

1995 1 CPR 163

Sumangala Rao - Appellant
Versus
Vijaya Bank - Respondent
Decided On : 10/29/1994
Complaint No. 17 of 1992

Consumer Protection Act, 1986 - Sections 12 & 17 - Deficiency in banking service - Complainant made fixed deposits & its maturity date was 31.10.1993 - Bank declined either to permit withdrawal on the ground that complainant no. 2 had raised a loan for his firm from another branch of Bank or to advance loan on fixed deposits - With holding of amount even after date of maturity is deficiency in service - Complainant is entitled to the maturity amount with interest at 15% from date of its maturity till payment. (Paras 8 to 15)

Result: Complaint allowed with cost of Rs.2500/-.

Act Referred :

CONSUMER PROTECTION ACT : S.17, S.12

ORDER D.R. Vithal Rao, President - In this complaint the complainants have sought for payment of deposits bearing Nos. VCC. 308/91 and VCC. 309/91 dated 31.10.1991 with interest thereon and also compensation in a sum of Rs.2,50,000/- from the Opp. party - Vijaya Bank.

2. The Complainants, wife and husband, made two Fixed Deposits described as 'Vijaya Cash Certificates' under VCC. Nos. 308/91 and VCC. No. 309/91 dated 31.10.1991, the face value of the deposits being Rs.2,00,000/- each and its maturity value was Rs.2,53,360/- each. The date of maturity was 31.10.1993.

3. It is the further case of the Complainants that he availed loan of a sum of Rs.15,000/- against fixed deposit bearing No. VCC. 308/91. The complainants in the mean-while agreed to purchase a residential site in Gangenahalli from one Sri N. Rajashekaraiyah for a consideration of a sum of Rs.3,90,000/-. He paid an advance of Rs.50,000/- and the balance amount was agreed to be paid by him on or before 24.1.1992 and so the complainants to meet this commitment sought withdrawal of the deposits before maturity. The Opp. party declined to permit the withdrawal and so the complainants sought the loan of 75% of the deposit value. Even that was declined by the Opp. party.

4. Nextly it is the case of the complainants that complainant No.2 i.e., H.K. Somasekhar and his father Kalaiah, as partners of a Firm known as 'Quality Castings' had bon-owed certain sums from the Opp. party-Bank, Peenya Industrial Estate Branch and as on that date the outstanding liabilities of the said loan account was in a sum of Rs.5,00,000/-. Complainant No.2 and his father had also given a security of a house property for the said loan. The said house property was valued about Rs.50,00,000/-.

5. The Opp. party refused to permit withdrawal of the deposit amount before maturity and also advance any loan on the said deposits on the ground that complainant No.2 and his father were due in a sum of Rs.5,00,000/- in respect of their firm 'Quality Castings' in Peenya Bank Branch of the Opp. party. The complainants further averred that the Opp. party had no right to exercise general lien on any part of the fixed deposit Nos. VCC. 308/91 and VCC. 309/91 in respect of the liability of the firm 'Quality Castings' The Complainants, on the basis of these averments sought the reliefs, as narrated above.

6. The complaint came to be filed on 3.2.1992. The Opp. party filed its version and admitted the fact of the fixed deposits made by the complainants as averred by them. The Opp. party is the Vijaya Bank, Sanky Road Branch, Bangalore. The Opp. party averred that the firm 'Quality Castings' was due in a sum of Rs.5,00,000/- to its Peenya Branch and so it was entitled to exercise general lien over the said deposits and not to make payment relating to the said deposits either for premature withdrawal or advancing loan to the complainants on the said deposits. The Opp. party on the basis of these averments sought the complaint to be dismissed.

7. During enquiry, complainant No.2, the husband of complainant No. 1 filed the affidavit and got Exts. C. 1 to C 7 marked in evidence. The Opp. party filed the affidavit of the Branch Manager, Vijaya Bank, Sanky Road Branch, Bangalore, and got Exts. R. 1 to R. 3 marked in evidence.

8. At the stage of hearing on 15.9.1994, the learned Counsel for the Opp. party filed a memo, which reads as under: Memo " In terms of the compromise entered, into between Mr. Somasekhar and his father Kalaiah, the partners of the partnership firm, Mr. Kaliah, who has taken over the business along with entire liability has assured to clear the loan taken from Vijaya Bank,

Peenya Branch within 3 days. A copy of the letter dt. 15.9.1994 written by branch Manager, Vijaya Bank, Sankey road branch in this regard is enclosed. In view of the above exercise of the right of lien over the term deposits in question does not arise." 8. We have heard the learned Counsel for the parties and also perused the material on record. It is not disputed that the complainants made fixed deposits under VCC. No. 308/91 and VCC. 309/91 for the face value of Rs.2,00,000/- each and the maturity value of it was Rs.2,53,360/- each. This deposit was made on 31.10.1991 and the maturity date of it was 31.10.1993.

9. The complainants sought permission for withdrawal of the said deposits for their family necessities in the month of January, 1992. But the Opp. party declined either to permit the withdrawal of the said amount on the ground that Complainant No.2 who had raised loan along with his father for the Firm Messrs 'Quality Castings' had over due liabilities to the extent of Rs.5,00,000/- or to advance loan on the fixed deposits. The Opp. party, it is evident, from its letters Exts. C.2 and C.6 declined withdrawal and advancing loan in exercise of Bank's general lien of 50% of the amount payable being his share of the deposit of Complainant No.2. 9. Though the complaint was filed before the date of maturity i.e., on 3.2.1992, the date of maturity was 31.10.1993 but the Opp. party Bank did not make payment of the said amount of fixed deposit to the complainants even after the date of maturity i.e., 31.10.1993.

10. In our opinion, this withholding of payment of the deposit amount to the complainants even after the date of maturity is clearly deficiency in service.

11. The learned Counsel for the Opp. party filed a memo on 15.9.1994 that they would not exercise bankers lien as the father of complainant No.2 had taken over the liability and assured the bank Peenya Branch to clear the said loan within a period of 3 days.

12. The Opp. party as per its own letters, Ex. C.2 and C.6 had informed the complainants to exercise its general lien of 50% of the amount payable under the deposits being the share of Complainant No.2, even on its own showing the Opp. party had no right to exercise any lien on the balance 50% of the amount; even that amount was not permitted to be withdrawn. Even after its maturity the amount was not paid to the complainants. But it was only on 15.9.1994 the Opp. party submitted that it would not exercise bankers lien over the said deposit amounts on the ground that the father of Complainant No.2 had assured them to clear the loan due in respect of the Firm Messrs. Quality Castings. This, in our opinion, is clearly deficiency in service and a negligent act on the part of the Opp. party.

13. The complainants have sought compensation in a sum of Rs.2,50,000/-. In our opinion, the award of interest on the maturity value of the deposits would serve the ends of justice.

14. In the result, therefore, this complaint is allowed. The Opp. party is directed to pay the maturity value of the fixed deposits bearing No.VCC. 308/91 and No. VCC. 309/91 deducting a sum of Rs.15,000/- loan with interest due thereon, availed by the complainants on the said fixed deposit.

15. The Opp. party is also directed to pay interest on the said maturity value of the fixed deposits, minus a sum of Rs.15,000/- with interest due, the loan availed by the complainants, at 15% per annum from 31.10.1993 till the date of its payment to the complainants.

16. The Opp. party shall also pay a sum of Rs.2,500/- towards costs in this complaint. The Opp. party shall pay the sums so awarded within a period of 30 days from this date. Complaint allowed with cost of Rs.2500/-.