

(2002) 03 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

ANDHRA BANK

APPELLANT

Vs

AND SECURITIES LTD. VISHWAPRIYA FINANCIAL SERVICES

RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Citation : 2002 3 CLT 52 : 2002 3 CPJ 21 : 2003 1 CPR 77 : 2003 2 CPC 247

Hon'ble Judges : D.P.Wadhwa , J.K.Mehra , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal arising from the order of the State Consumer Disputes Redressal Commission, Tamil Nadu. The facts leading to the filing of the complaint briefly are as under.

2. THE complainant/respondent is a Bank incorporated under the Indian Companies Act carrying on business and financial management and bill discounting. One M/s. Shree Ganesh approached the respondent for discounting bills of exchange raised by it on M/s. S.T.R. Laboratories, Hyderabad and produced a Bank Guarantee issued by the appellant from its Juntapalli Branch, Andhra Pradesh for a sum of Rs. 5.5 lakhs. Along with the Bank Guarantee a letter from the appellant dated 8th March, 1993 was also produced confirming the issuance of Bank Guarantee. In the said letter, the invoice numbers as also the delivery number and bill of exchange dated 2nd March, 1993 were confirmed. THE respondent believing the said Bank Guarantee and the letter by the appellant to honour the said bills of exchange drawn by the respondent and accepted by M/s. STR Laboratories, Hyderabad. When the respondent sent its representative for presentation of bills of exchange in person, no one was found at the given address which resulted in the respondent invoking the Bank Guarantee given by the appellants. This was done vide their letter dated 30th August, 1993. THE appellant asked for the particulars of the Bank Guarantee which were duly furnished to it. Appellant then wrote to the respondent that as per their records maintained at the branch, the said letter of guarantee was not noted and that they were referring the matter to the higher authorities. On 6th

of September, 1993 the respondent was informed that the Bank Guarantee was not issued by its branch. A detailed reply to this effect was sent by the respondent. THE respondent had also referred the matter to the RBI where no progress has so far been reported. On failure to honour the Bank Guarantee, the respondent filed complaint claiming the said sum of Rs. 5,50,000/- together with interest at the rate of 24% p.a. In reply, the appellant denied all the averments including the drawal of the bills of exchange by the respondent and further alleged that the Bank Guarantee could be invoked only after exhausting all other remedies. THE appellant on making inquiries came to the conclusion that the issuance of the Bank Guarantee was the result of collusion and fraud of the concerned authorities and the then Manager of the appellant, Mr. R.K. Murthy, which resulted in reference of the entire case to the CBI. On checking up the record in this connection, it was found that the respondents are not informed anywhere nor are they named. On the other hand, it has been proved that the respondent who honoured the bill of exchange made the payment, believing that it was duly backed up by Bank Guarantee, thus he had acted bona fide. THE State Commission after going through the correspondence exchanged between the parties has come to the conclusion that the Bank Guarantee was actually issued from the branch of the appellant and by the then Branch Manager. If that Manager had not acted bona fide, that cannot absolve the Bank from its liability under the letter of guarantee issued through its office by its own Manager and in case there is any fraud on the part of the customer of the Bank in a collusion with the Manager, the Bank has its recourse against the said customer and its own Manager. But, they have no right to not to honour the Bank Guarantee which was duly issued by its branch and signed by R.K. Murthy who was admittedly the Branch Manager. Accordingly, the said order directed the appellant Bank to honour the Bank Guarantee. It is well settled principle of law that if the act is done in course of employment which is authorised, then the master is liable for the acts of his servant. *Citizen's Life Assurance Co. v. Brown*, 1904 AC 423. It is also immaterial whether the agent is acting within the scope of express authority or implied authority, *Bansilal v. Kabul Chand*, ILR 1945 Nagpur 204. THERE is no evidence on record wherein the appellant had established that public notice of withdrawal of authority to that Branch Manager was given withdrawing his authority to issue Bank Guarantees. On the contrary, the evidence is that he was the Branch Manager and was acting within the normal course of his duties when he issued the Bank Guarantee. THE plea that the customer should have exhausted its remedies against the principal debtor before invoking Bank guarantee is also absolutely without any merit, because the person who gives the guarantee is surety and the person in respect of whose default the guarantee is given is "principal debtor" and the person to whom the guarantee is given is the "creditor" and that the contract of guarantee is between the guarantor and the creditor. THE liability of the surety/guarantor arose immediately on the contingency mentioned in the Bank Guarantee occurring, i.e. the dishonour of the bill of exchange. THE liability arose forthwith on the default of the principal debtor and even in a notice of default is not necessary to wait till a suit against

the surety is instituted. We agree with the conclusions that failure of the appellant to honour the letter of guarantee amounted to grave deficiency in service. We do not find any infirmity in the impugned order. It is affirmed and the appeal of the appellant is dismissed. Parties are to bear their own costs. Appeal dismissed.