(2012) 09 NCDRC CK 0099

In the National Consumer Disputes Redressal Commission

Haryana State Consumer Disputes Redressal Commission Panchkula — APPELLANT

Vs

Krishan Dutt Son Of Shri Roshal Lal , H.D.F.C. :Bank Ltd. — RESPONDENT

Date of Decision : 05-09-2012

Acts Referred:

Citation : 2012 0 NCDRC 509

Hon'ble Judges : J.M.Malik , Vinay Kumar J.

Advocate : H.P.Bhardwaj

Judgement

1. SHRI Krishan Dutt, the complainant sold his agricultural land to Manohar Lal. Manohar Lal gave him a cheque dated 12.9.2006 drawn on HDFC Bank Limited for Rs.2,40,000/- as earnest money. The complainant deposited the said cheque with the Oriental Bank of Commerce, petitioner/opposite party on 15.9.2006 as Krishan Dutt is petitioner''s account holder. On 18.9.2006, the petitioner sent the above said cheque to HDFC Bank Limited, Karnal through clearing but the said cheque was returned by HDFC Bank Limited, Karnal stating that the said cheque was payable at Mumbai. The petitioner-Oriental Bank of Commerce sent the above said cheque by registered post to Senior Service Branch at Mumbai for being presented to HDFC Bank Limited, Mumbai. However, the said cheque was not delivered by postal authorities to the addressee, the Senior Service Branch of the petitioner at Mumbai.

2. ON 10.10.2006, Shri Krishan Dutt, the payee of the cheque informed that the said cheque amount was debited in the account of the drawer of the cheque. On 13.10.2006, on enquiry, Senior Service Branch at Mumbai denied having received the cheque. Senior Superintendent of Post Office Karnal informed the petitioner, Bank that the said registered letter was delivered on 25.9.2006. A copy of the cheque was also received by the petitioner and on examination of the same, the petitioner found that the stamp of Oriental Bank of Commerce, which was put while sending the cheque to their Senior Service branch at Mumbai, was obliterated and a new cheque in someone else name was prepared and got

collected.

3. THE complainant filed a complaint with the District Forum. The cheque amount was paid on 10.10.2006 from drawer''s account to a person other than the complainant.

4. THE District Forum after hearing the parties held that both the banks, petitioner and HDFC Bank, were jointly and severally liable to compensate the complainant with a sum of Rs.2,40,000/- alongwith interest @10% p.a. from the date of encashment of cheque i.e. from 10.10.2006 till payment. The compensation in the sum of Rs.6,000/- was also awarded to the complainant for causing mental agony and harassment as well as financial loss to him. However, the State Commission did not grant any relief regarding forfeiture of the earnest money in the sum of Rs.60,000/-

5. WE have heard the learned counsel for the petitioner. Learned counsel for the petitioner argued that the petitioner-bank has only received the cheque and is protected under Section 131 of the Negotiable Instruments Act, 1881. He argued that he should not be burdened with this much amount and this Commission can reduce the said amount.

6. WE find no force in his arguments. The order of the State Commission goes to show that the other opposite party has already paid 50% of the compensation to the complainant. It is the petitioner and nobodyelse, who is more negligent. It could not send the cheque to Senior Service Branch, Mumbai. It did not take any action against the postal authorities. If the postal authorities did not pay any heed to their request, it could have filed another case against the postal authority including the complaint in the consumer court. It is clear that the petitioner is not serious and has not taken any action against the wrong doer i.e. post office. The petitioner has made a vain attempt to fight with windmills. Dallops of mystery surround this case. The revision petition is without force and is dismissed.