

Shri Lal Singh Lamba vs The Chief Manager on 1 July, 2013

STATE
CONSUMER DISPUTES REDRESSAL COMMISSION,

U.T., CHANDIGARH

First
Appeal No.

:

259 of 2013

Date of Institution

:

19.06.2013

Date of Decision

;

01.07.2013

Shri Lal Singh Lamba
son of Late Sh.G.S.Lamba, resident of H.No.462, Sector 6, Panchkula.

Appellant/complainant

V
e r s u s

The Chief Manager,
State Bank of India, City Sub Center, SC0 No.118-120, Sector 34, Chandigarh.

....Respondent/Opposite Party

Appeal under Section 15 of the
Consumer Protection Act, 1986.

BEFORE: JUSTICE SHAM SUNDER (RETD.), PRESIDENT.

MR. DEV RAJ, MEMBER.

Argued by: Sh. V.K. Diwan, Advocate for the appellant.

PER JUSTICE SHAM SUNDER (RETD.), PRESIDENT This appeal is directed against the order dated 15.05.2013, rendered by the District Consumer Disputes Redressal Forum-I, UT, 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 and his sons, namely Gagandeep Singh and Rajdeep Singh, were sanctioned a Term Loan, in the sum of Rs.50.00 lacs, on 12.01.2007, under Bankers Scheme, against property.

The said loan was secured by mortgaging shop No.80, Sector 20, Fruit and Vegetable Market, Panchkula. The said loan was to be repaid in 7 years, by way of equal monthly installments of Rs.90,000/- each with interest @14% p.a., with quarterly rests. It was stated that due to the circumstances, beyond the control of the complainant, repayment of the said loan could not be made, as per the stipulated schedule, and there was small deviation. By Sept., 2010, the complainant had repaid the loan amount, to the tune of Rs.26.00 lacs. The complainant, vide letters dated 22.09.2010 Annexure C-2 and 25.10.2010 Annexure C-3, requested the Opposite Party, that the repayment of loan may be rescheduled. It was also requested that interest at the PLR rate may be charged, in their loan account, after classification of the account in NPA Category. It was further stated that, on the contrary, the Opposite Party, threatened to take action, under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and issued notice dated 09.07.2010 Annexure C-4, under the same. It was further stated that, it was brought to the notice of the Opposite Party, that the amount claimed by it, was carrying excessive interest, erroneous penal interest, compounding interest, as also unauthorized charges had been debited, to the loan account of the complainant. The complainant, under the threat of sale of his assets, was forced to pay the total outstanding loan amount, alongwith penal interest, amounting to Rs.66,034/-, valuation charges to the tune of Rs.2,500/-, enforcement agent charges to the tune of Rs.66,144/-, service tax + cess on enforcement agent charges, to the tune of Rs.6,812/-, inspection charges for the year 2010-2011, to the tune of Rs.10,000/- i.e. total amounting to Rs.1,51,490/-. The said information was also provided to the complainant, by the Opposite Party, vide letter dated 14.12.2010 Annexure C-5.

3. The complainant took the matter with the Opposite Party, about wrong charging of the said amount of Rs.1,51,490/-, under different heads, and requested for the refund of the same, but to no avail. Legal notice Annexure C-7, was also served upon the Opposite Party, but the same was replied to in a vague manner vide Annexure C-9. It was further stated that by not refunding the amount, referred to above, illegally charged from the complainant, the Opposite Party was not only deficient, in rendering service, but also indulged 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 Party, to refund the amount of Rs.1,51,490/-, alongwith interest @18% P.A., from the date of debit, till realization; compensation, in the sum of Rs.1 lac, for mental agony, physical harassment, deficiency, in rendering service and financial loss; and cost of litigation, to the tune of Rs.25,000/-

4. The Opposite Party, in its written version, pleaded that the complaint was not maintainable. It was further pleaded that the District Forum had no Jurisdiction, to entertain and decide the complaint. It was further pleaded that complicated questions of fact and law were involved, in the complaint, and, as such, the same could not be adjudicated upon, by the District Forum, in summary proceedings. It was further pleaded that, only the Civil Courts had Jurisdiction, to entertain and

decide the complaint. It was admitted that the loan was granted, in favour of the complainant, against the mortgage of shop No.80, Sector 20, Fruit and Vegetable Market, Panchkula. It was stated that, as per the terms and conditions of the Loan Agreement, compound interest was required to be paid, on monthly basis, and the loan was agreed to be repaid, in 84 equal monthly installments of Rs.93,011/- p.m., w.e.f. April, 2008. The interest during the moratorium was to be served by the borrower/complainant, as per the Agreement executed by him, in favour of the Bank. It was further stated that the complainant, from the very beginning, started making defaults, in repayment of loan installments, and remained irregular, and, as such, the Bank Officials, had to visit his business premises, for recovery of the overdue amount. It was further stated that, left with no other alternative, the Opposite Party had to serve notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, on 09.07.2010, upon the complainant, which he did not reply. It was further stated that the charges recovered from the complainant, as per Annexure C-5, were on the basis of the Sanction letter Annexure R-1, as well as, the Loan Agreement Annexure R-2. It was further stated that neither there was any deficiency, in rendering service, on the part of the Opposite Party, nor it indulged into unfair trade practice. The remaining averments, were denied, being wrong.

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

6. 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.

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

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

9. The first question, that falls for consideration, is, as to whether, the complainant fell within the definition of a consumer or not. No doubt, no specific objection, in that regard, was taken by the Opposite Party, in its written version, but, on the other hand, it was pleaded by it, that the complaint was not maintainable. It is settled principle of law, that even if no objection, is taken by the Opposite Party, in the written statement, that the complainant did not fall within the definition of a consumer, the District Forum, or the State Consumer Disputes Redressal Commission, could suo moto decide such question, as the same, 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 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 the 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 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. It is, therefore, held that, even in the absence of taking any objection, by the Opposite Party, in the written version, that the complaint did not fell within the definition of a consumer, this Commission, can suo moto decide such a question.

10. For proper decision of the question, as to whether, the complainant fell within the definition of a consumer, the provisions of Section 2(1)(d) and Section 2 (1)(o), defining the consumer and service respectively, are extracted hereunder:-

(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) "service" 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.

11. The complainant was sanctioned loan of Rs.50 lacs, for business. He mortgaged his property i.e. shop No.80, Sector 20, Fruit and Vegetable Market, Panchkula, with the Opposite Party, for obtaining this loan. It means that loan was taken by the complainant, for commercial purpose, to run his business, with a view to earn huge profits. In the complaint, the complainant did not state even a single word that such loan was taken by him, for running his business, by way of self employment, to earn his livelihood. In Economic Transport Organization Vs. Charan Spinning Mills (P) Ltd., & 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. 2011 (1) SCC 525 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. Since, the services of Opposite Party were availed of, by the complainant, to purchase a shop and construction thereon, for running his business, on a large scale, to earn huge profits, he did not fall within the definition of a consumer.

12. The second question, that falls for consideration, is, as to whether, the Opposite Party, charged the amount referred to above, illegally. Clause 11 of the Sanction Letter R-1, reads as under:-

11. Penal Interest Maximum 2% over and above the normal rate applicable on account of irregularly like delay in payment of instalment or any other stipulated irregularity.

13. Loan Agreement Annexure R-2 was also executed between the parties. Clauses 2.3, 2.5 and 2.14, of the said Agreement, reads as under:-

2.3 INTEREST

i) The Borrowers shall pay to the Lender, interest on the principal amount of the loan outstanding from time to time @0.50% above the Benchmark Prime Lending Rate (BPLR) (presently at 13.25% p.a.) for the present or as applicable from time to time. The interest is payable on monthly basis. The current effective rate of interest is 13.75% p.a.

ii) The borrowers shall create final security (including obtaining NOC/approvals by way of hypothecation over Plot No.80, Market Committee Panchkula and the shop to be constructed thereon measuring 1000 sq.ft. to be registered in the name of Shri Lal Singh Lamba, Sh. Gagan Deep Singh and Sh. Rajdeep Singh, valued at Rs.80.00 lacs as per valuation report dt.23.8.2007.

iii) All interest on the Loan and on all other monies accruing due under this Agreement shall, in case the same be not paid on the respective Due Date, carry further interest at the maximum lending rate of the Lender on Rupee Loans as prevailing from time to time or at the applicable rate under this Agreement, whichever is higher. Such interest will be computed from the respective Due Dates and shall become payable upon the footing of compound interest with monthly rests as Provided in this Agreement and shall be payable on the dates specified in sub-section 2.3 (I) of this Agreement

2.5 IMPOSTS, COSTS AND CHARGES

i) The Borrower shall during the currency of the Loan bear all such imposts, duties and taxes (including interest and other taxes, if any) as may be levied from time to time by the Government or other authority pertaining to or in respect of the loan;

ii) The Borrower shall pay all other costs, charges and expenses (including cost of investigation of title to the Borrowers properties and protection of the Lenders interest) and expenses in any way incurred by the Lender and such additional stamp duty, other duties, taxes, charges and other penalties if any when the Borrower is required to pay according to the laws for the time being in force in the State in which its properties are situated or otherwise;

iii) In the event of the Borrower failing to pay the monies referred to in sub-section (i) and (ii), the Lender will be at liberty (but shall not be obliged to) pay the same. The Borrower shall reimburse all sums paid by the Lender in accordance with the provisions contained herein.

2.14 LIQUIDATED DAMAGES ON DEFAULTED AMOUNT In case of default in payment of installments of principal, interest, front end fee and all other monies (except liquidated damages) on their respective due dates, the borrower shall pay on the defaulted amounts, liquidated damages @2% p.a. for the period of default. Liquidated damages shall be payable in the manner and on the dates specified in section 2.3 (i) of this agreement.

14. It is evident, that the Sanction Letter, as also the Loan Agreement, were signed by the complainant. The afore-extracted Clauses of the Sanction Letter, as also of the Loan Agreement, executed between the parties, clearly stipulate, as to what amount could be charged by the Opposite Party, from the complainant, in case, he failed to make payment of the loan amount, in time. As per the averment, contained in the complaint, the complainant defaulted, in making payment of installments, on time. According to Clause 11 of the Sanction Letter, extracted above, penal interest could be charged by the Opposite Party, in such a situation. According to Clause 2.3, the interest was payable on monthly basis. According to Clause 2.5 of the Loan Agreement extracted above, the borrower was required to, during the currency of the Loan, bear all such imposts, duties and taxes (including interest and other taxes, if any), as may be levied, from time to time, by the Government or other Authority, pertaining to, or in respect of the loan. Not only this, the borrower was also required to pay all other costs, charges and expenses (including cost of investigation of title to the Borrowers properties and protection of the Lenders interest) and expenses, in any way, incurred by the Lender, and, such additional stamp duty, and other duties. It is further evident, from Clause 2.5 of the Loan Agreement that the borrower, if failed to pay the monies, referred to, in sub-section the Lender will be at liberty (but shall not be obliged to) pay the same, in that event, borrower shall

reimburse all sums paid by the Lender, in accordance with the provisions contained therein. Not only this, it is evident, from Clause 2.14 of the Loan Agreement, extracted above, that, in case of default, in payment of installments of the principal, interest, front end fee and all other monies (except liquidated damages) on their respective due dates, the borrower shall pay on the defaulted amounts, liquidated damages @2% p.a., for the period of default. The liquidated damages shall be payable in the manner and on the dates specified in Section 2.3(i) of the same (Loan Agreement). Under these circumstances, all the amounts charged, from the complainant, and debited to his account, revealed that the same were charged, by the Opposite Party, in accordance with the Sanction Letter and the Loan Agreement, executed between the parties. The Counsel for the appellant, however, failed to prove that the amount debited to the account of the complainant was, in any way, illegal. The District Forum was, thus, right in holding that the Opposite Party was justified, in charging the amount of Rs.1,51,490/-, vide Annexure C-5, and that was rightly, debited to the account of the complainant.

15. The District Forum, was, thus, right, in holding that the Opposite Parties, were neither deficient, in rendering service, nor indulged into unfair trade practice. The order of the District Forum, being legal and valid, is liable to be upheld.

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

17. In view of the above discussion, it is held that the order passed by the District Forum, being based on the correct appreciation of evidence, and law, on the point, does not suffer from any illegality or perversity, warranting the interference of this Commission.

18. 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.

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

20. The file be consigned to Record Room, after completion Pronounced.

July 1, 2013 Sd/-

[JUSTICE SHAM SUNDER (RETD.)] PRESIDENT Sd/-

(DEV RAJ) MEMBER Rg