STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND
DEHRADUN

FIRST APPEAL NO. 262 / 2019

1. Uttarakhand Gramin Bank
General Manager, Head Office – 18, New Road
Dehradun through present Branch Manager
Sh. Dhananjay Singh Negi aged about 57 years'
Branch Manager, Uttarakhand Gramin Bank
Aryanagar, Jwalapur, Haridwar

2. Uttarakhand Gramin Bank
Branch Aryanagar, Jwalapur, Haridwar
through present Branch Manager
Sh. Dhananjay Singh Negi aged about 57 years'
Branch Manager, Uttarakhand Gramin Bank
Aryanagar, Jwalapur, Haridwar

…… Appellants / Opposite Parties

Versus

Sh. Bhuleram S/o late Khimchand
R/o 31, Shanti Vihar, Aryanagar
Jwalapur, Tehsil and District Haridwar

…… Respondent / Complainant

Sh. Ravinder Singh, Learned Counsel for the Appellants
Sh. Amit Sharma, Learned Counsel for Respondent

AND

FIRST APPEAL NO. 330 / 2019

Sh. Bhuleram aged about 58 years' S/o late Khimchand
R/o 31, Shanti Vihar, Aryanagar
Jwalapur, Tehsil and District Haridwar (Uttarakhand)

…… Appellant / Complainant

Versus

1. Uttarakhand Gramin Bank
Regional Principal Office at
18, New Road, Dehradun (Uttarakhand)
Service through its Branch Manager

2. Uttarakhand Gramin Bank
Branch Aryanagar, Jwalapur
District Haridwar (Uttarakhand)
Service through its Branch Manager

…… Respondents / Opposite Parties

Sh. Amit Sharma, Learned Counsel for the Appellant
Sh. Ravinder Singh, Learned Counsel for Respondents

Coram: Hon'ble Mr. Justice D.S. Tripathi, President
Mr. Udai Singh Tolia, Member-II

Dated: 02/03/2023

ORDER

(Per: Justice D.S. Tripathi, President):

These two appeals, one by Uttarakhand Gramin Bank and another by the complainant, preferred under Section 15 of the Consumer Protection Act, 1986, are directed against the impugned judgment and order dated 10.06.2019 passed by the District Consumer Disputes Redressal Commission, Haridwar (in short "The District Commission") in consumer complaint No. 160 of 2018; Sh. Bhuleram Vs. Uttarakhand Gramin Bank and another, by which the consumer complaint was allowed and the opposite parties to the consumer complaint (appellants in First Appeal No. 262 of 2019), were directed to restructure the account No. 4185001048 of the complainant in compliance of the Government Order and provide benefit of natural calamity to the complainant, besides to pay Rs. 1,00,000/- towards compensation and Rs. 10,000/- towards costs. Since both the appeals arise out of the same impugned judgment and order, hence these are decided together by this order.

2. Facts relevant for the disposal of the present appeal are that on 01.12.2009, the complainant – Sh. Bhuleram had taken loan / financial assistance of Rs. 8,00,000/- from Uttarakhand Gramin Bank, Aryanagar, Jwalapur, Haridwar (opposite party No. 2 to the consumer complaint) in the shape of cash credit limit for his firm – M/s Ravi Traders. The loan amount was not timely repaid by the borrower, with the result that the loan account was classified by the bank as Non-Performing Asset (NPA), regarding which no intimation was

given to the borrower. Legal notice dated 02.01.2013 was issued by the bank to the borrower, which was incorrect. The State of Uttarakhand was hit by natural calamity in the month of June, 2013. As a result of the natural calamity, relief was granted by Reserve Bank of India to the borrower(s) and recovery proceedings were kept in abeyance for a period of one year & the loan account was to be restructured. However, neither the recovery proceedings were stayed by the bank, nor the loan account was restructured. The loan account has wrongly been classified as NPA. Legal notice dated 10.04.2018 was issued to the bank, thereby calling for restructuring of the loan account, but to no avail. Therefore, the consumer complaint was filed by the complainant before the District Commission.

3. The bank filed written statement before the District Commission, pleading that as per the guidelines issued by Reserve Bank of India, the account was classified as NPA on 28.02.2012, as the borrower has willfully flouted the terms and conditions of the loan agreement. The borrower has not refunded the principal loan amount along with interest and there is no deficiency in service on the part of the bank.

4. After giving opportunity of hearing to the parties, the consumer complaint has been decided by learned District Commission vide impugned judgment and order dated 10.06.2019, thereby allowing the consumer complaint in the above terms. Feeling aggrieved, the bank has preferred First Appeal No. 262 of 2019, thereby assailing the legality and propriety of the impugned judgment and order, whereas being not satisfied with the relief awarded by the District Commission per impugned judgment and order, the complainant has filed First Appeal No. 330 of 2019, thereby seeking enhancement of compensation.

5. We have heard Sh. Ravinder Singh, learned counsel appearing on behalf of Uttarakhand Gramin Bank and Sh. Amit Sharma, learned counsel for the complainant – Sh. Bhuleram and perused the record available before us.

6. There is no dispute with regard to the fact that the loan account was classified as NPA on 28.02.2012. In para 5 of the consumer complaint, it has been stated that the bank has initiated proceedings against the borrower under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest (SARFAESI) Act, 2002. The record shows that the bank has issued demand notice dated 12.03.2015 under Section 13(2) of the SARFAESI Act, 2002 against the borrower as well as guarantors. In para 5 of the consumer complaint, the complainant has admitted receipt of demand notice issued by the bank, seeking realization / recovery of Rs. 13,04,877/- as on 27.03.2018.

7. The consumer complaint in question was filed by the complainant before the District Commission on 11.06.2018, i.e., after issuance of notice dated 12.03.2015 by the bank under Section 13(2) of the SARFAESI Act, 2002. Thus, as per law, the consumer complaint filed by the complainant was not at all maintainable and ought to have been dismissed on the sole ground that the bank has already initiated the proceedings under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, prior to filing of the consumer complaint.

8. Hon'ble Apex Court in the case of **Jagdish Singh Vs. Heeralal and others** reported in **2013 STPL (Web) 895 SC**, has held that the

civil court jurisdiction is completely barred so far as the "measure" taken by a secured creditor under sub-section (4) of Section 13 of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest (SARFAESI) Act, 2002, against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal, to determine as to whether there has been any illegality in the "measures" taken. Hon'ble National Commission in the case of **Standard Chartered Bank Vs. Virendra Rai** reported in **II (2013) CPJ 337 (NC)**, has held that the Civil Court or Forum can not interfere in the proceeding initiated under Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest (SARFAESI) Act, 2002. Hon'ble National Commission by judgment and order dated 25.11.2013 passed in **Revision Petition No. 1653 of 2013; M/s India Bulls Housing Finance Ltd. Vs. Hardayal Singh**, has held that the case pertains to SARFAESI Act, 2002 and neither the District Forum nor the State Commission had jurisdiction to try the case. In the said decision, Hon'ble National Commission has placed reliance upon a judgment of Hon'ble Supreme Court given in **Civil Appeal No. 1359 of 2013; Yashwant G. Ghaisas and others Vs. Bank of Maharashtra**, wherein Hon'ble Apex Court has held:

> "The appellants challenged the action of the bank by filing a complaint under Section 21 of the Consumer Protection Act, 1986 (for short, 'the 1986 Act'). The National Commission referred to Section 34 of the 2002 Act whereby jurisdiction of all Courts and authorities to entertain challenge to the action taken by the bank has been ousted and dismissed the complaint by recording the following observations:
> The National Commission is not empowered to arrogate to itself the powers which come within the jurisdiction of Debt Recovery

> Tribunals. This matter is purely covered with the jurisdiction of DRT or DRAT. If there is any grievance against the notice under Section 13(2) of the SARFAESI Act that should be brought to the notice of the concerned authority. It is well settled that main creditor and the guarantors are equally responsible."

9. The record further shows that the bank has filed Original Application against the borrower and guarantors before Hon'ble Debts Recovery Tribunal, Dehradun on 17.07.2018, being O.A. No. 217 of 2018; Uttarakhand Gramin Bank Vs. M/s Ravi Traders, which was allowed per judgment and order dated 28.02.2019, declaring that the defendants are liable to pay jointly and severally a total sum of Rs. 15,25,065/- to the bank alongwith pendente lite and future interest @11.75% per annum simple rate of interest on reducing balance from the date of filing of the O.A., i.e., 17.07.2018 till the date of realization with costs. Learned counsel appearing on behalf of the complainant submitted that the date of filing of Original Application by the bank before Hon'ble Debts Recovery Tribunal, Dehradun against the borrower and guarantors, shall be taken as the date of initiation of proceedings by the bank under the provisions of SARFAESI Act, 2002. We do not find ourselves in agreement with the said submission, for the reason that the date of issuance of notice by the bank under Section 13(2) of SARFAESI Act, 2002, shall be construed as the date of initiation of proceedings by the bank against the borrower under the provisions of SARFAESI Act, 2002.

10. There is yet another aspect of the matter. The loan in question was taken by M/s Ravi Traders through its Proprietor Sh. Bhuleram, hence the consumer complaint, if though maintainable, ought to have been filed by M/s Ravi Traders and not by the complainant in his own name / capacity. In para 2 of the consumer complaint, the

complainant has admitted that he has taken loan for his firm. Therefore, on this score also, the consumer complaint was liable to be dismissed, as the complainant can not be said to be a "consumer" of the bank, for the reason that the loan was granted to M/s Ravi Traders and not the complainant.

11. It would not be out of place to mention here that the benefit of Government Order relating to natural calamity was also wrongly granted by the District Commission to the complainant. The reason being that it is brought to our notice that in the month of June, 2013, natural calamity had occurred / taken place in the hilly terrain of the State of Uttarakhand (Kedarnath region), while the complainant's firm is located at Haridwar. Hence, it can not be said that the business of complainant's firm was affected by the said natural calamity and on account thereof, there was default in repayment of loan amount. Thus, on that ground too, the finding recorded by the District Commission is per se illegal and against the factual position of the case.

12. For the foregoing reasons, we are of the considered opinion that the impugned judgment and order passed by learned District Commission suffers from material illegality, warranting interference by this Commission. Consequently, the appeal filed by Uttarakhand Gramin Bank being First Appeal No. 262 of 2019; Uttarakhand Gramin Bank and another Vs. Sh. Bhuleram, deserves to be allowed and the impugned judgment and order passed by learned District Commission is liable to be set aside. Since we have come to the conclusion that the impugned judgment and order passed by learned District Commission can not be sustained, there is no question of any enhancement of compensation, hence the appeal filed by the

complainant being First Appeal No. 330 of 2019; Sh. Bhuleram Vs. Uttarakhand Gramin Bank and another, is liable to be dismissed.

13. First Appeal No. 262 of 2019; Uttarakhand Gramin Bank and another Vs. Sh. Bhuleram filed by the bank, is allowed. Impugned judgment and order dated 10.06.2019 passed by the District Commission is set aside and consumer complaint No. 160 of 2018 is dismissed. The amount deposited by the appellants with this Commission, be released in their favour. First Appeal No. 330 of 2019; Sh. Bhuleram Vs. Uttarakhand Gramin Bank and another filed by the complainant, is dismissed. Costs of the appeals made easy.

14. Let the copy of the order be kept on the record of First Appeal No. 330 of 2019.

15. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties.

(**U.S. TOLIA**)
Member-II

(**JUSTICE D.S. TRIPATHI**)
President

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