(1995) 01 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

ARUN SAMEER ASSOCIATES PVT. LTD. — APPELLANT

Vs

REGIONAL MANAGER, STATE BANK OF INDIA — RESPONDENT

Date of Decision : 19-01-1995

Acts Referred:

Citation : 1995 0 NCDRC 101 : 1995 1 CPJ 208 : 1995 1 CPR 675 : 1995 2 CLT 20 : 1995 3 CTJ 303

Hon'ble Judges : R.THAMARAJAKSHI , S.S.CHADHA J.

Advocate : ARUN MADAN , S.L.GUPTA

Judgement

1. THE issue of rights and liabilities of a banker vis-a-vis the right of the customer and payee is raised in this appeal.

2. THE facts in a nutshell are these. Cheque No. 441353 dated 26.6.1990 for Rs. 4,29,785/-, cheque No. 441354 dated 26.6.1990 for Rs. 37,513 and cheque No. 441355 dated 26.6.1990 for Rs. 5,13,930/- were drawn by M/s. Industrial Cables (I) Ltd., Rajpura on State Bank of India, Rajpura in favour of M/s. Arun Samer Associates (P) Ltd. (the complainant). The complainant had earlier opened a current account No. 4/141 on 2nd February, 1990 with the State Bank of India, Rajpura. On 26.6.1990, Shri Arun Madan, Managing Director of the complainant company presented the said three cheques for the total amount of Rs. 9,81,201/- issued by M/s. Industrial Cables (I) Ltd., Rajpura to the opposite party for collection purposes. The Managing Director of the complainant company asked the officers of the opposite party to immediately clear the cheques and credit the proceeds in their account and with the intention to immediately withdraw the amount, also issued a cheque for Rs. 9,80,000/-. The clerk concerned made credit entries in the account of the complainant and corresponding debit entries in the account of the drawer and sent the cheques to the concerned officer for his clearance. The concerned officer had already received a letter (Annexure R-1) from the drawer of the said three cheques addressed to opposite party asking it to "please stop payment of the above cheques and do not make payment on their basis". He stopped the payment of

the said three cheques and the entries were reversed. The opposite party sent on 30th June, 1990 the formal intimation of dishonouring of the cheques due to stop payment advice of the drawer. The complainant in his complaint alleged serious deficiencies in the working of opposite party. It was alleged that the opposite party had stopped the payment of the cheques in question in connivance with the drawer of the cheques and thus deprived it of the amount which was legally due to it. The State Commission rejected, in our view rightly, the self-serving affidavit of Shri Arun Madan who had not chosen to support his claim in the witness box and to withstand the test of cross-examination. The State Commission found that it was established on record that the instructions from the drawer for stopping the payment of cheques in question were received by it in the letter Annexure R-1 on the same day and the payment of those cheques was stopped in compliance with those instructions. This was found corroborated from the copy of complaint dated 27.6.1990 (Annexure R-2) made by the General Manager, Industrial Cables (I) Ltd. alleging therein that Shri Arun Madan, Managing Director of the complainant company has obtained three cheques from it for the amount of Rs. 9,81,201/- dishonestly by misrepresentation and fraud and the Manager, State Bank of India had been instructed to stop the payment of those cheques. Nothing has been shown or urged before us to reverse those findings which we uphold.

3. WHAT is seriously contended is that the said three cheques were duly debited in the account of the drawer and the proceeds were credited in the account of the complainant and thus there was payment in due course of the cheques under Section 10 of the Negotiable Instruments Act, 1881 when there were no stop payment instructions. The stop payment instructions were received, if any, much later. The affidavit of the opposite party denied that the amount was debited to the account of the drawer and the cheque amount was credited in the account of the appellant. It is deposed that the clerk concerned only made the entries in the respective accounts and when the paper reached the concerned officer for authentication, the said officer rejected the entry as he had already received the stop payment advice from the drawer of the cheques. It is thus clear that entries are required to be authenticated/effected by the competent officer and as such, entries made by the clerk concerned alone cannot be considered as valid entries of the payment of the cheques in due course.

4. IT is true that under Section 31 of the Negotiable Instruments Act, the drawee of a cheque having sufficient funds of the drawer in his hands, properly applicable to the payment of such cheques must pay the cheque when duly required to do so. But if a constituent of the Bank has power to draw cheques, he has also the power to countermand payment. The banker, who is under an obligation to honour the cheques of its customers, is equally bound not to cash them if he has received intimation countermanding payment. The instructions to stop payment in this case are clear as is evident from the letter dated 26th June, 1990 (extracted in the State Commission''s order). The legal effect of countermand is to leave the balance in the hands of the Bank as if no cheque

had been issued to the complainant and therefore, no question arises as to any deficiency in service in refusing to make payment of the said three cheques. The appeal, therefore, fails and is hereby dismissed with no order as to costs.

