

(2014) 02 NCDRC CK 0072

In the National Consumer Disputes Redressal Commission

STATE BANK OF PATIALA

APPELLANT

Vs

Kusum Kalra

RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Citation : 2014 0 NCDRC 87 : 2014 1 CPJ 551

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : S.L.GUPTA , S.K.GUPTA

Judgement

1. THIS revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 18.03.2008, passed by the U.T. Chandigarh State Consumer Disputes Redressal Commission (for short "the State Commission ") in FA No. 617/2007, Kusum Kalra versus Branch Manager, State Bank of Patiala, vide which, while allowing the appeal, the order dated 31.07.2007, passed by the District Consumer Disputes Redressal Forum - I, Chandigarh, dismissing the complaint in question, was set aside.

2. BRIEF facts of the case are that the complainant/respondent Kusum Kalra deposited a sum of Rs.70,000/- with the petitioner, State Bank of Patiala Branch Dadu Majra, U.T. Chandigarh as a fixed deposit in the year 2000. The repayment of the FDR was to take place on 17.04.2002. The said FDR was get renewed with Bank and the maturity date was 17.10.2004. The bank issued a fixed deposit receipt bearing no. 496486, undertaking to encash the same on or after 17.10.2004 for a sum of Rs.81,588/-. The complainant presented the FDR to the bank on 18.11.2004 for encashment, but the petitioner/OP refused to credit the amount in her savings bank account with the same bank, saying that the complainant had stood as a guarantor in the loan account of one Tejinder Kaur and the said loan had become Non -Performing Asset (N.P.A.). The complainant has alleged that she had already made a programme to visit Bombay to purchase an off -set printing machine alongwith her husband and had also booked tickets for the same. However, due to refusal of the bank to en -cash the FDR, she failed to honour her commitment of going to Bombay. The OP vide their letter dated

17.12.2005, sent a banker cheque to her for Rs.15,657/ - as balance proceeds of the FDR, after retaining a sum of Rs.67,155/ - out of the total payable proceeds of Rs.81,588/ -. However, the complainant returned the said cheque, saying that it was illegal and unjustified action on the part of the bank. The complainant then sent a legal notice dated 8.02.2005 to the bank, asking them to make the payment of FDR, but in vain. The complainant then filed the consumer complaint in question before the District Forum. The petitioner/OP filed a reply before the District Forum, saying that the complainant stood guarantor for Tejinder Kaur, who failed to repay the loan amount and hence, the amount was rightly recovered from the complainant after giving due notice to her. There was no deficiency on the part of the OPs and hence the complainant was not entitled for any compensation. The District Forum after taking into account the evidence of the parties, dismissed the complaint vide their order dated 31.07.2007. An appeal was filed before the State Commission against this order by the complainant and the State Commission vide impugned order dated 18.03.2008, set aside the order of the District Forum and directed the petitioner/OP to credit the amount of FDR in the savings account of the complainant/respondent, alongwith interest @9% p.a. from the date of maturity till payment and also allowed litigation cost of Rs.10,000/ -. It has been observed by the State Commission in their order as follows: - "13. It is also not disputed that Smt. Tejinder Kaur had taken loan of Rs.50,000/ - on 29.09.2000 from the respondent bank vide annexure OP - 1 but there is no evidence that appellant had stood as guarantor/surety of Tejinder Kaur against the said loan and had executed the guarantee deed or surety bond in favour of the bank. A perusal of the promissory note Ex. OP/2 reads as under: "On demand I Tejinder Kaur promise to pay to Smt. Kiran and Smt. Kusum or order at the State Bank of Patiala Dadu Majra the sum of Rupees fifty thousand only for value received with interest at the rate of the State Bank of India Advance rate, rising and falling therewith with a minimum of 15% per annum with quarterly rests." Signed by Tejinder Kaur On the revenue stamp It is further mentioned in Ex.OP/3 as under: "pay to State Bank of Patiala and Order" Signed by Kusum Kalra and Smt. Kiran 14. Therefore, it shows that Smt. Tejinder Kaur had executed promissory note in favour of Smt. Kusum Kalra and Smt. Kiran and Smt. Kusum Kalra and Smt. Kiran had further endorsed the promissory note in favour of State Bank of Patiala or order. It means that there was promissory note on behalf of Tejinder Kaur in favour of State Bank of Patiala or other. It is not the case that the promissory note had been executed by Smt. Kiran and Kusum Kalra in favour of Tejinder Kaur who had further endorsed it in favour of State Bank of Patiala. There is no evidence that Smt. Kusum Kalra and Smt. Kiran were to take any amount from Smt. Tejinder Kaur or they were to pay any amount to the State Bank of Patiala. In fact such an endorsement either from Tejinder Kaur in favour of Smt. Kusum Kalra and Smt. Kiran or further endorsement on behalf of Kiran and Kusum Kalra in favour of State Bank of Patiala is without consideration and such a promissory note without consideration is void. At best the promissory note could be considered a document executed by Tejinder Kaur in favour of State Bank of

Patiala through Smt. Kiran and Kusum Kalra. 15. Ex. OP/4 is copy of the "D.P. Note delivery letter " vide which Demand Promissory Note was delivered. However, under law by any stretch of imagination appellant could not be considered as guarantor for repayment of loan of Tejinder Kaur. In fact appellant had no obligation to perform in favour of the bank. Instructions of the bank to the contrary that if a promissory note is executed by the borrower in favour of the guarantor then guarantor endorses the same in favour of the bank then it would be a valid document cannot be taken into account as it is not supported by any legal provision, hence, bank was not justified to deduct the amount of Rs.67155/- from the FDR of appellant and to send cheque of Rs.15657/- only. 16. Therefore, we hold that the order of District Forum is illegal and consequently, the appeal is accepted with costs of Rs.10,000/- and the respondent is directed to credit the amount of FDR in the saving account of appellant bearing account no. 5405. It shall also pay interest @9% p.a. from the date of maturity till payment. "

It is against this order that the present revision petition has been made.

3. AT the time of final hearing before us, the learned counsel for the petitioner Bank stated that the respondent Kusum Kalra had stood surety for Tejinder Kaur who had taken loan from the State Bank of Patiala. He has drawn our attention to a document dated 29.09.2000, which is a D.P. note executed by Tejinder Kaur in favour of Kusum Kalra & Kiran, saying that she promises to pay a sum of Rs.50,000/- to these two persons. There is an endorsement made and signed by Kusum Kalra and Kiran at the back of this note in favour of "State Bank of Patiala or order ". Our attention has further been drawn to D.P. note delivery letter, addressed to the Manager, State Bank of Patiala, Dadu Majra on 29.09.2000 itself from Tejinder Kaur. This letter is also signed by Kusum Kalra and Kiran. Further, there is a letter dated 1.10.2003 sent by the Bank to Tejinder Kaur asking her to pay the necessary amount of Rs.5,000/- within 15 days as her account had become irregular. A copy of this letter has been endorsed to Kusum Kalra "guarantor ". There are also letters dated 09.09.2004 and 21.01.2005 signed by Tejinder Kaur to the Bank, requesting for One Time Settlement (OTS) for the said loan. Another letter sent by the Bank to Tejinder Kaur and duly acknowledged by Tejinder Kaur says that on 1.09.2003, a sum of Rs.54,678/83ps was outstanding balance with Tejinder Kaur. Further, there is a letter dated 12.12.2004 addressed by the Bank to Kusum Kalra in which they have stated as follows: - "In this regard, we had already got the sanction of our controlling authority to appropriate the proceeds of your FDR to adjust the loan account of Tajinder Kaur; but seeing your credit worthiness and good clinatale we had not used the right to set off Bank dues. You are requested to appraise the borrower to adjust loan A/c. fully within 15 days of this letter failing which the Bank will be left with no option other than to adjust the Bank dues form to proceeds of your FDR. Hoping you will cooperate us this regard."

4. THE learned counsel argued that from the facts of the case, it was very clear

that the complainant Kusum Kalra had stood guarantor for the loan taken by Tejinder Kaur and the Bank had every right to recover the same from the complainant in case of default on the part of the Tejinder Kaur. The learned counsel has quoted a judgement of this Commission in this regard in the case of "Gurgaon Gramin Bank & Anr. versus Om Parkash" as reported in IV (2010) CPJ 385 (NC), saying that the petitioner Bank was justified in appropriating the amount from respondent "s saving bank towards outstanding loan amount. In this very judgement, an order passed by the Hon "ble Apex Court in "Industrial Investment Bank of India Ltd. versus Biswanath Jhunhunwala," as reported in VI (2009) SLT 625, has been mentioned, in which the Hon "ble Apex Court stated that the liability of guarantor and principal debtor are "co -extensive and not in alternative ". Learned counsel stated that in view of these facts, the petition should be allowed and the order passed by the District Forum should be restored. In reply, the learned counsel for the respondent stated that the document produced on the file was only a hypothecation agreement executed on 29.09.2000 by Tejinder Kaur and there was no guarantee deed executed on the prescribed proforma. Learned counsel argued that there should have been a proper agreement between the parties in support of the version that the complainant had stood guarantee for the loan taken by Tejinder Kaur. He has drawn our attention to a copy of proforma of guarantee in this regard. Further, in this case, there had been no evidence that the complainant Kusum Kalra or Kiran had taken any money from Tejinder Kaur. The said Tejinder Kaur had also approached the Bank for OTS, which was not accepted by the Bank. The order passed by the State Commission was, therefore, in accordance with law and should be upheld.

5. IN reply, the learned counsel for the petitioner has drawn our attention to section 37 of the Negotiable Instrument Act, 1881 as stated in the grounds of revision petition as follows: - "The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

6. WE have examined the material on record and given a thoughtful consideration to the arguments advanced before us. The factual matrix of the case brings out that Tejinder Kaur did take loan from the petitioner Bank for which the complainant Kusum Kalra had stood guarantor. The copy of the promissory note on record also makes it clear that Kusum Kalra and Kiran had made an endorsement on the note in favour of the Bank itself. Whether the guarantee deed or agreement on the prescribed proforma was executed or not, the record of the case and the endorsement on the promissory note clearly shows that the complainant was a guarantor of the loanee Tejinder Kaur. It is also clear that Tejinder Kaur defaulted in the payment of said loan. She requested for OTS with the Bank, but her request was declined. The basic issue then arises whether the Bank was competent to recover the amount of default

from Kusum Kalra or not. The authority cited by the petitioner in the case of "Gurgaon Gramin Bank versus Om Parkash" (supra), in which an order passed by the Hon "ble Apex Court has also been quoted, i.e., "Industrial Investment Bank of India Ltd. versus Biswanath Jhunjhunwala" (supra), makes it very clear that the liability of a guarantor and principal debtor are co -extensive and the Bank was justified in appropriating the amount from the account of the guarantor to satisfy the outstanding loan. The District Forum has also placed reliance on an order, passed by the Hon "ble Supreme Court in "Syndicate Bank versus Channaveerappa Beleri & Ors." as reported in II (2006) SLT 518 = 2006 AIR SCW 2134. In view of position above, we do not observe any illegality, irregularity or jurisdictional error in the orders passed by the District Forum. In fact, the order passed by the State Commission does not reflect a correct appreciation of the facts and circumstances of the record, because it is very clear that the complainant had stood guarantor for the loanee Tejinder Kaur and the Bank had every right to recover their money from the guarantor.

7. IN view of position above, this revision petition is allowed, the order passed by the State Commission is set aside and the order passed by the District Forum is upheld, and the consumer complaint, in question, is ordered to be dismissed. There shall be no order as to costs.