
(2001) 05 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

Branch Manager, State Bank of India

APPELLANT

Vs

NAFISA BEGAM

RESPONDENT

Date of Decision : 23-05-2001

Acts Referred:

Citation : 2002 1 CPJ 268 : 2002 2 UC 6

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

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal against the judgment and order dated 26.11.1993 passed by District Consumer Forum, Faizabad in Complaint Case No. 626/1992.

2. THE facts of the case stated in brief are that the complainant deposited a sum of Rs. 5,500/- in her Saving's Bank Account No. C-1951 in the State Bank of India, Chowk Branch, Faizabad. A Pass-book was issued on 4.9.1991. THEREafter the complainant went to draw the amount from her pass book on 14.10.1992, it came to her knowledge that the amount which has been entered in the pass book has not been shown in the ledger. THE amount was not paid to her on account of which she suffered mental tension. THE Bank refused to pay the amount, hence she filed a complaint for recovery of Rs. 5,500/- alongwith Rs. 20,000/- as compensation on account of mental tension and Rs. 1,000/- on account of cost. She has also prayed for interest on the deposited amount. The opposite party in its written version admitted the opening of her account on 4.9.1991. It was intimated that at present only a sum of Rs. 224/- was in balance in her account on 15.10.1992. It has been admitted that the complainant gave an application on 15.10.1992 in which it was mentioned that she has deposited amount from time to time in her account total amounting to Rs. 7,500/- out of which the amount was withdrawn from time to time leaving with a balance of Rs. 5,500/-. It has also been indicated in the application which was moved by the complainant that the departmental enquiry was set-up which is still pending. A F.I.R. in this regard was also lodged with the Police Station which is also pending for investigation. The amount has not been deposited by

the complainant and all the entries in the pass book have been done by Kumari Vineeta Pandey employee of the Bank who has been suspended. She was working on the Saving's Bank counter as a clerk prior to 13.4.1992.

The parties led evidence in support of their respective contentions. The learned District Forum after considering the case of the parties, came to the conclusion that the complainant had deposited the amount in the pass book and there is deficiency on behalf of the State Bank of India. It, therefore, directed that a sum of Rs. 5,000/- be paid to the complainant along with interest which has been fixed from time to time. The complainant was also awarded a sum of Rs. 500/- as cost and a sum of Rs. 2,000/- on account of mental torture, tension etc.

3. AGGRIEVED against this order, the appellant, State Bank of India has come in appeal and has challenged the correctness of the order passed by learned District Consumer Forum. We have heard the learned Counsel for the parties and perused the file. The learned Counsel for the appellant has argued that the complainant has not produced the deposit slips. According to the learned Counsel, criminal proceedings are pending, hence the case cannot be filed before the learned District Consumer Forum. On the other hand, the learned Counsel for the opposite party/complainant has argued that an action has been taken against the employee which shows that the amount was deposited by the complainant. According to him the pendency of criminal proceedings will not bar the maintainability of the complaint. In the present case it has been mentioned in the judgment that the criminal case was pending before the Criminal Court. This was the position when the judgment was delivered in the year 1993. It has not been indicated by either of the parties whether the said criminal case is still pending or not. Moreover the pendency of the criminal case has nothing to do with the trial of this case. In the present case the complainant has alleged that deficiency in service is on behalf of the State Bank of India and has claimed the refund of the amount deposited by her along with compensation. The learned Counsel for the appellant has further argued that this relief cannot be given to the complainant in the Consumer Court as the criminal case is pending in the Criminal Court and the Criminal Court can only have the power to punish. These are two independent proceedings and the pendency of criminal case will not deprive the complainant of the remedy which is available under Consumer Protection Act, therefore, this argument of the learned Counsel for the appellant is repelled.

4. NOW we have to see whether the amount was deposited by the complainant as alleged. It is an admitted fact that in the pass book, the entry of the amount of Rs. 5,500/- exists. In the copy of pass book which has been filed that a number of transactions had taken place in this account, even according to the learned Counsel for the appellant all these entries are fictitious and they are in the handwriting of Kumari Vineeta Pandey. According to the learned Counsel she was working in the Saving's Bank Account Counter till 13.4.1992 and thereafter she was transferred. The learned District Forum in its judgment has given the

details of the various entries which are entered in the account of the complainant. It has also been mentioned in the judgment that Kumari Vineeta Pandey has filed a writ petition in the Hon"ble High Court and has obtained a stay order in her favour. It is wrong to say that on the part of Bank only Rs. 250/- is due to be paid to the complainant. If Kumari Vineeta Pandey has made false entries as alleged by the State Bank of India then the Bank itself is responsible for the same because she was an employee of the Bank and the Bank has to bear the loss if any caused on account of the fault of the employee. It is no defence that the complainant does not have the deposits slips. The complainant is a lady and it is just possible that she might have not retained the deposit slips. There is no evidence on record to show that there was any conspiracy between the complainant and Kumari Vineeta Pandey on account of that these entries have been made. In the detailed judgment, the learned District Forum has considered various aspects of the matter and has rightly come to the conclusion that the State Bank of India is liable to pay the amount, therefore, we do not find any flaw in the judgment of the learned District Forum which requires no inter-ference. The appeal is, therefore, liable to be dismissed. ORDER The appeal is dismissed. The judgment and order of the learned District Consumer Forum are confirmed. The appellant shall pay a sum of Rs. 2,000/- as cost to the complainant. Let compliance of this order be made within a period of two months. Let copy of this order be made available to the parties as per rules. Appeal dismissed.