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(2016) 01 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

Case No : 1004 of 2014

GAUTAM MITRA APPELLANT

Vs

PUNJAB NATIONAL BANK RESPONDENT

Date of Decision : 15-01-2016

Acts Referred:

Indian Penal Code, 1860, Section 120B, Section 420, Section 468, Section 471, Section 428, Section 367, <a

Citation : (2016) 01 NCDRC CK 0004

Hon'ble Judges : K S Chaudhari

Advocate : Ramji Srinivasan, Gautam Mitra, Gaurav Mitra, Dhruv Kapur, Siddharth Bhatia

Judgement

1. This appeal has been filed by the appellant against the order dated 6.8.2015 passed by the learned W.B. State Consumer Disputes Redressal Commission, Kolkata (in short, ''the State Commission'') in S.C. Case No. CC/28/2010 Gautam Mitra Vs. Punjab National Bank by which, complaint was dismissed.

2. Brief facts of the case are that Complainant/Appellant Shri Gautam Mitra, Barrister-at-Law/Advocate practicing at the Hon''ble High Court of Calcutta and the Supreme Court of India since 1974 was initially appointed Commissioner by the Hon''ble High Court, Calcutta, on 2nd June, 1977 in Suit No. 232 of 1975 (Punjab National Bank -vs- Sahu Jain Charitable Society and Ors) to effect partition of premises Nos.18A and 18B, Brabourne Road, Kolkata . He was thereafter appointed Receiver-cum-Commissioner in the said Suit in March, 2000, and took over the operation of the Bank Account / Current Account No. 2621 which was subsequently numbered as Account No.0100002100026213 and thereafter numbered as Account No. 0100002100584489 maintained with the OP/ Respondent Bank at their Brabourne Road Branch, Kolkata, situated at the suit premises. At that time, the Complainant found a nominal balance lying in the said Current Account. The Complainant being the authorized signatory of the said

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Current Account, his specimen signature was taken and kept in the records of the Bank. On or about 29th August 2005, the Complainant received a cheque for Rs.75,00,000/- (Seventy five lakh) only from Sahu Jain Charitable Society pursuant to an order passed in the said Suit . The cheque was deposited into the Current Account maintained with the Bank. By an order dated 31st October 2008 in the Suit No. 232 of 1975, the Complainant was directed to refund the aforesaid sum of Rs. 75,00,000/- to Sahu Jain Charitable Society. On or about 17th November 2008 , the Complainant attempted to make the said refund but it was found that only a sum of Rs.86,293.16 was lying in the said account. Upon making enquiries the Complainant found that immediately after the deposit of the cheque for Rs. 75,00,000/-, cheques of various amounts were presented to the OP Bank by Shri Subir Pal who was then caretaker of the suit premises, that those cheques were presented with imitated signatures of the Complainant and that OP Bank allowed the encashment of those cheques . Almost all such cheques were bearer cheques and money was withdrawn by the said Subir Paul himself by putting his own signature on the reverse of the cheques. Initially the genuine cheques signed by the Complainant were presented for encashment, but later cheques with imitated signatures were presented. Even auditors, Mr. Subir Basu Mallick and Mr. R.K. Saha were given false Bank statements up to March 2007 and audit reports were prepared on the basis of those false statements which incorrectly showed that Rs. 75,00,000/- was still lying in the Bank Account. The sum of Rs. 75,00,000/- being withdrawn from the Bank , the Complainant had to pay the such sum of Rs. 75,00,000/- to Sahu Jain Charitable Society out of his own pocket and suffered substantial financial loss and damage in his personal capacity. More than 600 cheques have been used by the said Subir Pal to withdraw / encash amounts from the Current Account of the Complainant. The Complainant filed a complaint / First Information Report on 7th November 2008 with the Detective Department, requesting the Police authorities to take appropriate action. The Complainant took professional services of a handwriting expert to confirm the imitation of signatures on the cheques and it has been reported that the signatures are not those of the Complainant. The Complainant issued a demand notice to the Bank on 16th February 2009 calling upon them to refund and reimburse the sum of Rs. 75,00,000/-with interest calculated @ 18% p.a. from 18th November 2008. The OP Bank rejected the demand made by the Complainant as improper and unjustified. A charge sheet was submitted by the Police authorities on 7th April 2009 being charge sheet No. 130/2009 dated 6th April 2009 in the Court of the Ld. Chief Metropolitan Magistrate u/s 120B /367/468/420/428/471/477 IPC against the said Subir Pal . The OP Bank by their letter dated 31st August 2009 stated that the original cheques and other documents have been seized by the police and after having the Police Report they will take a final view in the matter. The Complainant filed a copy of report containing opinion of the Questioned Documents Examiner, CID, West Bengal, that the signatures on the cheques used for the encashment of the sum of Rs. 75,00,000/- or more are imitated . Inspite of knowledge about findings of the Questioned Documents Examiner, CID, West Bengal, the OP Bank

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has neglected to pay the demanded amount of Rs. 75,00,000/- though the OP committed gross negligence in dealing with the account of the Complainant maintained as Commissioner-cum-Receiver culminating in gross deficiency in service . The OP permitted the withdrawal from the account of the Complainant without properly verifying the signatures on the cheques. The OP Bank did not furnish any Bank Statement to the Complainant inspite of request being made in that regard. The irregular act on the part of the Bank could not have been carried on by the said Subir Pal without the tacit support, active assistance of employees of the OP Bank. Alleging deficiency on the part of OP, complainant filed complaint before State Commission.

3. Op resisted complaint and submitted that complaint does not fall U/s 2(d) of the Consumer Protection Act as the matter arising out of fraud is pending before the Ld. Court of the Ld. 5th Metropolitan Magistrate , Kolkata, that at none of the meetings held with the Complainant the issue of current account of the Receiver / Commissioner was discussed and that the Bank provided periodical statements of account on regular intervals to the representative / caretaker appointed by the Commissioner / Receiver and on the basis of the same annual audit of the accounts of the Receiver / Commissioner was conducted . The Police authorities during investigation broke open the almirah maintained by the caretaker and seized all the statement of accounts along with all other important documents. The OP Bank always provided computer generated statement of account since 1999 and no typed or hand written statement is delivered to any customer of the OP Bank since 1999. The OP Bank invited the Commissioner / Receiver to identify his signatures on the cheques. During the course of examination of the original cheques issued by the Commissioner / Receiver, he after writing ''accepted'' on the back of the cheques, suddenly stopped and said that he was confused and was unable to differentiate the alleged false cheques. The Commissioner / Receiver did not thereafter turn up to identify and quantify the cheques having alleged false signatures. The cheques were passed after proper identification by Bank officials who did not have any doubt of alleged forgery while handling the cheques. It has also been contended that the OP Bank has no deficiency or negligence and the matter can be crystallized only after the police investigation. The cheques have been honoured in normal course of business in good faith and without any negligence and prayed for dismissal of complaint. Learned State Commission after hearing both the parties, dismissed complaint against which, this appeal has been filed along with application for condonation of delay.

4. None appeared for respondent even after service of notice; hence, proceeded ex-parte.

5. Heard learned Counsel for the appellant and perused record.

6. As there is delay of only 12 days in filing appeal, I deem it appropriate to condone delay for the reasons mentioned in the application.

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7. Learned Counsel for the appellant submitted that inspite of holding complainant as consumer and submitting all necessary evidence regarding forged cheques, learned State Commission committed error in dismissing complaint for want of documents; hence, appeal be allowed and impugned order be set aside and matter may be remanded back to the learned State Commission.

8. Perusal of order reveals that learned State Commission held that complainant falls within purview of consumer. Complaint was dismissed for unexplained reason for refunding 75 lakhs by complainant to OP and for not submitting supporting documents containing signatures marked Q93 to Q.636 with proper identification.

9. Learned Counsel for the appellant submitted that in order to maintain his image, appellant deposited Rs.75 lakhs with Bank. It was further submitted that all original documents were seized by police from OP which were filed by investigating agency in charge sheet filed before Chief Metropolitan Magistrate. In such circumstances, original cheques could not have been presented by complainant before learned State Commission and learned State Commission ought to have called record from Chief Metropolitan Magistrate for disposal of complaint instead of dismissing it for want of record. As complainant was not possessing aforesaid documents, he could have filed only photocopies of the documents and for not filing original documents, complaint could not have been dismissed and impugned order is liable to set aside and matter is to be remanded back to the learned State Commission.

10. Consequently, appeal filed by the appellant is allowed and impugned order dated 6.8.2014 passed by learned State Commission in S.C. Case No. CC/28/2010 Gautam Mitra Vs. Punjab National Bank is set aside and matter is remanded back to the learned State Commission to decide complaint afresh after calling record from concerned criminal court and after giving an opportunity of being heard to both the parties.

11. Parties are directed to appear before learned State Commission on 29.2.2016.

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