

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW.

Appeal NO. 1932 OF 2003

(Against the judgment/order dated 29.4.2003 in Complaint Case
No.106/99 of the District Consumer Forum, Varanasi)

Sanjay Kumar Gupta & anotherAppellants

Versus

Uma Rani SrivastavaRespondent

BEFORE:-

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT

HON'BLE MR. RAMPAL SINGH, MEMBER.

HON'BLE MR. SYED ALI AZHAR RIZVI, MEMBER.

For the Appellant : Mr. Rajesh Chaddha, Advocate.

For the Respondent : Mr. S.B. Srivastava, Advocate.

Dated : 1.4.2010

JUDGMENT

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT (ORAL)

Heard Mr. Rajesh Chaddha, learned counsel for the appellants and Mr. S.B. Srivastava, learned counsel for the respondent/complainant and also perused the record.

This appeal is directed against the judgment dated 29.4.2003 of the District Consumer Forum, Varanasi. Whereas two members allowed the respondent's complaint for recovery of Rs.78,800.00 alongwith interest @ Rs.15% p.a. from August, 1998 with an award of Rs.5,000.00 as compensation, the President of the Forum awarded Rs.10,000.00 as compensation besides having decreed the complainant's claim for Rs.78,800.00. The President also granted interest @ Rs.15% p.a. w.e.f. June,1998 and August, 1998. Obviously, thus, there is difference of opinion between the decision of the President on one side and that of the two members on the other, on the amount of compensation as indicated above in addition to the award of interest from June, 1998. In other words, it may be observed that there is complete concurrence insofar as the complainant's claim for Rs.78,800.00 having been decreed is concerned.

To enumerate briefly, the respondent purchased two FDRs of Rs.25,000.00 each by depositing the said sums with the Creative Credit

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Capital Ltd. of which the two appellants namely Sri Sanjay Kumar Gupta and Sri Rakesh Kumar Gupta are the Managing Director and Director, respectively. The respondent had also opened with the company four recurring accounts and deposited in each of them Rs.500.00 per month. In all she deposited Rs.24,000.00 i.e. Rs.6,000.00 per recurring deposit account. She claimed interest amounting to Rs.4,800.00 on the amounts she had deposited under the recurring deposit scheme. She did not claim interest on the amount of Rs.50,000.00 deposited in fixed term deposit as she received regularly the interest under the scheme.

Learned counsel appearing for the appellants termed both the judgments to be ex-parte and requested for remand of the matter to the District Consumer Forum for a fresh trial and decision as opportunity of defending the two appellants had not been afforded by the Forum below. It may be observed in this respect that the District Consumer Forum appointed Advocate Commissioner thrice to execute service of notice and this is established from the orders dated 28.8.2001, 13.2.2002 and 16.4.2002. Whereas on earlier two occasions i.e. on 28.8.2001 and 13.2.2002 the court had arrived at a conclusion that the service of notice could not be effected as the appellants were not available, the order dated 16.4.2002 appears to indicate that according to the Commissioner's report the opposite-parties after going through the notice declined to receive it. In the complaint, Sri Sanjay Kumar Gupta and Sri Rakesh Kumar Gupta have been shown to be the opposite-parties in one row but since Sri Sanjay Kumar Gupta's name is at the first place, we may infer that the notice has been handed over to him but he refused to accept it. We do not find the observations of the Forum below as recited in its order of April 16, 2002 to be doubtful from any angle. The District Forum took extra caution by deputing the Advocate-Commissioner not once but thrice. We, thus, hold that the service of notice upon the Managing Director of the Finance Co. was rightly termed to be as sufficient. Therefore, the request for remanding the matter to the District Consumer forum is not sustainable.

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As regards merit of the complainant's case, it may be observed that the appellants have fairly admitted about the complainant's case of a total sum of Rs.74,000.00 having been deposited with them- two sums under the fixed term deposit scheme and the four recurring deposit accounts. Mr. Chaddha conveyed to us that since the Finance Co. had been wound-up under the mandatory instructions of the RBI, the necessary documents pertaining to the four recurring deposit accounts are not available with them and, therefore, it is difficult to look into the finally aggregated amounts of the accounts. The complainant filed the copies of the recurring deposit accounts which are paper Nos.8 & 9 on record. These deposits seem to be free from any suspicion without there being any cutting or erases. In the absence of the original accounts the complainant's version about the details of the deposits entered in the four pass-books available with them seems to be credible and sustainable. And, likewise the complainant's case about the two fixed term deposits also is worth the name credit. The appellants' contention is that they had paid the amount of Rs.50,000.00 in cash to the complainant under receipt but the said receipt has not been adduced in evidence for our perusal, although the original FDRs are stated to be in possession of the two appellants. It would be significant to note that according to the complainant she handed over the original FDRs to the appellants while receiving two separate cheques for Rs.25,000.00 each but both the cheques were dishonoured on account of paucity of funds in their company's bank account. The endorsement of the two cheques being dishonoured find place in the banker's documents comprising paper Nos.11 & 12. Had there been any substance in the appellants' version of the sum of Rs.50,000.00 paid in cash under receipt of the complainant, the receipt would have certainly been obtained and produced before us but it appears that since there is no receipt, the original FDRs have been purposely withheld by the appellants. An inference can, therefore, be drawn that the theory of the payment being made in cash is nothing but a tissue of lies. We are, therefore, inclined to uphold the concurrent findings of the President and both the members that the appellants are liable to pay to the complainant a sum of Rs.78,800.00 due to

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respondent. The rate of interest is also common in both the judgments. It is liable to be paid w.e.f. the date or dates the deposits were made by the complainant. The amount of compensation as arrived at by the two members obviously, seems to be on lower side. While concurring with the decision of the President regarding the complainant's right to get the aforesaid amount, the members have not recorded any cogent reason as to why compensation of Rs.10,000.00 in the circumstances of this case should not have been awarded. In this regard, we may observe that the appellants played tricks with the complainant by issuing two cheques without there being any fund in their account and then bringing forward a false plea of making cash payment without there being any evidence of receipt. Also, an unbelievable plea of the documents regarding recurring deposit accounts were not available with them, was pressed into service. Then refusal of notice after going through the contents thereof was also indicative of the harassing attitude and even the fact that the respondent's own son was an employee of the Finance Co. of the appellants did not find any sympathetic consideration or favour. We are, therefore, of the decisive view that a compensation of Rs.10,000.00 in the circumstances of the case was absolutely justifiable.

We are not inclined to accept the contention of the appellants' learned counsel that the interest and compensation both can not be awarded together, as from the circumstances of this case it is evident that the two appellants despite there being a fiduciary relationship between them and the respondent's son harassed her by playing all techniques of the trade. Moreover, the rate of interest is moderate and the amount of compensation i.e. Rs.10,000.00 is also a very small amount insofar as her principal amount of deposits and the physical and mental inconvenience of the respondent were concerned.

Further more, the relationship between the appellants and the respondent was that of a banker and customer where the concept of interest is an integral part of the trading transaction.

For the reasons disclosed above, we find no merit in this appeal.

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Accordingly, it is dismissed and the majority judgment of the Forum below with slight modification as indicated above is hereby confirmed.

The default clause will also come into play for its operation as the appellants have not willingly and voluntarily carried-out the direction of the majority judgment as yet. However, the fact that a sum of Rs.50,000.00 was deposited with the District Consumer Forum pursuant to this Commission's direction will be taken note of while computing the interest and the said deposit will be accountable w.e.f. the date of the deposit till the date without incurring the liability of default clause. Meaning thereby that the penal rate of interest will not be applicable during this period.


(JUSTICE BHANWAR SINGH)
PRESIDENT


(SYED ALI AZHAR RIZVI)
MEMBER


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(RAMPAL SINGH)
MEMBER

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