(2015) 09 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

Goyals Timber Technicks Ltd. APPELLANT

Vs

Bank Of Maharashtra And Ors. RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:

Citation : (2015) 09 NCDRC CK 0006

Hon'ble Judges : K.S.CHAUDHARI J.

Judgement

1. THIS appeal has been filed by the appellant against the order dated 18.03.2014 passed by the learned A.P. State Consumer Disputes Redressal Commission, Hyderabad (in short, ''the State Commission'') in Consumer Complaint No. 139/2012 - M/s. Goyal''s Timber Technicks Ltd. v. Bank of Maharashtra by which, complaint was dismissed.

2. BRIEF facts of the case are that complainant/appellant Company is registered under the provisions of the Indian Companies Act, 1956 which is engaged in the business of manufacturing of doors, windows and other form work systems and is small scale industry. The complainant is maintaining the account with the opposite party/Respondent bank since 12 years. The complainant apart from utilizing various services rendered by the opposite party bank was also operating cash credit account bearing No. 20011321321 and the account was a standard account. The complainant contended that during the course of its business activities used to have various commercial transactions with various parties and the complainant was having one of such business dealing with M/s. Maytas Infra Ltd. which is now renamed as M/s. IL & FS Ltd. The complainant during the course of the said business transactions issued certain cheques belonging to the complainant company which were in possession of the said company and due to certain disputes between the complainant and M/s. Maytas Infra Ltd. and after suspecting that the said company is trying to encash the cheques of the complainant company, the complainant company issued stop payment letter on 12.08.2010 to the opposite party No. 1. The opposite party No. 1 has acknowledged the receipt of the said letter on 12.08.2010 itself and despite

having acknowledged the stop payment instructions, the opposite party No. 1 has allowed the encashment of the cheques on 31.12.2010 thereby causing a total loss to a tune of Rs. 37,77,000/ -. Alleging deficiency on the part of OP, complainant filed complaint before State Commission. OP resisted complaint and submitted that it did not receive instructions from the complainant for stopping payment of cheques. It was further submitted that OP has no knowledge for what reason complainant issued cheques to M/s. Maytas Infra Ltd. and if complainant has any grievance against M/s. M/s. Maytas Infra Ltd., it can initiate legal action against it. Aforesaid three cheques were passed as per procedure in usual course of business as per instructions of the drawer of the cheques and prayed for dismissal of complaint. Learned State Commission after hearing both the parties dismissed complaint and liberty was given to the complainant to approach appropriate and competent Court against which, this appeal has been filed. Heard learned Counsel for the parties and perused record.

3. LEARNED Counsel for the appellant submitted that as OP cleared cheques inspite of directions for stopping payment, complainant falls within purview of consumer; even then, learned State Commission committed error in holding that cheques were issued for commercial activity. It was further submitted that after recording evidence, learned State Commission ought to have decided complaint on merits also, but has committed error in dismissing complaint only on the legal question; hence, appeal be allowed and impugned order be set aside and matter may be remanded back to learned State Commission for disposal of complaint on merits. On the other hand, learned Counsel for the respondent submitted that as cheques were issued for commercial purposes, order passed by learned State Commission is in accordance with law; hence, appeal be dismissed.

4. PERUSAL of record reveals that learned State Commission recorded evidence and later on vide impugned order dismissed complaint on the ground that complainant does not fall within purview of consumer. Learned Counsel for the appellant rightly argued that after recording evidence learned State Commission ought to have decided complaint on merits also instead of deciding complaint on legal issues. Once evidence is recorded, it was obligatory on the part of learned State Commission to decide complaint on facts and on law both, and should not have decided complaint only on legal point. If complaint was to be decided on legal point, it should have been decided before recording evidence and I am of the view that to this extent, learned State Commission committed error in disposing complaint only on legal point. Now, the core question to be decided in this matter is whether complainant falls within purview of consumer or not.

5. LEARNED Counsel for the appellant submitted that, though, complainant was carrying -on -business and in ordinary course of business issued cheques which were asked to be stopped by OP from encashment and, thus, availing services of OP, complainant was consumer qua OP. She placed reliance on judgment of Hon''ble Apex Court in : (2000) 5 SCC 122 - Vimal Chandra Grover v. Bank of India in which it was held that grant of overdraft facilities to its customer by a

bank amounts to providing of service. She also placed reliance on judgment of Hon''ble Apex Court in : 2006 (5) SCC 727 - Standard Chartered Bank Ltd. v. Dr. B.N. Raman in which it was held that customers to whom services are rendered by the Banks are consumers within the meaning of Section 2(1)(d)(ii). In the light of aforesaid judgments, it becomes clear that complainant was consumer while availing services of OP.

6. BUT , the main question is whether complainant was availing services exclusively for the purpose of earning his livelihood by means of self - employment. Admittedly, the complainant is a Limited Company so by no stretch of imagination, it can be presumed that complainant was availing services exclusively for the purpose of earning his livelihood by means of self - employment. As per pleadings, complainant was having business activities with M/s. Maytas Infra Ltd. which is now renamed as M/s. IL & FS Ltd. and during the course of the said business transactions issued certain cheques in favour of M/s. Maytas Infra Ltd. As cheques by complainant were issued for clearance of commercial transactions between the complainant and M/s. Maytas Infra Ltd., complainant was availing services of OP for commercial purposes. This Commission in III : (2012) CPJ 264 (NC) - Satish Kumar Gajanand Gupta v. Srushti Sangam Enterprises (India) Ltd. & Anr. held that where complainant resident of Delhi intended to purchase permanent accommodation at Mumbai for his stay during his business visits to avoid expenditure incurred in hotels, transaction was relating to business activity which fall into the category of commercial purpose and complainant was held not to be a consumer. In II : (2014) CPJ 724 (NC) - Shailaja Finance Ltd. v. GTM Builders and Promoters Pvt. Ltd. flat purchased by Complainant company to use it for residential purpose of its Directors and staff members was held to be commercial purpose. In Complaint No. 39 of 2013 - M/s. Sam Fine O Chem Ltd. v. Union Bank of India, this Commission observed that charge of excess interest by bank from Complainant Company pertaining to complainant''s Bank Account activity was held to be commercial and complaint was dismissed by this Commission. This order was challenged before Hon''ble Apex Court in C.A. No. 7141/2013 which was dismissed by the order dated 19.8.2013. This Commission in R.P. No. 2571 of 2012 - Subhash Motilal Shah (HUF) & 6 Ors. v. Malegaon Merchants Co -op. Bank Ltd. upheld order of dismissing complaint honouring cheques by bank which were alleged to have been forged. SLP (C) No. 39200/2013 filed against this order was dismissed by Hon''ble Apex Court vide order dated 13.1.2014. In the light of aforesaid judgments it becomes clear that as complainant being Limited Company was availing services of OP for commercial purposes, complainant does not fall within purview of consumer under the C.P. Act. and learned State Commission has not committed any error in dismissing complaint on this ground.

7. I do not find any illegality in the impugned order and appeal is liable to be dismissed.

8. CONSEQUENTLY appeal filed by the complainant is dismissed with no order as

to costs.

