

APR.

STATE CONSUMER DISPUTES REDRESSAL COMMISSION
UTTAR PRADESH LUCKNOW
REVISION NO.83 OF 2011

(against the order dated 06.04.2011 in execution case no. 29/2008 (complaint case no. 119/1996) passed by the District Consumer Forum, Jaunpur)

Union Bank of India

Revisionist

Versus

Ashok Kumar Dubey

Opposite party

BEFORE

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT
HON'BLE MR. YASH PAL SHARMA, MEMBER

For the Revisionist : Sri Pankaj Kumar Sinha, Advocate

For the Opposite party: Sri V.K. Yadav, Advocate

DATED: 03.06.2011

JUDGMENT

MR. JUSTICE BHANWAR SINGH, PRESIDENT (ORAL)

By means of this revision the validity of the impugned order dated 06.04.2011 has been questioned on the ground that a finding on the plea of compromise between the parties has not been recorded. The contention seems to carry weight. It may be recapitulated that the complaint of the opposite party for recovery of compensation of Rs.79,400/- was allowed by the District Consumer Forum, Jaunpur vide its judgment dated 01.05.2008. During the course of the execution proceedings the bank initiated a move for reconciliation and as pleaded further, the dispute was resolved on payment of Rs.90,000/-. The payment of the said sum of Rs.90,000/- was made by means of pay order no. 104537 dated 30.04.2009. The complainant denied the said compromise though admitted receipt of money in part payment of his dues. He denied the theory of full and final settlement for a sum of Rs.90,000/- only. The revisionist i.e. the Union Bank of India moved

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adjournment application on the ground of the compromise and resisted the recovery proceedings of the alleged balance amount of the decretal sum. However, its application was rejected and the plea of compromise was sidetracked without a categorical finding thereon. In our considered opinion the Forum below has committed a jurisdictional error by not entering into the merit of the plea of compromise and arriving at a just conclusion. Without prejudice to the interest of either of the two parties it may be observed that the bank's plea of compromise prima facie appears to be sustainable but a categorical finding after affording an opportunity of hearing to both the parties in respect of their contentions seems to be inevitable. Since the payment has been made by way of pay order in full and final settlement of the agreement, as pleaded by the bank, it was imperative for the Forum below to have gone into the merit of the said averment and come out with a conclusion on merit. Rejection of the adjournment application without giving a legal finding on the issue amounts to miscarriage of justice.

We therefore, set aside the impugned order dated 06.04.2011 and remand the case to the Forum below for a fresh and categorical decision on the issue of compromise. We direct that unless the said issue is resolved on merit, recovery proceedings shall remain stayed.


(JUSTICE BHANWAR SINGH)
PRESIDENT


(YASH PAL SHARMA)
MEMBER

Asif