(2001) 03 NCDRC CK 0098

In the National Consumer Disputes Redressal Commission

ANILKANT GAJENDRARAJ BUCH — APPELLANT

Vs

General Manager, State Bank of India — RESPONDENT

Date of Decision : 03-03-2001

Acts Referred:

Citation : 2001 2 CPJ 307

Hon'ble Judges : M.S.Parikh , Mahendra K.Joshi J.

Final Decision : Appeal partly allowed

Judgement

1. THIS appeal arises from order dated 6.3.1996 rendered by the learned Ahmedabad City Consumer Disputes Redressal Forum, Ahmedabad in Complaint No. 128/96, dismissing the complaint with no order as to costs.

2. AS per the impugned order it was the complainant''s case that he had applied for shares with opponent No. 2 Company (Indian Petrochemicals Corporation Limited) and that vide letter dated 1.2.1994, the said Company called upon the complainant to pay allotment/ call money and to produce proof showing full payment of the shares in order to enable the complainant to apply for right shares. The complainant had already paid Rs. 5,000/- towards allotment notice in cash to the opponent No. 1 State Bank of India towards final call amount on 16.4.1993. The complainant, therefore, forwarded the copies of the call letter duly endorsed to opponent No. 2 Company. AS there was no reply and as the closing date was approaching near, the complainant sent demand draft for Rs. 5,825/- including interest @ 18% as per the formal advice of opponent No. 2. However, the final call money were not credited to the Company''s account as revealed by opponent No. 1 State Bank of India. Thus, the complainant alleged deficiency in service on the part of the opponent No. 1 Bank in not remitting the amount paid by the complainant towards the aforesaid call amount to the opponent No. 2 Company. He, therefore, alleged that he sustained loss on account of negligence on the part of opponent No. 1 in not crediting the sum of Rs. 5,000/- in the account of opponent No. 2 Company. He, accordingly prayed for compensation in the sum of Rs. 10,000/- which will include repayment of Rs.

5,000/- with interest. In reply to the complainant''s case, opponent No. 2 contended that the complaint was not maintainable and that the complainant will not have any cause of action against the opponent No. 2 Company. Opponent No. 2 however asserted that if it was found that double amount was received by opponent No. 2, the complainant would be compensated accordingly.

Opponent No. 1 resisted the claim alleging that employee of the Bank signs counter-foil when payment in cash is made and returns the same to the person making payment. The counter- foil produced by the complainant is not signed by the employee of opponent No. 1 Bank. According to opponent No. l''s stand, the complainant ought to prove payment of Rs. 5,000/- in cash. The complaint is, therefore, sought to be dismissed. Upon consideration of the rival stand, the learned Forum came to the conclusion that although the complainant produced documentary evidence in support of his case, he failed to prove payment of Rs. 5,000/- in cash while observing that the allotment letter containing payment endorsement bears only the rubber stamp w! rich was also not legible from the xerox copy. The learned Forum has, therefore, observed that the complainant would have to be careful either to produce the original counter- foil or the acknowledgement of the application showing payment of Rs. 5,000/- made to the opponent Bank The complaint has accordingly been dismissed, with no order as to costs.

3. WE have seen the original intimation/ allotment money notice dated 16.4.1993. It is in respect of 100 shares of IPCL and call money due @ Rs. 50/- per share are shown to be Rs. 5,000/-. The last date for payment shown in the column in respect thereof is 15.5.1993. It is not in dispute that the amount was to be paid to State Bank of India, Ahmedabad (Bhadra). Now, in the printed portion showing acknowledgement, there is a rubber stamp of State Bank of India, Securities Department with date. The rubber stamp also indicates branch being Ahmedabad Main branch but the exact date is not legible except the year 1993 as the same stands applied on the rubber stamp. It also contains in capital letters words ''application received. The portion of the application to be received by the Bank on behalf of the Company has accordingly been removed and in the ordinary course of banking business, must have been left with State Bank of India. What is important to be noticed from this document is that opponent No. 1 bank has not disputed this apparent tenor of the document. It has not disputed the rubber stamp appearing on 20 paise revenue stamp. It has also not come with the case that the rubber stamp of the Bank was either stolen or was in the hands of some outsider so that there was a possibility of fraud having been committed by a stranger or some third party other than employee of the Bank. The only contention which has been raised both before the Forum as well as before this Commission is that there is no inscription of the words ''cash received'' in the rubber stamp or anywhere in the document and there is no initial. That is how the complainant was put to proof payment of Rs. 5,000/- in cash to the Bank. The complainant has filed his affidavit in support of his stand that he made payment of cash in the Bank to the concerned department manned

by the concerned employee of the Bank. If it was banking practice to apply stamp containing words ''cash received'' on such documents and if it was the banking practice that there should appear initial of concerned employee in the rubber stamp, the Bank ought to have established such practice by cogent evidence. Even in that case violation of such practice at the hands of the Bank''s employee will bring the same consequence namely liability of the Bank as an employer for the default of the employee. It has been submitted on behalf of the opponent No. 1 Bank that when the complainant alleged fraud, criminal negligence and negligence on the part of the employee/s of opponent No. 1 Bank, he should be relegated to his remedy before the Civil Court. It has also been submitted that some clerk of the opponent No. 1 Bank has taken/ received cash amount of Rs. 5,000/- for being credited to opponent No. 2. Company. WE cannot subscribe to the submissions so made on behalf of the opponent No. 1 for it is settled law that whatever may be the nature of the default (fraud, criminal act or omission or negligence of an employee/s of the Bank) there is obviously vicariously liability on the part of the employer being opponent No. 1 Bank. This proposition of law has clearly been settled by the Honourable Supreme Court in the case of State Bank of India v. Shyamadevi, reported in AIR 1978 SC p. 1263. It has been observed that a master is liable for his servant''s fraud perpetrated in course of master''s business whether the fraud was for master''s benefit or not if it was committed by the servant in the course of his employment and that there is no difference in the liability of the master for their wrong, whether fraud or any other wrong. Therefore, investigation of allegation with regard to employee''s fraud would very much rest upon the opponent No. 1 Bank if there is a prima facie conclusion with regard to payment of Rs. 5,000/- made by the complainant in the ordinary course of banking business of the concerned department. It is for the opponent No. 1 Bank to investigate the matter and bring to book the offending employee/s. It has been submitted that if an employee commits fraud for his personal gain, the employe would not be liable. That is not the correct reading of the decision. More often than not employee /s would commit fraud for his/their personal gain. The relevant consideration would be whether he has committed fraud during the course of his employment or not. If he has done it while remaining outside the precincts of the Bank, it would be a different matter. But if he has done by remaining within the precincts of the employer (in this case, Bank] then he has done it during the course of his employment and there can be no answer in this respect from the employee. In the present case the very rubber stamp of the bank clearly indicates that the complainant reached the concerned department/table for depositing the documents with necessary payment and obviously handed over the same to the concerned employee of the Bank.It is a fact that the employee did not credit that amount in the Bank''s books and the Bank in turn did not transmit the amount to the opponent No. 2 Company. However, that would have no consequence upon the complainant''s claim in so far as opponent No. 1 Bank is concerned on the plain reading of the decision in Shyamadevi''s case (supra). In that view of the matter, the complainant would succeed. This is a case of 1993 and nearly seven years have passed. In the ordinary course of investment of money the complainant would have received double the money which he tendered to the opponent No. 1 Bank by this time. Therefore, his prayer for compensation in the sum of Rs. 10,000/- deserves to be granted. We do not propose to grant interest on that amount till today. We, however, propose to allow interest @ 12% on Rs. 10,000/- till payment is made. We also propose to allow cost in favour of the complainant. We, therefore, pass following order : ORDER The appeal is partly allowed. Impugned order 6.3.1996 rendered by the learned Ahmedabad City Consumer Disputes Redressal Forum, Ahmedabad in Complaint No. 128/96, dismissing the complaint is hereby set aside and the claim of the complainant is granted as under: The opponent No. 1 State Bank of India will pay to the complainant Rs. 10,000/- with running interest @ 12% p.a. from today till payment and composite cost quantified at Rs. 1,000/- both for the complaint as well as appeal. Opponent No. 1 Bank shall bear its own costs. Opponent No. 1 Bank shall make payment as aforesaid to the complainant by A/c Payee cheque within six weeks from today. Appeal partly allowed.