(1996) 01 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

BRANCH MANAGER, OSMANABAD DISTT.CENTRAL CO.OP.BANK LTD. — APPELLANT

Vs

RAMACHANDRA DASHARATH MANE — RESPONDENT

Date of Decision : 03-01-1996

Acts Referred:

Citation : 1996 0 NCDRC 4 : 1996 1 CPC 197 : 1996 1 CPJ 133 : 1996 1 CPR 1

Hon'ble Judges : V.BALAKRISHNA ERADI , B.S.YADAV , S.S.CHADHA , R.THAMARAJAKSHI , S.P.BAGLA J.

Advocate : D.PRAKASH REDDY , UDAY LALIT

Judgement

1. THE limited point in this First Appeal No. 361 of 1993 for consideration is as to whether the Omarga Branch of the Osmanabad District Central Co. Operative Bank Ltd., the Appellants herein, acted in accordance with the authority given to them for the withdrawal of funds from the account of Ramachandra Dasharath Mane & Ors., the Respondents herein. The Respondents are a Partnership Company and opened an account with the Appellant Bank. In their complaint this partnership-firm alleged deficiency in the service of the Bank on the ground that the withdrawals were allowed by the Bank on the authority of one of the partners whereas according to the instructions given to them two partners should have authorised any withdrawal. The State Commission, Maharashtra, in their Order of 10.6.1993 came to the conclusion that 51 cheques were honoured by the Bank, appellants herein, signed by Partner No. 3, and not jointly signed by Partners Nos. 1 and 3 and that too after the dissolution of the firm. All the details of the cheques, numbers, dates and amounts as placed on record are admitted by both the sides. Citing the decision of this Commission in the case of Bhandari Co. Operative Bank Ltd. v: Dilip Madhukar Kambli & Ors. in First Appeal No. 21/91 decided on 25.10.1991, the State Commission held that the honouring of these 51 cheques signed by one partner amounted to deficiency in rendering of the service, as it was contrary to the instructions from the depositors. The State Commission, therefore allowed the complaint directing the Opposite Parties to pay to the Complainants Nos. 1 and 2 a sum of Rs. 8,55,021/- within 30 days

from the date of receipt of their Order failing which the aforesaid amount shall carry interest at 18% per annum till realisation.

2. THERE are two points to be considered in this appeal. Firstly, whether the Bank really acted beyond the authority in honouring the cheques signed by one partner. We have seen the account opening from which is in Marathi and found from one of the Marathi knowing Advocates the meaning of the word Kiwa which according to him is "Or", in the instructions given in this form as regards the withdrawals. The English translation of the Account opening form is also a part of the record. In the column "special directions'' to operate the account it has been mentioned that partners at serial Nos. 1 or 3 shall operate the bank account with his signature. To us it is quite clear that either of the partners had the authority to operate the account and therefore we hold that the bank acted in accordance with the instructions and authority given to them as regards the operation of the account. The second point to be considered is whether the bank allowed the operation of the account after they came to know of the dissolution of the partnership deed. It has been stated in a letter sent by the bank to Shri Ramchandra Dasharath Mane, one of the partners, and the Respondent herein "your letter dated 5.3.1991 alongwith the photostat copy of dissolution of partnership deed received by our Omarga Branch on 7.3.1991. Your deed of dissolution of partnership-firm was not received in Omarga Branch in time and on account of the said fact, operation in the said account were taken place upto 30.10.1990". It is clear that Shri Ramchandra Dasharath Mane informed the Omarga Branch about the dissolution of the partnership-firm through his letter dated 5.3.1991 received in the branch on 7.3.1991 whereas the operation of the account was upto 30.10.1990 as stated by the bank in their letter No. ACT/7788/1991-92 of 8.2.1992.

3. THE State Commission has cited an order of this Commission in First Appeal No. 21 of 1991 Bhandari Co. Operative Bank Ltd. v, Dilip Madhukar Kambli and Ors. decided on25.10.1991 wherein it was held that the Bank has debited the account of Mr. Dilip Madhukar Kambli without written instructions from him for the purchase of a machine for which loan was sanctioned by the Bank. The facts of that case indicate that Mr. Dilip Madhukar Kambli had agreed to purchase the machine from the person whom the Bank officials had recommended but had not given any instructions to the Bank to transfer the loan amount to the account of the supplier of the machine. Hence, it was held that it amounted to deficiency in service as the debiting of the account of Madhukar Kambli by the Bank was without any authority. In the present case the Bank has acted in accordance with the special instructions as indicated in the account opening form and, therefore, the facts of these two cases are distinct and distinguishable.

4. WE , therefore, hold that even on this count there was no deficiency of service on the part of the Bank. We, therefore, accept this appeal and set aside the order of the State Commission. There is no order as to costs.

