(2011) 12 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

STATE BANK OF PATIALA APPELLANT

Vs

Narinder Pal Singh RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:

Citation : 2012 1 CPJ 352

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Final Decision : Revision Petition allowed.

Judgement

1. STATE Bank of Patiala, which was the opposite party before the District Consumer Disputes Redressal Forum, Mandi (in short ''the District Forum'') has filed this revision petition against the order dated 3.7.2007 passed by Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla (in short ''the State Commission'') dismissing the appeal filed by the petitioner against the order of the District Forum whereby the District Forum had directed the petitioner to hand over LIC policy No. 76215910 to the respondent/complainant within one month from the passing of the order with interest @ 6% p.a. on the amount due and payable on its maturity amount from the date of filing of the complaint till realization. Rs. 1,000 were awarded on account of harassment and costs of litigation.

2. RESPONDENT/complainant had taken an overdraft facility from the petitioner. Respondent pledged his LIC policy No. 76215910 for Rs. 50,000 with the petitioner bank by executing the Security Delivery Letter dated 7.3.1998. Respondent is the sole proprietor of M/s. Jeevan Singh Joginder Singh for which he was availing Cash Credit Limit for the sum of Rs. 8 lacs since 16.7.1998 from the petitioner Bank. Respondent duly availed the aforesaid Cash Credit facility but neglected to maintain its financial discipline and repay the outstanding amount regularly. A sum of Rs. 13,53,492 was due and payable by the respondent to the petitioner as regard the Cash Credit Limit as on 1.7.2004 besides interest, costs and expenses.

3. RESPONDENT/complainant on 31.1.2005 liquidated his liability in the

Overdraft Account and requested the petitioner Bank to release the LIC policy deposited by him with it. Petitioner declined to release the policy and exercising its ''General Lien'' provided to the Bankers under Section 171 of Indian Contract Act, 1872, over all the monies, securities, etc. of its debtors petitioner retained the impugned LIC policy. Policy was not released as the respondent/complainant owed substantial amount to the petitioner in the Cash Credit Account maintained by him with the petitioner.

4. AGGRIEVED by the refusal to release the policy, respondent filed the complaint before the District Forum.

5. ON being served, petitioner entered appearance and filed its written statement averring therein that the petitioner had a legal right to retain the LIC policy as the respondent owed petitioner a substantial amount in respect of Cash Credit Facility of Rs. 8 lacs granted to the respondent as sole proprietor of M/s. Jeevan Singh Joginder Singh. It was averred that the petitioner bank was to set off/ adjust the security of the LIC policy towards the outstanding amount in the Cash Credit Account of respondent/complainant as they had a lien over the same. It was further averred that as per security letter, the LIC policy had been deposited in the petitioner''s bank as a ''Security'' for all money, now owing or which shall be at any time hereafter be owing by the respondent/complainant in any manner whatsoever.

6. IT may be mentioned that the petitioner had already initiated proceedings against the respondent/complainant under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short ''the Act'') in respect of the mortgaged property of the respondent/complainant. Respondent moved an application under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and had obtained a stay order against confirmation of sale from the Debts Recovery Tribunal Chandigarh on 23.12.2004.

7. DISTRICT Forum held that the petitioner was not justified in withholding the LIC policy as the same had been pledged to secure repayment of the overdraft facility only and not the Cash Credit Limit by the respondent/complainant. Complaint was allowed and petitioner was directed to hand over policy to the complainant within one month from the date of order, failing which together with interest @ 6% p.a. on the amount due and payable on the LIC policy from the date of filing of complaint till entire amount is released. Rs. 1,000 were awarded by way of compensation and costs.

8. PETITIONER being aggrieved filed the appeal before the State Commission. The State Commission upheld the order of District Forum and dismissed the appeal with costs of Rs. 5,000. In addition, petitioner was directed to pay Rs. 10,000 to the respondent by way of punitive damages.

9. BEING aggrieved petitioner has filed the present revision petition.

10. LEARNED Counsel appearing for the petitioner submits that the order passed by Fora below is illegal and not sustainable in law as well as facts; that the petitioner in exercise of the ''General Lien'' in terms of the settled principles of law envisaged under Section 171 of Indian Contract Act can set off/adjust the policy amount out of amount of Cash Credit by the respondent. He has relied upon judgments of Supreme Court in Syndicate Bank v. Vijay Kumar and Ors., AIR 1992 SC 1066", and judgment of this Commission in Canara Bank and Anr. v. C.D. Patel, II (2001) CPJ 19 (NC) and M. Mallika v. State Bank of India and Anr., IV (2006) CPJ 1 (NC).

11. RESPONDENT who is appearing in person has supported the orders passed by the Fora below.

12. IT is a settled principle of law that the bank has ''General Lien'' over all forms of securities deposited by or on behalf of the customer in the ordinary course of banking business and that the general lien is a valuable right of the banker judicially recognized and in the absence of agreement to the contrary. A Banker has a general lien over such securities and has a right to use the proceeds in respect of any balance that may be due from the customer by way of reduction of customer''s debit balance. The provisions of Section 171 of the Indian Contract Act, 1872 carves out an except to the said general rule in order to protect the interest of the bank by ensuring right to retain the documents so that other loan accounts of the bank are also cleared by borrowers or guarantors without forcing the bank to file suits. In the present case the petitioner was well within its right to exercise its right of General Lien over the LIC policy and the petitioner bank was entitled to set off/adjust the security of the LIC policy towards the outstanding amount in the Cash Credit Account of the respondent/complainant as they had a lien over the same.

13. THE Fora below have erred in not appreciating that the LIC policy pledged in the Overdraft Account could be retained as a security for adjusting the outstanding amount in the Cash Credit Account as there was no contract to the contrary and the right of ''General Lien'' could be exercised by the petitioner. The State Commission ignored the fact that in the present case security letter clearly stipulated that the LIC policy had been deposited in the petitioner''s bank as a security for all money, now owing or which shall be at any time hereafter be owing by the respondent/complainant in any manner whatsoever.

14. STATE Commission gravely erred in holding that since the respondent had approached the appropriate authority under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and obtained the order dated 23.12.2004 to stay the proceedings, the petitioner bank was not justified in exercising right of Bankers General Lien under Section 171 of Indian Contract Act. Pendency of proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 in respect of security i.e. mortgaged property do not bar the Petitioner from in exercising its ''Bankers Lien'' in respect of LIC policy. The

subject matter of proceedings under Section 17 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was in respect of the secured assessed i.e. the mortgaged property of the respondent and not the LIC policy and the stay order passed by the Debts Recovery Tribunal was only in respect of confirmation of the sale of mortgaged property.

15. THE State Commission has also erred in holding that since the petitioner had already invoked the legal process for recovery of its outstanding dues against the respondent and having chosen a legal remedy, its action cannot be protected or upheld under Section 171 of the Indian Contract Act, 1872. Petitioner initiated the legal proceedings against the respondent for enforcing its right under the Securitization Act only as regards the secured asset i.e. the mortgaged property and no other proceedings have been initiated. The reasoning which formed the basis of the order of the State Commission is misconceived and without any basis whatsoever.

16. WE draw support for the view taken by us from the three judgments cited by Counsel for the petitioner at the bar which have been referred to earlier. In Syndicate Bank v. Vijaya Kumar''s case (supra), Supreme Court of India has held: "By Mercantile system the Bank has a general lien over all forms of securities or negotiable instruments deposited by or on behalf of the customer in the ordinary course of banking business and that the general lien is a valuable right of the banker judicially recognized and in the absence of an agreement to the contrary, a Banker has a general lien over such securities or bills received from a customer in the ordinary course of banking business and has a right to use the proceeds in respect of any balance that may be due from the customer by way of reduction of customer''s debit balance."

17. PETITIONER Bank followed the due process of law before appropriating the amount of the LIC policy pledged with it. Petitioner lawfully and legally exercised its right of set off adjust the maturity amount of LIC policy against the Cash Credit Limit obtained by the respondent.

18. FOR the reasons stated above, the revision petition is accepted. Order of the Fora below are set aside and the complaint is ordered to be dismissed with no order as to costs. Revision Petition allowed.