

(2004) 04 NCDRC CK 0092

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

DENA BANK, NIGAMIT NIKAY

APPELLANT

Vs

MAHADEV LAL AGRAWAL

RESPONDENT

Date of Decision: April 21, 2004

Citation: 2004 1 CPC 677 : 2004 3 CLT 471 : 2004 4 CPJ 146

Hon'ble Judges: V.K.Agrawal , Veena Gupta , R.S.Awasthis J.

Final Decision: Appeal allowed

Judgement

1. THIS appeal, under Section 15 of the Consumer Protection Act, 1986, is directed against the order dated 24.8.2002 in Complaint No. 145/2002 by the District Consumer Disputes Redressal Forum, Raipur (hereinafter called the "Distt. Forum" for short) directing the appellant Bank to refund to respondent No. 1 Rs. 50,000/- with interest thereon.

2. UNDISPUTEDLY the borrower respondent No. 2 Ramjeevan Agrawal obtained a loan from appellant Bank. Complainant/respondent No. 1 Mahadev Lal Agrawal was the guarantor of respondent No. 2 for the said loan. The respondent No. 1 deposited by way of security his FDRs which were to mature during the year 1986-87. Since the loan amount was not paid by the borrower respondent No. 2, the appellant Bank adjusted the maturity amount of said FDRs towards the loan amount.

It was averred by the complainant in his complaint that the truck of the respondent No. 2 was hypothecated with the appellant Bank and the amount of loan should have been recovered by seizure and sale of the truck, before recovering the loan

amount from guarantor respondent No. 1, from the maturity amount of his FDRs.

The complaint was resisted by the appellant Bank inter alia on the grounds that the complaint was time-barred and that the appellant Bank had the right to recover the amount from the guarantor respondent No. 1 and the Bank could exercise general power of lien under Section 171 of the Indian Contract Act, on the securities of complainant/respondent No. 1 including his FDRs.

3. THE learned District Forum allowed the complaint and directed the appellant Bank to refund of Rs. 50,000/- payable regarding the said FDRs.

Learned Counsel for the appellant at the outset submitted that though a specific objection was raised by him regarding the complaint being barred by time yet the same was not considered and no finding was given by the Distt. Forum on the said objection. It was further urged that as the complainant was a guarantor of the respondent No. 2, his liability is co-existive with the liability of the principal debtor i.e., respondent No. 2 as per Section 128 of the Indian Contract Act. It was further urged that the appellant Bank was within its rights to exercise general power of lien under Section 171 of the Indian Contract Act, in adjusting the amount of FDRs of respondent No. 1 towards the loan of borrower respondent No. 2. It was, therefore, contended that the Distt. Forum erred in directing the appellant bank to refund the amount of FDR to the complainant/respondent No. 1.

4. IT would appear from the averments of the parties and letter dated 12.2.2002 that the amount of loan obtained by the respondent No. 2 was adjusted in the year 1986 and 1988 by the appellant Bank. The above adjustment was made from the amounts payable under the FDR to the complainant respondent No. 1. Therefore, the cause of action arose when the amounts were so adjusted. This complaint was filed on 10.4.2002. IT is, therefore, clear that the complaint was barred by limitation having been filed after about 14 years after the cause of action arose. The complaint deserves to be dismissed on that count alone.

Moreover, it is clear the appellant Bank recovered the amount of loan advanced to the principal debtor respondent No. 2, from the FDRs of complainant respondent No. 1 guarantor. The appellant bank could exercise a right of general lien on the

securities including the FDR of respondent No. 1 under Section 171 of the Contract Act. Obviously, there was no deficiency in service on the part of the appellant in adjusting the amount of FDR of guarantor respondent No. 1, towards the loan taken by the borrower respondent No. 2. The complaint, therefore, deserves to be dismissed. The learned Distt. Court erred in not doing so.

The appeal is, therefore, allowed. The impugned order is set aside. The complaint is dismissed. However, in the circumstances of the case parties shall bear their own cost throughout. Appeal allowed.