

**(2004) 05 NCDRC CK 0027**

**In the National Consumer Disputes Redressal Commission**

APARNA ASSOCIATES

APPELLANT

Vs

C. Srinivasan

RESPONDENT

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**Date of Decision :** 31-05-2004

**Acts Referred:**

**Citation :** 2004 3 CPJ 641

**Hon'ble Judges :** A.Raman , R.Vanaroja J.

**Final Decision :** Appeal allowed

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**Judgement**

1. THE complainant's case is that he sent a sum of Rs. 15,000/- on 20.2.1996 for investment in Apple Industries Limited for a period of one year through the opposite parties who are the agents and brokers. Similarly he sent a sum of Rs. 25,000/- for investment in Ceat Finance, Rs. 25,000/- in Lloyds Finance and Rs. 20,000/- in Foresight Finance through the opposite parties. But the complainant has not received any receipts for depositing the amount. THE complainant is a retired employee of NLC. He wanted to deposit the amount in companies and earn interest and to make his living. THE opposite parties have committed breach of trust and deficiency in service. If the third opposite party namely A.P. Swaminathan, has committed any fraud, the opposite parties 1 and 2 are liable for the same. Hence, the complaint has been laid with a direction to the opposite parties to pay the sum of Rs. 15,000/- invested on 20.2.1996 in Apple Industries Limited with interest at 15% from the date of deposit and further pay a sum of Rs. 70,000/- viz., Rs. 25,000/-, Rs. 25,000/- and Rs. 20,000/- in Lloyd's Finance, Ceat Finance and Foresight Finance respectively, invested on 3.8.1996 through the opposite parties with interest at 15% and also with a direction to pay a further sum of Rs. 50,000/- towards mental agony and hardship and a cost of Rs. 10,000/-.

2. THE opposite parties 1 and 2 contended that the third opposite party was only an employee. THE opposite parties 1 and 2 are not aware of any payments said to have been made by the 1st complainant to the third opposite party. THE third opposite party was not authorized to receive any payment from any party

without issuing the official printed receipt. THE opposite parties are, therefore, not responsible. THE 1st complainant informed the 2nd opposite party about the payment of Rs. 70,000/- to the third opposite party. If the third opposite party had committed any deficiency in service, the opposite parties 1 and 2 are not liable. THE complaint as against them is not maintainable. THE opposite parties 1 and 2 pray that the complaint may be dismissed with costs. The complainant mentioned about having made deposits. The deposits have been made on 20.2.1996 in a sum of Rs. 15,000/- and Rs. 70,000/- on 3.8.1996. It is stated that the manager of the opposite parties 1 and 2, the third opposite party, stated on 3.8.1996 that the receipt book is not available that as soon as it is received from Head Office they would issue the receipt and, therefore, the complainant did not obtain receipt for the same. Ex. C1 is the receipt dated 20.2.1996 for Rs. 15,000/-. It mentions that the amount was received by way of cheque in the name of Apple Industries, Chennai. This only reads that it is an application form for deposit as detailed above. This form is issued under the printed acknowledgement form of Aparna Associates of T. Nagar, Chennai. The other document is Ex. C2 which mentions the receipt of Rs. 70,000/- on 3.8.1996. This receipt is not in the letter-head of the opposite parties 1 and 2 nor in the deposit form or in the application form. It is signed by A.P. Swaminathan which reads as follows : "I, A.P. Swaminathan, have received from Thiru K. Srinivasan Rs. 70,000/- as deposit. For the said deposit, before 30.8.1996, I will issue receipt or return the deposit."

Therefore, it is clear that the sum of Rs. 70,000/- was not paid by the complainant to the opposite parties 1 and 2. But it has been paid individually and personally to the third opposite party who has received it in his personal capacity and has acknowledged it and has promised to return the amount or sent a receipt before 30.8.1996 for the said sum. Therefore, as regards the sum of Rs. 70,000/-, the complainant's case that it was given for deposit with the opposite parties 1 and 2 cannot be accepted at all. On the other hand, if at all the complainant has a case, it is only for the payment of Rs. 15,000/- on 20.2.1996.

3. AS regards the balance of Rs. 70,000/-, it has nothing to do with the opposite parties 1 and 2 nor there was any contract or hiring of service with reference to this said amount and thus there is no privity of contract at all. This amount was neither deposited with the opposite parties 1 and 2 nor it was accepted by the opposite parties and 2 nor they have undertaken to refund or return the amount. Therefore, the lower Forum erred in accepting the case in toto. Therefore, the appeal has to be allowed insofar as that part of the claim made for Rs. 70,000/-. In the result, the appeal is allowed and the order passed by the lower Forum is hereby modified. There will be a direction to the opposite parties 1 to 3 to refund the sum of Rs. 15,000/- with interest at 15% per annum from 20.2.1996. The claim as regards the payment of Rs. 70,000/- with interest at 15% from 3.8.1996 will stand dismissed. The order of the lower Forum granting a sum of Rs. 5,000/- towards mental agony is also set aside. In the circumstances, the parties are directed to bear their own costs. Time for payment : Two months.

Appeal allowed.