(2011) 02 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

Uttar Pradesh Housing and Developing Board	APPELLANT
Vs	
Chief Manager Allahabad Bank Indira Nagar Branch	RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:

Citation : 2011 0 NCDRC 52 : 2011 1 CPJ 276 : 2011 1 CPR 258

Hon'ble Judges : R.K.Batta , Vinay Kumar J.

Final Decision : Petition stands disposed off

Judgement

1. THIS is a Consumer Complaint filed by Uttar Pradesh Awas Vikas Parishad against Allahabad Bank, seeking interest on certain funds which had remained in their bank accounts with the Respondent. The Complainant is a housing and development Board in the business of marketing of individual plots and constructed housing units. The Respondent is the banker of the Complainant providing banking services for their activities.

2. THE case of the Complainant is that it had entered into an agreement/ understanding with the Respondent under which moneys deposited in non-operating account numbers 404, 410 and 411 were required to be released/ remitted to the main operative bank account of the Complainant on the 5th, 15th and 25th of every month. THEse accounts were seized/attached under orders of the District Court, Bulandshahar in May 1996 and subsequently released from the attachment under orders of the High Court of Allahabad in February 1997. The Respondent Bank was informed about orders of the High Court of Allahabad and advised to transfer monies lying in non-operative accounts to the main operative bank account of the Complainant at Lucknow. Despite protracted correspondence, the Respondent Bank did not pay interest on these amounts, though the deposited principal amount in these accounts, totaling Rs.1,81,87,730.94 only, were transferred to the main branch account of the Complainant. The relevant intimation in this behalf from the Respondent/Bank to the Complainant/Board was contained in the letter of 17.08.2007 from Allahabad Bank, Indira Nagar Branch Lucknow. The English translation of this Hindi letter

reads as follows:- Please refer to your letter No.2087/E.M.E No. of dated 17.08.07 on the above subject. In this matter, you are informed that on making available the order regarding stay passed in Execution Case No.8/92 of the Honble Court of 8th Additional District Judge Kanpur Nagar in the evening of 16.8.07, today on 17.8.07, your office has transferred the total amount of Rs.1,81,87,730.94 (Rupees one crore eighty one lakhs eighty seven thousand, seven hundred and thirty and paise ninety four only) lying in the above said three accounts.

The Complainant has therefore, sought direction from this Commission to the Respondent Bank to pay an interest of Rs.3,04,53,970.38, calculated at 16% p.a., for the period 1997 to 2007. The complaint petition also informs that a legal notice sent by the Complaint in this behalf to the Respondent, has not elicited any response.

3. WE have perused the records and finally heard the counsels for the parties. Before proceeding to examine the matter on merits, it is necessary to observe that on 1.4.2010 the Complainant had been directed by this Commission as follows:- In this complaint, amount of Rs.3,04,53,970.38 calculated @ 16% p.a. for the period the basic amount of Rs.1,81,12,902.94 remained with opposite party- Bank, has been claimed towards interest. One of the letters dated 23.8.2007 filed along with the complaint, sent by the petitioner to the opposite party-Bank would show that the interest was claimed at Term deposit rate. WE direct the petitioner to disclose on affidavit as to what was the rate of interest on Term deposit during the relevant period and what amount of interest would be payable on the retained amount calculated at that rate before 12.7.2010 on which date matter be listed for admission. The matter was thereafter taken up by this Commission on 12.07.2010 and 27.9.2010, before being finally reserved for orders on 14.12.2010. No affidavit has been filed on behalf of the Complainant, until 14.10.2010, in compliance of the directions mentioned above. It is also observed that the Complainant has not filed any agreement or other documents to substantiate their claim that the Respondent-Bank was required to transfer the balances in non-operating account numbers 404, 410 and 411 on the 5th ,15th and 25th of every month, to the main operative bank account of the Complainant. There is however, a reference to it in their letter of 23.8.2007 addressed by the Complainant to the Bank.

4. SIMILARLY, on 12.07.2010 the Complainant was directed by this Commission to produce the correspondence, which had taken place between the parties after the order of Allahabad High Court dated 24.02.1997 till the return of the principal amount on 17.08.2007. But, the correspondence filed on behalf of the Complainant covers only the period between 24.9.2003 to 30.5.2008. The picture that emerges from the above records of this case shows that the Complainant has periodically been writing to the Respondent-Bank for statement of accounts and demanding interest at 16% per year in this period. The letter of 17.8.2007 written by the Respondent/Bank to the Complainant has been cited in

an earlier paragraph. This letter refers to receipt of information from the Complainant regarding direction of 8th Additional District Judge, Kanpur. According to this letter, the direction was made on 16.8.2007, communicated by the Complainant on 17.8.2007 and acted upon by the Respondent on the same date. The Respondent had transferred an amount of Rs.18187730/- to the account of the Complainant in the main branch. Thereafter, in the letter of 18.1.2008, the Respondent/Bank acknowledged that the issue of interest, raised claimed by the Complainant, was under consideration and informed that the decision reached will be conveyed. Apparently, no final outcome, if any, was communicated. Eventually, a legal notice was also served on 28.10.2009, which has remained unacknowledged till the date of filing this complaint. The Complainant has prayed for award of the following:- (i.) Interest amount of Rs.304,53,970.38 (para 14 of the complaint petition), calculated at the rate of 16%. This is wrongly mentioned, in the concluding para of the petition, as Rs.4,10,11,346.77. (ii.) Rs.10,00,000 as compensation for mental agony and inconvenience suffered. (iii.) Rs. 50,000 towards costs.

5. IN para 6 above we have noted that the Complainant has not produced any evidence in support of the claim that there was an existing agreement/ understanding with the Respondent that the balance in the three non-operative accounts will be transferred to the main operative account on the 5th, 15th and the 25th of every month. However, the undisputed fact remains that the principal amounts (totaling Rs.1,81,87,730) had remained beyond the operational control of the Complainant till they were transferred to their operative account on 17.8.2007. It is also undisputed that these amounts, for the same reason, were available to be utilized by the Respondent/Bank, since the lifting of the freeze by the High Court of Allahabad on 24.7.1997. Therefore, we hold that the Respondent is liable to pay interest to the Complainant for the period 25.2.1997 to 16.8.2007. The question is at what rate of interest?

6. THE Complainant has claimed interest at 16%. We find, from the letters produced on record, that this claim is based on the assumption that this was the rate payable on fixed deposits during the relevant period. We would however like to note that, despite clear opportunity given, the Complainant has failed to produce any evidence in justification of this claim. In fact, no evidence whatsoever has been produced on behalf of the Complainant to show that, at any time during this period, the Complainant had given any instruction to the Bank/ Respondent to put these amounts in a fixed deposit for the whole or part of the period from 25.2.1997 and 16.8.2007. THErefore, we reject the claim of interest at fixed deposit rates. In conclusion, while the Complainant is entitled to receive interest from the Respondent on the amount and for the period mentioned in paras 10 and 11 above, it cannot be at fixed deposit rates. We therefore, direct the respondent to pay interest at savings bank account rate admissible during the relevant period. The same shall be paid within a period of three months. Failing this, the Respondent shall pay interest thereon at the rate of 7% per year. In the facts and circumstances of this case, we find no justification to award any

compensation or costs to the Complainant. The Complaint Petition stands disposed off in these terms.