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Court : Andhra Pradesh State Consumer Disputes Redressal Commission SCDRC Hyderabad

Decided On : Feb-03-2011

Judge : Honourable Mr. Justice D. Appa Rao, President &Amp; Smt. M. Shreesha, Member

Appeal No. : F.A. 1321/2008 against C.C. 904/2007 , Dist. Forum-I, Visakapatnam

Appellant : Chamarty Viswanadham and Another

Respondent : The Icici Bank Ltd. Rep. by Its Branch Manager

Judgement :

ORAL ORDER: (Per Honble Sri Justice D.Appa Rao, President.)

1) This is an appeal preferred by the complainants against the inadequacy of compensation awarded by the Dist. Forum besides non-mulcting liability on the respondent bank due to loss of documents.

2) The case of the complainants in brief is that they are man and wife and that the respondent bank had sanctioned loan amount of Rs. 2,35,000/- payable in 45 equated monthly instalments (EMI) commencing from 7.5.2003 to 7.4.2007 by taking earlier outstanding payable to M/s. Housing Development Finance

Corporation (HDFC). Towards security the bank had demanded them to deposit original documents viz., a) original sale deed No. 42/95 dt. 19.5.1995 b) original link sale deed No. 7341/83 dt. 6.8.1983 c) E.C. No. 493/99 dt. 13.4.199 and d) E.C. No. 3541/99 dt. 15.4.1999. They had repaid the entire loan amount and demanded the bank to return the documents. Despite repeated demands they did not choose to return. Later they heard from the customer care centre that the original documents were lost. On that they got a registered notice issued demanding them to return the original documents or pay compensation of Rs. 25 lakhs for which there was no response. However, the bank addressed a separate letter on 3.8.2007 alleging that they were putting efforts to re-create true copies of the documents. Those documents are essential for making transactions in future. Even the true documents are that were re-created by the respondent would not substitute the originals. They had suffered mental agony, physical strain apart from financial expenditure and therefore they claimed a compensation of Rs. 18, 80,000/- for loss of original documents, and a direction to return the original documents whenever they were traced and fix responsibility on the bank in case of mis-use of those documents by 3rd parties, and prays to re-create the documents which were in their possession and costs of Rs. 20,000/-.

3) The respondent bank resisted the case. While admitting deposit of original documents while sanctioning loan it alleged that the complainants have made a complaint to Reserve Bank of India (RBI). The original documents deposited by them have not been traced. The said fact has been informed to the complainants and therefore they were initiating documents re-creation process. Despite their efforts they could not trace out. They have already given public notice in the newspapers besides lodging a report on 27.6.2007. They had taken steps to obtain certified copies of the documents. There was no deficiency in service on its part and therefore prayed for dismissal of the complaint with costs.

4) The complainants in proof of their case filed the affidavit evidence of complainant No. 1 and got Exs. A1 to A33 marked while the respondent bank filed the affidavit evidence of its Manager and did not file any documents.

5) The Dist. Forum after considering the evidence placed on record opined that admittedly when the documents were lost there was deficiency in service, however, in view of the fact that they initiated the process of re-creation of documents directed the bank to obtain certified copies of documents cost and in case they were traced they should return to the complainant besides compensation of Rs. 15,000/- and costs of Rs. 2,000/-.

6) Aggrieved by the said decision, the complainants preferred the appeal contending that the Dist. Forum did not appreciate the facts or law in correct perspective. It ought to have seen that due to non-availability of original documents they were handicapped in obtaining housing loans and enter other transactions, and the banks were refusing to extend loans thereby they had sustained loss of Rs. 19,80,000/- which ought to have been awarded, and refund Rs. 2,78,436/- being the amount paid by them under the loan agreement together with interest @ 24% p.a., besides an undertaking that they would return the documents if they were traced and that the documents were lost at their end and mulct liability in case they are misused by third parties and costs of Rs. 20,000/-.

7) The point that arises for consideration is whether the order of the Dist. Forum is vitiated by mis-appreciation of fact or law?

8) It is an undisputed fact that the complainants had deposited original sale deed, link sale deed and encumbrance certificates when they borrowed loan from the respondent bank. It is also not in dispute that the complainants had repaid the entire loan amount. Admittedly the original documents could not be returned by the bank on the ground that they were lost. Though the bank alleged in its written version that it had put all the efforts and even public notice in the newspaper and also report to the police no document evidencing the same was filed. A perusal of written version undoubtedly shows that the bank was at fault, and could not give satisfactory explanation as to how those documents could not be traced. It did not take any action against the erring employees or at least said fact was not even mentioned. It may be stated herein that if the complainants intend to borrow once again no bank would lend amount on the ground that original documents were not deposited with them. The bank in such circumstances has to give indemnity bond

in favour of the complainants that it would reimburse whatever loss occasioned due to loss of documents besides that it has to give a certificate to the complainants stating that the documents that were pledged before it were lost and substitute by taking registered extracts from the competent authorities and hand over to the complainants with a certificate that these documents were given by it in lieu of original documents specifically mentioning that they were lost at their end.

9) The complainants could not prove that the banks were refusing to extend the loans on the ground that original documents were not filed. Now they intend the entire amount paid by them under the loan agreement be refunded on this ground. They have also sought for a compensation of Rs. 19,80,000/- being the value of the property. These are all unsustainable claims. There is no proof that by depositing those documents, third parties had borrowed amounts. Equally some loss has been occasioned due to missing of the documents. The Dist. Forum had granted a compensation of Rs. 15,000/- besides costs of Rs. 2,000/- which cannot be said to be low. It is reasonable and modest.

10) In the result the appeal is allowed in part modifying the order of the Dist Forum directing the bank to give indemnity bond in favour of the complainants that it would reimburse whatever loss occasioned due to loss of documents besides a certificate to the complainants stating that the documents that were pledged before it were lost. They are directed to take registered extracts from the competent authorities and hand over it to the complainants by making a certificate that these documents were given by it in lieu of original documents specifically mentioning that they were lost at their end. However, rest of the order of the Dist. Forum is confirmed. The complainants are entitled to costs of Rs. 2,000/- in the appeal. Time for compliance four weeks.