(2011) 05 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

BANK OF MAHARASHTRA APPELLANT

Vs

G.C.Jain RESPONDENT

Date of Decision : 16-05-2011

Acts Referred:

Citation : 2011 0 NCDRC 297 : 2011 2 CPR 77 : 2011 3 CPJ 96

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Final Decision : Revision petition accept

Judgement

1. THE present revision has been filed by Bank of Maharastra (hereinafter referred to as the Petitioner) being aggrieved by the order of the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as the State Commission) in favour of G.C.Jain (hereinafter referred to as the Respondent).

2. THE facts of the case according to the Respondent are that on 19.09.1998, he had requested the Petitioner/Bank to issue him a bank draft for Rs.1 lakh in favour of M/s Reach Computers Ltd. payable at Broadway Branch, Chennai on his savings bank account No.8683, which the Petitioner/Bank issued on the same date. Respondent thereafter collected the bank draft and took it to his office from where it got lost. As a precautionary measure, Respondent immediately informed the Manager of Petitioner/Bank in writing on 22.09.1998 (21.09.1998 being Bank Holiday) and requested to stop payment of the said bank draft. Respondent also lodged a complaint to this effect with Police Station, Kotla Mubarakpur, Delhi on 26.09.1998. Subsequently, Respondent requested Petitioner/Bank to credit Rs.1 lakh in his savings bank account in view of his request for stop payment of bank draft. However, he was shocked to learn on 24.10.1998 from the Respondents that the Broadway Branch, Chennai had already made payment to M/s Reach Computers Ltd. Since the Respondent contended that he had suffered a loss of Rs.1 lakh due to sheer negligence on the part of the Petitioner, he issued legal notice to the Petitioner/Bank to make good the loss within 15 days with 18% interest but the Petitioner/Bank did not make the necessary payment. Aggrieved Respondent filed a complaint before the District Forum requesting that the

Petitioner be directed to pay him a sum of Rs.1 lakh with interest as well as litigation expenses of Rs.35,000/- and any other relief deemed fit and proper. Petitioner/Bank has denied the above allegations and stated that there is no deficiency of service on their part because as per the Banking Laws and the Negotiable Instruments Act 1881, a bank is duty bound to honour the bank draft if it is presented by the person in whose favour it is made. Petitioner further concluded that it is the Respondent who got into some dispute with M/s Reach Computers and, therefore, manipulated and gave wrong facts in the complaints before the District Forum. THE District Forum after hearing both parties and considering the evidence on record accepted the complaint. THE relevant part of the order of the District Forum reads as follows: After going through the evidence on record and careful consideration of the facts we are unable to appreciate the stand of O.P. that once the draft is issued payment cannot be stopped. Had this been the law, O.P. would not have written to its payee branch at Chennai to stop payment. Letter dated 24.10.1999 written by O.P. to the complainant clearly shows that O.P. had instructed it branch at Chennai by Fax not to make the payment and it was assured that payment shall not be made and caution would be exercised. Despite this payment was made on the ground that the party was genuine. O.P. has relied upon 1(1991) CPJ 124 but in that the bank had stopped payment _ Bank _ & was not held responsible for any deficiency of service. So this authority does not help O.P. rather it only proves that payment of bank draft can be stopped on instructions of the person who had got it issued. In view of the O.P.s own letter dated 24.10.1999 and this authority we do not consider it necessary to discuss other authorities cited by O.P. The Petitioner was directed to pay the Respondent Rs.1 lakh with 12% interest w.e.f. 22.02.1999 till payment and Rs.500/- as costs within a period of one month. Aggrieved by this order, Petitioner/Bank filed an appeal before the State Commission which dismissed the appeal. It, however, modified the order of the District Forum by setting aside the interest awarded by the District Forum and instead awarded a lump sum compensation of Rs.25,000/- besides Rs.10,000/- as litigation costs. The operative part of the order of the State Commission is as follows:

According to the appellant, as per Banking practice and rules and law when the draft is issued payment cannot be stopped and moreover the instructions for stopping the payment were received after the draft was already encashed.

3. THE perusal of the impugned order shows that the appellant-bank had written a letter to the Chennai Branch dated 24.10.98 to stop the payment but by that time the payment had already been made. Through no allegation of connivance or fraud was leveled against the appellant-bank but the very fact that instructions for stopping the payment were issued on 22.09.98 whereas the draft was issued on 19.09.98 but the appellant-bank sent the letter for stopping the payment only on 24.10.98 i.e. a month later. Such an act amounts to deficiency in service and renders the bank liable to make up the loss suffered by the respondent. Hence, the present revision petition.

4. COUNSEL for both parties made oral submissions. COUNSEL for Petitioner stated that the learned fora below failed to appreciate its contention that as per the provisions of the Negotiable Instruments Act, 1881 (specifically Sections 10 and 85-A), once a bank draft is issued in favour of any person by the Bank, the bank has no right to stop the payment of the said bank draft if it is presented by the person in whose name it is made. In the instant case, it is not in dispute that the bank draft was made in the name of M/s Reach Computers Ltd. and was presented by M/s Reach Computers Ltd. to the Chennai Branch of the Petitioner/ Bank who honoured the draft and made payment after duly verifying the identity of the payee. This stand has also been confirmed in a number of court rulings, including of the Bombay High Court in Tuka Ram Bapuji Nikam Vs. Belgaum Bank Ltd. AIR 1976 Bombay 185. Counsel for Petitioner further contended that the Respondent had not come with clean hands and had been changing his stand by initially stating that the bank draft was lost and then alleging that it was stolen. Later he wrote to the Police Station narrating new facts that the demand draft had in fact been stolen by an employee of M/s Reach Computers, one Mr.N.A.Navaneethan alias Mr.M.S.Pillai. Hence, his request to stop payment of the bank draft was not bonafide. Counsel for Respondent denied the above contentions and reiterated that the cheque was stolen by the above employee of M/s Reach Computers and it was under these circumstances that he had requested that the payment of the bank draft be stopped. These facts were appreciated by the fora below and the revision petition, therefore, deserves to be dismissed.

5. WE have considered the above averments of both counsel as also the evidence/documents on record and have gone through the relevant provisions of the Negotiable Instruments Act 1881. From the documentary evidence produced before the fora below, it is a fact that the Respondent had changed his story because in his written complaint before the District Forum as well as in his first letter to the Manager, Bank of Maharashtra, Respondent had clearly stated that the bank draft had got lost from his office and hence requested to get the payment stopped by the Broadway Branch of Petitioner/Bank to avoid any misuse. Subsequently, he changed and embellished his stand to state that the bank draft had been stolen by Mr.N.A.Navaneethan alias M.S.Pillai, an Area Manager of M/s Reach Computers Ltd. who had suggested to the Respondent that he should place his orders for computers with another company where he would get better cheaper deal and who then stole the bank draft from the Respondents table while Respondent was busy with some other work. In view of the above facts, we can only conclude that the Respondents contention lacks credibility.

6. WE have also gone through the Negotiable Instruments Act, 1881 and agree with the Petitioner that the Petitioner/Bank is duty bound and under legal obligation to honour the bank draft which was made in favour of the person who presented it for payment before the bank. It was only if the draft was presented by a person other than the beneficiary then the bank would have been within its

rights not to honour it. This is very clear from a reading of Sections 85-A and 10 of the Negotiable Instruments Act, 1881 which are reproduced below: 85-A. Drafts drawn by one branch of a bank on another payable to order. - Where any draft, that is, an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course. 10."Payment in due course" - "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned. To sum-up, in this case it is not in dispute that the Respondent has got the bank draft in the name of M/s Reach Computers Ltd. and on presentation of the bank draft by the party in whose name it was made, the bank as per the provisions of Negotiable Instruments Act, 1881 rightly honoured the bank draft. There was, therefore, no negligence or irregularity in its actions, since the bank was legally duty bound to have done so. The learned fora below erred in not taking into account the provisions of the Negotiable Instruments Act as well as the factual position in deciding the case. We, therefore, set aside the order of the fora below and accept the revision petition with no order as to costs.

