(1993) 08 NCDRC CK 0059

In the National Consumer Disputes Redressal Commission

CHAMAN LAL GROVER APPELLANT

Vs

AREA GENERAL MANAGER, NEW BANK OF INDIA RESPONDENT

Date of Decision : 05-08-1993

Acts Referred:

Citation : 1993 2 CLT 398 : 1993 3 CPJ 290 : 1993 3 CPR 558 : 1994 1 CPC 389

Hon'ble Judges : V.Balakrishna Eradi , Y.Krishan , B.S.Yadav J.

Advocate : Himinder Lal , A.D.Mehndru

Final Decision : Disposed Of

Judgement

1. IN this complaint the Complainant has claimed Rs. 1,93,00,000/- from the Opposite Parties who are various officers of New Bank of INdia. According to the allegation of the complaint Foreign Letter of Credit (for short FLC) limit was sanctioned by the New Bank of INdia, Panipat Branch vide letter dated 20th March, 1989 in favour of the Complainant to the tune of Rs. 10.00 lakhs. Assured by the said FLC limit being enjoyed by the complainant, on 14th June, 1990 he entered into contract with M/s. Mair Com (NZ) Ltd., a New Zealand firm for purchase and import of 17,000 Kgs. of raw wool. For the said contract the Panipat Branch of New Bank of INdia issued LC dated 3rd August, 1990 to the extent of US $ 39610 (Rs. 7.00 lakhs). The said LC was issued against 120 days D.A.(document against acceptance) basis. A copy of the said LC was endorsed to the Complainant who sent it to its agent to expedite the matter at his end and who in turn shipped the material to the port for dispatch, pending receipt of the LC direct from the Bank which he did not receive for considerably long time and informed the complainant of the situation. The Complainant approached the local branch of the Bank who asked the Complainant to approach the Regional Office at Cliandigarh where he was asked to get the needful done from the Head Office at Delhi. The Complainant was able to get sanction from the Head Office on 22nd August, 1990. It was received at Panipat branch on 24th August, 1990. The failure of the Bank to issue the LC in time and delay in issue of three weeks caused the Complainant to suffer business loss and loss of reputation. Upto that

stage the Complainant has used the limit of Rs. 7.00 lakhs out of total of 10.00 lakhs and thus Rs. 3.00 lakhs were still left for further business. The Complainant further entered into a new contract for purchase of raw wool for his business. IN view of the contracts of purchase the Complainant entered into an agreement to sell manufactured goods (yarns) to the parties named in annexure 8 annexed to the complaint. The Complainant again approached his local Bank for issue of LCs for new contracts on 1st September, 1990. The new LCs were not issued and thus the Complainant had to suffer a clear loss of more than Rs. 20.00 lakhs since he had agreed to supply different parties 50,000 Kilograms of Yarn and he failed to supply the same and thus parties claimed from him damages at the rate of Rs. 40/- per kilogram for non-fulfillment of agreement. As a result of the said malpractice and lack of service of the Bank, the purchasers withheld the payment of the Complainant, as the Complainant could not fulfil his part of supplying the material. The material already supplied got completely damaged at the goods area at Bhadoi, Varanasi and Bihar. The Complainant had to suffera minimum loss of Rs. 5.00 lakhs on this count in addition to the loss of business reputation and embarrassment faced by him. The purchasers did not accept the goods receipt sent to them by the said Bank which were received back in the Bank. Though later on bank drafts of the amount of goods receipts were deposited by the Complainant in the Bank, they did not release the goods and adjusted the amount of bank draft against some other head. This was totally due to the negligent and mala fide act of the Bank who in their turn debited the said bill amount to the account of the complainant and stopped further provision of this facility to him. The Complainant presented a cheque to the Bank for payment of salaries to the employees and labours but the payment was refused by the bank and he was humiliated and virtually thrown out of the Bank premises. On 7th October, 1991 the Complainant again visited the Bank for drawing Rs. 1.00 lakhs for salary for the employees and labours vide cheque No. 787001. The local Bank Manager shouted at him, insulted and humiliated him and told him to get out of the Bank. The Complainant was forced to sell hypothecated goods to pay the salaries and wages of the labour, electricity and other charges. Labour went on strike and rioting and violence took place in which machinery and building of the Complainant was damaged and loss of about Rs. 10.00 lakhs was suffered by him on this count. The Complainant has been blacklisted by his foreign business parties because he could not make available the LC of Rs. 3.00 lakhs. On this ground the Complainant claimed damages amounting to Rs. 50.00 lakiis. On account of above events the Complainant suffered a severe heart attack and he was hospitalised at Escort Heart INstitute, Delhi. The Complainant had to suffer total expenditure of more than Rs. 2.8 lakhs in addition to sufferings and torture. He has to be on medicines to remain alive which will be more than Rs. 1.00 per day throughout his life. IN addition to the above, the complainant suffered loss to his personal reputation in national and international trading circles and such loss can be quantified at Rs. 1.00 crore. Hence the claim for the amount mentioned at the beginning of this order.

2. THE case was contested by the Opposite Parties. A preliminary objection has been taken to the effect that the Complainant has suppressed material facts from this Commission. He is a defaulter in respect of the facilities and owes an amount of Rs. 37,06,632/- to the Bank and for the recovery of which the Bank has filed a suit against him as back as on 26th March, 1992. It may be mentioned here that the present complaint was filed on 1st June, 1992. According to the Opposite Parties the complaint involves numerous intricate and highly disputed question of fact as well as law, the disposal of which will require a lengthy full scale trial and the recording of voluminous evidence and scrutiny of a very large volume of documentary evidence. Hence the appropriate forum in which all these issues can be agitated is Civil Court before which the civil suit filed by the Bank for the recovery of its dues is already pending and the complainant has yet to file written statement in that suit. On merits it was admitted that the complainant was enjoying a foreign letter of credit limit of Rs. 10.00 lakhs since 1989 but the said limit was on D.P. (document against payment) basis. The complainant has deliberately distorted and misrepresented the real facts. The contract with the New Zeland firm was different from the earlier contracts under which the complainant was enjoying FLC limit of Rs. 10.00 lakhs. In the earlier contract payment was to be made to the seller immediately whereas in the present contract the seller had given the Complainant a credit of 120 days and as such there was no primary security of the document with the Bank as in the original FLC limit. As such the Complainant requested the Bank to provide FLC facility to the tune of Rs. 7.00 lakhs against D.A. basis. The accountant inadvertently, taking it to be an LC under the original FLC on Rs. 10.00 lakhs on D.P. basis prepared the format of LC. The said LC was to be finally signed by the Branch Manager who was the duly authorised signatory to issue the LC. Before the said draft of LC could reach the Manager, the complainant, who had nefarious designs in his mind, managed to get a copy of the draft LC as he knew very well that the said LC could not be issued by the Manager unless and until new sanction was granted for the issuance of the said facility by the Head Office on the recommendation of the Regional Office. Accordingly the Branch Manager told the complainant that it was not within his power to issue the said LC on D.A. basis and he could only recommend his case to the Regional Office who in turn would send further recommendations to the Head Office. Under the circumstances, the Manager sent his recommendations to the Regional Office for grant of the said limit against the margin of 25%. The Complainant vide his letter dated 10th August, 1990 requested the Bank to reduce the margin to 15% and Head Office as a special case accommodated the complainant and sanctioned issuance of the FLC of Rs. 7.00 lakhs on D.A. basis despite the fact that the other accounts of the Complainant were irregular. The said facility was granted only for single transaction with the condition, inter alia, that the Complainant would regularise his other accounts and do other needful things as mentioned in the sanction letter. The Complainant is trying to take undue advantage of this special accommodation given to him by the Head Office and is trying to overawe and malign the high officials of the Bank. The Complainant has already enjoyed the

said FLC facility on D.A. basis and thereafter no FLC could be issued on D.A. basis without the sanction of the Head Office and that is why when the complainant again approached the Bank Manager for issuance of another FLC of Rs. 3.00 lakhs on D.A. basis the latter had no option but to refuse to do so as there was no such sanction received from the Head Office. The allegations made by complainant is only a cock and bull story woven only to use it as a cover for his own misdeeds and with a view to devour the huge amount of the Bank. No LC on D.A. basis was issued. After the Branch at Panipat received the sanction from the Head Office on 24th August, 1990 about the sanction of LC for Rs. 7.00 lakhs on D.A. basis the Branch Manager immediately took steps to issue the LC as per recommendation. The complainant made request to the Branch Manager that the Letter of Credit be dated 3rd August as he had represented to the seller that he was in possession of Letter of Credit of that date and if it was issued on 24th August, 1990 he would lose his credit. With a view to accommodate the Complainant, the Branch Manager prepared the Letter of Credit dated 3rd August, 1990 but since sanction of the Head Office was dated 22nd August, 1990 so with a view to protect interest of the complainant the Letter of Credit was dated as 3/24th August, 1990. The Branch Manager left no stone unturned to cooperate and help the complainant to protect his interest. After the issuance of the Letter of Credit of Rs. 7.00 lakhs the complainant did not regularise the account which was a condition precedent for issuance of LC on DA basis and the Branch Manager is now facing explanation from the Head Office. It was incorrect that the Letter of Credit of Rs. 7.00 lakhs on D.A. basis was out of the earlier limit of Rs. 10.00 lakhs which was on D.P. basis and as such there was no question of their being a remaining limit of Rs. 3.00 lakhs on D.A. basis for further business. The falsity of the allegation of the complainant is self-evident inasmuch as the complainant was already enjoying the facility of Rs. 10.00 lakhs then there was no question of applying for FLC of Rs. 7.00 lakhs as a special case. The Complainant remained of reckless nature inasmuch as despite the fact that on having known that it was not having any facility of the Letter of Credit on D.A. basis of Rs. 3.00 lakhs yet he entered into the alleged contract.

The other allegations of the Complainant were also denied except the allegations about cheque No. 787001. About that cheque it was pleaded that it was rightly turned down as there was no provision in any of the limit granted to the Complainant for encashment of any such cheque as the cash credit account was already overdrawn by Rs. 5,23,456.06 against sanctioned limit of Rs. 10.00 lakhs and was highly irregular. The selling of hypothecated goods by the Complainant is not only illegal but is criminal as the hypothecated goods were one of the securities of the loan granted by the Bank to the complainant. According to the Opposite Parties there is no deficiency or negligence in the rendering of service on the part of the Bank.

3. THE complainant filed rejoinder in which he denied that he has any knowledge of the suit at the time of filing of the present complaint. It was further pleaded that he has filed a criminal complaint under Sections 384/500/506/523/34 of the

Indian Penal Code and Sections 11 and 12 of Prevention of Corruption Act against Opposite Parties No. 1,2 and 3 in the Court of Chief Magistrate, Panipat. Copy of the Criminal complaint has been filed and it is dated 13th November, 1991. It may be mentioned here that copy of the complaint has been perused and most of the allegations contained in the complaint font the subject matter of the present complaint. The pleading of the parties have been given in detail above only to show that the complaint involves intricate and highly disputed questions of fact which will require lengthy full scale trial, examination of numerous witnesses will have to be undertaken and in addition large voluminous documents will have to be scrutinised. Moreover, a suit has been filed by the Bank for the recovery of its dues which is pending in a Civil Court and the Complainant had not filed written statement in that suit at the time of filing the complaint and it is not known if he has since filed it or not. We do not know what pleas have been taken by the Complainant as defence in that suit. A criminal complaint has been filed by the complainant against Opposite Parties No. 1 to 3 much before filing of the present complaint in which most of the facts now forming subject-matter of the present complaint are involved. In the light of the above, we are of the opinion that the observations made by this Commission in case M/s. Special Machines Ltd. v. Punjab National Bank& Ors.-I (1991) CPJ 78 (NC) will apply. This Commission observed in that case as follows: "We have already referred to the statement made by Counsel appearing on behalf of the Complainant that he is prepared to undertake not to press for any detailed examination of witnesses on his side but cannot ignore the nature of the pleas raised by the bank in its defence and the submission made on its behalf by the learned Attorney that elaborate oral as well as documentary evidence will have to be adduced. We find that having regard to the complicated nature of the pleadings filed in the case and the issues of fact arising there from, the submission made by the respondent Bank that the questions arising for consideration in the case cannot be satisfactorily adjudicated upon without elaborate oral and documentary evidence being adduced and scrutinised is well founded. The contentions advanced by the plaintiff that there has been manipulation of accounts, failure to give credits, over charging of interest at various stages and incorrect maintenance of accounts etc. would necessitate a detailed scrutiny of the books of accounts maintained by the Hindustan Commercial Bank Limited and its successor-ininterest (Respondent Nos. 2 & 3) in relation to the different heads of transactions (accounts) that the complainant had with the said Bank over a period of more than 12 years (1975-76) to (1987-88). Such elaborate scrutiny and settlement of accounts can be satisfactorily undertaken and performed only in a regular civil suit and not in proceedings before this Commission under the Act which are more or less summary in nature. The procedure for disposal of complaints under the Act has been laid down in Section 13 of the Act, the provisions of which are made applicable to proceedings before the National Commission by Rule 14(2) of the Consumer Protection Rules, 1987. Sub-sections (2) and (3) of Section 13 of the Act show beyond doubt that the statute does not contemplate the determination of complicated issues of fact involving taking of elaborate oral evidence and adducing of voluminous documentary evidence and a detailed scrutiny and assessment of such evidence. It is no doubt true that the forums constituted under the Act are vested with the power to examine witnesses on oath and to order discovery and production of documents. But such power is to be exercised in cases where the issues involved are simple such as the defective quality of any goods purchased or any shortcoming or inadequacy in the quality, nature and manner of performance of a service which the respondent has contracted to perform for consideration. Even in such cases, if it appears to the concerned Forum under the Act that the issues raised cannot be determined without taking elaborate oral and documentary evidence it is open to it to decline to exercise jurisdiction and refer the party to his ordinary remedy by way of suit."

It was further remarked in that case:"Since a suit instituted by the respondent Bank is already pending before the learned Senior Sub Judge, Karnal, it is perfectly open to the Complainant if so advised to file a counter-claim in which he can agitate all the matters in respect of which he has made the claim for compensation against the Bank in the present complaint-petition. With due respect, we are not impressed by the argument advanced by the learned Counsel for the complainant that since fairly heavy Court fee will have to be paid for such a counter-claim the complainant should be given the opportunity to have recourse to the cheap remedy under the Act and seek an adjudication of thee matter from this Commission". For the foregoing reasons we decline to exercise jurisdiction in this complaint case and refer the complainant to ordinary remedy by way of a suit in a competent Court having jurisdiction or filing counter claims in the suit filed by the Bank. We make no order as to costs. Order accordingly.