(1994) 01 NCDRC CK 0046

In the National Consumer Disputes Redressal Commission

DEEPALI ENTERPRISES — APPELLANT

Vs

BRANCH MANAGER, BANK OF MAHARASHTRA — RESPONDENT

Date of Decision : 01-01-1994

Acts Referred:

Citation : 1994 3 CPJ 201

Hon'ble Judges : G.G.Loney , M.G.Gavai , Elipe Dharma Rao J.

Advocate : Kalantri , Mandawgane

Judgement

1. IN this complaint, it is alleged by M/s. Deepali Enterprises, Amravati that the Bank of Maharashtra was deficient in its service towards the complainant. The complainant is a pharmaceutical distributor and commission agent at Amravati. IN the year 1986, the complainant was in need to Bank Guarantee of Rs. 1.5 lakhs for submission to M/s. Bengal Immunity Ltd., Bombay for purposes of his business. The complainant was asked by the Opposite Party bank to deposit Rs. 50,000/- in fixed deposit party receipt which he deposited on 29.3.1986 for a period of five years. The deposit receipt No. 223162 was issued to the complainant. After completion of the formalities the Opposite Party-Bank issued a letter dated 30.3.86 about the bank guarantee in favour of Bengal Immunity, Bombay. It is alleged in the complaint that the normal period of bank guarantee is for 12 months and if the instruction of renewal is not given, then this cannot be valid after the lapse of 12 months from the date of issuing the same. According to the complainant, in the letter dated 30.3.1986 it was stated to be valid upto 29.3.1987. The complainant alleged that though he gave a letter dated 25.7.1988 for renewal of the bank guarantee it was not renewed. It is further alleged that the Opposite Party Bank vide its letter dated 7.2.1989 asked the complainant to deposit Rs. 75,000/- against the Bank guarantee certificate for obtaining bank guarantee certificate. Again the complainant alleged that no bank guarantee was issued in his favour. Therefore the question of renewing the bank guarantee did not arise. It is the case of complainant that after 29.3.87, there was no bank guarantee instruction in force. The complainant, therefore, requested the bank to release the amount of fixed deposit dated 29.3.1986. The

Opposite Party vide its reply dated 11.8.90 stated that the original guarantee instruction has not been returned by beneficiary and, therefore, the security deposit cannot be returned till the same is received. The complainant, therefore, informed the bank vide his letter dated 28.11.90 that as soon as the bank guarantee certificate is received by the complainant the same will be handed over to the bank but till then, the deposit amount of Rs. 50,000/-should be retained by the bank and it should not be paid to M/s. Bengal Immunity Ltd. As against it was intimated to complainant by the Opposite Party Bank vide their letter dated 3.6.1991 that the amount of Rs. 1.51akhs will be paid to the beneficiary as demanded by them. It is the case of the complainant that even though his bank guarantee was not renewed after 12 months, his amount of fixed deposit with interest amounting to Rs. 1.5 lakhs was not paid to him till the filing of this complaint. The complainant alleged that his fixed deposit matured on 29.3.91 and he is entitled to claim from the Opposite Party Bank Rs. 50,000/- as the initial deposit and Rs. 27,172/- towards interest on F.D.R. and-Rs. 8,850/- towards interest after the maturity date. Thus, total amount of Rs. 1,40,100/- is claimed in this complaint.

2. THE Opposite Party Bank filed its written version. THE Opposite Party opposed the complainant''s claim on the technical ground that the complaint is not maintainable and the beneficiary of the bank guarantee is not made a party. It is, however, admitted by the Opposite Party that the complainant had deposited Rs. 50,000/- towards fixed deposit for purposes of bank guarantee and the normal period of bank guarantee is 12 months. It is also stated in the reply by the Opposite Party that the payment of Rs. 1.50 lakhs has been made to Bengal Immunity on 14.8.91. Thus, the complainant''s claim has been denied by the Opposite Party. We have heard Shri Kalantri, Advocate for the complainant and Shri Mandawgane for the Opposite Party. The complainant has filed his affidavit. On the basis of the fact, the complainant had deposited Rs. 50,000/- towards fixed deposit for purposes of obtaining bank guarantee whose normal period is extended for a period of 12 months. Thus, it is clear that the period of bank guarantee expires on 25.3.87. Thereafter, the complainant had by his letter dated 28.11.90 clearly informed the Opposite Party not to make the payment to the beneficiary of the guarantee i.e.Bengal Immunity Ltd. Inspite of this, clear cut notice, the Opposite Party thereafter on 14.8.91 paid Rs. 1.50 lakhs to M/s. Bengal Immunity Ltd. In our view, when the bank guarantee expired and when there was clear instruction from the complainant not to make payment to M/s. Bengal Immunity Ltd., the act of Opposite Party to make the payment contrary to the advice of the complainant amounts to deficiency in service. Complaint allowed.