(1999) 07 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

BANK OF BARODA APPELLANT

Vs

Shatruhan Lal RESPONDENT

Date of Decision : 01-07-1999

Acts Referred:

Citation : 1999 2 CLT 623 : 1999 2 CPC 642 : 1999 3 CPR 153 : 2000 1 CPJ 331

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal against the judgment and order dated 21.10.1995 passed by District Consumer Forum, Bahraich in the Complaint Case No. 410 of 1994.

2. THE facts of the case stated in brief are that the complainant who is a retired Government Employee, received a cheque of Rs. 5,907/- dated 8.2.1994 which was sent to the banker, opposite party, for clearance on 18.3.1994. When amount of the cheque was not paid, the opposite party Bank''s Manager gave a letter to him addressed to the Bank Manager at Lucknow. THE complainant went to Lucknow alongwith the letter but nothing could be traced out. THEreupon at the request of the complainant the Bank wrote a letter dated 7.9.1994 to the department concerned from where the complainant has retired for issue of another cheque. THE department told him that unless the non-payment certificate is issued, no second cheque can be issued. After a long try by the complainant the Bank did not issue an objection latter. THErefore, the complainant filed the present complaint praying for the recovery of the amount of the cheque and expenses etc. A notice was sent to the opposite party and in reply the Bank, Bank of Baroda, Bahraich, in their written reply alleged that the cheque was sent to State Bank of India, which has been lost in transit. The opposite party is not responsible for the loss of the cheque.

After considering the evidence on record and hearing the learned Counsel for the parties, the learned District Forum came to the conclusion that the opposite party, Bank, is liable to pay the amount of the cheque Rs. 5,907/- and a sum of Rs. 3,000/- as damages alongwith interest at the rate of 18% per annum from

8.2.1994.

3. AGGRIEVED against this order, the appellant-Bank has come in appeal and has challenged the correctness of the order passed by the learned District Forum. Learned Counsel for the appellant has argued that the cheque was sent to State Bank of India, Lucknow for collection from Bahraich. The Service Branch of the appellant at Lucknow sent the cheque for clearance but the same was received with an objection. It is further argued that the said cheque alongwith objection was despatched to Bahraich branch but it was lost somewhere in transit. According to the learned Counsel for the appellant, there is no liability of the Bank to pay the amount as cheque was lost in transit. The learned Counsel for the complainant has argued that it was the duty of the appellant Bank to have asked the Postal Authorities to pay the damages for non-delivery of cheque which is alleged to have been sent by the Lucknow branch of the Bank. According to learned Counsel for the appellant he is liable to pay the compensation only which the complainant has suffered and not the entire amount of the cheque. A query was made from the learned Counsel for the appellant as to whether any steps were taken by the Bank to enquire from the Post Office as to whether the cheque has been misplaced. The Bank has not filed any postal receipt to show that the cheque, as a matter of fact, was sent by registered post or not. It was the duty of the Bank to have taken precaution to send the cheque alongwith objection by registered post to Bahraich branch after it was received back by the Bank. Even the appellant did not take any steps to implead the Postal Authorities in the present case in order to show negligence on their part about the non-delivery of the alleged cheque sent by registered post. If the negligence lies on the part of the Postal Authorities, then the appellant should have taken steps before the learned District Forum for getting the Postal Authorities impleaded in the complaint. The fault was with the appellant-Bank at Lucknow because it was their duty to have taken steps by issuing reminders to the post office enquiring as to what has happened to the letters sent by them to the Bahraich branch. There was deficiency in service on the part of the appellant in this aspect. Annexure 1 is a receipt which has been filed alongwith affidavit of one Om Kumar Jai Singh who was the Branch Manager of the Bank of Baroda, Chhavni Bazar, Bahraich which was sworn on 25.10.1996. Annexure 1 to it is a receipt of registered letter which is alleged to have been sent by the Bahraich branch to the State Bank of India, Moti Mahal Branch, Lucknow for encashment, but this receipt is of no importance because the receipt of the cheque at this branch is admitted.

4. THE learned Counsel for the complainant has also argued that Bank Authorities refused to issue no objection certificate to the department concerned so that a duplicate cheque could have been issued. During the course of arguments, learned Counsel for the appellant has placed before us copies of letters dated 3.9.1994 and 7.9.1994. THE letter dated 3.9.1994 is addressed to the complainant informing him that the cheque has been lost in transit and a request was made for making arrangements for issue of a duplicate cheque from

the department. By letter dated 7.9.1994 the Executive Engineer, Tubewell Division, Bahraich was requested to issue a duplicate cheque in favour of Sri S.L. Pandey on the ground that the above cheque has been lost in transit. A striking feature in both these letters is that there was no mention in these letters that the amount of the cheque has not been paid so far by the Bank to the complainant or has been realised on the account of Executive Engineer, Bahraich. Thus what the complainant has alleged is that no objection certificate by the Bank was not issued. Even these two letters do not indicate that any of these letters has been issued in the form of no objection certificate. Even if the Bank would have written to the Executive Engineer, Bahraich that the amount of the cheque has not been received and they have no objection if a second cheque is issued, then the purpose of no objection certificate would have been achieved. It is common knowledge that the person who has issued a cheque will not issue duplicate cheque unless he has received a no objection certificate that the amount of the misplaced cheque has not been paid to him. The complainant would have got the duplicate cheque issued from the Department only on submission of no objection certificate and by fulfilling other formalities which are required to be completed by department. Thus we hold that fault lies on the shoulders of the appellant which could have been avoided by the appellant by issuing a no collection certificate of non-payment of the amount of cheque to the complainant in favour of his department by whom the original cheque was issued. Thus we find that there is a deficiency in service on the part of the appellant in the present case and the Bank is liable to compensate the complainant for the loss which he has suffered for non-payment of the amount of cheque. Learned Counsel for the appellant has argued that only damages be awarded against the appellant and the rest of the amount be not awarded against the appellant. As the deficiency in service is found because the duplicate cheque can still be procured by the complainant from his department. We do not find any reason to accept this argument. The complainant was put to lot of harassment on account of non-encashment of the cheque. It was the duty of the Bank in which it was deposited, to have got the cheque encashed and deposited the proceeds into the account of the complainant. The appellant is liable to pay the damages as awarded by the District Forum as well as the amount of the cheque. To this extent the order of the District Forum is perfectly justified and requires no interference. But at the same time we feel that a chance can be given to the appellant-Bank to get a duplicate cheque or draft issued from the department of complainant after issuing a no objection certificate to the department concerned. Thus for this purpose the appellant-Bank shall send a letter of request to the Executive Engineer, Tubewell Division, Bahraich issuing a no objection certificate about the non-encashment of the cheque in dispute, which was earlier issued by the department and complete the formalities which may be required by the department, if any. As we have directed, the Bank has to pay the entire amount to the complainant, the amount so received from the Executive Engineer, Tubewell Division shall be credited by the Bank to its own account, so that the amount paid to the complainant by the Bank may stand recovered by the Bank from the department concerned. Order 9. The appeal has no force and is dismissed. The judgment and order of the District Forum concerned are confirmed. The compliance of the order shall be made within two months from today. However, the Bank, after issuing no objection certificate to the department concerned, may request for issuing a duplicate cheque, draft or local pay order and after it is issued by the department concerned, may appropriate the proceeds to its account, if the amount has already been paid to the complainant. Let compliance of this order be made within two months from the date of this order. Copy of this judgment be made available to the parties as per rules. Appeal dismissed.

