Mohd Nafees and Others Vs. State Bank of India Local Head Office and Others

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Court : Andhra Pradesh State Consumer Disputes Redressal Commission SCDRC Hyderabad

Decided On : Apr-27-2012

Judge : Mr. R. Lakshminarasimha Rao, Honourable Member &Amp; Mr. Thota Ashok Kumar, Honourable Member

Appeal No. : F.A.No. 968 of 2010 Against C.C.No. 879 Of 2009 District Consumer Forum-III Hyderabad

Appellant : Mohd Nafees and Others

Respondent : State Bank of India Local Head Office and Others

Judgement :

Oral Order (As per R.Lakshminarsimha Rao, Member)

1. The complainants are the appellants. The appeal is preferred against the order of the District Forum C.D.No.879 of 2009.

2. The facts of the case as stated in the complaint are that each of the appellants deposited an amount of `20,000/- with the third respondent bank on 30.01.1996 with maturity date 30.07.1998. The appellants, after the maturity period, demanded the third respondent to pay the maturity value of the deposit receipt. The third respondent informed them that Mohd.Shabbir obtained loan from the

third respondent bank by offering the deposit receipts pertaining to the appellants. The third respondent bank allowed automatic renewal of the deposit. The appellants filed complaint claiming maturity amount of `20,000/- each with interest and costs.

3. The respondents no.1 and 2 resisted the claim contending that Mohd Shabbir was sanctioned terms loan of `2,30,000/- on 16.12.1996 from the third respondent bank. The appellants executed surety letters in respect of the deposit receipts of `20,000/- each with a request to the third respondent bank to treat the deposit receipts as collateral security. The appellants undertaken not to withdraw or take advance/loan on the deposits until entire loan amount is repaid by Mohd.Shabbir. The third respondent bank has filed mortgage suit in O.S.No.53 of 1999 on the file of Senior Civil Judge, Mahaboobnagar and the Court passed final decree in respect of the mortgaged property. The appellants filed criminal case against Mohd Shabbir with the Police, Jadcherla for the offence of cheating and the case is pending before the Judicial Magistrate of the First Class, Jadcherla.

4. The appellant no.1 filed his affidavit and the documents ExA1 to A15. On behalf of the opposite parties no.2 and 3, Sridhar Rao, Branch Manager of opposite party no.3 has filed his affidavit and the documents, ExB1 toB7.

5. The District Forum has dismissed the complaint on the premise that the deposit receipts were issued as collateral security to the third respondent bank and the respondents had lien over them against the loan granted to Mohd. Shabbir.

6. The point for consideration is whether the impugned order is vitiated by the misappreciation of the fact or law?

7. There is no denying the fact that each of the appellants deposited a sum of `20,000/- on 30.1.1996 with the third respondent bank. The third respondent bank issued deposit receipts in favour of the appellants. The maturity date as mentioned in the deposit receipts is 30.07.1998. It is not disputed that the amount on maturity was not paid to the appellants. The defence of the respondents is that the deposit receipts were offered as security by the appellants for the loan advanced to Mohd.Shabbir. It is the contention of the respondents that the third respondent

bank filed suit in O.S.no.53 of 1999 on the file of the Senior Civil Judge, Mahaboobnagar and the Court has passed final decree in respect of the mortgaged property.

8. The appellants had not explained as to how Mohd Shabbir came into possession of the deposit receipts. It is an admitted fact that Mohd Shabbir obtained loan from the third respondent bank by offering as security, the deposit receipts pertaining to the appellants. The complaint filed by the appellants with the police indicate that they did not offer the deposit receipts as collateral security for repayment of the loan amount obtained by Mohd Shabbir. As such the third respondent bank has the obligation to pay the amount on maturity to the appellants.

9. Once it is proved that the appellants had not offered their deposit receipts as collateral security for repayment of the loan sanctioned by the third respondent bank in favour of Mohd.Shabbir, the question that would arise is as to whether the suit filed by the third respondent bank against Mohd Shabbir for recovery of the amount can be a bar for payment of the amount on maturity to the appellants. The appellants in paragraphs 8 and 9 of the complaint elaborately averred that the third respondent bank had not sought for attachment of the amount covered under the deposit receipts as also the third respondent bank had not filed the deposit receipts in the suit. Paragraphs 8 and 9 of the complaint read as under:

8. Further, opposite party no.2 also sent a letter dt.13.04.2009 to the opposite party no.1, categorically admitting that in the suit filed by the bank against the borrower, there was no prayer by the bank for attachment of the monies held in the FDRs and that no supporting documents evidencing lien were also submitted to the Court as Exhibits. It was further clarified in the said letter that the amounts deposited in the FDRs are still in the branch books under auto renewal and not paid to any one and that they may wait for decision of the Court for settlement of the deposit amounts. It was also stated in the said letter that the borrower approached for a compromise deal, which was approved for a compromise amount of Rs.3,50,000/- and an amount of Rs.1,50,000/- has already been paid.

9. Thus, the said correspondence between the Opposite parties 1 to 3, categorically disclose that they are withholding the amounts covered by the said FDRs, under the pretext of offering them as security for the loan sanctioned to the said Mr.Mohd. Shabbeer, though in fact no prayer was made by opposite party no.3 in the suit filed against the said borrower in respect of the said FDRs. The opposite party no.3 also cannot withhold the said FDRs amount, on the pretext that a criminal case filed by the 1st complainant against Mohd. Shabbeer and others is pending. Further there is no whisper even in the plaint about the alleged offering of the said FDRs as security for the loan given to the said borrower.

10. The third respondent bank had issued the fixed deposit bonds in favour of the appellants promising attractive rate of interest on the date of maturity mentioned therein. The third respondent bank cannot obtain the amount under the deposit receipts. In the circumstances, the liability of the opposite parties no.2 is on par with the other opposite party no.1 in regard to the payment of the amount due from the opposite party no.1 company to the complainants.

11. The appellants had deposited their respective amounts with the third respondent bank which had issued the deposit receipts and assured them that the amount as promised would be paid to them on the date of maturity mentioned therein. An offer to pay the deposit amount with attractive rate of interest after the date of maturity and failure to pay the same by the respondents to the appellants constitutes deficiency in service and unfair trade practice as well on the part of the respondents Hence, the respondents are liable to pay the amount on maturity along with interest thereon. The order of the District Forum does suffer from infirmity of the misappreciation of facts and law.

12. In the result the appeal is allowed by setting aside the order of the District Forum. Consequently the complaint is allowed. The opposite parties are directed to refund the deposit amount of `20,000/- each along with contractual rate of interest to the complainants together with costs of `3,000/-. Time for compliance four weeks.