

(1999) 11 NCDRC CK 0032

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Sakthi Finance Ltd.

APPELLANT

Vs

A.John

RESPONDENT

Date of Decision: Nov. 2, 1999

Citation: 2000 1 CPJ 183 : 2000 2 CLT 351 : 2000 2 CPR 512

Hon'ble Judges: M.S.Janarthanam , Pulavar V.S.Kandasamy J.

Final Decision: Appeal dismissed

Judgement

1. THIS appeal is directed against the order dated the 2nd day of March, 1998 in O.P. No. 202/96 on the file of the District Consumer Disputes Redressal Forum, Coimbatore.

2. THE appellant is the opposite party while the respondent is the complainant.

When this action came up for hearing on 20.10.1999 this Commission made an endorsement on the docket as below : "The learned Counsel for the appellant as well as the respondent called absent. The matter is adjourned to on which date the matter will be disposed of on merits on perusal of the records even if any of the learned Counsel is absent on that date."

This apart, the matters listed for hearing today () had been affixed in the notice board yesterday (1.11.1999) itself.

3. DESPITE all these things, the learned Counsel for the appellant as well as the learned Counsel for the respondent were not present in Court to project their hues of views. The fact that both the learned Counsel are absent does not mean that this appeal cannot at all be disposed of on merits of course on perusal of the records by ourselves. That is exactly what we are going to do. We perused the records and also the order passed by the Forum below.

The operative portion of the order of the Forum below is getting reflected in paragraph 10 which reads as under :

"In the result, this Forum doth order and direct that the opposite party should, within two months from the date of receipt of a copy of this order, pay to the complainant interest on a sum of Rs. 52,200/- (Rupees fifty two thousand and two hundred only) at the rate of 18% per annum from 30.12.1987 till 26.3.1994 and interest on a sum of Rs. 58,000/- (Rupees fifty eight thousand only) at the rate of 18% per annum from 30.12.1987 to 26.3.1994 and also a sum of Rs. 40,600/- (Rupees forty thousand and six hundred only) with interest thereon at the rate of 18% per annum from 17.2.1988 till the date of payment and a sum of Rs. 500/- (Rupees five hundred only) as costs in this complaint failing which suitable penal action will be taken against the opposite party as per provision of law."

4. THE order of the Forum below, we rather feel, on the facts and in the circumstances of the case does not suffer from any infirmity whatever either on facts or on application of law to the factual matrix of the case on hand. THE minimum or short facts that may be necessary for the disposal of the action, we may pen down here.

The complainant deposited certain amounts with the opposite party, a financial institution. He made 3 deposits with the opposite party for Rs. 45,000/-, Rs. 50,000/- and Rs. 35,000/- respectively on 30.12.1986, 30.12.1986 and 17.2.1987 under fixed deposit receipts. All the deposits so made were to respectively attain maturity on 30.12.1987, 30.12.1987 and 17.2.1988. The maturity value respectively was Rs. 52,000/-, Rs. 58,000/- and Rs. 40,600/-.

The officials of the Income-tax Department in the month of October, 1987 appeared to have raided the premises of one A. James who is none else than a relation of the complainant. During the course of raid several fixed deposit receipts found in the premises of A. James inclusive of these 3 fixed deposit receipts were seized. The Income-tax Department also attached the deposits and issued prohibitory orders prohibiting A. James from making payment of the deposit amounts seized by them.

5. MR. James applied for settlement of the dispute to the settlement Commission and ultimately the tax dues of the said James were assessed and finally settled on 26.3.1994. In the course of settlement the maturity value of the first two deposits of the complainant alone were adjusted towards the tax dues of MR. A. James. The accrued interest amount due on those deposits from the date of maturity that is to say 30.12.1987 and up to the date of adjustment of the maturity value towards the income-tax amount due by A. James which event happened on 26.3.1994 had not been remitted to the Income-tax Department.

6. THIS apart, the maturity value of the third fixed deposit was also not adjusted by the Income-tax Department for the dues to be paid by Mr. A. James. The third fixed deposit, as already stated, was to the tune of Rs. 40,600/- and the interest to be paid subsequent to the maturity date of the said deposit also remained unpaid. It is for this amount which remained not adjusted towards the tax dues of Mr. A. James or remain unpaid in the sense of not paid to the complainant, the Forum below passed an order as stated above.

The moot question that arises for consideration is as to whether the order of the Forum below is sustainable on the facts and in the circumstances of the case.

No doubt true it is that the opposite party would take a stand that they are not liable to pay interest on any fixed deposit subsequent to the date of the maturity if that deposit is not further renewed by the deposit holder and in the case on hand none of the deposits were further renewed beyond the maturity date by the complainant it is altogether untenable on the part of the complainant to claim interest and in this view of the matter the order of the Forum below is not sustainable when it granted interest beyond the maturity date.

7. IT is also the contention of the opposite party as getting revealed from the date of the Forum below that the claim are all time barred in the sense of the action before the Forum below had been instituted long subsequent to the expiry of 2 years from

the date when the 3 fixed deposits got matured.

The two contentions as above noticed appeared to wear the credible look of tenability on their face but a little bit of a probe if made into those contentions the ugliness taking shelter thereunder would get exposed. We are to point out here that the provision of this Act is not in derogation of any other law. Section 3 of the Act prescribes that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. The Income-tax Act, 1961, contains the salient and sanguine provisions for the realisation of dues from the assessee and the Department had ample powers under the relevant provisions of the said enactment either for the attachment of the money or issuing prohibitory orders to any person holding the money of the assessee preventing him to disburse the same to the assessee.

8. IN the case on hand, the INcome-tax Department, as already stated, issued prohibitory orders preventing Mr. A. James to disburse the fixed deposit amounts to the complainants and others despite the fact that the fixed deposits got matured. This apart the INcome-tax Department also adjusted the maturity value of the first two deposits made by the complainant with the opposite party towards the tax dues of A. James pursuant to the orders of the settlement Commission which event happened as already indicated on 26.3.1994.

In such state of affairs the cause of action can be stated to have arisen only on 26.3.1994 and not earlier to that inasmuch as the money had become due to the complainant on and from the said date. Viewed from this angle, it cannot at all be stated that the complaint which had been filed by the complainant in the year 1996 cannot at all fall within the prescribed period of limitation of 2 years as had been provided in Section 24-A of the Consumer Protection Act.

The other contention of the opposite parties that they are not liable to pay interest beyond the maturity date cannot at all be countenanced on the facts and in the circumstances of the case. So far as the first two deposits are concerned, of course the maturity value had been adjusted towards the tax dues of Mr. A. James on 26.3.1994 pursuant to the order of the Settlement Commission. But the interest due on both those deposits on and from 30.12.1987 the date of maturity until 26.3.1994 the date on which the amounts had been adjusted towards the tax dues of Mr. A. James had not been remitted to the Income-tax Department. The interest amount on those 2 deposits for the said period has to be definitely paid by the opposite party as has been ordered by the Forum below. The reasons are rather obvious. It is not as if the opposite party simply kept the amount idle without the user of the

money. In such state of affairs it is but reasonable for the opposite party to pay interest during the said period of retention of the money in his custody and also the rate of interest granted by the Forum below is after all 18% which is but reasonable in commercial transactions. Therefore we do not want to interfere with the award of interest @ 18% p.a. during the said period.

9. SO far as the 3rd deposit is concerned, as seen from the records, it was not at all adjusted towards the tax dues of Mr. A. James and, therefore, it is that the opposite party is liable to return to the complainant not only the maturity value of the deposit but also the interest @ 18% p.a. from 17.2.1988 the date on which the deposit got matured till up to the date of payment and that is exactly what the lower Forum has done and therefore we do not want to interfere that portion of the order also.

10. THE Forum below also granted costs in a sum of Rs. 500/- which is but reasonable on the facts and in the circumstances of the case. For the reasons, as above we are of the view that the order of the Forum below is sustainable in law and as such the appeal deserves to be dismissed.

In fine, the appeal is dismissed. But we make no order as to costs on the facts and in the circumstances of the case. Appeal dismissed.