

Ajit Jain Vs. Development Credit Bank Limited, Through Its Managing Director and Another

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Court : Union Territory Consumer Disputes Redressal Commission SCDRC UT Chandigarh

Decided On : Apr-04-2014

Judge : Sham Sunder (Retd.), President, the Honourable Mr. Dev Raj, Member & the Honourable Mrs. Padma Pandey, Member

Appeal No. : First Appeal No. 103 of 2014

Appellant : Ajit Jain

Respondent : Development Credit Bank Limited, Through Its Managing Director and Another

Judgement :

Sham Sunder (Retd.), President:

1. This appeal is directed against the order dated 11.02.2014, rendered by the District Consumer Disputes Redressal Forum-I, U.T., Chandigarh (hereinafter to be called as the District Forum only) vide which, it dismissed the complaint, filed by the complainant (now appellant).

2. The facts, in brief, are that the complainant applied for Home Equity Loan, with Opposite Party No.2, which was approved by it, vide letter dated 25.02.2010, copy whereof is Annexure C-1. Loan amount, to the tune of Rs.1,70,00,000/- was

sanctioned, in favour of the complainant. Opposite Party No.2, assured the complainant, that it would charge him interest @11.50% per annum, on the loan amount. It was stated that the complainant always paid the installments of loan amount, to Opposite Party No.2, as per the schedule. It was further stated that, on 09.07.2012, Opposite Party No.2, intimated the complainant, vide letter Annexure C-2, that outstanding amount of loan of Rs.1,42,27,952.43Ps., had been assigned to Opposite Party No.1, on 30.06.2012, with all rights and obligations. Vide letter dated 30.07.2012, Annexure C-3, Opposite Party No.1, also confirmed, with regard to taking over of the loan account, from Opposite Party No.2. New loan assignment No.HDFECHD00027188, was provided to the complainant, by Opposite Party No.1. It was further stated that the consent of the complainant was never taken by either of the Opposite Parties, in this regard. It was further stated that the original loan of the complainant was Home Equity Loan, whereas, Opposite Party No.1, started considering the said loan account as mortgage loan, against the settled terms and conditions.

3. On 25.10.2012, Opposite Party No.1, sent a statement of account Annexure C-4, to the complainant, wherein, the existing applicable rate of interest was mentioned as PLR (%) 10.50, variance : 1.00 and rate of interest (ROI): 11.50 % per annum. It was further stated that the complainant also received a letter dated 30.10.2012 Annexure C-5, from Opposite Party No.1, whereby, the rate of interest, on the loan aforesaid, was arbitrarily increased by 01.50% per annum, with retrospective effect, i.e. from 05.10.2012. It was further mentioned, in the said letter that variance, on the loan amount, had been fixed at 2.50% per annum, over the base rate, which was 10.50% per annum. In this manner, Opposite Party No.1, put an additional financial burden of Rs.15,20,178/-, upon the complainant, by increasing the rate of interest. It was further stated that Opposite Party No.1 had illegally and arbitrarily, increased the rate of interest from base rate i.e. 11.50% per annum to 13% per annum. It was further stated that, as per the Code of Banks Commitment to Customers-Annexure C-6, in case of loan at floating rate of interest, the reference rate to the floating rate was to be linked and the premium or discount was to be applied to the reference rate, for determining the rate of interest on the loan. This reference rate was to remain uniform for customers contracting the loan, at different points of time. It was further stated that Opposite

Party No.1, being a member of BCSBI, had adopted the Code of Banks Commitment to Customers, as per document Annexure C-7.

4. It was further stated that the complainant made a representation dated 10.11.2012, Annexure C-8, to Opposite Party No.1, which sent reply vide email dated 12.11.2012 Annexure C-9. It was further stated that, in case of loan with floating rate of interest, the same (rate of interest) could be revised only when there was a revision, in the base rate, but, on the other hand, there had been no increase, in the same (base rate) since 01.08.2011, as per computer image Annexure C-10, which related to interest rates on loans and advances. It was further stated that Opposite Party No.2, had no authority to hand over/assign loan of the complainant, to Opposite Party No.1, during the tenure period of the same (loan). When Opposite Party No.1, was requested to reverse the increase, in the rate of interest, or in the alternative to pay an amount of Rs.15,20,178/-, as enhanced, in the loan account, apart from making the payment of compensation, it refused to do so. It was further stated that the aforesaid acts of the Opposite Parties, amounted to deficiency, in rendering service, as also indulgence into unfair trade practice. When the grievance of the complainant, was not redressed, left with no alternative, a complaint under Section 12 of the Consumer Protection Act, 1986 (hereinafter to be called as the Act only), was filed, directing the Opposite Parties, to reverse the increased rate of interest, on the loan amount, aforesaid, i.e. base rate of 10.50% per annum plus (+) 1% variance i.e. 11.50% per annum, or in the alternative to pay Rs.15,20,178/-; compensation, to the tune of Rs.3 lacs, for mental agony and physical harassment, and cost of litigation, to the tune of Rs.30,000/-

5. Opposite Party No.1, in its written reply, pleaded that, as per Clause No.2 of the sanction letter Annexure C-1, the rate of interest was variable, and the same could be revised, at any time, and from time to time, as per the Policy, market conditions, and/or applicable Laws and Regulations, if any, during the tenure of loan. It was stated that, as per the letter Annexure C-2, Opposite Party No.2, was entitled to assign the loan, under the terms and conditions of the Home Equity Agreement, executed between it, and the complainant, and, as such, the same had been assigned to Opposite Party No.1. It was further stated that, no prior

consent of the complainant was required, at any stage, for the purpose of transfer or assignment of the said loan. It was admitted that, at a particular time, the base rate was 10.5% per annum, variance was 1% and the applicable rate of interest to the loan of the complainant was 11.50% per annum. It was further stated that since the interest rate was floating, it could increase or decrease, depending upon the base rate of the PLR, and the variance was likely to change. It was further stated that the rate of interest increased, in terms of the Loan Agreement and the rate of interest was revised as 13% per annum w.e.f. 05.10.2012. It was further stated that the loan of the complainant was governed by the terms and conditions contained, in the Agreement/Contract, executed between the parties. It was further stated that the rate of interest was applicable, taking into consideration various factors, including the cost of money involved in other Regulatory Guidelines issued by the Government. It was further stated that, on the basis of the CRR Ratio and other guidelines issued, there was no straightjacket formula, by which the floating rate of interest was governed. It was further stated that neither there was any deficiency, in rendering service, on the part of Opposite Party No.1, nor it indulged into unfair trade practice. The remaining averments, were denied, being wrong.

6. Opposite Party No.2, in its written version, pleaded that that the complainant alongwith co-applicant Ms.Ritu Jain, had approached it, for obtaining a Home Equity Loan facility, to the tune of Rs.1,70,00,000/-. It was stated that the said loan was disbursed, in favour of the complainant, at floating/variable rate of interest, on 25.02.2010, after deducting the agreed charges. It was further stated that the said loan was repayable, in 108 monthly installments of Rs.2,53,363/- each. It was further stated that the complainant had mortgaged his property i.e. House No.180, Sector 33-A, Chandigarh, in favour of Opposite Party No.2, in consideration of the loan, availed of by him. It was further stated that the complainant had paid only 30 installments, to Opposite Party No.2. It was further stated that the said loan, availed of by the complainant was assigned to Opposite Party No.1, vide assignment deed dated 30.06.2012, by Opposite Party No.2. It was further stated that, as per Clause 6.3 (d) of Assignment Deed dated 27.06.2012, the acquirer and the transferor were required to jointly give appropriate notice of assignment, as mutually agreed to between the parties. It was further stated that Opposite Party No.2 informed about the said issue to the complainant, vide letter dated

09.07.2012 Annexure C-2. It was further stated that neither there was any deficiency, in rendering service, on the part of Opposite Party No.2, nor it indulged into unfair trade practice. The remaining averments, were denied, being wrong.

7. The Parties led evidence, in support of their case.

8. After hearing the Counsel for the parties, and, on going through the evidence, and record of the case, the District Forum, dismissed the complaint, as stated above.

9. Feeling aggrieved, the instant appeal, has been filed by the appellant/complainant.

10. We have heard the Counsel for the appellant, at the preliminary stage, and, have gone through the evidence, and record of the case, carefully.

11. The Counsel for the appellant, submitted that the complainant applied for Home Equity Loan, in the sum of Rs.1,70,00,000/-, which was approved by Opposite Party No.2, vide letter dated 25.02.2010, Annexure C-1. He further submitted that, at the time of grant of loan, Opposite Party No.2, assured that interest @11.50% per annum, shall be charged. He further submitted that Opposite Party No.2, without the consent of the complainant, could not assign the loan, sanctioned in his favour, but it did so, in favour of Opposite Party No.1, on 30.06.2012. He further submitted that no prior consent of the complainant was obtained by the Opposite Parties, for such transfer of loan. He further submitted that interest, on the loan was arbitrarily increased, by the Opposite Parties, from time to time, without any basis. He further submitted that even the rate of interest was increased on the loan, by 1.50% per annum, with retrospective effect, i.e. from 05.10.2012, due to which the complainant was put to financial burden. He further submitted that, according to Code of Banks Commitment to Customers, in case of loan at floating rate of interest, the reference rate was to be linked and the premium or discount was to be applied, to the reference rate, for determining the rate of interest, on the loan. He further submitted that, this reference rate was to remain uniform, for customers contracting the loan, at different points of time. He further submitted that Opposite Party No.1, being a member of BCSBI, adopted

the Code of Banks Commitment to Customers, and had illegally and arbitrarily increased the rate of interest, to the tune of 13% per annum, on the loan aforesaid, without the prior consent of the complainant. He further submitted that there was clear-cut deficiency, in rendering service, on the part of the Opposite Parties, and indulgence into unfair trade practice, on account of their aforesaid acts of omission and commission, but the District Forum, failed to properly appreciate the same, in view of the evidence produced, on the record, and fell into a grave error, in dismissing the complaint. He further submitted that the order of the District Forum, being illegal and invalid, is liable to be set aside.

12. The first question, that falls for consideration, is, as to whether, the complainant fell within the definition of a consumer or not. No doubt, the complainant stated, in the complaint, that it was a Home Equity Loan, which was sanctioned, in his favour. Even, no proper objection, was taken by the Opposite Parties, in their written versions, that the complainant did not fall within the definition of a consumer, as the loan was obtained by him, for furtherance of his business. The question, that falls for consideration, is, as to whether, in the absence of taking such an objection, in the written versions, by the Opposite Parties, the District Forum or this Commission, could consider the same, to find out, as to whether, the complainant fell within the definition of a consumer or not, as this question, goes to the root of the case. In *Ramesh Kumar Sihan Hans Vs. Goyal Eye Institute and others*, Consumer Complaint No.135 of 2011 decided on 30.03.2012, it was held by the National Commission that the District Forum, State Commission or the National Commission are required to examine the complaint to find out (1) Whether the complainant is a consumer within the meaning of Section 2(1)(d) of the Act, and is entitled to invoke the original jurisdiction of the Consumer Forum; (ii) Whether the complaint raises one or more consumer disputes viz., unfair trade practice or restrictive trade practice, defects in goods or deficiency, in service, as defined under the Act; (iii) Whether Consumer Forum has territorial and pecuniary jurisdiction, to entertain the complaint; (iv) Whether the complaint has been filed within the period of limitation, and; (v) Whether the complaint is accompanied with such amount of fee, as has been prescribed. The principle of law, laid down in *Ramesh Kumar Sihan Hanss* case (supra) is fully applicable to the facts of the instant case.

13. Keeping in view the principle of law, laid down, in Ramesh Kumar Sihan Hanss case (supra) , it is to be decided, as to whether, the loan was taken for the furtherance of his business, by the complainant or not. Annexure R-1 is a copy of the loan application, which was submitted by the complainant. In this document, under the heading 'Home Returns?', against 'Business Requirements?' tick mark was made. This clearly shows that loan was obtained by the complainant, for business requirements. In other words, the loan was obtained by the complainant, for the purpose of furtherance of his business. Since, the loan was obtained by the complainant, for the purpose of furtherance of his business, and he utilized the same, with a view to gain huge profits, it could be said that it was a commercial transaction. For proper decision of this question, the provisions of Section 2(1)(d) and Section 2(1)(o), defining the 'consumer' and service respectively, are extracted as under:-

'(d) "Consumer" means any person who, -

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised or under any system of deferred payment when such use is made with the approval of such person but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person [but does not include a person who avails of such services for any commercial purpose];
Added by Act 62 of 2002 w.e.f. 15.03.2003.

[Explanation. For the purposes of this sub-clause "commercial purpose" does not include use by a consumer of goods bought and used by him and services availed

by him exclusively for the purposes of earning his livelihood, by means of self-employment;]

Section 2(1)(o) defines service as under:-

(o) "services" means service of any description which is made available to potential 16[users and includes, but not limited to, the provision of] facilities in connection with banking, Financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, 17[housing construction] entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.?

14. According to Section 2(1)(d)(i) of the Act, the consumer does not include a person who obtains such goods for resale or for any commercial purpose. Section 2(1)(d)(ii), which was amended by Act 62 of 2002 w.e.f. 15.03.2003, clearly lays down that the person who hires or avails of the services, for a consideration, for any commercial purpose, shall not qualify, as a consumer. In the instant case, admittedly, the complainant obtained the huge amount of Rs.1,70,00,000/-, from Opposite Party No.2, for furtherance of his business. These credit facilities were availed of, in other words, the services of the Opposite Parties, were hired by the complainant, for commercial purpose i.e. for furtherance of business, to earn huge profits, and not for earning livelihood, by way of self-employment. In Economic Transport Organization Vs.Charan Spinning Mills (P) Ltd., and Anr., I (2010) CPJ 4 (SC), a Constitution Bench of the Hon`ble Supreme Court held that if the goods are purchased or the services are availed of, by the complainant, for any commercial purpose, then it does not fall within the definition of a consumer, and consequently, the consumer complaint will not be maintainable, in such cases. In Birla Technologies Ltd. Vs. Neutral Glass and Allied Industries Ltd. I (2011) CPJ 1 (SC) and Sanjay D.Ghodawat Vs. R.R.B.Energy Ltd., IV (2010) CPJ 178 (NC), a case decided by a Full Bench of the National Consumer Disputes Redressal Commission, New Delhi, similar principle of law, was laid down. Under these circumstances, the complainant did not qualify as a consumer, as defined by Section 2(1)(d)(i) and (ii) of the Act. It is, therefore, held that the complainant does

not fall within the ambit of a consumer, and, as such, the complaint was not maintainable. The finding of the District Forum, to the effect, that since no objection was taken in the written versions that the complainant did not fall within the definition of a consumer, no plea raised at the time of arguments, could be taken into consideration, being incorrect is reversed.

15. Even otherwise, on merits, the appeal is liable to be dismissed, at the preliminary stage, for the reasons to be recorded, hereinafter. According to the appellant, the loan could not be sold/assigned to Opposite Party No.1, by Opposite Party No.2, without his prior consent and by doing so, both the Opposite Parties, were deficient, in rendering service. It may be stated here, that the parties are governed by the terms and conditions of the Home Equity Agreement, Annexure R-3, which was executed between the complainant and Opposite Party No.2. Articles-10.2 and 10.3 of Home Equity Agreement Annexure R-3, which is duly signed by the complainant, are reproduced hereunder :-

œ10.2 INSPECTION, ASSIGNMENT :

(a) X x x x x x

(b) The Lender shall have the right to create charge over the Property in favour of any bank, Institution or body by way of security for any refinance facility or any loan availed of by Lender from such bank, Institution or body. Lender shall also have the right to transfer or assign the mortgage over the Property in favour of any bank, Institution or body in connection with any sale or transfer of the Loan by Lender to them.

(c) The Lender shall have the authority to make available any information contained in the Loan Application and/or any document or paper or statement submitted to the Lender by or on behalf of the Borrower and/or pertaining or relating to the Borrower and/or the Loan including as to its repayment, conduct, to any rating or other agency or Institution or body as Lender in its sole discretion may deem fit. Lender shall also have the authority to seek and/or receive any information as it may deem fit, in connection with the Loan and/or the Borrower from any source or person or entity to whom the Borrower hereby authorizes to

furnish such information.

10.3 SECURITIZATION:

(a) The Lender reserves the right to assign/sell/securitize the Loan with or without security, if any, in any manner by transferring and/or assigning or otherwise all its right, title and interest which the Lender deems appropriate and the Borrower hereby expressly agrees that in that event, Lender is not required to obtain any permission or put the Borrower to any notice.

(b) The Borrower shall be bound to accept any such securitization and any such sale, assignment, or transfer and the Borrower shall accept such other party(s) as creditors exclusively or as a joint creditor with the Lender, or as a creditor exclusively with the right to Lender to continue to exercise all powers hereunder on behalf of any such other party.

(c) x x x x x x x

16. The plain perusal of the afore-extracted Articles of the Home Equity Agreement, clearly reveals that the lender had a right to assign/sell/securitize the loan, with or without security, in any manner by transferring and/or assigning or otherwise, all its right title and interest, which it deemed appropriate, and the borrower agreed that the lender was not required to obtain any permission or put the borrower to any notice. Once, the complainant agreed to the terms and conditions including the Articles extracted above of the Home Equity Agreement, Opposite Party No.2, could assign the whole loan, without his prior consent, and, thereafter, he (complainant), could not turn round and say that his prior consent was not sought before doing so. Opposite Party No.2, thus, acted within the ambit of the afore-extracted Articles of the Home Equity Agreement, by transferring the loan, in favour of Opposite Party No.1. As such, there was no illegality, in doing so, as prior consent of the complainant, for this purpose was not required. In the instant case, Opposite Party No.2, informed the complainant vide letter dated 09.07.2012, Annexure C-2, that under the Agreement, executed between him and it (Opposite Party No.2), it (Opposite Party No.2) was fully entitled to assign the loan, disbursed to him, and it assigned the same (loan) to Opposite Party No.1, on

30.06.2012, and all the rights and obligations, in relation to the same (loan) were assigned to it (Opposite Party No.1). The Deed of Assignment of Receivables with Underlying Security, Annexure OP-2/1, executed between the Opposite Parties, on 27.6.2012, to support its contention, was also produced by Opposite Party No.2. Thus, after assigning/selling of the loan, in question, in favour of Opposite Party No.1, by Opposite Party No.2, the former stepped into its shoes. Both, Opposite Parties No.1 and 2, informed the complainant, about the assignment of loan, granted by Opposite Party No.2, separately vide letters Annexures C-2 and C-3. The District Forum, was, thus, right in holding that by assigning/transferring the loan, granted in favour of the complainant, by Opposite Party No.2, in favour of Opposite Party No.1, in accordance with the terms and conditions of the afore-extracted Articles of the Home Equity Agreement, between the complainant and Opposite Party No.2, they were neither deficient, in rendering service, nor indulged into unfair trade practice. The findings of the District Forum, in this regard, being correct are affirmed.

17. The next question, that falls for consideration, is, as to whether, the Opposite Parties could increase the rate of interest, from time to time, as per the terms and conditions of the Home Equity Agreement, executed between them. Condition No.2 of the sanction letter dated 25.02.2010 Annexure C-1, reads as under :-

œ2. Rate of Interest “ 11.50% per annum. The Company shall review and, if considered necessary, revise the Rate of Interest at any time and from time to time as per its policy, market conditions and/or applicable laws and regulations, if any, during the tenor* of the loan. Except to the extent the Rate of Interest is revised by the Company as above, the terms and conditions stated herein and in the Loan Agreement shall be final and conclusive and binding. Where the customer opts for any scheme(s)/offer(s), the Rate of Interest shall be as per the Terms and Conditions applicable to such Scheme(s)/Offer(s) and as may be contained in the Addendum to the Agreement.?

18. According to Condition No.2 of Annexure C-1 extracted above, the Company (Opposite Party No.2), could review, and if considered necessary, revise the rate of interest, at any time, and, from time to time, as per its Policy, market conditions

and/or applicable Laws and Regulations, if any, during the tenure of the loan. As stated above, the complainant also executed Home Equity Agreement Annexure R-3, and as per Article-1 (i), rate of interest means the floating rate of interest. Further, Article-2.2 (b) and (c), in respect of interest, reads as under :-

œ(a) X x x x x x x

(b) The Loan shall carry interest at the rate as mentioned in the Annexure to this Agreement which can be varied from time to time at the sole discretion of Lender. For purpose of this Agreement the interest shall be charged by the Lender on monthly basis, starting from the 5th of every month (including the month of disbursal of loan by Lender).

(c) The Lender shall review and, if considered necessary, revise the Rate of Interest at any time and from time to time as per its policy, market conditions and/or applicable laws and regulations, during the tenor of the loan at its sole discretion. The Lender will inform the Borrower about the variation in the interest in due course.?

(d) X x x x x x x

(e) X x x x x x x?

19. Once, the rate of interest was floating, the same could be varied from time to time, by Opposite Party No.1, which had stepped into the shoes of Opposite Party No.2, as per the Policy, market conditions etc. The complainant was informed by Opposite Party No.1, vide letter dated 30.10.2012 Annexure C-5, that with effect from October 05, 2012, the rate of interest, on his loan, had been increased by 1.50% per annum, and the interest on the business loan had been revised to 13.00% per annum. Under these circumstances, the grievance of the complainant, to the effect, that the rate of interest, was varied, and increased from time to time, by the Opposite Parties, arbitrarily and illegally, could be said to be devoid of merit. As stated above, the parties are bound by the terms and conditions of the Home Equity Agreement, executed between them. According to the terms and conditions of the said Agreement, since the loan was granted, on floating rate of

interest, with the changed market conditions and other applicable Laws and Regulations, the District Forum was right, in holding that by increasing the rate of interest, from time to time, as per the aforesaid Agreement, executed between the parties, there was neither any deficiency, in rendering service, on the part of the Opposite Parties, nor they indulged into unfair trade practice.

20. No other point, was urged, by the Counsel for the appellant.

21. For the reasons recorded above, the appeal, being devoid of merit, must fail, and the same is dismissed, at the preliminary stage, with no order as to costs. The order of the District Forum is upheld.

22. Certified copies of this order, be sent to the parties, free of charge.

23. The file be consigned to Record Room, after completion.

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