(2006) 09 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

V.L.KRISHNA APPELLANT

Vs

P.Ramachandra RESPONDENT

Date of Decision : 15-09-2006

Acts Referred:

Citation : 2006 2 CPR 165 : 2006 4 CPJ 322

Hon'ble Judges : Chandrashekhar , Rama Ananth , M.Shama Bhats J.

Advocate : C.V.Sudhindra , B.N.Sreekanta Swamy

Judgement

1. WE could not have come across a better case of fraud committed by a Financial Institution on a bona fide Depositor than the case on hand. In the instant case, depositor had deposited certain amount with the Financial Institution. On maturity of the Deposit, when the Depositor demanded for the matured value, the Financial Institution denied to pay the matured amount on the alleged ground that the Depositor has availed a loan, by creating certain documents. Added to this, the Financial Institution has filed a Criminal Case against the Depositor for offences punishable under the Indian Penal Code for having demanded the lawful amount.

2. PARTIES in this Order are referred to according to their position in the Complaint filed before the District Forum. This Appeal is by the Complainant challenging the Order of the District Forum dismissing his complaint.

The case of the Complainant is that he has invested a sum of Rs. 1,00,000 in the Fixed Deposit with the opposite party (for short, "OP") on 13.10.1997 for a period of five years. The matured value of the said Deposit is Rs. 2,01,200. After the maturity, the complainant made a request to the OP to pay the amount. But the OP did not pay the amount on the ground that the complainant has borrowed loan of Rs. 80,000 from the OP on the security of the said Fixed Deposit. Aggrieved by non-payment of the amount, the complainant filed the Complaint before the District Forum.

3. THE District Forum has dismissed the complaint on the ground that since the

OP has already filed a Criminal Case against the complainant under Section 200 of the Code of Criminal Procedure alleging that the complainant has committed offences punishable under Sections 384, 385, 507 and 511 of the Indian Penal Code and as the said Criminal Case is pending consideration, it is not appropriate to direct the OP to pay the amount to the complainant. This Order of the District Forum is under challenge by the complainant in this Appeal. It is not in dispute that the complainant has invested a sum of Rs. 1,00,000 in Fixed Deposit with the OP for a period of five years on 13.10.1997. It is also not in dispute that the said Fixed Deposit was matured and the matured value was payable by the OP to the complainant. The only dispute, according to the OP, is that the complainant has borrowed a sum of Rs. 80,000 from the OP on the security of the above said Fixed Deposit. The complainant disputes the said fact saying that he has not borrowed any money and the documents produced by the complainant with regard to the said transaction are all concocted and forged.

4. IN order to ascertain whether there is any truth in the defence taken by the OP, we looked into the xerox copies of the documents produced by the OP before the District Forum. The Complainant has also produced the original Fixed Deposit Receipt for our perusal. IN the said Fixed Deposit Receipt, the number mentioned is 1393 and the ''Pa'' number mentioned is 177/7. The matured amount is mentioned as Rs.2,01,200. IN the alleged Application filed by the Complainant for sanction of loan the Khata number is mentioned as 1351/7. On the alleged ''On Demand Pronote'' said to have been executed by the complainant in favour of the OP, the deposit number is mentioned as 1351/7. This deposit number does not relate to the complainant as the Complainant''s Fixed deposit Number is 1393. Further, if at all the Complainant has availed any loan from the OP on the security of the Fixed Deposit, the OP ought to have collected the Fixed Deposit Certificate from the complainant and retained with it as security. But, in the instant case, the Fixed Deposit Certificate is still with the complainant. Further, it is the case of the OP that the loan has been paid to the complainant in cash. The OP is virtually doing a Banking Business. Therefore, there was no reason for the OP to pay a sum of Rs.80,000 to the complainant by way of cash. Normally, as per the Banking Practice, any amount payable by a Financial INstitution would be paid only by way of Cheque. IN the instant case, it is not known why the loan amount of Rs.80,000 was paid by the OP to the complainant by way of cash on the basis on Pronote. We also looked into the signatures of the complainant on the alleged ''On Demand Pronote'' and the application made by the complainant for grant of loan and compared the same with the admitted signature of the complainant in the Vakalath filed in this appeal. It is visible to the naked eye that there is a difference in the signatures. On the basis of these documents it is not possible to come to the conclusion that the complainant has borrowed loan of Rs.80,000 from the OP by executing an ''On Demand Pronote''. Therefore, if it is the case of the OP that the complainant has borrowed loan of Rs.80,000 from it and he has not repaid the same, it is open for the OP to initiate proceedings against the complainant either in the Civil Court or by way of a dispute under

Section 70 of the Karnataka Co-operative Societies Act. IN view of these disputed facts, it is not open to the OP to retain the amount admittedly payable by it to the complainant. The District Forum without considering these aspects has proceeded to dismiss the complaint only on the ground that there is a Criminal Case filed by the OP against the complainant and the same is pending consideration before the Criminal Court. The criminal case, in our view, does not come in the way of the OP to pay the matured value of the Fixed Deposit to the complainant, having regard to the nature of the offences alleged against the complainant and also having regard to the admitted deposit of the amount made by the complainant. In the result, we pass the following Ordert: (1) The Appeal is allowed. The impugned Order is set aside. (2) The Complaint filed by the complainant before the District Forum is allowed. (3) The OP is directed to pay Rs.2,01,200 to the complainant with interest at 12% per annum from the date of the maturity of the deposit, namely 13.7.2002 till realization. (4) The OP is also directed to pay Rs.5,000 to the complainant towards the costs of these proceedings.

Appeal allowed.

