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(2017) 09 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

Case No : 97 of 2005

SUBHASH MEHTA NRI — APPELLANT

Vs

CENTURION BANK LTD. THROUGH ITS, CHAIRMAN & MANAGING DIRECTOR/CORPORATE OFFICE, & ORS. — RESPONDENT

Date of Decision : 13-09-2017

Acts Referred:
Consumer Protection Act, 1986, Section 24A - Limitatioln period

Citation : 2017 4 CPR 164

Hon'ble Judges : Ajit Bharihoke, S.M. Kantikar

Advocate : Himanshu C. Desai, Ajay Monga, Devmani Bansal

Judgement

1. Subhash Mehta, a Non Resident Indian has filed consumer complaint against Erstwhile Centurion Bank Limited (now HDFC Bank) and its officials alleging deficiency in service.

2. Case of the complainant is that he purchased a bank draft for a sum of Rs. 99,99,024/- from Surat Branch of State Bank of Hyderabad. The bank draft was, thereafter sent to the Kochi Branch of opposite party bank alongwith an account opening form with the instructions to deposit the draft amount in a fixed deposit account in the name of the complainant for a period of one year and one day at the interest rate of 10% p.a. compounded quarterly. The said draft was accepted by the opposite party bank and a fixed deposit receipt no. 0504239 dated 03.07.2002 for principal amount of Rs.99,99,024/- @ 10% p.a. having maturity value as on 04.07.2003 of Rs.1,10,37,051/- was issued and sent to the complainant by the Branch Manager of Kochi Branch of the opposite party bank. The complainant submitted the original FDR for collection of the proceeds with Nehru Place, New Delhi Branch of the opposite party bank on 07.11.2003 with a request to collect the maturity amount and credit the proceeds in the bank account of the complainant in Nehru Place, New Delhi Branch of the opposite party bank. The Manager of Nehru Place, New Delhi branch of the opposite party assured the complainant that amount of the fixed deposit shall be collected and

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credited in his account within three days. However, later on complainant was told that only an FDR of Rs.30.00 lakhs was opened by the Kochi Branch of Opposite party bank in his account and the balance of the draft amount of Rs.69,99,024/- was credited to the account of M/s Sea Life Exports in the Kochi Branch of the opposite party bank. It is the case of the complainant that transfer of Rs.69,99,024/ to the account of M/s Sea Life Exports was unauthorizedly done by the Branch Manager of the Kochi branch of the opposite party bank without any written or oral instruction from the complainant. Claiming this to be deficiency in service, the complainant has raised consumer dispute seeking following reliefs:

"a. to pay Rs.1,10,37,051 being the maturity amount of the FDR on 04.07.2003;

b. to pay Rs.3,97,33,39 accrued interest from 04.07.2003 till the date of filing the complaint @ 18% p.a.

c. to pay Rs.800,000 towards mental tension suffered by the complainant;

d. to pay Rs.3,00,000 towards travelling expenses i.e. coming from Canada to Delhi, loss of income and cost of complaint;

e. pass any other relief which this Hon''ble Commission may deem fit and proper."

3. The opposite parties on being served with the notice of the complaint filed joint written statement admitting that bank draft of Rs.99,99,024/- forwarded by the complainant was received in Kochi Branch of the opposite party bank with instruction letter requesting the bank to open a fixed deposit account of Rs.30 lakhs for one year in the name of the complainant and transfer balance Rs.69,99,024/- to the account of M/s Sea Life Exports. It is alleged that as per instructions, the fixed deposit receipt no.SU-0504239 dated 03.07.2002 was opened in the name of the complainant and balance Rs.69,99,024/- was credited to the account of M/s Sea Life Exports. It was specifically denied that there were instructions to open fixed deposit account for Rs.99,99,024/- or any such fixed deposit receipt was prepared and sent to the complainant. According to the opposite parties, the fixed deposit receipt set up by the complainant is a forged document. Besides, the above noted pleas on merit, the opposite parties raised a preliminary objection that instant complaint before the consumer Fora is not maintainable because it involves adjudication of complicated question of facts including the allegation of forgery which would require elaborate procedure of examination and cross examination of witnesses. According to the opposite parties, the complaint is not maintainable being barred by limitation.

4. Both the parties in order to prove their respective pleas have adduced affidavit evidence. Besides, they have filed copies of opinion of their respective handwriting experts.

5. We have heard learned counsel for the parties and perused the record.

6. Section 24-A of the Consumer Protection Act deals with period of limitation for

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filing a consumer complaint and it provides that District Forum, State Commission or the National Commission shall not admit the complaint unless it is filed within two years from the date on which the cause of action has arisen. Thus, in order to resolve the issue of limitation, it is necessary to find as to on which date the cause of action for raising consumer dispute arose.

7. Perusal of para 7-A of the consumer complaint filed by the complainant would show that in the said paragraph, complainant has categorically alleged that he wrote a letter dated 09.09.2002 to Nehru Place Branch, New Delhi of opposite party bank (opposite party no.3) informing the bank as to how the fraud has been committed upon him. From this it is obvious that complainant came to know about the alleged fraud of diversion of his money on or before 09.09.2002. It is alleged in the said paragraph that opposite party no.2 i.e. Manager of the Kochi Branch of opposite party bank responded to the letter dated 09.09.2002 vide reply dated 22.10.2002 wherein it was stated that after the receipt of account opening form, opposite party no.2 bank had opened a fixed deposit of Rs.30.00 lakhs for a period of one year @ 9% p.a. and remaining amount has been transferred to the current account of M/s Sea Life Exports. From the above, it is clear that it is admitted case of the complainant that opposite party bank conclusively denied his claim under the alleged FDR of Rs.99,99,024/- vide letter dated 22.10.2002. Therefore, in our opinion, the cause of action for filing the consumer complaint arose in favour of the complainant on 22.10.2002, the date on which the opposite party bank denied its liability under the FDR set up by the complainant. The denial of liability by the opposite party bank is clearly established from the contents of letter dated 22.10.2002 referred to in the complaint which is reproduced as under:

"22 nd October 2002

Mr Subash Mehta

A 3, Greater Kailash Enclave

Part II

New Delhi - 110 048

Dear Sir,

Sub: Your Account no. 3001-311183 - 001 with our HNL Extension Counter

We are in receipt of your letter dated 09.09.2002, addressed to our Executive Director, Mumbai, sent through our New Delhi office.

We have verified our records and have to advise you as under:

The DD for Rs.99,99,024/- drawn on SBH Ernakulam was credited to your account on 03.07.2002 and as per your written instructions dated 26.06.2002 sent along with the account opening form, we have on the same day (03.07.2002), opened a fixed deposit of Rs.30,00,000/- for one year @ 4%. The

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remaining amount of Rs.69,99,024/- was transferred to the current account of M/s Sea Life Exports as per your written instructions.

We are surprised to see the Xerox copy of the FD receipt handed over by you to our Delhi office. We clarify that we have not issued any such receipt for Rs.99,99,024/-.

Under the circumstances, we reserve our right to proceed further if found necessary on hearing from you.

Thanking you,

Sincerely yours

Branch Head."

8. In view of the facts enumerated above, it is clear that vide letter dated 22.10.2002, the opposite party bank denied having issued FDR for Rs.99,99,024/- as alleged by the complainant and any liability under said instrument. In view of the aforesaid express denial, it is clear that cause of action for filing the consumer complaint arose on or before 22.10.2002. Admittedly, the consumer complaint was filed by the complainant on 05.10.2005 i.e. almost one year after the expiry of period of limitation. Therefore, in our considered opinion, the complaint is barred by limitation particularly when despite of opposite party having taken the objection of limitation, the complainant did not bother to apply for condonation of delay giving explanation as to what prevented him filing the complaint within the stipulated period of limitation.

9. Coming to the merits of the case. Both the parties have filed evidence on affidavit supporting their respective allegations. Case of the complainant is that on receipt of bank draft, the Kochi Branch of the opposite party bank sent FDR to the tune of Rs.99,99,024/- for a period of one year and one day @ 10% p.a. to him whereas according to the bank, the complainant alongwith bank draft had sent an instruction letter dated 26.06.2002 with the request for opening a fixed deposit account in the name of the complainant for one year for Rs.30.00 lakhs and transfer the balance of the subject draft amount to the account of M/s Sea Life Exports (account no.0009308811001), which instructions were followed. Surprisingly, on perusal of the photocopies of the FDR receipts placed on record by respective parties, we find that both the deposit receipts have reference no.SU -504239 and both the receipts purported to have been signed by the authorized signatory of the opposite party bank. Thus, the core question is which of the FDR receipts is genuine? In order to establish that FDR receipt of Rs.99,99,024/- claim to be issued by the opposite party bank, the complainant has filed report of handwriting and finger prints expert Sh. Deepak Jain, who has opined that FDR is signed by the concerned Branch Manager of the opposite party bank. On the contrary, opposite party bank has also filed the report of C V Jayadevi, Handwriting and Finger Print Expert who had opined that FDR of

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Rs.30.00 lakhs claims to have been issued by the bank is genuine. Thus, we are confronted with the report of one handwriting expert against the other. Incidentally, the handwriting experts have not been subjected to cross examination. The said reports being contradictory to each other cannot be relied upon particularly in view of the fact that both the handwriting experts fall within the category of interested witnesses being appointed and paid by their respective clients to examine the documents and submit the report. Under the above circumstances, we are left with no option but to appreciate the evidence in the context of background circumstances.

10. On careful perusal of record, we find that stand and conduct of the complainant is highly suspicious. Perusal of photocopy of account opening form dated 26.06.2002 submitted by the complainant would show that in the said form, it is mentioned that complainant is a Canadian national having Indian address A-3, Greater Kailash Enclave, Part II. If the complainant was resident of Greater Kailash, New Delhi, it seems highly odd and unnatural that he would go to far away branch at Kochi to open the FDR account in the Centurion Bank despite of the fact that admittedly the said bank had a branch at Nehru Place, New Delhi which is at a distance of one kilometre from Delhi address of the complainant. Otherwise also, under the natural course of circumstances, a person sending a bank draft of huge amount of Rs.99.00 lakhs plus to a bank, is expected to send a covering letter giving instructions as to what should be done with the bank draft. No instruction letter has been filed by the complainant. Further, if the story of the complainant was true, then we fail to appreciate as to why within three months of having opened the Fixed Deposit account in the Kochi Branch of the opposite party bank, the complainant would visit Nehru Place branch with a letter addressed to the Executive Director that a fraud has been committed in respect of subject transaction. There is no cogent evidence on record to explain as to how and in what manner and from whom the complainant came to know that bank officials have defrauded him. Not only this, it is admitted case of the complainant that in response to his letter dated 09.02.2002 alleging fraud on the part of the opposite party bank, he received a communication dated 22.10.2002 making it clear that as per his instructions, out of subject draft amount, fixed deposit for sum of Rs.30.00 lakhs was opened and remaining amount was transferred to the account of M/s Sea Life Exports. Had the version of the complainant been correct, under the natural course of circumstances and as a normal prudent man, he would be expected to react immediately but as per the material on record, he kept silent for months together till he allegedly wrote a letter dated 05.04.2003 to the bank. The aforesaid sequence of facts and the conduct of the complainant clearly indicate that his version is not reliable.

11. Thus, we are of the view that complainant has failed to prove that opposite parties have wrongly diverted sum of Rs.69,99,024/- to the account of M/s Sea Life Exports against his instruction.

12. In view of the discussion above, it is clear that case of the complainant is not

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only barred by limitation but he has failed to prove his allegation of deficiency in service or unfair trade practice on the part of the part of the opposite parties. Complaint is accordingly dismissed.

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