(2013) 04 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

Haryana Packaids Pvt. Ltd. APPELLANT

Vs

Punjab And Sind Bank and Others RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Citation : 2013 2 CPJ 591

Hon'ble Judges : ASHOK BHAN J.

Final Decision : Appeal dismissed

Judgement

1. COMPLAINANT /Appellant has filed this Appeal seeking interest on the awarded amount against the judgment and order dated 5.3.2007 passed by the State Consumer Disputes Redressal Commission, Delhi, (in short, ''the State Commission'') in Complaint No. 50/98 wherein the State Commission allowing the complaint has directed the Respondents to pay the amount of withheld cheque of Rs. 8,39,276 to the Complainant along with compensation of Rs. 50,000 and costs of Rs. 10,000. Facts:

Complainant/Appellant Company was having a current account with one of the Branch of Punjab & Sind Bank at Tilak Nagar, New Delhi. It opened a new current account with Respondent No. 1, Punjab and Sind Bank, Chandni Chowk, Delhi on 19.2.1996. State Commission, Delhi vide order dated 20.3.1995 awarded an insurance claim in favour of the Appellant for the loss suffered by it against the United India Insurance Company and a cheque of Rs. 8,39,276 was deposited by the Insurance Company with the Respondent Bank towards the satisfaction of the decree on 13.10.1995. State Bank of India, Noida Branch raised an objection to release the said amount to the Appellant as it was having a dispute pending with the Appellant since 1993. This Commission vide order dated 30.1.1996 directed the Respondents to release the amount to the Appellant. Appellant received a Pay Order No. 741377 dated 13.2.1996 for Rs. 8,39,276 from the State Commission, Delhi and deposited the same with the Respondent No. 1 Bank along with orders passed by this Commission and the State Commission. Amount was credited to the new account of the Appellant at Chandni Chowk on

21.2.1996. But the Respondent Bank denied the Appellant either to withdraw the deposited amount or to transfer the same to the Tilak Nagar Branch of the Respondent Bank. Appellant issued three cheque Nos. 234701, 234703 and 234704 on 27/28.2.1996 for Rs. 82,000, Rs. 50,000 and Rs. 5,00,000 respectively to its creditors but the same were dishonoured by the Respondent Bank on the ground "Account Freezed". Complainant, being aggrieved, filed the complaint before the State Commission.

2. RESPONDENTS , on being served, put in appearance and filed their written statement resisting the complaint on the grounds that the Pay Order for Rs. 8,39,276 deposited with the Respondent on 20.2.1996 was kept in the sundry account as the new account was opened by the Appellant only on 27.2.1996 after completing all the necessary formalities; that since the account was opened on 27.2.1996, no cheque book could have been issued to the Appellant on 21.2.1996 nor could the account number be allotted; that the State Bank of India, Noida obtained an ex parte order from the Civil Court, Ghaziabad restraining the Appellant to withdraw the amount; that there was no deficiency in service on their part. State Commission came to the conclusion that the State Bank of India, Noida in collusion with the Respondent Bank obtained the particulars of deposits and account number to file a suit against the Appellant; that the suit was not filed against the Appellant but against Packraft India Pvt. Ltd. with which the Appellant had nothing to do; that the Respondent Bank deliberately did not clear the cheques issued by the Appellant. State Commission allowed the complaint and directed the Respondents to pay a sum of Rs. 8,39,276 of the withheld cheque to the Appellant. Since, there was an inter se dispute between the State Bank of India, Noida and the Appellant as a result of which the amount remained deposited with the Respondent Bank, the State Commission awarded a lump sum compensation of Rs. 50,000 to the Appellant instead of awarding interest. Rs. 10,000 were awarded towards cost of litigation.

3. STATE Commission in its order observed as under: As it apparent from aforesaid rival contentions there is no dispute that the Bank Draft was encashed by the OP Bank on 21.2.1996 being of high value and the OP kept this money in suspense account and did not issue cheque book from 21st February onwards. Secondly, the OP in collusion with the State Bank of India gave particulars of deposits and account number to facilitate State Bank of India to file a suit, though there was no such occasion for State Bank of India to be in knowledge about the opening of the account and deposit of demand draft. Moreover, suit was not filed against the complainant but against Packraft India Pvt. Ltd. with which the complainant had nothing to do. Thus the OP deliberately did not clear the cheques issued from 27th February, to 21st March, 1996, the date upto which complainant had issued cheques. Cheques in question were not drawn by either OP No. 2 or OP No. 3. Instead these cheques were issued by Inder Vaid, Director of the Company. Therefore, the Bank had no reason to refuse payment as there was no order as on 27.2.1996 or of 12.3.1996 restraining payment.

It was not open to the OP -Bank to refer to and rely upon the pleadings of SBI as well as the orders and that too an ex parte order passed by the Civil Court. OP was only concerned whether there was a stay against the operation of the account and the cheques issued by the complainant, i.e. Inder Vaid and nothing beyond that.

4. RESPONDENTS have accepted the order passed by the State Commission and did not file any appeal. Appellant, being aggrieved, has filed the present appeal seeking interest on the awarded amount. We have heard the learned Counsel for the parties at length.

Learned Counsel appearing for the Appellant contends that the Appellant has been deprived of interest for no fault on its part; that the findings recorded by the State Commission are contradictory; that on the one hand, State Commission held the Respondent Bank deficient in service by withholding the cheque amount illegally but on the other hand has rewarded the Respondent by not making it liable to pay the interest for withholding the amount for 11 years.

5. AS against this, learned Counsel appearing for the Respondent contends that the Appellant is not entitled for either interest or compensation as the Civil Court of Ghaziabad had passed a stay order dated 16.4.1996 staying the withdrawal of Rs. 8,39,276 by the Appellant which order was unsuccessfully challenged by the Appellant till the Apex Court. Moreover, the cheque amount was deposited in the current account which admittedly does not run any interest. The facts of the case are not in dispute before us.

6. PAY Order deposited by the Appellant was got encashed by the Respondent Bank on 21.2.1996 and the amount was kept in Suspense Account since the new account was opened by the Appellant on 27.2.1996. State Bank of India, Noida Branch (in short the "SBI") filed two Civil Suit Nos. 1200/93 and 1201/93 against the Appellant and M/s. Packraft India Pvt. Ltd. in which defendant No. 2/V.S. Mann and Defendant No. 3/Usha Mann were the common Directors seeking an injunction to restrain them from withdrawing the amount of Rs. 8,39,276 as a recovery suit for Rs. 23,45,654.41 filed by the SBI was already pending against these two Directors. Vide orders dated 24.2.1996 and 16.4.1996 in the Civil suit Nos. 1200 and 1201 of 1993 respectively, the Civil Court of Ghaziabad stayed the withdrawal of Rs. 8,39,276 lying in Punjab & Sind Bank, Chandni Chowk, Delhi, by the Appellant. Further, the Civil Court of Ghaziabad vide ex parte order dated 12.3.1996 stopped the Defendant No. 2A/V.S. Mann and Defendant No. 3/Usha Mann to operate the account of the Appellant Company. The cheques issued by the Appellant to its creditors were dishonoured by the Respondent Bank on the ground that "Account had been freezed" as per Court order dated 12.3.1996. Against the said orders, Appellant as well as M/s. Packraft India Pvt. Ltd., filed Appeal Nos. 211/96 and 347/96 before the Allahabad High Court. Allahabad High Court vide its common order dated 13.8.1996 dismissed the Appeal No. 347/96 filed by M/s. Haryana Packaids Pvt. Ltd. whereas the Appeal No. 211/96 filed by M/s. Packraft India Pvt. Ltd., was allowed. SLP (C) No. 916/97 filed by the

Appellant was also dismissed by the Hon''ble Supreme Court vide order dated 28.4.1997. We agree with the contention raised by the learned Counsel for the Appellant that the interest is not a penalty or punishment and is the normal accretion on capital as held by the Hon''ble Supreme Court in the case of Alok Shanker Pandey v. Union of India & Ors., III : (2007) SLT 27 : II (2007) CPJ 3 (SC) : (2007) 3 SCC 545. In normal circumstances, we would have granted the interest on the amount lying deposited with the Respondent Bank but decline to do so for the reasons stated by the State Commission in its order. State Commission keeping in view the peculiar facts and circumstances of case granted overall compensation of Rs. 50,000 to the Appellant instead of awarding interest by observing thus: In view of the peculiar facts of the case and the stand taken by the OP with regard to the inter se litigation between SBI and the complainant - company as well as the other partners, we do not feel inclined to award interest and award lump sum compensation of Rs. 50,000 for the deficiency in service for unauthorisedly and illegally having withheld the amount of the cheque. OP shall also pay Rs. 10,000 as cost of proceedings.

In our considered view, State Commission in the peculiar facts and circumstances of the case has rightly awarded the lump sum compensation of Rs. 50,000 instead of awarding interest to the Appellant. This part, the amount was kept in the Current Account which does not earn any interest. We do not find any infirmity in the order passed by the State Commission.

For the reasons stated above, we do not find any merit in this appeal and dismiss the same leaving the parties to bear their own costs.