(2004) 05 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

THIRUCHIRAPALLI MULTIPURPOSE SOCIAL SERVICE SOCIETY — APPELLANT

Vs

CANARA BANK — RESPONDENT

Date of Decision : 07-05-2004

Acts Referred:

Citation : 2004 0 NCDRC 33 : 2004 2 CLT 545 : 2004 2 CPC 5 : 2004 2 CPJ 62

Hon'ble Judges : M.B.SHAH , RAJYALAKSHMI RAO J.

Advocate : DAYAN KRISHNAN , PRADEEP DEWAN

Judgement

1. HEARD the learned Counsels for the parties.

2. IT is the contention of the complainant that the complainant, the Thiruchirapally Multipurpose Social Service Society, registered under the Societies Registration Act at Thiruchirapally, deposited various funds as narrated in paragraph 3 in FDR with the opposite party, Canara Bank. It is submitted that in all complainant deposited a total sum of Rs. 62,08,745.05 for a term of five years. All the fixed deposits were due for maturity in the year 2000. It is contended that to their shock and surprise they received a letter dated 5.2.1996 that the bank was marking a general lien on fixed deposits to cover the DIR Loans sanctioned by them from 1986 to individuals on the recommendations of the complainant. It is contended that a bank acted arbitrarily, in illegally marking general lien on the said deposits because the DIR Scheme never provided for any guarantee by the complainant. It is, therefore, prayed that bank be directed to repay a sum of Rs. 48,80,160/- with interest @ 24% from 1.7.1996 and to pay a compensation of Rs. 5,00,000/- for mental agony and hardship caused to the complainant. It is undisputed that respondent bank gave loan to the persons recommended by the complainant. For this purpose, various letters are produced on record.

3. IT is also not disputed that there was a scheme framed by the Central Government known as "Differential Interest Rate" Scheme, which, inter alia, provided rate of interest @ 4% per annum and ceiling of the loan amount at Rs. 1,500/-, repayment period was not to exceed five years.

4. LEARNED Counsel for the complainant relied upon Clause 9.4, which reads as under : "Security : Generally the borrower has no assets to offer as security and, therefore, only such assets as are created by the Bank loan are taken as security. Third party guarantee is not to be sought. Even group or cross guarantee among a homogeneous group of borrowers is sought only for moral persuasion in appropriate cases. Advances upto Rs. 500/- are sanctioned as clean cash credits."

Learned Counsel for the complainant submitted that there was no guarantee given by the complainant for repayment of the loan by the loanees to whom the benefit was given under the scheme framed by the Central Government. He, therefore, submitted that bank was not entitled to have any lien on the fixed deposits of the complainant.

5. AS against this, learned Counsel for the opposite party submitted that the demand of repayment by the complainant is totally unjustified for the reasons that : (1) the amount, which was deposited by the complainant was ''Seed Money'' and on the basis of the Seed Money, Bank has given loans to the persons recommended by the (2) the complainant has recovered large amount from the loanees and has not deposited the same with the bank; (3) in any case considering the commercial nature of transaction between the complainant and the opposite party and the voluminous evidence which is required to be considered, this would not be a fit case for exercise of jurisdiction under the Consumer Protection Act, 1986. He, inter alia, contended that the transaction between the parties is simplicitor commercial one and that parties are required to lead evidence with regard to the amount received by the complainant from the loanees which would be practically impossible to do so in the present case as there are large number of loanees who have claimed to have paid the amount directly to the complainant. It is also pointed out that most of the loanees are poor persons and are residing near about Trichy.

6. LEARNED Counsel for the opposite party has also referred to letter dated 25.4.1988 written by the Secretary of the petitioner to the Divisional Manager, Canara Bank, Tiruchirapally. It would be worthwhile to refer to the letter as a whole, which, inter alia, provides that it was a joint venture of the petitioner and the bank to extend loans to 2000 beneficiaries. It also provides that recipients were guaranteed in group. The said letter is as under: "In continuation of our discussion about the implementation of T.M.S.S. - Canara Bank - joint Venture in extending loans to the beneficiaries recommended by us during the year 1988, we would like to record the following for your favourable consideration.

As discussed and decided by us in our joint discussions at different times that 2000 beneficiaries will benefit from this joint venture during the year 1988, we now request you to inform the concerned branches (viz. Bank Branch at Inamkulathur and at Trichy junction) to implement this scheme as before.

7. FURTHER , as our beneficiaries are from the poverty stricken areas and as they are unable to spend a sum of Rs. 10/- for photos, they request that this

procedure may be withdrawn. Moreover the loanees are listed from out of the Mahalir Mantrams organized by us; the recipients are guaranteed in groups; and they are poor, we request and recommend that this practice of affixing photos to the loan applications may be withdrawn. Thanking you and assuring of our full co-operation in this regard."

8. THEREAFTER there is a letter dated 7.5.1991 by the Secretary of the petitioner wherein it has been, inter alia, stated : "We undertake that the utilization of the loan amount will be ensured by us and also we undertake to monitor the recovery of the dues through our Grama Nala Mandram. We request you to kindly sanction the loans". The next important letter is dated 12th July, 1991. It is written by the Senior Manager of the bank to the Secretary of the complainant wherein it has been specifically mentioned that for the project started in collaboration with the complainant in lending financial assistance for the upliftment of the downtrodden, complainant has provided seed money capital. It is to be stated that on 7.8.1990, the Bank Manager wrote letter to the Secretary of the petitioner, wherein it is stated for financing the women folk of the rural area identified by the complainant for their upliftments. It was also pointed out that bank had agreed to participate in lending programme to the beneficiaries sponsored by the complainant. As per Bank''s terms and conditions and in response to that complainant had agreed to deposit the seed capital money with the bank; on the basis of various meetings with the bank officers and members of the complainant, the programme continued and complainant kept on depositing the seed capital money. The seed amount was not fixed deposit as understood in usual tense. It is, therefore, submitted that bank has rightly marked its general lien on the ''seed capital''.

9. CONSIDERING the aforesaid dispute, in our view, this would not be a fit case for deciding it under the Consumer Protection Act. Prima facie, it was a joint commercial venture between the complainant and the bank to give loan as per DIR Scheme and, therefore, the complainant cannot be said to be consumer. It is alleged that some amount was recovered by the complainant. In this view of the matter, this complaint requires to be dismissed. It would be open to the complainant to approach either Civil Court or have recourse to any other alternative Forum. The observations made hereinabove with regard to the nature of the transaction are not of binding nature and are subject to leading of evidence in appropriate Forum.

