Mr. N.P. George Vs. Br.Manager, Central Bank of India, Mumbai and Another

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Court : Maharashtra State Consumer Disputes Redressal Commission SCDRC Mumbai

Decided On : Nov-25-2008

Judge : Mr. P.N. Kashalkar, Hon€™ble Presiding Judicial Member. Smt. S.P. Lale, Hon€™ble Judicial Member.

Appeal No. : First Appeal No.219 of 2008 @ M.A. No.343 of 2008 (In Consumer Complaint No.344 of 2006)

Appellant : Mr. N.P. George

Respondent : Br.Manager, Central Bank of India, Mumbai and Another

Advocate for Pet/Ap. : Ms. Seema Singh for appellant. Mr. Atul Patkar for respondent No.1. Nr. M.S. Naik h/f U.B. Wavikar for respondent No.2.

Judgement :

Oral Order:

Per Mr. P.N. Kashalkar, Honble Presiding Judicial Member

Being aggrieved by the dismissal of the complaint no. 344/2006, the original complainant has filed this appeal challenging the judgment passed by District Consumer Forum, Mumbai Suburban on 12/10/2007. Facts to the extent material may be stated as under:

Complainant is having proprietary firm styled as M/s.Geetech Enterprises. His proprietary concern was granted by overdraft facility by Central Bank of India. The complainant was asked by the bank to settle the account by letter dt. 30/08/2005. The complainant after having discussion submitted a proposal on 07/03/2006 to settle the overdraft account for Rs.9 lakhs in terms of full and final settlement and enclosed a cheque of Rs.2 lakhs along with proposal. But the complainant was informed by the Bank that account will be settled by the bank for Rs.9,72,000/-. The complainant accepted this proposal and paid Rs. 1 lakh on 29/05/2006. Thus, total amount paid by the complainant to the bank was Rs.3 lakhs and he was having balance of Rs.6,72,000/- as per settlement. The complainant sold of his flat to Mr.and Mrs. Malhotra for Rs.6,72,000/-. These vendees took loan from North Canara GSB Cooperative Bank Ltd., Jogeshwari. When vendees and opposite party no.2 tendered Rs. 6,72,000/- to the Central Bank of India to pay the amount in behalf of the complainant, they were told to pay Rs. 7,03,626/-. Accordingly, they paid the said amount to the Central Bank of India on behalf of the complainant. Thus, according to the complainant, opposite party no.1/Central Bank of India recovered Rs. 31,628/- excess than the settlement amount from the account of the complainant. Further it was found by the complainant that opposite party no.1/ Central Bank of India again recovered Rs.1 lakh extra from opposite party no.2 bank (bankers of Mr.and Mrs. Malhotra). Thus, the complainant found that Central Bank of India in all recovered Rs.1,31,628/- extra from opposite party no.2 on behalf of Mr.and Mrs. Malhotra for settlement arrived at between Central Bank of India and the complainant.

The complainant found that Central Bank of India in all recovered Rs. 1,34,628/- extra from opp.party no.2 on behalf of Mr and Mrs.Malhotra, which was the amount allegedly paid by them for settlement arrived at between Central Bank of India and complainant. When this fact came to knowledge of the complainant, he sent registered notice on 07/07/2006 but the bank failed to reply or comply with notice and therefore, complainant filed consumer complaint seeking refund of Rs1,31,628/- and also claimed compensation of Rs.50,000/- and cost of Rs.20,000/-. Complainant filed affidavit and documents in support of his claim.

Opp. party no.1/Central Bank of India resisted the complaint by filing written statement and pleaded that the complaint was malafide and it was filed with the intention of making money and it is absolutely a frivolous claim. It pleaded that complainant was not a consumer and it was a commercial transaction and as such, the complaint is not tenable. He further pleaded that overdraft facility was given to the complainant on 06/11/2002 for Rs.8 lakhs and demand promissory note dated 09/11/2002 was executed as collateral security. Interest applied was at 14%. Overdraft facility was secured by equitable mortgage of property i.e. flat 212/22 owned by the complainant. Complainant agreed to settle the overdraft account for Rs. 9,72,000/-. It was not accepted by the bank. Complainant did not take permission of bank i.e. mortgagee/opp.party no.1 before selling the mortgage property to Mr and Mrs.Malhotra. Complainant made deposits with the said overdraft account and those deposits were appropriated towards outstanding liability. The bank however committed genuine calculation error while arriving at total outstanding amount of the complainant. So, it called opp.party no.2 bank to make further payment and rectified the error, and accordingly, informed this fact to the complainant. But instead of contacting opp.party no.1, complainant asked opp.party no.2 bank to collect the title deeds. The bank pleaded that it did not recover interest amount from the complainant and therefore, it pleaded that the complaint should be dismissed with cost.

Opp. party no.2/ North Canara GSB Cooperative Bank Ltd. filed written statement and resisted the complaint. It pleaded that the complaint is bad for non joinder of vendodrs/purchaseers Mr and Mrs.Malhotra. It pleaded that it acted as an agent of Mr and Mrs.Malhotra and therefore, in absence of Mr and Mrs.Malhotra, the complainant can not file consumer complaint against him. It pleaded that it had given loan to Mr and Mrs.Malhotra for purchase of flat belonging to the complainant but it was found that the flat was mortgaged with opp.party no.1 bank. It had sanctioned housing loan of Rs. 23 lakhs to Mr and Mrs.Malhotra and on direction of Mr and Mrs.Malhotra paid Rs.7,03,628/- to opp.party no.1 bank to clear the charges against the property and to collect the title deeds of the flat, which the complainant was selling to Mr and Mrs.Malhotra. Opp.party no.1 bank by letter dated. 01/07/2006 informed opp.party no.2 that due to clerical mistake wrong amount of loan was informed earlier, which was due and payable by the complainant and therefore, opp.party bank asked for difference of Rs.1 lakh and accordingly paid Rs.1 lakh to Central Bank of India on 03/07/2006. As such, it pleaded that there was no deficiency in service on their part and complaint should be dismissed with cost.

On the basis of affidavits and documents placed before it by the rival parties, the Forum below held that there was no proof to show that opp.party bank had agreed to settle the overdraft account of the complainant at Rs, 9 lakhs initially and thereafter, at Rs.9,72,000/- . On the contrary the Forum below noted that the documents produced by the complainant showed that the said flat was not accepted by opp.party no.1 bank. Forum below also did not find favour with the contention that the opp.party no.1 bank extracted Rs.1,31,628/- in excess of agreed settlement amount and therefore, the Forum below found that neither opp.party no.1 bank nor the opp.party no.2 could be held to be deficient in service. Forum below also noted that there was no contractual liability against the opp.party no.2 bank. Forum below also held that Mr and Mrs.Malhotra was impleaded by the complainant and they were not necessary party. Opp.party no.2 bank acted on the direction of Mr and Mrs.Malhotra and paid the amount (excess amount as per complainants version) to opp.party no.1 bank. So, the grievance if any, the complainant had was against Mr and Mrs.Malhotra at whose instance further payment of Rs.1 lakh was made by opp.party no.2 bank. Thus, the Forum below was pleased to dismiss the complaint. As such, the complainant has filed this appeal.

We heard Adv. Ms.Seema Singh for appellant, Adv.Mr.Atul Patkar for respondent no.1, Adv. Nr. M.S. Naik h/f Adv.U.B.Wavikar for respondent no.2.

We are finding that there was no deficiency in service on the part of opp.party no.1 bank, because opp.party no.1 bank had committed genuine calculation error calculation of overdraft amount of the complainants loan account. Complainant settled the account, but part payment was to be paid by opp.party no.2 bank at the instance of Mr and Mrs.Malhotra, who purchased the mortgage flat of the complainant and agreed to pay the remaining amount of loan directly to Central Bank of India through its bankers. So, payment was made for settlement of complainants dues to get clear title of the flat of the complainant. Mr and Mrs.Malhotra paid amount from its bankers (opp.party no.2) to the Central Bank of India (opp.party no.1) and opp.party no.2 was satisfied that there was clerical mistake or calculation error on the part of Central Bank of India in arriving at final figure of dues payable by the complainant to opp.party no.1/ Central Bank of India towards overdraft facility account. So, that amount was rightly settled and paid by opp.party no.2 at the instance of Mr and Mrs.Malhotra , who purchased the flat of complainant free from any encumbrances. When this is so, the complainant can not have any grudge that Central Bank of India collected extra amount from Mr and Mrs.Malhotra. In the circumstances, the Forum below rightly held that both the banks are not guilty of deficiency in service. Moreover, there was no contractual relationship (privity of contract) between the complainant and opp.paty no.2 bank. The payment was made by opp.party no.2 bank at the instance of Mr and Mrs.Malhotra, who had purchased the flat from the complainant and to clear complainants dues as per demand, respondent no.2 bank paid the due amount to respondent no.1 bank to get cleared of outstanding loan of the complainant so, that they could get clear title of the flat, which they were purchasing from the complainant and it was mortgaged by the complainant in favour of respondent no.1/bank. In the circumstances, agreeing with the findings recorded by the Forum below, we hold that there was no deficiency in service on the part of respondent no.1 and 2 bank and there appears to be no substance in the complaint as well as appeal preferred by the complainant. Hence, we pass following order:-

ORDER

1. Appeal stands dismissed.

2. Parties are left to bear their costs.

3. Declared in open court.

4. Copies of the order herein be furnished to the parties.