

1991 2 CPJ 13

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

MODERN
MECHANICAL And
ELECTRONICS

APPELLANT

Vs

CHAIRMAN-CUM-M.D.
RAJ FINANCAL CORPRESPONDENT

Date of Decision: Dec. 13, 1990**Citation:** 1991 2 CPJ 13**Hon'ble Judges:** S.K.Mal Lodha , Damodar Thanvi J.**Final Decision:** Appeal dismissed

Judgement

1. BY this appeal under Section 15 of the Consumer Protection Act, 1986 ("the Act" herein) the complainant appellant questions the correctness and legality of the order dated 15.6.1990 passed by the District Forum, Jaipur in Complaint Case No. 721/89. The District Forum dismissed the complaint without going into its merit. It upheld the preliminary objections. Suffice it to state that the complainant submitted a complaint under Section 12 of the Act against Rajasthan Financial Corporation, Jaipur (opposite party No. 1) and State Bank of India, Malviya Nagar Branch, Jaipur (opposite party No. 2) on 19.10.1989. The complainant Modern Mechanical and Electronic Engineering Group is a small scale industry which prepares electric motors, General fabrication (steel furniture, cooler etc.). It has been alleged in para 18 of the complaint that there is an investment of Rs. 6,50,000/- on the unit Out of that Rs. 2,00,000/- are of opposite party No. 1 and Rs. 2,00,000/- are of opposite party No. 2. The complainant had mortgaged the building, plant and machinery with opposite party No. 1, The valuation of which is in excess of the loan amount. According to the complainant the loan taken by the complainant is secured as the market value of the property is more than Rs. 18,00,000/-. It was alleged that opposite party No. 1 refused to give rehabilitation grant vide letter dated 5.10.1989 and the opposite parties are bent upon taking possession of the unit, for which it has no authority particularly when the application dated 19.10.1989 is pending before opposite party No. 1. The complainant apprehended that opposite parties may take possession of the unit

without following the legal procedure, so he is entitled to get an order that the complainant should not be dispossessed and the opposite parties may be bound down not to refuse advance. The relief para of the complaint is as follows :

2. WITH the complaint various documents were filed. Opposite Party No. 1 resisted the complaint by filing a version dated 23.12.1989. It was, inter alia, pleaded that it is not the responsibility of Opposite Party No. 1 to advance working capital to the complainant and that as the complainant has failed in making payment of the loan and the arrears started amounting up still it agreed to give second charge to the Bank which was sufficient. An objection was taken that the complainant is not a "consumer". The amount that was advanced by Opposite Party No. 1 to the complainant was a loan according to the terms of the contract. The proceedings which opposite party No. 1 has taken against the complainant are in accordance with the provisions of the R.F.C. Act. It was also stated in the version of the case that the reliefs which the complainant has asked cannot be granted by a redressal forum under the Act. A rejoinder was filed by the complainant. Opposite Party No. 2 while controverting the allegations made in the complaint averred that the complainant failed to make payment of the loan that was advanced by it and, therefore, Opposite Party No. 2 instituted a suit against the complainant and others for Rs. 3,97,332/- in the Court of District and Sessions Judge, Jaipur City, which was transferred to the Additional District and Sessions Judge, Jaipur City No. 3. The next date as stated in the version of the case was 21.2.90. In the additional pleas it was mentioned that the complaint of the complainant is in regard to the grant of working capital does not fall under the category of service and so it may be dismissed. The complainant filed rejoinder to the version of the case submitted by Opposite Party No. 2. The District Forum took note of *Special Machines Karnal v. Punjab National Bank and others I* (1991) CPJ 78 (NC)=Original Petition No. 32/89 decided on 22.12.1989 by the National Commission. It also referred to the order of the National Commission passed in *M/s. Dees Piston Pvt. Ltd. v. State Bank of India* decided on 22.12.1985 by the National Commission. The District Forum in the impugned order dated 15.6.1990 held that the complainant is not a "consumer" and the dispute raised by the complainant is not a "consumer dispute". According to the District Forum the actions of the opposite parties do not constitute "deficiency" in service. It also observed : -

In coming to the aforesaid conclusion, the District Forum took the following facts into consideration. The complaint relates to loan and relationship is that of mortgagor or mortgagee. A suit has already been instituted which is pending before the Additional District and Sessions Judge, Jaipur City No. 3, Jaipur. As the property of the complainant has been hypothecated for loan the relationship is that of mortgagor and mortgagee or the dispute pertaining to it, is not a consumer dispute. It also opined that the property

which the opposite parties want to take possession are of more than Rs. 1,00,000/- and, therefore, the District Forum has no pecuniary jurisdiction to entertain the complaint. Whether on the basis of the allegations made there was "deficiency" in service by the opposite parties or not, after referring to the averments made in the complaint it observed that not granting of loan facility or any irregularity in it does not constitute deficiency in service and if that is so it is not a "consumer dispute". "Complainant", "complaint", "consumer", "consumer dispute", "deficiency" and "service" have been defined in Section 2(1)(b), (d), (e), (g) and (o) of the Act respectively. Section 14(1) of the Act deals with the finding of the District Forum. Reliefs that can be granted to the consumer are mentioned in clauses (a) (b) (c) and (d) of Section 14(1) of the Act. We have already extracted hereinabove the reliefs claimed by the complainant in the complaint. In *M.L. Joseph v. State Bank of India Trichur* (Original Petition No. 12/89) decided by the National Commission on August 23, 1989 the complaint pertained to a transaction of borrowing from the Bank and the grievance of the petitioner was that the Bank has not been accommodating him sufficiently in the matter of grant of nursing facilities for small scale industry which has fallen sick. It was held that the petitioner is at liberty to seek his relief from the Civil Court either in the proceedings that are already pending before the Sub-Court, Trichur or in other independent proceedings as may be open to him in law. Again in *Society of U.P. Consumers for Education and Actions v. Bank of Baroda, Lucknow and others* (Original Petition No. 13 of 1989 decided on 23.8.1989 by the National Commission), the complaint was in respect of transaction of borrowing from a nationalised Bank and the grievance of the petitioner was that the Bank has not been rendering him sufficient supplemental financial assistance for the continued implementation of his project of establishing a poultry farm. The complaint was dismissed with liberty to the petitioner to seek appropriate redressal in a Civil Court. The matter was considered in *M/s Jayal Iron & Steel v. State Bank of India and others* (Original Petition No. 2 of 1989 with Miscellaneous Petition No. 23 of 1989 for Directions, decided on August 31, 1989 by the National Commission). In that case the grievance of the petitioner pertained to the alleged failure on the part of the State Bank of India and the U.P. State Financial Corporation to grant financial assistance to the petitioner for nursing and rehabilitating a sick industrial unit of his. A grievance was also put forward against the U.P. Electricity Board that they had illegally delayed the grant of power connection to the petitioner and subsequently disconnected the power connection without valid justification. The National Commission ruled that these are matters in respect of which the petitioner should approach a Civil Court for appropriate redress. All the aforesaid three authorities of the National Commission were considered by us in *Ramkripal Bhargava v. Union of India and others* decided on 25.9.1989. That order was upheld by the National Commission in *Ramkripal Bhargava v. Union of India and others I* (1991) CPJ 23 (NC)=First Appeal No. 23/89 decided on March 16, 1990. Therein it was observed as follows :

"It is for the Bank to decide whether a particular party is eligible for credit within the framework of the credit policy laid down by the Government of India and the Reserve

Bank of India viz. whether the project to be financed is viable, the would-be-borrower is creditworthy, the history of his past performance as a borrower in honouring his obligations for repayment of his loan liabilities. The obligation of the Bank to provide credit where improvement works are undertaken by a farmer from his own resources even though such items or works may be eligible for bank credit, entitlement of a farmer to credit where there is admitted delay on the part of the farmer to undertake the sowing operations in time. More importantly, for providing further credit, it is for the Bank to satisfy itself whether there has been a bona fide crop loss due to vagaries of weather and whether a borrower is a defaulter or not. It will not be open to the Commission to substitute its judgment for the decisions to be taken by the Banks for giving Bank credit. If there is any evidence of proved abuse of exercise of their authority for giving credit by Bank officials, redress has to be sought from the officers of the Bank in their higher echelons. The Reserve Bank of India and the Government of India who have laid down the guidelines and norms for Bank credit. The Commission cannot overlook the fact that the financial viability of the Banks would be seriously affected and the whole credit system will collapse if it is not ensured that the amounts advanced will be recovered in overwhelming majority of the cases and defaults are kept to the minimum. It will be for the Bank to decide the risks it should undertake balancing its interests and the need for promotion of agriculture."

The National Commission has expressed itself in the following words :

"We have taken the view that a complaint pertaining to a transaction of borrowing from a Bank voicing the grievance that the Bank has not been accommodating the complainant sufficiently in the matter of grant of adequate nursing and financing facilities for a small scale industry which consequently became sick, the proper forum to agitate the said grievance is a Civil Court and proceedings under the Consumer Protection Act cannot be invoked for seeking relief. We have also held in quite a few cases that complaints by borrowers from Banks against failure to provide adequate financing facility to an industry or business cannot form the subject matter of adjudication under the Act since in the matter of grant or withholding of further advances and insisting on margin money etc. the Banks have to exercise their discretion and act in accordance with their best judgment after taking into account various relevant factors and hence mere failure to provide financial facility or assistance cannot be said to constitute "deficiency in service" as defined in Section 2(1)(g) of the Act. We see no reason to deviate from the aforesaid view which we have already taken in similar matter."

3. IN Precision Engineering Works v. Rajasthan Financial Corporation Jaipur (Appeal No. 128/90 decided on 12.10.1990) one of the reliefs sought by the complainant-appellant

was that the possession of the factory which has been taken by the R.F.C. may be restored as it was not in accordance with law. IN that case it was prayed that the possession may be restored, action be taken against delinquent officer, interest may be waived and compensation may be awarded. Relief also sought for not auctioning the unit. On behalf of the R.F.C. a plea was raised that the relationship between the complainant and the opposite parties is that of a mortgagor and mortgagee and that proceedings have been taken under Section 29 of the Rajasthan State Financial Corporation Act, 1951. It was urged that the complaint was not maintainable under the Act. After considering the definitions mentioned hereinabove, the complaint and the documents accompanying it, the version of the case and the documents accompanying it and relying on the principles laid down by the National commission in various cases, it was held that the complainant may pursue another independent proceedings as may be open in law where it is not possible to grant relief to the petitioner under the Act. M.L. Joseph"s case (supra) was relied on.

The complaint for the reliefs mentioned above was filed on 19.10.1989. Opposite Party No. 2 instituted a suit against the complainant (its proprietor) and another in the Court of District and Sessions Judge, Jaipur for the recovery of Rs. 3,97,032/- and sale of hypothecated goods, machinery etc. on 20.5.1987. The reliefs claimed in the suit are contained in the last para of the complaint. The various reliefs claimed in the suit are detailed from 1 to 5. The complainant and its proprietor who were defendants in the suit submitted written statement contesting the suit on various grounds. In the written statement additional pleas were taken. A prayer was made that for the various acts of omission and commission a sum of Rs. 11,07,262/- may be awarded to him. It was in the nature of a counter claim and the reliefs sought were these : A plea was taken by the State Bank of India which was Opposite Party No. 2 that in view of the suit that has been instituted by it and the written statement filed, and the fact of the pendency of the suit, the District Forum has no jurisdiction to proceed with the complaint. The District Forum took note of it in its order by stating that"

4. THE National Commission in Dess Pistons Pvt. Ltd. v. State Bank of India and another (Original Petition No. 18/89 decided on 17.10.1989) observed that the petition before them should fail on the ground that a suit in respect of the same matter is pending between the parties and it is open to the petitioner to raise in the said suit all the contentions that he has raised before the National Commission. As held by them in a number of cases that when a matter is sub judice before a competent Civil Court, this Commission will not entertain a petition in respect of the identical subject matter. It, therefore, dismissed the petition on the limited ground. It will be useful to refer to Consumer Unity and Protection Center v. Nadiad Municipality and others (Original

Petition No. 7/88 decided on May 10, 1989), Dr. Indira Sanghi Managing Director, H.M.T. v. Karnataka State Electricity Board (Original Petition No. 4/88 decided on July 24, 1989 and Mr. M.L. Joseph v. State Bank of India, Trichur (Original Petition No. 12/89, decided on August 23, 1989) by the National Commission. Following respectively the aforesaid decisions we have taken a view in Bansilal Meena v. R.F.C. (Complaint Case No. 57/89) that when the matter is sub judice before a Civil Court in respect of the complaint filed before the Commission, it should not go into the merits of the complaint

The appeal fails and it is hereby dismissed. In the circumstances of the case, we leave the parties to bear their own costs. Appeal dismissed.