

CASE NO.:
Appeal (civil) 4724 of 2006

PETITIONER:
Raythara Sahakari Bank Ltd.

RESPONDENT:
Chandrakala R. Das

DATE OF JUDGMENT: 08/11/2006

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No. 25317 of 2004)

ARIJIT PASAYAT, J.

Leave granted.

Appellant calls in question legality of the order passed by the National Consumer Disputes Redressal Commission, New Delhi (in short the 'National Commission') summarily dismissing the Revision Petition filed by the appellant-Bank observing that the short order passed by the State Consumer Dispute Redressal Commission, Bangalore, Karnataka (in short the 'State Commission') is absolutely clear and needs no interference.

Background facts giving rise to the present appeal in a nutshell are as follows:

The respondent, (hereinafter referred to as the 'complainant') availed jewel loans from the appellant-Bank by pledging gold ornaments on different dates in August 2000, February 2001, April 2001, May 2001 and June 2001. Appellant-Bank insured gold ornaments kept in the locked iron safe of the Bank for a sum of Rs.25,00,000/- with United India Insurance Company Limited. On 4.8.2001 a huge quantity of gold ornaments including those pledged by the complainant with the Bank, were stolen. Information was lodged at the police station and a criminal trial is pending. On 1.10.2003 the appellant-Bank submitted its claim to the Insurance Company but the same was repudiated. On 17.1.2004, the appellant-Bank, with a view to return value of the gold ornaments of the pledges convened a meeting where more than 400 persons, who were jewel loan borrowers and authorities of the cooperative societies were present. It was resolved that each person who had pledged ornaments shall be paid at the rate of Rs.410/- per gram which was the prevailing market rate at the time of theft. It was also resolved that no interest shall be charged on all such jewel loans. Complainant issued a notice to the Bank demanding higher value for the gold ornament pledged. Appellant-Bank requested the complainant to accept the rate fixed on the basis of Resolution dated 17.1.2004. On 8.3.2004 the complainant filed a complaint before the District Consumer Disputes Redressal Forum, Udupi (in short 'District Forum') with a prayer for a

direction to the appellant-Bank to pay the entire amount with upto date interest in respect of six jewel loan accounts and to pay present market rate of gold at the rate of Rs.573/- per gram along with making charges and a compensation for non-delivery of gold ornaments amounting to Rs.25,000/- and litigation expenses of Rs.10,000/-. On 28.5.2004, the appellant-Bank filed its statement of defence and denied its liability to pay the amount with interest. There was no default of service and non-delivery of the jewel was on account of the admitted theft in the Bank for which criminal case has been instituted and insurance claim has been lodged. Subsequently, the appellant-Bank filed an affidavit before the District Forum stating that it is willing to pay at the rate fixed for all the jewel loan borrowers. The District Forum held that the value of the gold was to be computed at the rate of Rs.573/- per gram which was the claim, though the price of gold prevailing on the date of order was Rs.593/- per gram. Accordingly, it was held that value of gold payable was Rs.67,041/-. Appellant preferred an appeal before the State Forum which by a short order held that there was no illegality or irregularity in the order of the District Forum and if there was any insurance policy covering the theft, it was open to the appellant-Bank to lodge a claim and pursue the remedy available. The revision petition filed before the National Commission as noted supra was dismissed.

In support of the appeal, learned counsel for the appellant submitted that neither the State Commission nor the National Commission considered the effect of the decision taken on 17.1.2004 in a meeting where more than 400 borrowers had accepted the rate. No other complaint has been lodged, but taking advantage of the order passed by the District Forum as upheld by the State Commission and the National Commission, large number of people are trying to reopen the matter.

Learned counsel for the respondent supported the order of the Forums and submitted that a realistic view has been taken by the District Forum which was upheld by the State Commission and the National Commission.

We find that all through stand of the appellant-Bank has been that all the borrowers except the respondent have accepted the rate arrived at consensually at the meeting. The complainant did not dispute that such a decision had been taken. It is not clear as to whether the complainant had attended the meeting which was convened and where all the borrowers were given the chance to participate. The decision in the meeting undisputedly was to the effect that the value of gold on the date of theft was to be paid. It appears that there was no other complaint except the one under consideration. Both the State Commission and the National Commission passed cryptic orders and did not discuss even the various stands taken by the appellant. It was open to the State Commission and the National Commission to consider the stand relating to acceptance of rate fixed at the meeting and its effect on the complainant's claim. But, that has not been done. We, therefore, set aside the order of the National Commission and remit the matter to it for fresh consideration for the purpose of considering the effect of the decision taken on 17.1.2004 where about 400 similarly situated borrowers had accepted the rate. We make it clear that we have not expressed any opinion on the merits of the case.

Appeal is allowed to the aforesaid extent with no order as

to costs.

JUDIS