
(2004) 10 NCDRC CK 0046

In the National Consumer Disputes Redressal Commission

ANJU TIWARI

APPELLANT

Vs

Khaitan Hostombe Spinel Ltd.

RESPONDENT

Date of Decision : 18-10-2004

Acts Referred:

Citation : 2005 1 CPJ 451

Hon'ble Judges : V.K.Agrawal , Veena Misra , R.S.Awasthis J.

Final Decision : Appeal dismissed

Judgement

1. -THIS appeal under Section 15 of the Consumer Protection Act, 1986, is directed against the order dated 10th November, 1998 in Complaint No. 48/92 by the District Consumer Disputes Redressal Forum, Durg (hereinafter called the "Distt. Forum" for short), dismissing the appellant's complaint.

2. THE complainant's case stated in brief is, that he had applied for allotment of 500 shares to the respondent No. 1. As per allotment advice, he was allotted 300 shares on payment of additional amount of Rs. 500/-. It was further averred that as Rs. 500/- were to be deposited by the appellant, he got prepared a Bank Draft for Rs. 500/-, drawn on Bank of Baroda, Durg payable to Allahabad Bank at Nagpur and sent it through Air Men Courier Service to Allahabad Bank, Nagpur. It was alleged that though the draft was received on 14.9.1991, by the respondent No. 2/Allahabad Bank, it failed to remit and credited the same amount in favour of respondent No. 1. THEREfore, the complainant could not succeed in securing the allotted shares and suffered loss. He claimed that compensation of Rs. 18,000/- besides the price of shares Rs. 3,000/- be directed to be awarded in his favour. The complaint was resisted by the respondents. The stand of the respondent No. 2/Bank was that the draft was received by it on 17.9.1991, while the issue of shares had already closed on 16.9.1991. Therefore, the draft as above was returned to the complainant. It was also averred that the complainant had also filed a civil suit for recovery of the said amount hence, the complaint was not tenable.

The Distt. Forum by the impugned order dismissed the complaint mainly on the

ground that since the complainant had already filed a civil suit which is pending hence, the complaint was not maintainable.

3. LEARNED Counsel for the parties were heard and the record was perused. The first question that arises consideration is: as to whether the draft sent by the complainant reached the respondent No. 2/Bank on or before 16.9.1991?

4. IN the above context, the complainant has produced the photo copy of the receipt issued by Air Men Courier Service by which the draft was allegedly sent by him. It may be noticed from the said receipt that some article was despatched by Air Men Courier Service on 13.9.1991 which was received by the respondent No. 2/Bank at Nagpur. However, though the date has been tried to be shown in the receipt as 17.9.1991, yet it appears that the said date was interpolated. Close look to the photo copy of the said receipt shows interpolation in the figure four and it appears that the earlier figure "4" was converted into figure 7 and thus instead of 14.9.1991, the date 17.9.1991 appears to have been interpolated, as has been asserted on behalf of the respondent No. 2/Bank. The complainant has, therefore, failed to prove that the draft reached the respondent No. 2/Bank on or before 16.9.1991 when the issue closed. It may also be noticed that the respondents have all along been asserting that the appellant filed a civil suit regarding recovery of the amount. Application for admission of the above fact was also filed on 24.2.1996 and the same remained un-replied by the complainant/appellant though several opportunities were granted to him. In the circumstances, the inference drawn by the Distt. Forum that a civil suit has already been filed by the complainant/appellant regarding recovery of the amount, appears to be justified and the said finding is based on proper appropriation of material placed on record. It may be noticed in the above context the complainant has not filed any rejoinder to the above assertion of the respondents. In the above circumstances, it is clear that the complainant was not entitled to any relief. The complaint was rightly dismissed by the Distt. Forum. This appeal has no substance. Accordingly, it is dismissed. Appeal dismissed.