

RAYTHARA SAHAKARI BANK LTD.

v.

CHANDRAKALA R. DAS

NOVEMBER 8, 2006

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

Indian Contract Act, 1872:

Complainant and others took loan from Bank by pledging jewellery—Jewellery stolen from the Bank—Bank fixing certain rate in return of the value of the jewellery stolen—Rate so fixed accepted by all the borrowers except the complainant—Complainant demanding higher rates—District Consumer Forum directed upward revision in the rate—Affirmed by State Commission—Revision petition dismissed by National Commission—On appeal, Held: Both the State Commission and the National Commission passed cryptic orders—They failed to discuss about the effect of the stand taken by the Bank on complainant/Borrowers—Hence, order of the Commission set aside and matter remitted to the National Commission for consideration afresh—Directions issued.

The respondent-Complainant availed jewel loans from the appellant-Bank by pledging gold ornaments. The gold ornaments kept in the Bank were stolen. An FIR was lodged at the police station and a criminal trial is pending. The appellant-Bank, with a view to return value of the gold ornaments so pledged, convened a meeting of all the borrowers and resolved that in lieu of stolen jewellery, each of them shall be paid at the rate of Rs. 410/- per gram, the prevailing market rate of gold at the time of the theft. It was also resolved that no interest would be charged on all such jewel loans. One of the borrowers issued a notice to the Bank demanding higher rates for the gold ornaments pledged. Later, he filed a complaint before the District Consumer Disputes Redressal Forum seeking for direction to the Bank to make payment at the rate of Rs. 573/- per gram for the stolen jewellery along with making charges and compensation for non-delivery of gold ornaments and litigation expenses. The District Forum allowed the petition. On appeal, the State Forum held that there was no illegality or irregularity in the order of the District Forum. The revision petition filed before the National Commission was dismissed.

A Hence the present appeal.

The appellant contended that neither the State Commission nor the National Commission considered the effect of the resolution passed by the Bank fixing the rate per gram of the gold for the purpose of making payment to the customer/borrowers of Loan; and that 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 would prefer to reopen the matter.

Partly allowing the appeal, the Court

C HELD: 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-Bank. 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. Hence, the order of the National Commission is set aside and the matter is remitted to it for fresh consideration for the purpose of considering the effect of the decision taken by the Bank and accepted by about 400 similarly situated borrowers.

[754-E-F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4724 of 2006.

F From the final Judgment and Order dated 16.11.2004 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 2292 of 2004.

V.N. Raghupathy for the Appellant.

Varinder Kumar Sharma for the Respondent.

G The Judgment of the Court was delivered by

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

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Redressal Commission, Bangalore, Karnataka (in short the 'State Commission') A
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 B
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 C
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 D
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 E
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 F
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 G
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 H

A 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.

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 C 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.

D 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.

E 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.

H S.K.S.

Appeal partly allowed.