some time and thereafter started to write letters and issue notices only with a mala fide intention to pressurise the Bank officers with a sole intention to blackmail the Public Financial Institutions. If really the cash was paid and remitted to the concerned account the respondent should have taken the counterfoils. Since, there was no procedure to take the cash directly to RID accounts the question of collecting the cash and issue RID receipts does not arise. District Forum vide its order dated 07.05.2010 while allowed the complaint observed as follows: ""Originally the complaint was filed by the 1st complainant. Admittedly, trial was conducted and both sides adduced evidence and after hearing both the parties, the complaint was dismissed. Complainant filed an appeal before the State Commission got remanded the matter for de novo trial and for impleading complainants no. 2 and 3 as parties. In spite of notice, the opposite party did not appear and did not adduce any evidence afresh. But all the three complainants have filed affidavits. So though, the complaint was remanded with a direction to conduct de novo trial giving opportunity to both sides, the opposite party did not file any affidavit and did not got mark the documents as evidence. So we have to scrutinize the evidence adduced by the complainants which is not contested by the opposite party at all after remand. Under Negotiable Instruments Act, every instrument like cheque, FD receipts or promissory note or demand draft have presumption that they are issued for consideration and the burden is on the person who alleges that actually those instrument are not supported by consideration. In the present case, the opposite party has not adduced any evidence after remand to rebut the presumption and not proved that FDR ''s totally for Rs.4,00,000/ - admittedly issued by opposite party Bank are not funded, i.e., not supported by consideration. Only after three legal notices for the first time on 16.04.2008, nearly after three years, the opposite party has contended that the FDR ''s issued are not funded by cash. Under these circumstances, the complainants are entitled to payment of the FD amounts with interest and the opposite party has committed deficiency in service in not honouring the FD receipts issued by it "".

District Forum gave the following order: ""The complaint is allowed, directing the opposite party Bank to release the amount with interest in respect of FD receipt no. 64006775975 in favour of 2nd complainant and to release the amount with interest in respect of FC receipt no. 64006774132 in favour of 3rd complainant. The opposite party is liable to pay the cost of Rs.1000/ - "".

15. AGGRIEVED by the order of the District Forum the petitioner/ opposite party filed an appeal before the State Commission. The State Commission while the dismissing the appeal, on the issue relating to argument of the appellant that they were not issued notices by the District Forum and the case was decided ex parte, held as under: ""During the course of arguments counsel for the appellant argued that after remand the District Forum has not issued notice to the appellant - Bank. But on perusal of the order sheet maintained by the District Forum, it is seen that the District Forum ordered for issuance of notice to both the parties on 08.01.2010 and the same returnable on 08.02.2010. In the note sheet maintained by the District Forum, it is seen that notice issued by the District Forum to both the parties were duly served on 19.01.2010. Therefore, the grounds urged by the appellant - Bank and the submission made by the counsel for the appellant does not hold water. Before the District Forum respondent/ complainant adduced further evidence on 16.04.2010 and on the day opposite party remained absent and the case was adjourned to 22.04.2010

for cross examination of the complainant by the opposite party if any. On that day also opposite party remained absent and failed to cross examine the complainants. The opposite party has also not filed the additional evidence. Therefore, the District Forum stating that opposite party evidence is taken as closed and posted the case for arguments on 28.04.2010. On 28.04.2010 also the opposite party remained absent. Therefore, the District Forum heard the arguments of the complainants and permitted them to file written arguments and posted for orders. Accordingly, the District Forum allowed the complaint and passed the impugned order under challenge. It is submitted that appellant/ OP received the copy of the impugned order dated 18.06.2010. Record indicated that after remand, notice was duly served on the OP on 19.01.2010 and the same was duly acknowledged with seal and signature of the OP Bank. Therefore, the grounds urged by the appellant that principles of natural justice has not followed by the District Forum cannot be accepted. On the other hand, counsel for the respondents/ complainants submitted that since Dr S K Chandrashekar has maintained a huge balance in his SB Account the appellant Bank Manager approached him in his residence and requested for deposit the same in Fixed Deposit. There is a usual practice of the Managers in the Bank that they are required to show some targets in the deposits from their customers by honest and affiliate customers to keep their amount in FD. The contention of the respondents that the then Manager of the appellant Bank approached Dr S K Chandrashekar handed over Rs.4,00,000/ - to deposit the same in Fixed Deposit in his name and in the name of respondents 2 and 3. Accordingly, three Fixed Deposit Certificates were issued in their respective names. After the death of Dr S K Chandrashekar the respondent no. 1 being one of the legal heir approached for encashment of the FDR ''s but the same was not paid for the reasons best known to the OP. Therefore, the arguments advanced by the appellant in support of its contention cannot be acceptable. Considering the usual practice of the Manager of the Bank to approach the honest and affiliate customers to deposit the amount in FD to meet the target of deposits in their Bank. Therefore, we accept the arguments put forth by the counsel for the respondents. If really the amount in the SB account of the deceased Dr S K Chandrashekar would not be transferred to the FD account due to some connectivity problem, the Bank would not have issued the FDR ''s and there was no urgency with the FDRs without transferring the amount from the SB Account. Since the respondent/ complainants have denied about the signatures in the withdrawal slips it could be said that the appellant fails to prove its defence taken in its version. After the remand, though notice was served on the OP, OP remained absent and has not adduced further evidence. It seems that the appellant/ Bank intentionally avoiding to appear before the District Forum and contest the matter and also failed to cross examine the complainants. This goes to show that the appellant deliberately protracting the proceedings by not appearing before the District Forum. Of course, initially, complaint came to be filed by 1st respondent/ complainant and consequently respondents 2 and 3 have impleaded by filing an appeal. The respondents/ complainants have rightly contested the case by adducing further evidence. This Commission has recorded its finding that 07.02.2008 after the death of late Dr S K Chandrashekar the complainants approached OP Bank requesting to close the Fixed Deposits of his father and to pay the deposit amount with interest. The three Fixed Deposits were made one in the name of deceased Dr S K Chandrashekar, one in the name of complainant no. 2 and another in the name of complainant no. 3 on 23.08.2006. Till 07.02.208 the OP Bank was not aware of the fact that the amount was not transferred to the FD account from out of the account of the deceased Dr Chandrashekar account due to some connectivity problem of the computer and the same was forgotten by the OP Bank. What efforts the OP Bank has made to recover the amount is not known and there is no document to show that whether the Manager of the appellant/ OP Bank went to the house of the respondent/ complainants and collected the amount. Therefore, we are of the opinion that there is a clear cut negligence on the part of the appellant/ Bank in not maintaining the accounts of its honest and affiliate customers in a proper and prospective manner. Taking all these facts and circumstances of the case and reasons assigned is in accordance with law which does not call for any interference. Therefore, we hold that the order under challenges is just and proper. Accordingly, the appeal is liable to be dismissed. Hence, we pass the following: Appeal is dismissed. The amount deposited by the appellant/ Bank in this appeal shall be transferred to the District Forum enabling the District Forum to pay the same to the complainants after due notice to them ''''.

16. THE main grounds for the revision petition are as follows: The State Commission and the District Forum failed to appreciate that the petitioner Bank has not received the money for the Fixed Deposit and the money which was to be transferred to the Fixed Deposit was not transferred and remained in the Saving Banks account of the respondents and the said sum was admittedly withdrawn by the respondents.

The State Commission and the District Forum failed to appreciate that the petitioner Bank has produced before the District Forum the cash scroll of the said date which does not indicates the deposit of any cash by the respondent/ complainant.

The State Commission and the District Forum failed to appreciate that in the Bank there is no system according to which the Branch Manager of the petitioner Bank will visit the residences of the consequences convincing them for deposit and receiving the cash payments without issuing any receipts of the said cash.

The State Commission failed to appreciate the even if the petitioner Bank was not present during the de novo proceedings, it was the duty of District Forum to take into consideration the reply, oral evidence and documentary evidence filed by the Petitioner Bank. The District Forum has ignored everything and even the version of the Bank merely on the ground that the Bank has not participated in the proceedings.

The State Commission failed to appreciate that the petitioner Bank was not served with the court notice and the Bank had not received any court notice from the District Forum, this is why the Bank could not participate in the proceedings. Otherwise the Bank has a very good and strong case on merits, unfortunately Bank could not participate in the proceedings because the Bank was not served and Bank was not aware that any proceedings is going on in the District Forum at Mandya.

We have heard the learned counsel for the parties have gone through the records of the case carefully.

17. IT is an undisputed fact that the petitioner had issued the FDs for Rs.2.00 lakh in the name of Dr S K Chandrashekar on 25.08.2006 for a period of five years and FD of Rs.1.00 lakh in the name of respondent no. 2 and Rs.1.00 lakh in the name of respondent no. 3. Petitioner in their written statement before the District Forum had admitted the same. The only dispute is regarding the manner by which the Bank has collected the amount for the Fixed Deposits. As per the respondents, the Manager of the Bank had himself visited the residence of Late Dr S K Chandrashekar and made them sign the pay -in slips and other challans and forms and collected the forms. Respondent no. 1 went along with the said Manager to the petitioner ''s Bank and collected the FD Bonds from him. The version of the petitioner is that Late Dr S K Chandrashekar came to the petitioner and expressed his intention to keep the money in the Savings Accounts of himself, his wife and daughter in a Fixed Deposits and so the branch officers prepared the necessary debit slips and to the concerned saving account of Late Dr S K Chandrashekar. Respondent no. 2 and 3 also had sufficient credit balance in their Saving Bank Account to transfer the amount to the fixed deposit amount thereafter. It is their version that Late Dr Chandrashekar, father of respondent was not doing so well and expressed an urgency to return back. So the certificates were issued and handed over without carrying the debits in the savings bank accounts as there was some problems in the connectivity and server of the computer. Petitioner has unilaterally stated that ''''due to inadvertence and due to the rush of work it was forgotten to transfer the amount from SB account to fixed deposit accounts of all the three ''''. ... ... as a matter of fact that, complainant came to the Bank with the receipt and requested the Branch Manager to close the RID and to pay the money. At that time the branch was searching out the accounts and came to know that there was no funding made to the RID account from the SB Accounts and it was satisfactorily explained to the complainant with regard to the things happened and the reasons for issue of RID receipts without funding ''''. Petitioner has also stated that thereafter knowing fully well the entire balance in the saving bank account of father, mother and sister of the complainant have withdrawn through ATM and through Cheques and have not at all intimated to the Bank with regard to non - transferring of amount from SB account.

18. LEARNED counsel for the petitioner has admitted that no evidence to support the statement made above has been placed on record before the National Commission. The respondent ''s requests to the petitioner for issue of FDs with instructions as to how the funding was to be done nor the account statements for the three savings accounts or any other paper indicating as to whether FDs were to be issued by debiting the amount to the saving account or by taking money in cash have been placed on record. The respondents have established their case without any denial from the petitioner that three FDs have been issued in the name of Late Dr S K Chandrashekar, Smt Parimala and Ms Sweta. It was for the petitioner to establish as to how it was to be funded and the circumstances under which the Bank departed from the prescribed procedure and issued the FDRs without ensuring that the amount of the FDs had been collected. It is also for the petitioner to explain as to how it has escaped notice at all levels in the Bank for over two years that FDs receipts had been issued without collecting the money. This is a very a serious matter. In the case of a public financial institution it would show that the laid down procedure and guidelines were not being followed by the Bank at any level and more particularly by the Manager. There was no internal audit and no checking of the balances in the saving accounts. Hence, deficiency of service on the part of the Bank is clearly established and onus of proof with regard to funding of FDs and the issuance of FDs without collecting the amount cannot be shifted by the petitioner on the respondent once the FDs have been issued and handed over to the respondent after a long gap of more than two years when the respondents have applied to encash their deposits. It is for the Chairman of the Bank to get an enquiry conducted and fix responsibility for this lapse. There, however, is no justification for the petitioner ''s case that customers should be made to pay for the negligent careless and casual manner in which the Maddur Branch of State Bank of Mysore has functioned in the instant case..

19. IN view of the foregoing reasons, 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.20,000/ - (Rupees twenty thousand only).

20. PETITIONER is directed to pay Rs.5,000/ - (Rupees five thousand only) directly to each respondents by way of demand draft and the balance amount of Rs.5,000/ - (Rupees five thousand only) be deposited in the name of ''Consumer Legal Aid Account '' of this Commission within four weeks from today. In case the petitioner fails to pay and deposit the said cost within the prescribed period, then it shall be liable to pay interest @ 9% per annum till realisation. List on 18th July, 2014 for compliance.

