(1993) 10 NCDRC CK 0092

In the National Consumer Disputes Redressal Commission

HARBANS And CO. APPELLANT

Vs

STATE BANK OF INDIA And OTHERS RESPONDENT

Date of Decision : 06-10-1993

Acts Referred:

Citation : 1994 1 CPC 18 : 1994 1 CPR 381 : 1994 2 CPJ 456

Hon'ble Judges : S.S.Dewan , R.L.Gupta J.

Final Decision : Complaint dismissed

Judgement

1. THIS is a complaint under Section 17 read with Section 12 of the Consumer Protection Act, 1986 (for short ''The Act'') for deficiency in the banking service rendered or to be rendered by the -State Bank of India. The specific reliefs sought in the complaint are these: "(i) the opposite-party be summoned and punished for committing an offence under the Consumer Protection Act; (ii) to direct the opposite-parties to compensate for the loss suffered by the complainant due to the deficiency in their service which is, (a) Rs. 1,89,099.90 due to the distress sale of goods; (b) Rs. 1,02,635/- expenditure incurred in going to Dubai; (c) Rs. 28,365/- received as export incentive which is now to be returned; (d) interest upto 20.12.1990 is Rs. 80,000/- (e) interest @ 18% p.a. w.e.f. 21.12.1990 which comes to Rs. 1,62,04090 till date plus accrued interest till the payment is made. Total amount of Rs. 5,62,140-80. (iii) to award an amount of Rs. 2 lacs as compensation for the loss and injury suffered by the complainant due to the gross negligence and deficiency in service of the Opposite-party.

2. THE grievance of Harbans Lal, Complainant, a partner of the Firm-M/s. Harbans & Co. is that the firm had entered into an agreement with M/s. Siam Readymade Garments Factory, Sharjah (UAE) for the supply of knitted garments. THE garments were to be supplied directly to AL Jallaf Trading, Dubai and as per terms of the deed, the Siam Readymade Garments Factory, Sharjah opened a letter of credit No. DUB 895978 for US $ 70729.56 through the British Bank of the Middle East, Dubai. THE beneficiary was the complainant and the Opposite-

party No. 4 (State Bank of India, Ludhiana) was the advising bank; that acceptance of the letter of credit was conveyed to the Importer in Dubai vide Proforma Invoice dated 30.12.1989 sent by the complainant (Annex. C-3) and the goods were shipped in three consignments in the month of February, 1990 and all these transactions were routed through the Opposite-party No. 4. It is alleged that the first consignments sent vide Annexure C-5 for USD 14567.00 was negotiated by the Opposite-party No. 4 and honoured by the drawee - opening bank without any objection and the second and third consignments vide Annexure C-6 and C-7 for USD 14,200 and USD 17,050 respectively were also negotiated by the Opposite-party No. 4 informed the complainant that the drawee of the bill had pointed out a discrepancy i.e. the unit rate should be 0.605 and not 0.65 and had refused to negotiate the bills. THE Complainant explained and showed the original contract to the Opp. Party, which mentioned that the drawee will honour the documents even if there was some discrepancy and that the Opposite-party No. 4 was also informed that the bills were negotiated by them after proper scrutiny. According to the complainant, the Opposite-party No. 4 instead of taking-up the matter with the opening bank, simply debited the amount of the complainant without any authority/permission from the firm and while negotiating the letter of credit, flouted their own instructions by debiting the amount to the account of the complainant in an unathorised manner and the State Bank of India had failed in its duty to take-up the matter effectively with the opening bank and thus defeated the very purpose of opening of letter of credit for exporting the goods. It is further alleged that due to the unfair trade practice and deficiency in service on the part of the Opposite-parties, the complainant had to rush to Dubai as the loss due to demmurage and storage charges were mounting and the goods were likely to be damaged and that he had to stay at Dubai for 30 days and restored to distress selling at the then prevalent rate of dollar and thus he had to incur a huge loss of USD 10220. THE Complainant on the basis of these averments sought reliefs as narrated above. On notice being issued, the Opposite-party No. 4 filed its written statement and fragmentary preliminary objections having been taken by it to which a reference is unnecessary because the same are not pressed. On merits the Opposite-party controverted the allegations of the complainant and pleaded that there had been no deficiency in service. It was averred that the bills of the complainant were not free from discrepancy because he had charged the higher amount for the goods supplied than that of the contracted amount. It was alleged that because of this fatal discrepancy, the opening bank never honoured the bills inspite of the fact that the Opposite-party bank sent repeated reminders requesting to the opening bank to honour the documents but the latter refused to do so.

According to the Opposite-party No. 4, they had sent two bills for realisation of the proceeds of the negotiated bills and the opening bank pointed out a discrepancy in the unit price of the goods supplied and finally the bills were dishonoured and the same were communicated to the complainant and was duly acknowledge by the Firm and that in Annexure C-3, the proforma invoice dated 30.12.1989, which was a total contract between the seller and the buyer i.e. the complainant as a seller and M/s. Siam Readymade Garments Factory, Sharjah (UAE) as a buyer wherein it was settled that the buyer will accept all bills to be drawn under the L.C. inspite of any discrepancy and the answering bank did not come in the picture at all. It was alleged that the answering bank was to act for and on behalf of the complainant for negotiating the documents under a general letter of indemnity bond Annexure C-23 wherein, it was clearly stipulated that the Complainant had no right, title or interest to claim any damages from the Opposite-party for any loss or damage as a result of any act of omission or negligence in the collection of the amount of the Bills. It was further alleged that when the opening bank did not honour the bills and never remitted any payment as alleged and there being discrepancy in the documents, the answering bank had no option except to send the amount to the opening bank through whom the reimbursement we earlier claimed and received and that the discrepancy was duly communicated to the complainant vide letters Annexures 0-2 and 0-3.

3. IN support of his claim, the complainant-Harbans Lal rested himself content with the averments made in the complaint and the unproved documents Annexures C-l to C-12. No other evidence was adduced and no reason was given as to why the complainant had chosen to refrain from appearing in the witness box, indicated. The Opposite-party put in the documents Annexure O-l to O-23. The Complainant filed replication reiterating the allegations made in the complaint. Both the parties were afforded opportunity to adduce any other evidence in support of their case. That however, was not at all availed of and the Commission was compelled to close their advance. When the case was taken-up today, Mr. Bhupinder Kakkar, Advocate for the complainant stated that he did not wish to lead any further evidence apart from the one noticed above. On his request we heard the learned Counsel for the parties and considered the record.

4. HAVING regards to the averments in the complainant, objection statement and the submissions made by the learned Counsel for the parties, the only point that arises for our consideration is whether there was any deficiency in service rendered by the Opposite-party No. 4. From the perusal of the complaint, it is clear that the sum and substance of the complaint is that instead of taking-up the matter with the opening bank, the Opposite-party-bank debited the amount of the complainant without any permission from the Firm and thus defeated the very purpose of opening of letter of credit for exporting the goods and that due to the unfair trade practice and deficiency in service on the part of the State Bank of India, the complainant had to rush to Dubai and to resort to distress selling at the then prevalent rate of dollar and had to incur a huge loss of USD 10220. The firm plea of the Opposite-party-bank was that when the two bills of the complainant were sent to the opening bank for realisation of the proceeds of the negotiated bills, the same were dishonoured because of the discrepancy in the unit price of the goods supplied by it and that the firm was informed of that discrepancy and the same was acknowledged by it and that when the opening

bank did not honour the bills and never remitted any payment and there being discrepancy in the documents, the answering bank had no option except to send the amount to the opening bank. The stand of the Opposite-party was that the bank had acted for and on behalf of the complainant for negotiating the documents under a. general letter of indemnity bond Annexure C-23 wherein it was clearly stipulated that the complainant had no right, title or interest to claim any damages from the Opposite-party for any loss or damage as a result of any act of omission or negligence in the collection of the amount of the bills. The Opposite-party-bank has explained that it took up the matter with the opening Bank and in good faith remitted the amount to the opening Bank through whom, the reimbursement was earlier claimed and received. Be that as it may, the complainant has failed to establish precisely how and in what respect the Opposite-party-bank failed to discharge its obligations to the complainant. Having regards to these facts and in the circumstances of the case, we do not See any substance in the grievance made by the complainant regarding the alleged unathorised debiting the amount to the account of the complainant. So we hold and record that there was no deficiency in the services rendered by the Opposite-party.

5. IN addition, we find that the complainant has claimed reliefs regarding the loss of Rs. 1,89,099.90 sustained by the firm due to the distress sale of goods at Dubai and the amount of Rs. 1,02,635/- incurred by it for going to Dubai. From the narration of these facts, it would be evident that the case involves complex questions of facts, rights and obligations of the parties, (a) as between the parties it would be required to determine whether the complainant had sold the goods at Dubai for Rs. 1,89,099.90 due to distress sale (b) and whether the complainant had incurred the expenditure of Rs. 1,02,635/- for going to Dubai. The complainant has not adduced any oral or documentary evidence to substantiate his claim on these items.

6. IT is evident from the above that the complainant''s case is not a simple case of deficiency in service rendered by the Opposite-party bank. IT involves determination of complex questions of facts and law, which cannot be satisfactorily determined by this Commission in the time frame provided under the Act. IT would be better for the complainant to seek redress of his grievances in a Civil Court, if so advised. With these observations, the complaint is dismissed with no order as to costs. The Complainant is free to seek redress in a Civil Court, if it so choose. Complaint dismissed.

