(1992) 09 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

A.JAYACHANDRA KUMAR APPELLANT

Vs

CHAIRMAN, STATE BANK OF INDIA RESPONDENT

Date of Decision : 01-09-1992

Acts Referred:

Citation : 1992 0 NCDRC 91 : 1992 2 CPJ 517 : 1992 2 CPJ 551 : 1992 2 CPR 699 : 1993 1 CLT 371 : 1993 2 CLC 222

Hon'ble Judges : V.BALAKRISHNA ERADI , Y.KRISHAN , B.S.YADAV J.

Advocate : A.V.RANGAM , S.SANKARAN

Judgement

1. ACCORDING to the complaint petition the Complainant with one Shri Jayaramraja bad established a partnership firm known by the name and style Indian Tractor Company dealing with sales of tractors, Trailers, agricultural implements, tractor spare parts and servicing of the sold tractors.

2. THE Complainant alongwith his partner opened a joint Current Account No. 255 with the State Bank of India (for short S.B.I.) in the name of the Partnership firm on the 26th September, 1986. The account was to be operated jointly by both the partners. The joint Current Account not operated after 26th June, 1987 according to the version of the Opposite Party and as admitted by the Complainant at the hearing. The second partner Shri P.S. Jayara maja is reported to have opened another account No. 304 in the name of the firm. Indian Tractor Company, on the 11th December, 1987 describing himself as sole proprietor. The Complainant calls it a fictitious account. The grievances of the Complainant are briefly set out below : (i) That there has been an inordinate delay on the part of the Opposite Party, S.B.I, in sending him Statements of Account pertaining to the Partnership Account No. 255 in spite of his repeated requests from August, 1988 onwards. (ii) His partner Shri Jayaramraja has, according to the complainant, misappropriated Rs. 1,30,000/- and appropriated the assets of the firm of the value of Rs. 3 lacs. He has also destroyed and tampered with the account books, counterfoils of the cheque books and cheque books in the office of the firm during the absence of the Complainant form India. For taking action against his

partner for misappropriation, the petitioner asked for the amounts, precise dates and cheque numbers pertaining to Account No. 255, Xerox copies of the Partnership Deed and the Account opening folio sheet containing the specimen signatures of the partners and the condition regarding the joint operation o; the Account, but the Bank failed to provide the same. In October, 1991 he was informed by the Opposite Party. Bank that the opening form containing the specimen signatures of the partners and the photo stat copy of the partnership deed relating to Account No. 255 were missing or misplaced. According to the Complainant "legal actions against P.S. Jayaramaraja in the civil forum were troyed as the plaint should have been filed within three years from the date of knowledge of misappropriation/ appropriation". He attributed this to the failure of the Bank to send him the statement of account and Xerox copies of the partnership deeds and the account opening firm, (iii) His third complaint is that the Opposite Party, Bank allowed the fictitious account No. 304 to be opened without his knowledge in the name of the Indian Tractor Company, the partnership firm whose deed of partnership enjoined that the account must be operated jointly. Cheques and D. Ds in favour of the partnership firm were deposited in this Account No. 304 enabling his partner Shri Jayaramraja to siphon away funds in his favour. The complainant has claimed Rs. 22.80 lakhs as compensation.

3. THE Opposite party in its version has questioned the maintainability of the petition on the ground that there has been no deficiency in service, that the complaints and claims of the complainant are barred by limitation, that it opened the new Current Account No. 304 after complying with the requisite formalities on 11th December, 1987 and it was operated till 7th July, 1988. It is further contended that it had sent the Statement of Accounts of the joint Account No. 255 periodically to the firm on the address given in the account opening form. According to the Opposite Party it was not its legal duty or obligation to furnish copies of the statement of accounts in addition to one of the joint holders of the Current Account. Nonetheless the Bank also provided statement of accounts to the Complainant even free of cost.

4. AT the hearing the Complainant was unable to explain as to how he remained ignorant of the joint Account No. 255 opened on 26.9.86 having become inoperative in June/July, 1987, the opening of the "fictitious" account No. 304 from 11th December, 1987. According to the Complainant, he left for U.S.A. in March, 1988 and returned on 26.5.1988. It is not clear how he can plead ignorance of the opening of Account No. 304 from 11th December, 1987 by his partner in the name of the partnership firm when he was very much in India. In his letter of 14th October, 1991 to the Manager of the Opposite Party, he had stated that he was aware in 1987 that large sums of money from Account No. 255 had been misused, violating the agreement between the partners. Yet he did not take any action either to ascertain as to how the partnership firm was running after its account had become inoperative in Jule/July, 1987. Again in the same letter he has stated that in May, 1988 when he returned from U.S.A he

found that his partner was having another firm called Shakti Agencies but surprisingly he took no notice regarding the functioning of his partnership firm which was being managed by the partner Shri layaramraja in his absence from India. As regards the partnership deed, according to the Opposite Party, Bank only a photocopy and not the original, was submitted at the time of opening of the account. The Opposite Party has explained that the photocopy of the partnership deed could not be traced because the account had become inoperative in June, 1987. Further the complainant''s specific request for supplying the said document was received by it in December, 1991 when three years period of limitation for filing a case for misappropriation etc. against his partner in a Civil Court had already expired.

5. AS regards the allegation No. 3, the Opposite Party, Bank has explained that Account No. 304 was opened by the Bank in due course and in good faith after complying with all internal procedural requirements as per the Orders of the then Branch Manager of the Bank. At the hearing it was not considered necessary to examine the third allegation about the opening of the second Current Account No. 304 by the partner of the Complainant as the Complainant had sufficient cause to find out as to how the partnership firm was working after the joint account had become inoperative and he had become aware of large sums of money from joint Account No. 255 having been misused by his partner, had knowledge of misappropriation of funds and assets by his partner Shri Jayaramraja and more so in May, 1988, he became aware that his partner was running a new firm.

6. CONSIDERING the fact that the allegations made by the Complainant have been challenged on facts by the Opposite Party, that the Complainant has not been able to explain as to what action he took when he became aware of misuse of funds etc. by his partner and how the partnership firm, Indian Tractor Company, continued to work when its joint account had become inoperative, we are of the view that the complicated issues involved in this complaint cannot be satisfactorily adjudicated in the proceedings under the CP. Act. We therefore, dismiss the petition and leave it to the Complainant to seek redress in a Civil Court if so chooses and is so advised.

