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STANDARD CHARTERED BANK LTD.

v.

DR. B.N. RAMAN

JULY 14, 2006

B

[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

C

Consumer Protection Act, 1986—Section 2(1)(d), (g) and (o)—Business transaction between Bank and Customer, a non-resident Indian—Deposit by Customer in Foreign Currency Non-Resident Account—Reinvestment of the matured amount from time to time—On enquiry about status of the amount after 12 years of initial deposit, told by Bank that the amount prematurely withdrawn just after 3 months of initial deposit—Complaint for deficiency in service—Claim for decree of the final matured amount after conversion of foreign currency and interest @ 18% p.a. till realization—State Commission

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decreeing the claim—Decree upheld by National Commission—On appeal, held: Factual findings of the Courts below are upheld—However as the rate of interest @ 18% was on the higher side and since the courts below have not examined the question regarding selection of appropriate date for fixing the rate of exchange, matter remitted to State Commission for reconsideration on these points.

E

Banking—Customers of Bank—Whether consumers—Held: They are consumers with the meaning of Section 2(1)(d)(ii) of Consumer Protection Act—Statutory bodies are within the purview of the Act as their functions come under the term 'service'—Consumer Protection Act, 1986—Sections

F

2(1)(d)(ii) and 2(1)(o).

Words and Phrases—'Banking'—Meaning of.

G

Respondent-Consumer, a non-resident Indian had admittedly deposited US Dollars in Foreign Currency Non-Resident (FCNR) Account in August 1979 with appellant-Bank. The same was to mature in November 1984. In June 1984 the consumer got intimation that he should reinvest the entire amount on maturity for a further period of 6 years at 13% p.a. interest. The said reinvestment was to mature in November 1990. In 1986, on visit to India, when the consumer visited the office of the Bank he was assured that everything was in order. In September 1990, he again requested the Bank to

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reinvest the entire amount on maturity in the FCNR account for a further period of 3 years. Consumer when visited India in 1992 enquired about the status of his deposits, which was not replied to. On complaint, he received a letter from Bank, stating that there was no outstanding amount in the account as the same was prematurely withdrawn in November 1979.

Consumer filed a complaint before State Commission stating therein that he could not have withdrawn the amount, as he was not in India on the relevant date and the original deposit memo was retained by the Bank in safe custody. He claimed money decree with interest @ 18% p.a. till realization. State Commission decreed the claim holding that the facts stated by the consumer were proved and there was no evidence to show that the amount deposited was prematurely withdrawn and also to show that the records were destroyed on completion of eight years; that the deposit was reviewed from time to time, and hence was within limitation. The appeal of the Bank to National Commission was dismissed confirming the order of State Commission. Hence the present appeal.

Partly allowing the appeal and remitting the matter to the State Commission, the Court

HELD: 1.1. The Court is in agreement with the factual findings of the impugned judgment. However, the claim of the respondent for money decree with interest at the rate of 18% p.a. till realization appears to be on the higher side and inflative. The rate of exchange, which is indicative of price and which constantly varies from time to time, has not been examined. [564-D-F]

1.2. In an action to recover an amount payable in a foreign currency, five dates compete for selection by the court as the proper date for fixing the rate of exchange at which the foreign currency amount has to be converted into the currency of the country in which the action has been commenced and decided. These dates are - the date on which the amount became due and payable; the date of the commencement of the action; the date of the decree; the date when the court orders execution to issue; and the date when the decretal amount is paid or realized. The court has to select a date which puts the plaintiff in the same position in which he would have been, had the defendant discharged his obligation when he ought to have done, bearing in mind that the rate of exchange is a fluctuating factor. To select the date when the amount became due, the court has to act in a just, fair and equitable manner.

[564-E-H]

A *Forasol v. Oil and Natural Gas Commission*, AIR (1984) SC 241, relied on.

B 1.3. In such cases, the Agencies under the Consumer Protection Act, 1986 should also keep in mind the economic situation of the country. In the present case, none of these factors have been considered by the State Commission. In cases of this type, the burden is on the complainant to show the rate of exchange prevalent on the aforesaid dates in order to assist the court to arrive at the indicative prices. This has not been done in the present case. Neither the State Commission nor the National Commission has examined this question regarding selection of the appropriate date, the appropriate rate of exchange on that particular date as also the rate of interest which the appellant was required to pay. [565-A-C]

D 2. Activities relating to non-sovereign powers of statutory bodies are within the purview of the Consumer Protection Act, 1986. The functions of such statutory bodies come under the term 'service' under section 2(1)(o) of the Act. Banking is a commercial function. 'Banking' means acceptance, for the purpose of lending or investment of deposit of money from the public, repayable on demand or otherwise. The intention of the 1986 Act is to protect consumer of such services rendered by the banks. Banks provide or render service/facility to its consumers or even non-customers. Banking is business transaction between bank and customers. Such customers are consumers within the meaning of section 2(1)(d)(ii) of the Act and the services rendered by the banks come under Section 2(1)(o) of the said 1986 Act. [564-A-D]

E *Vimal Chandra Grover v. Bank of India*, AIR (2000) SC 2181, relied on.

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2982 of 2006.

From the Judgment and Order dated 14.7.2004 of the National Consumer Disputes Redressal Commission, New Delhi, in First Appeal No. 299/1997.

G Mukul Rohtagi, Sanjay Gupta, Varsha Kirpalani, N. Gupta and Rajeev Sharma for the Appellant.

Rajeev Dhawan and Balraj Dewan for the Respondent.

The Judgment of the Court was delivered by

H KAPADIA, J. Leave granted.

This civil appeal, by grant of special leave, is filed by Standard Chartered Bank Ltd. against order dated 14.7.2004 passed by National Consumer Disputes Redressal Commission (for short 'National Commission') dismissing the bank's appeal and confirming the decree passed by the State Consumer Disputes Redressal Commission. New Delhi (for short 'State Commission') under Consumer Protection Act, 1986 (for short 'the Act').

Respondent herein was a non-resident Indian employed as a professor of Medical Physiology in the University of Libya from 1975 to 1980. Thereafter, he stayed in Libya till 1992. On 17.8.79 when the respondent was in Libya he had placed with the bank US \$5000 in FCNR (Foreign Currency Non-Resident) Account for 63 months at 9% p.a. vide LF No. MR-24, DR No.316/79/39. The deposit was made by the draft drawn on New York Bank. The deposit was to mature on 17.11.84. The appellant confirmed the deposit. The deposit receipt is annexed to the paper book. In 1984, Reserve Bank of India (RBI) allowed the banks to keep FCNR for six years. Interest on such deposits was increased from 9% to 13% p.a. According to the respondent, in June 1984, intimation was given to the appellant to reinvest the entire amount in FCNR account on maturity for a further period of six years at 13% p.a. In 1986, the respondent visited India. He attended the branch office of the bank. The respondent claims that he was assured by the bank that everything was in order and that US\$ 7939.56 were lying in the FCNR account which amount stood reinvested at 13% p.a. for six years maturing on 17.11.90. Respondent alleged that in September 1990 he had requested the bank to reinvest the entire amount in his FCNR account for a further period of three years. This was to be done on maturity of his deposit on 17.11.90. In January 1992, as stated above, the respondent returned to India. He enquired about the status of his deposits. He did not get the response. He made a complaint in writing on 5.1.92 and on 14.1.92. On 7.9.92, he received a letter from the bank stating that no outstanding amount was there in his name in the FCNR account. By letter dated 15.10.92, the appellant stated that from their records it is seen that the said deposit was prematurely withdrawn on 22.11.79. Thereafter, correspondence ensued. Respondent herein denied the fact of premature withdrawal of the deposit. He complained to RBI. On 19.4.93 the bank stated that the deposit was encashed prematurely not on 22.11.79 but on 23.11.79. A copy of the sale/purchase register was also enclosed by the bank to show that the deposits stood withdrawn on 23.11.79. Ultimately, on 28.9.94 the respondent herein preferred a complaint under section 2(1)(g) and section 2(1)(o) of the Act before the State Commission.

A In the said complaint respondent alleged that he could not have withdrawn the amount on 23.11.79 as he was not in India. He relied upon his passport to show that he was not in India. He further alleged that a copy of the original FCNR was put in the safe deposit vault. In this connection, he relied upon the said receipt which states that the deposit receipt memo is retained by the bank in Safe Custody. Respondent stated, on the basis of the above facts, that the amount has been withdrawn by somebody in connivance with the bank's officers. In the circumstances, respondent herein claimed that he was entitled to the decree in following terms :

C	"S. No. Year	Interest	Total amount payable on maturity
1.	From 17.8.79 to 16.11.1984 (63 months)	@ 9% to be added half yearly . on \$ 5000	US \$ 7939.56
D	2. From 17.11.84 to 16.11.1990 (6 years)	@ 13% to be added half yearly on \$ 7939.56	US \$ 16904/093
E	3. From 17.11.90 to 16.11.1993 (3 years)	@ 10.5% to be added half yearly on \$ 16904/093	US \$ 22978/645

F A total of Rs.7,12,337.99 at present date is due from the opposite party till 17.11.93. Thereafter, interest @ 18% per annum on the aforesaid amount which comes to approx. Rs.1,28,220.83 (Rupees one lakh twenty eight thousand two hundred twenty and paise eighty-three only)."

G By written statement, the appellant conceded that the respondent had deposited on 17.8.79 a sum of US \$ 5000 in FCNR account for 63 months maturing on 17.11.84 at 9% p.a. However, the appellant contended that prior to the date of maturity the deposit was prematurely withdrawn on 23.11.79. In this connection, reliance was placed on sale/purchase register. Therefore, according to the bank, there was no question of reinvesting of the aforesaid amount from time to time, as alleged by the respondent. The appellant also denied that the deposit receipt was kept in Safe Custody. In this connection, the appellant submitted that an inquiry into premature withdrawal and the demand for recovery of money after 12 years was beyond time. The bank,

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however, agreed that in 1984 RBI allowed it to keep FCNR for six years at the rate of 13% p.a. However, the appellant contended that since the amount was prematurely withdrawn, there was no question of reinvesting it for six years at the rate of 13% p.a. The bank denied all factual allegations made by the respondent with regard to reinvestment. By the objections, apart from the question of limitation, the appellant stated that the respondent was not a consumer as defined under section 2(1)(d) of the said 1986 Act. The appellant also contended that under RBI rules, the bank was not bound to retain the records after eight years and, therefore, the matter cannot be decided on presumptions; that the burden was on the respondent to prove the alleged facts regarding reinvestment. By the written statement, the appellant denied its liability to pay a sum of Rs.7,12,337.99 including interest till 17.11.93 and further interest at 18% p.a. on the said amount amounting to Rs.1,28,220.83.

By order dated 28.4.97, the State Commission came to the conclusion that the respondent had deposited US\$ 5000 on 17.8.79 carrying 9% interest and maturing on 17.11.84; that the receipt was retained in safe custody; that there was no record to show that the said amount was prematurely withdrawn; that there was no evidence regarding destruction of the records on completion of eight years and since the initial deposit of US\$ 5000 on 17.8.79 stood established the decree, as prayed for, was granted by the State Commission. The Commission further found that there was no evidence on record to show that the respondent had given written instructions to the bank for premature withdrawal; that there was no endorsement on the receipt showing payment in lieu of discharge and, therefore, the bank was not entitled to place reliance only on entry in the sale/purchase register dated 23.11.79. The State Commission further found that on 23.11.79 respondent was not in India. In this connection, reliance was placed on the endorsement in his passport. Accordingly, the State Commission came to the conclusion that the deposit was reviewed from time to time and, therefore, the complaint was within limitation. Accordingly, the decree in the aforesaid terms was passed by the State Commission.

Aggrieved by the aforesaid decision of the State Commission, appellant herein went in appeal to the National Commission under the said 1986 Act. By the impugned order dated 14.7.2004, the findings of fact recorded by the State Commission were confirmed. The appeal was accordingly dismissed. Hence, this civil appeal comes before this court at the instance of the bank.

The Consumer Protection Act, 1986 provides for formation of National

- A Commission; State Commission and District Forum. These are remedial agencies. Their functions are quasi judicial. The purpose of these agencies is to decide consumer disputes. Activities relating to non-sovereign powers of statutory bodies are within the purview of the Act. The functions of such statutory bodies come under the term 'service' under section 2(1)(o) of the Act. Banking is a commercial function. 'Banking' means acceptance, for the purposes of lending or investment of deposit of money from the public, repayable on demand or otherwise [See: *section 5(b) of Banking Regulation Act, 1949*].
- B The intention of the 1986 Act is to protect consumers of such services rendered by the banks. Banks provide or render service/facility to its customers or even non-customers. They render facilities/services such as remittances,
- C accepting deposits, providing for lockers, facility for discounting of cheques, collection of cheques, issue of bank drafts etc. In *Vimal Chandra Grover v. Bank of India*, AIR (2000) SC 2181 this court has held that banking is business transaction between bank and customers. Such customers are consumers within the meaning of section 2(1)(d)(ii) of the Act.
- D Only two points appear to have been argued by the bank before the National Commission, *viz.*, question of premature withdrawal and limitation. However, the claim of the respondent for money decree with interest at the rate of 18% p.a. till realization appears to be on the higher side and inflative. The rate of exchange, which is indicative of price and which constantly varies
- E from time to time, has not been examined. This is apart from awarding of the rate of interest at 18% p.a. which itself is on the higher side. In the case of *Forasol v. Oil and Natural Gas Commission*, AIR (1984) SC 241 this court observed that in an action to recover an amount payable in a foreign currency, five dates compete for selection by the court as the proper date for fixing the rate of exchange at which the foreign currency amount has to be converted
- F into the currency of the country in which the action has been commenced and decided. These dates are - the date on which the amount became due and payable; the date of the commencement of the action; the date of the decree; the date when the court orders execution to issue; and the date when the decretal amount is paid or realized. The court has to select a date which puts the plaintiff in the same position in which he would have been, had the
- G defendant discharged his obligation when he ought to have done, bearing in mind that the rate of exchange is a fluctuating factor. To select the date when the amount became due, the court has to act in a just, fair and equitable manner because in a case where the rate of exchange has gone up, the opponent escapes by paying a lesser sum than what he was bound to and
- H thus he gains by default while in the converse case where the rate of exchange

has gone against the opponent, the opponent would be subjected to a greater burden than what it should be. Apart from the judgment of the Supreme Court in *Forasol* (supra), we may observe that in such cases, the Agencies under the Consumer Protection Act, 1986 should also keep in mind the economic situation of the country. Encashment of dollar denominated deposits have certain economic implications. In the present case, none of these factors have been considered by the State Commission. In cases of this type, the burden is on the complainant to show the rate of exchange prevalent on the aforesaid dates in order to assist the court to arrive at the indicative prices. This has not been done in the present case. Neither the State Commission nor the National Commission has examined this question regarding selection of the appropriate date, the appropriate rate of exchange on that particular date as also the rate of interest which the appellant was required to pay.

For this limited purpose alone, we partly allow the appeal and remit the matter to the State Commission to pass the decree in favour of the respondent herein in accordance with law indicated above. On all other factual findings, we are in agreement with the impugned decision. This appeal is partly allowed with no order as to costs.

K.K.T.

Appeal partly allowed.