2024 INSC 162

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1495 OF 2023

Rajesh Monga .... Appellant(s)

Versus

Housing Development Finance Corporation Limited & Ors. .... Respondent(s)

J U D G M E N T

A.S. Bopanna, J.

1. The appellant is before this Court in this appeal claiming to be aggrieved by the order dated 10.11.2022 passed by the National Consumer Disputes Redressal Commission, New Delhi ('NCDRC' for short) in Consumer Complaint No. 2367 of 2018. By the said order the NCDRC has concluded that the appellant is bound by the terms and

conditions of the agreement dated 11.01.2006, while the respondent was bound by various instructions of the Reserve Bank of India ('RBI' for short), at the time of signing the agreement dated 11.01.2006. Hence the complaint filed by the appellant was dismissed. The appellant is therefore before this Court.

2. The brief facts are that the appellant was in need of home loan. The respondents No. 2 and 3 being the employees of respondent No. 1 approached the appellant during August 2005. The appellant was exploring the option of securing loan from other financial institutions as well. The case of the appellant is that respondents No. 2 and 3 being the direct sales agent and the resident manager of respondent No. 1 - HDFC convinced the appellant that the rate of interest charged by the respondent No. 1 on home loan was lesser than what was being charged by ICICI Bank. In this regard, the appellant relied on an email dated 05.10.2005 from respondent No. 2 to contend that a comparison was provided in the said email to the appellant

that the rate of interest offered by respondent No.1 was cheaper.

3. It is contended that the respondent No. 2, on behalf of respondent No. 1 had assured that the rate of interest would be charged based on the Prime Lending Rate of RBI. Based on such representations the appellant is stated to have applied for home loan of Rs.3,50,00,000/= (Rupees Three Crores and Fifty Lakhs) from respondent No.1, which was sanctioned and the loan agreement dated 11.01.2006 was entered into. The loan amount was disbursed to DLF Universal Ltd., in instalments between January 2006 to December 2007. As per the loan agreement, interest at 7.25% p.a and margin of 3.5 % per annum was provided. Though this was the position, the grievance of the appellant is that the respondent No. 1 revised the rate of interest to 8.25 %, despite RBI not having changed the Prime Lending Rate during 11.01.2006 to 01.05.2006.

4. In spite of the complainant contacting the respondent No. 2 and other officers, there was no relief, instead, the

respondent No. 1 raised the rate of interest to 8.75 %, to 9.25% and again to 10.5% though there was no change made by RBI with regard to the Prime Lending Rate. The appellant therefore got issued a legal notice dated 27.09.2007 demanding to return the interest amount which was charged over and above 7.5% p. a. The respondent No.1 vide their reply to the notice dated 09.10.2007 contended that the appellant through the agreement opted for 'Adjustable Rate of interest', as such rate of interest was varying as per the retail prime lending rate of respondent No. 1. It is in that background the appellant approached the Consumer Forum.

5. We have heard Sri. Vikas Singh, learned senior counsel for the appellant, Sri. Aniruddha Choudhary for the respondents and perused the appeal papers.

6. The thrust of the contention is that the respondent No. 2 on behalf of respondent No.1 had assured that the interest charged by respondent No.1 is as per the retail prime lending rate to be notified by RBI. As such the interest

which was indicated at 7.25% p.a. can be altered only if the RBI had altered the rate of interest and not otherwise. Though, in the agreement it is contained that the rate of interest would be as per the prime lending rate of interest of respondent No.1, the same is contrary to the assurance that was held out to the appellant that such adjustable rate of interest agreed is only when the rate of interest is varied by the RBI and not as per the interest to be varied by respondent No.1. The learned senior counsel for the appellant in that regard has placed strong reliance on the email dated 05.10.2005, to contend that such assurance was made to the appellant.

7. The learned senior counsel for the appellant has relied on ***Texco Marketing (P) Ltd. v. TATA AIG General Insurance Co. Ltd.***, (2023) 1 SCC 428, wherein the issue considered was with regard to an exclusion clause in an insurance policy which materially altered the nature of the contract. It was observed in this regard that insurance contracts are standard form contracts wherein the insurer

being the dominant party dictates its own terms and the consumer has weak bargaining power and as such the contracts are one sided. The concept of freedom of contract loses some significance in a contract of insurance. Such contracts demand a very high degree of prudence, good faith, disclosure and notice on the part of the insurer, being different facets of the doctrine of fairness. The bench consisting of two Hon'ble judges was of the opinion that one cannot give a restrictive or narrow interpretation to the provisions relating to unfair trade practices as given under the Consumer Protection Act, 1986. The Court's finding against one of the parties qua the existence of unfair trade practice has to be transformed into an adequate relief in favour of the other, particularly in light of Section 14 of the 1986 Act. Once, the State Commission or the NCDRC, as the case may be, comes to the conclusion that the term of a contract is unfair, particularly by adopting an unfair trade practice, the aggrieved party has to be extended the resultant relief which is further strengthened by Sections 47

and 49 of the 2019 Act. It was also observed that under sub-section (2) of Sections 49 and 59 of the Consumer Protection Act, 2019 the State Commission and the NCDRC, respectively, may declare any terms of the contract being unfair to any consumer to be null and void and there exists ample power to declare any terms of the contract as unfair, if in its opinion, its introduction by the insurer has certain elements of unfairness.

In ***Debashis Sinha v. R.N.R. Enterprise*** (2023) 3 SCC 195, the dispute was regarding amenities promised by the real estate developers in their brochures/advertisement which were not delivered by them. It was noted that once the NCDRC arrived at a finding that the respondents therein were casual in their approach and had even resorted to unfair trade practice, it was its obligation to consider the appellants' grievance objectively and upon application of mind and thereafter give its reasoned decision. If at all, the appellants had not forfeited any right by registration of the sale deeds and if indeed the respondents were remiss in

providing any of the facilities/amenities as promised in the brochure/advertisement, it was the duty of NCDRC to set things right.

8. In ***Pradeep Kumar v. Postmaster General*** (2022) 6 SCC 351, in those facts and circumstances it was found by this Court that fraud was committed by an officer and employee of the post office. It was held that the Post Office, as an abstract entity, functions through its employees. Employees, as individuals, are capable of being dishonest and committing acts of fraud or wrongs themselves or in collusion with others. Such acts of bank/post office employees, when done during their course of employment, are binding on the bank/post office at the instance of the person who is damnified by the fraud and wrongful acts of the officers of the bank/post office and such acts within their course of employment will give a right to the appellants to legally proceed for injury, as this is their only remedy against the post office. Thus, the post office, like a bank, can and is entitled to proceed against the officers for

the loss caused due to the fraud, etc. but this would not absolve them from their liability if the employee involved was acting in the course of his employment and duties.

9. From a perusal of the above noted cases, it would disclose that they are circumstances where certain aspects were contained in the agreements in question, but a contention was raised contrary to the same and this Court had rejected such contention. The learned senior counsel would however contend that though the parties may have agreed on certain aspects in the agreement, what is important is the intention of the parties and any correspondence exchanged between the parties as a prelude to the transaction before executing the agreement will be relevant to know the intention of the parties. It is in that regard contended that the email dated 05.10.2005 was prior to the agreement dated 11.01.2006 and as such the said intention should be gathered and given effect to. In order to persuade us to accept this contention, the learned senior counsel for the appellant has relied on the decision in

Board of Trustees of Chennai Port Trust v. Chennai Container Terminal Private Ltd. (2014) 1 CTC 573 wherein it was contended that the petitioner therein had granted licence to Respondent No. 1 therein for the development and maintenance of Chennai Container Terminal in terms of Licence Agreement entered into between parties in 2001. Contentions were raised that pre-contractual correspondence cannot be relied upon as the correspondence fructified into a contract. It was held that while English jurisprudence is clear on the aspect of pre-contractual correspondence losing its significance once the contract comes into existence, a straightjacket formula cannot be applied in India as there may be people from different states and different languages as their mother tongue whose wishes culminate into a contract which is drafted and concluded in a foreign language.

10. Having perused the precedents on which reliance was placed, we are of the opinion that the same does not come to the aid of the appellant. In the instant case, at the outset,

it is to be noted that the respondent No.1 being a NBFC and as a corporate body would be bound by its policies and procedures with regard to lending and recovery. In that regard, the applicability of the rate of interest to be charged is also a matter of policy and cannot be case-specific unless the individual agreement entered into between the parties indicate otherwise.

11. In that backdrop, a perusal of the fact situation in the instant case will disclose that the appellant filed the loan application on 16.09.2005. It was indicated therein that the 'Rate option' is 'Adjustable', which discloses that, what was opted is an Adjustable Rate of Interest, which will depend on the increase or decrease of the rate of interest. The issue however is as to whether such an Adjustable Rate of Interest will apply based only on the rate of interest being fixed/ altered by RBI or as to whether the Rate of Interest fixed/ altered by Respondent No.1 - HDFC will apply in respect of the loan transaction. It is in that regard contended that respondent No.2, representing respondent No. 1 - HDFC

had made a tabulation comparing the rate of interest to represent that it is beneficial to the appellant and had explicitly indicated in the email dated 05.10.2005 that- "PLR is decided by RBI, whereas FRR is decided by the individual Bank, HDFC is the only Institution working on PLR". It also indicated that in other banks like ICICI there is a clause that the change in FRR is on sole discretion of the bank.

12. The agreement dated 01.11.2006 executed between the parties inter alia provides as follows;

> "1.1 (e). The expression 'rate of interest' means the Rate of interest referred to in Article 2.2 of this Agreement and as varied from time to time in terms of this Agreement.
>
> (h) The expression 'Adjustable Interest Rate' or "AIR" means the interest rate announced by HDFC from time to time as its retail prime lending rate and applied by HDFC with spread, if any, as may be decided by HDFC, on the loan of the borrower pursuant to this Agreement.
>
> (i) The expression "Retail Prime Lending Rate" or 'RPLR' means the interest rate announced by HDFC from time to time as its retail prime lending rate.
>
> 2.2 (a). Until and as varied by HDFC in terms of this Agreement the AIR applicable to the said loan

> as at the date of execution of this agreement is as stated in the Schedule. is as stated in the Schedule.
>
> 3(f). HDFC may vary its retail crime lending rate from time to time in such manner including as to the loan amounts as HDFC may deem fit in its own discretion."

13. At the threshold, it can be noted that the appellant is not an illiterate person to take the benefit of the precedents relied upon. On the other hand, when it is contended that the appellant had the option of securing loan from other banks and that being misled by the email had entered into the transaction, would by itself indicate that the appellant was worldly wise. In such circumstance when the parties have signed the agreement dated 01.11.2006, the terms agreed therein would bind the parties and the email exchanged between the parties cannot override the policy decisions of the respondent No.1 institution. In order to contend that the appellant has been misled or that the earlier representation will constitute unfair trade practice,

the appellant ought to have raised such contention when the agreement was to be signed.

14. Having executed the agreement; having agreed to the terms and conditions; having received the loan amount, the appellant cannot raise any objection for the first time when the rate of interest was increased after having acquiesced by signing the agreement. Further, the appellant having repaid the loan amount with interest as per the terms of agreement cannot make out a grievance in hindsight and seek refund of the amount paid.

15. That apart, though it is contended that the appellant had the option of securing financial assistance from other institutions but was lured by respondent No.2 through the email and therefore amounts to unfair trade practice causing loss to the appellant, due to which he is entitled to be compensated, there is no material on record or evidence tendered to establish that the appellant had in fact approached any other financial institution which had agreed to sanction loan or to demonstrate that it was a

better bargain and if taken from such institution the appellant was in a better position.

16. Therefore, if all these aspects of the matter are kept in perspective and the order passed by the NCDRC is perused, we are of the view that no error has been committed so as to call for interference. Accordingly, the appeal is dismissed with no order as to costs.

17. Pending application, if any, stands disposed of.

.....J.
(A.S. BOPANNA)

.....J.
(M.M. SUNDRESH)

New Delhi,
March 04, 2024