(2004) 06 NCDRC CK 0096

In the National Consumer Disputes Redressal Commission

CHAIRMAN, CORPORATION BANK — APPELLANT

Vs

MARKANTI RAJAIAH — RESPONDENT

Date of Decision : 07-06-2004

Acts Referred:

Citation : 2004 3 CLT 575 : 2004 3 CPR 678 : 2004 4 CPJ 254

Hon'ble Judges : I.Venkatanarayana , M.Shreesha J.

Final Decision : Appeal allowed

Judgement

1. THE appellants are the opposite parties in CD 54/1999 on the file of the District Consumer Forum, Medak District at Sanga Reddy.

2. THE brief facts as set out in the complaint are that the complainant approached the opposite parties Bank on 4.10.1996 to withdraw some amount from his account. THE fourth opposite party who is working as Attender stated that if he kept the amount in the account he would fetch the interest and asked him to keep the pass book with him. He also took the complainant''s signature on the withdrawal slip and the complainant gave the FDR to the Attender. THE complainant submits that the said Attender withdrew the amount of Rs. 80,000/- and debited the same in his pass book and by his own handwriting wrote the balance as Rs. 1,02,372.05 ps. in his account, though there was only an amount of Rs. 22,372.05 ps. THEreafter, the complainant approached the Bank authorities, and submits that the opposite parties promised that they would reimburse the amount of Rs. 80,000/- misapprorpriated by the said Attender. Police complaint was also filed. THEreafter, the complainant made several requests to the opposite parties to refund the amount of Rs. 80,000/- but received no response. Hence the complaint. The opposite parties 1 and 2 filed a joint counter submitting that the Attender has cheated a number of customers and that the opposite parties have taken steps to verify the genuine claims of the customers and to compensate them as a gesture of goodwill. But, in the instant case, the opposite parties have nothing to do with the transaction made by the complainant and the said Attender. They further submit that they are not liable

for any loss, which, the complainant might have suffered on account of the act of the said Attender, and, therefore, seek dismissal of the complaint with costs.

The third opposite party, though, received a notice, did not appear before the Forum and was set ex parte.

3. THE fourth opposite party filed his counter denying the allegations made by the complainant and submits that the police booked a case against him under the influence of the Bank authorities; and that he has never cheated any customer of the Bank; and that the matter is pending with the police, and, therefore, the Forum has no jurisdiction to entertain the complaint. Based on the evidence adduced and pleadings put forward, the District Forum allowed the complaint directing the opposite parties jointly and severally to return the balance amount of Rs. 1,02,372.05 with interest at 12% p.a. and also pay costs of Rs. 1,000/-.

4. AGGRIEVED by the said order, the appellants preferred this appeal. The learned Counsel for the appellants submitted that Ex. A1 shows the balance amount of Rs. 1,02,372.05 ps. whereas, the case of the complainant is that the second respondent/fourth opposite party has committed fraud of Rs. 80,000/- and that in his own handwriting he corrected the balance in his pass book and wrote Rs. 1,02,372.05 ps. though the actual balance was Rs. 22,372.05 and that the complainant is admitted in the complaint itself that the fraud was committed by the 2nd respondent/opposite party No. 4, and hence, none of the opposite parties have nothing to do with the fraudulent practice perpetrated against the first respondent by the second respondent. They also drew our attention to the law laid down by the Apex Court in AIR 1978 SC 126, in which, Their Lordships were pleased to held that "The first of the principles which govern the vicarious liability of an employer for the loss caused to a customer through the misdemeanour or negligence of an employee, is that the employer is not liable for the act of the servant if the cause of the loss or damages arose without his actual fault or privity and without the fault or neglect of his agents or servants in the course of their employment. There is no difference in the liability of a master for wrong committed by servant in the course of his employment and it is a question of fact in each case whether it was committed in the course of the employment." In the instant case the Attender is not a part of the transactions undertaken by the Bank, i.e., his duties and responsibilities do not include his employment in the day-to-day transactions involving money transfers. The Counsel for the 1st respondent/complainant submitted that since the Attender is employed by the Bank, the Bank is vicariously responsible for the acts of the Attender. Moreover, there is a submission by the Bank authorities that the said Attender has cheated other customers also. We are of the opinion that the second respondent/4th opposite party is only an Attender attached to their branch, and that the 1st respondent/complainant voluntarily gave a signed withdrawal slip to the said Attender, and the signature is genuine and not disputed by the 1st respondent/complainant, and consequently the third appellant Bank branch was within its rights to act on such a withdrawal slip and

debit the withdrawal of the complainant. Moreover, it is not the case of the complainant that he was an illiterate novice not ''knowing how to operate the account or withdraw the amounts. It is a matter of general practice that when a customer produces a pass book before a Bank, the Bank authorities authenticate the last entry and the previous entries are deemed to be automatically admitted, and when there is no evidence laid down to this point, keeping the facts and circumstances in view, we are of the opinion that the Bank has no obligation for fraud committed by an Attender who is not entrusted by the Bank with the functions of the Bank transactions, for which, other clerks and officers are engaged.

5. THE learned Counsel for the appellants also relied on the National Consumer Disputes Redressal Commission''s judgment in State Bank of India v. M. Ponniah Nadar and Another, reported in III (1995) CPJ 89 (NC), wherein, the brief facts are, that the complainant handed over his pass book to a peon in the Bank and wanted to withdraw the amount from his account, but, on reaching the Bank found that his amount has been taken away by the peon. In this case, the National Commission held if the peon has not handed over the money to the complainant, the Bank cannot be held responsible for the action of the said peon. In the instant case, we find, the facts are similar to the above mentioned judgment and on perusal of the material filed before us, we are of the opinion that the District Forum has erred in allowing the complaint, and, therefore, we set aside the order of the District Forum. This appeal is allowed with a direction to the 1st respondent /complainant to approach appropriate Forum for relief against the second respondent of this appeal. Appeal allowed.