
(2004) 03 NCDRC CK 0108

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

INDIAN OVERSEAS
BANK

APPELLANT

Vs

P. Palanisamy

RESPONDENT

Date of Decision: March 17, 2004

Citation: 2005 2 CPJ 262

Hon'ble Judges: A.Raman , R.Vanaroja J.

Final Decision: Appeal allowed

Judgement

1. -THE complainant"s case is as follows: THE complainant is working as an Assistant in the District Munsif Court, Kodaikanal. He pledged his jewels weighing 51.500 gms and raised a loan of Rs. 15,300/-. THE complainant paid a sum of Rs. 5,300/- on 15.3.1997. But he was transferred to Kodaikanal in the month of February, 1997. THE complainant has written a letter to the opposite party on 25.4.1997 seeking to know the outstanding amount. On 24.3.1998, the complainant went in person to find out as to what had happened and came to know that the jewels pledged by him was disposed of by way of auction and a sum of Rs. 5,473/- was available at his credit. THE action of the opposite party has caused great loss and hardship to the complainant. Hence the complaint.

2. THE opposite party submitted as follows: THE complainant is not a consumer. THERE is no deficiency in service. THE complainant has given an undertaking that if he does not discharge the loan within a year, the jewels can be sold in auction. THE opposite party has thus got a power to sell the pledged jewels by auction. A registered letter was sent on 25.4.1997 which was returned and thereafter an insertion was made on 17.9.1997 in the local newspaper. After the auction also, a notice was sent on 29.12.1997, but it was

returned. THERE is no deficiency in service. Hence, the opposite party prayed that the complaint be dismissed.

The Lower Forum accepted the complaint and directed the opposite party to pay the market value of the 51.500 gms. of gold along with with interest and compensation of Rs. 5,000/- and cost. Hence this appeal.

We are unable to accept the verdict of the lower Forum. The complainant is not an ordinary person. He is a Government employee, that too, working in Judicial Department. He ought to be aware of his rights and duties as well. The complainant has availed a jewel loan on 25.4.1996 on condition that he should repay the same within a year or on demand and otherwise the Bank will be entitled to sell the jewels in auction. A letter Ex. B-2 was sent to his address which has been returned as "No such addressee". Then, a public notice was given by insertion in local issue of "Dinamalar" where we find the complainant's name is also given and the details of the loan have been given. Thereafter the jewels have been sold. After the jewels were sold, another letter was sent to the complainant addressing it to the same address viz., No. 26, Bharathi Nagar, Veda sandur. The complainant has not chosen to come or inform the Bank about the change in the address. Conveniently, on 21.5.1998 he writes to say that he has availed of a loan towards which he has paid a sum of Rs. 5,300/- on 15.3.1997 and that he is still due in a sum of Rs. 10,000/-. For the loan which was availed by him on 25.4.1996 in a sum of Rs. 15,300/- he pays only a sum of Rs. 5,300/- on 15.3.1997 only viz., a year afterwards and does not care to pay the balance and then conveniently writes a letter on 25.4.1997. But there is no proof that such a letter was sent. What has been produced is only a Certificate of Posting. From that it does not follow that such a letter was sent. It is not known why the complainant who is an employee in a Court should not go in person and inform the opposite party about the change of his address or about his willingness to make payment and redeem the jewels back. According to him, he was transferred to Kodaikanal in the month of February, 1997. But the payment of Rs. 5,300/- has been made by him on 15.3.1997 in person. If he was in a position to go over there to make payment on that day, why is that he was not in a position to go in person later on or inform the Bank about the change in his address then. He has no explanation. Further, he has not produced any record from his office to show that he was actually transferred in the month of February, 1997. He has in his letter Ex. A-4 alleged to have been sent, has stated that since there was no reply he again went on 24.3.1998 to the Bank and the Manager was not available then and that he came to understand that the jewels were sold in auction on 14.10.1997. This letter is also alleged to have been sent. There is no proof for having sent this letter. Then, he sends a lawyer's notice under Ex. A-6. Thus, from the circumstances, it is clear that this is not a case where any deficiency in service can be inferred. The complainant having availed of a loan, kept quiet for nearly a year and pays only a part of it. With a view to build up a defence he burks the fact of his transfer. Thereafter he did not show any interest to make any payment. A publication in paper has been made. After coming to know that his jewels had been sold away, he has concocted the documents and rushed to

the Court. The documents clearly show that the Bank is invested with the power to sell the jewels. The Bank has sent a notice which has been returned. When the complainant who has availed the loan is transferred to another place, it is his duty to inform the creditor, viz., the Bank about his transfer, so that the Bank will be in a position to contact him. But he purposely omits to do so. On the other hand he goes to make a part payment concealing the fact. Therefore, having not acted honestly, it is not open to the complainant now to allege any deficiency in service. The opposite party have followed the procedure and hence auctioned the jewels. If the complainant is aggrieved by the same, his remedy is to only approach the Civil Court and he cannot come forward by way of this complaint. Therefore, we are satisfied that this is a fit case where the order passed by the lower Forum has to be set aside.

3. IN the result, the appeal is allowed with cost of Rs. 250/-. The order passed by the lower Forum is set aside. The complaint will stand dismissed with costs of Rs. 250/-.
Appeal allowed.