(1992) 05 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

Classic Electronics APPELLANT

Vs

Punjab National Bank RESPONDENT

Date of Decision : 08-05-1992

Acts Referred:

Citation : 1992 1 CPJ 332 : 1992 2 CPR 128

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

Final Decision : Appeal dismissed

Judgement

1. THIS complaint is a long narration of allegations of improper maintenance of the Complainant''s accounts by the Respondent Bank which is said to have resulted in the denial of the contractual credit to the Complainant. In the result, according to the Complainant, he was virtually crippled in setting up the industry for manufacturing of T.V. Sets for which credit had been sanctioned by the U.P. Financial Corporation, Respondent No. 2 and by the Punjab National Bank, Respondent No. 1.

2. IN the narration of facts in the complaint petition, the dates of most of the transactions are not mentioned, the nature of the accounts opened with the Respondent Bank not clearly specified and the statement of the case is further confused by citation of collateral and even irrelevant facts which makes the petition not easily comprehensible. Only after plodding through the rejoinder of the respondent and the further counter of the Petitioner we have been able to comprehend the relevant facts. They are briefly given below: The Complainant opened two accounts with the Respondent Bank: (a) Current Account No. 1543 opened on 14.8.1985. The Respondent No. 2 sanctioned on 18.5.1985 a term loan of Rs. 8.43 lacs. The term loan was to be used for creation of fixed assets like buildings, plant and machinery. As and when the instalments of the loan were released they were to be credited to the current account to be used by the Complainant for creation of fixed assets. It was a special account intended to receive the instalments of the term loan sanctioned by the respondent No. 2 U.P. Financial Corporation. The Respondent No. 1, the Bank, executed an agreement

with the Respondent No. 2, U.P. Financial Corporation, on the 27th June, 1985 whereby it undertook not to set off or adjust any money due from or payable by the loanee petitioner to the Respondent Bank against the current account

(b) A Working Capital Loan Account No. 101 was opened on 24th November, 1985. The Respondent No. 1, the Bank, sanctioned an overdraft facility of Rs. 4.80 lacs as C.C.A.H. (Cash Credit Account against Hypothecation). On the 15th December, 1985 an A.B.C. (Advance Against Bill Collection) was allowed with a limit of Rs. 1.40 lacs. This Working Capital Account was to be used for the purchase of the materials and meeting other running expenses. Thus the total amount which the Complainant could avail of from the Working Capital Loan Account was Rs. 6.20 lacs. The grievance of the petitioner is that on 12th April, 1986, a day before the starting of TV production by the unit put up by the Complainant, the Bank transferred a sum of Rs. 29,000/- from the Fixed Asset Loan Account No. 1543 to the Working Capital Loan Account No. 101. According to the Complainant, this transfer was in violation of the "No set off undertaking given by the Respondent Bank to Respondent No. 2, U.P. Financial Corporation.

The Petitioner wrote to the Respondent Bank on the 22nd October, 1986 that this transfer of funds was in violation of setoff undertaking and in consequence he could not make payments out of the Current Account No. 1543.

3. IN his counter the Complainant has made further fresh allegations that he could not make payment from the Current Account No. 1543 from 21st March, 1986 to 30th May, 1986 even though there was drawing power and all the cheques issued in Current Account No. 1543 were returned dishonoured for no reasons. IN short, his contention is that by the irregular transfer of Rs. 29,000/- from the Current Account No. 1543 on 12.4.1986 to his Working Capital Account No. 101, his Current Account was frozen, further work on the production unit was stopped and he was starved of funds to undertake production. IN his complaint he has further alleged that he was not allowed to withdraw Rs. 21,074.21p. for purchase of TV components (the date on which this occurred has not been mentioned). He has further alleged that all his withdrawals from any account were stopped from the 2nd of July, 1986. The Complainant has concluded by saying that the Petitioner''s repeated requests to the respondent Bank to reverse the transfer of Rs. 29,000/- from the Working Capital Account to the Fixed Assets Current Account fell on deaf years and this has caused irreparable damage to his unit which was in the process of being established. The Complainant has also alleged that "the Respondent Bank did not provide the Working Capital to the Petitioner firm as a result of which the working of the unit was paralysed." In other words the Working Capital Account No. 101 was not allowed to be operated upon.

4. THE Respondent Bank has contested the peition. In the first instance, he has pointed out that the Petitioner has concealed the fact that he had filed a complaint in the first instance before the District Forum on 9.4.1990 in which no monetary relief was claimed. On 14th May, 1990 he had amended the complaint

and claimed damages of Rs. 9.50 lacs. Consequently this was dismissed by the District Forum as being beyond its jurisdiction. THE Counsel for the Complainant before us could not explain as to why these facts were not disclosed in the complaint. The Respondent Bank in its rejoinder has maintained that: (1) Rs. 29,000/- were transferred from the Fixed Capital Current Account No. 1543 to the Working Capital Account No. 101 on 12.4.1986 on the instruction of the borrower. Further the Complainant Account holder raised no objection to this transfer on the monthly statements of the accounts furnished to him or with reference to the Account Pass Book entries, the Pass Books being with the Complainant. He has also submitted that no complaint was received from the Complainant regarding the bill amount of Rs. 21,074.25p. and in the absence of particulars in the complaint petition, he could say nothing more on this complaint Further, even after transfer of Rs. 29,000/- from Account No. 1543 the Complainant could operate on this account inasmuch as he had drawn only Rs. 5.35 lacs against the sanctioned credit of Rs. 8.43 lacs. There was still drawing power to the extent of Rs. 3.08 lacs but he never drew any amount.

5. ON enquiry from the Commission, the Counsel for the Complainant failed to produce any communication from the Respondent No. 2, U.P. Financial Corporation withholding the further release of funds against the term loan on the ground that the Bank had, contrary to its undertaking, adjusted Rs. 29,000/- from the Current Account No. 1543 to Working Capital Account No. 101. He could also not produce any communication from him to the U.P. Financial Corporation that the said Corporation had wrongfully or unjustifiably withheld the release of funds from Account No. 1543 due to the alleged violation of the "No set off undertaking by the Bank or that the U.P. Financial Corporation refused to release the balance of funds available against the term loan when called upon to do so.

6. THE Counsel for the Complainant referred to his letter of 30th September, 1986 to Respondent No. 2, U.P. Financial Corporation stating that the bank transferred Rs. 29,000/- on 12.4.1986 to the Current Account No. 1543 without the sanction of the U.P. Financial Corporation. A perusal of the letter shows that the Petitioner Complainant had only requested the Bank to honour the Complainant''s Cheque of Rs. 25,431.50p. payable as interest to the U.P. Financial Corporation to avoid penalty. In short, he could not refer to any communication from the Complainant to the Bank protesting against the alleged freezing of either of the banks accounts. It is also noticed that Respondent No. 2, U.P. Financial Corporation in its letter of 22nd October, 1986 to Respondent No. 1, the Bank, requested the latter to reverse the entries in the account. It did not instruct the Bank not to honour the cheques of the Complainant or to refuse the release of the balance of the term loan available viz., 3.08 lacs. Thus there is no truth in the allegations against the Bank that the irregular transfer of Rs. 29,000/- from the Current Account No. 1543 to the Working Capital Account No. 101 starved the Complainant of funds and prevented him from establishing his factory.

In fact, the Respondent No. 2, U.P. Financial Corporation in its letter dated the 27th June, 1986, had asked the Complainant to lift the periodic instalment of loan, the previous instalment having been drawn on the 9th April, 1986. In other words, the Respondent No. 2 never made any issue of the violation of "no setoff undertaking by the bank and the irregular adjustment between the two accounts did not disqualify him from receiving the balance of the term loan or incapacitate him from operating the Current Account

7. AS regards the Working Capital Account No. 101, the Respondent Bank has pointed out that the Complainant has admitted that in his counter that the Account No. 101 had a debit balance of Rs. 3.60 lacs on 9.4.1986 as against his drawing power of Rs. 3.591acs only (The ABC facility for which overdraft to the extent of Rs. 1.40 lacs allowed was not operated at all). From the statement of the Account No. 101 submitted both by the Complainant as well as by the Respondent No. 1 it is seen that this account was continued to be operated upon in subsequent months till January, 1987, when at the request of the Complainant, it was transferred to the Gandhi Nagar Branch of the Bank. This also completely knocks out the allegations of the Complainant that the cheques issued by him on this account were also dishonoured or he was not allowed to operate on this account. Considering, therefore, the facts and circumstances in this case, we are inclined to believe the statement of the Respondent No. 1 that the sum of Rs. 29,000/- was transferred from the Account No. 1543 to the Working Capital Account No. 101 on the instructions of the Complainant himself. This transfer, though irregular, was to the benefit of the Complainant and enabled him to reduce to an extent his exceeding the drawing power limits.

8. ON the basis of the facts on record and taking into account the clarifications furnished or not furnished by the Counsel for the Complainant at the hearing, we find that complaint is without foundation, vexatious and malicious. The complaint is dismissed. The Complainant shall pay a sum of Rs. 2,500/- as costs. Appeal dismissed.

