

(1993) 10 NCDRC CK 0065

In the National Consumer Disputes Redressal Commission

INDIAN OVERSEAS BANK

APPELLANT

Vs

MAHAVEER METAL INDUSTRIES

RESPONDENT

Date of Decision : 21-10-1993

Acts Referred:

Citation : 1993 3 CPJ 372 : 1994 1 CLT 407 : 1994 1 CPC 116

Hon'ble Judges : V.Balakrishna Eradi , A.S.Vijayakar , Y.Krishan , B.S.Yadav J.

Final Decision : Appeal allowed

Judgement

1. -THIS is an appeal against the order dated the 21st of February, 1992 made by the State Commission of Tamil Nadu in Original Petition No. 117 of 1991. The State Commission held that the appellant Bank had unjustifiably dishonored the cheques issued by the firm which must have certainly affected the firm's reputation. In consequence it allowed Rs. 25,000/- as compensation by way of damages to the respondent complainant and costs of Rs. 5,000/-.

2. ON the basis of the records and the averments made before us at the hearing, the relevant facts are briefly noticed below: The respondent complainant firm was originally a partnership consisting of 6 partners. It is stated in the order of the State Commission that this firm was reconstituted on 10th May, 1989 under a fresh deed of partnership, but the name and style of the firm is the same, as of the firm before reconstitution, i.e. M/s. Mahaveer Metal Industries, with three partners, Shri Champalal, Shri Bansilal and Shri Chunnilal. However, according to the appellant Bank, while opening the current account of the newly constituted partnership in 1989, in the partnership deed of 10th May, 1989 it was stated that Shri Pukhraj, one of the partners in the firm prior to reconstitution had expressed his desire to retire in 1985 w.e.f. 13th November, 1985, but he did not sign the retirement deed. Likewise, two other partners, viz. Shri Shanti Lal and Shri Prasad Mal had also decided to retire from the partnership w.e.f. 1.4.1989, but it is not clear whether they had actually retired by signing the retirement deed. However, this question whether they had retired or not, is not relevant as would be evident from the facts hereafter. 1. The partnership firm before

reconstitution on 10th May, 1989 had opened a current account with overdraft and cash credit facilities with the Indian Bank Sowcarpet Branch, Madras.

2. On the reconstitution of the firm on 10th May, 1989, the new partnership firm with the same name and style, i.e. Mahaveer Metal Industries opened a current account with the Indian Overseas Bank, Sowcarpet Branch, Madras.

3. According to the appellant bank at the time of opening of the account in 1989 with Indian Overseas Bank, it was not disclosed that they had a similar current account already existing in the same name and style with the Indian Bank.

4. On 9th June, 1990 the Indian Overseas Bank received a communication from Shri Pukraj, one of the partners, before the reconstitution of 10th May, 1989, that the erstwhile partnership had not been dissolved and that one of the partners Shri Chunnilal in collusion with two other partners had opened an account in that Bank. Further that there was a dispute among the partners of erstwhile firm and that the matter was in the Civil Court. Further, that the firm before the alleged reconstitution had an account with the Indian Bank, Sowcarpet Branch and that the opening of an account in another bank viz. the Indian Overseas Bank without the consent of all the partners was illegal. He had further requested that the current account of Mahaveer Metal Industries with the Indian Overseas Bank be frozen. On receipt of this communication, the Indian Overseas Bank had reported the objection taken by Mr. Pukhraj to the opening of the current account with the bank in the same name and style, Mahaveer Metal Industries without dissolving the earlier partnership. It had merely requested the Mahaveer Metal Industries "to produce the dissolution deed of the erstwhile partnership to enable us to make sure that the earlier firm was dissolved. Until then, we have no other alternative but to stop operations in your account with us." In short, according to the appellants, the respondent partnership had opened an account with the appellant bank by misrepresenting material facts and without disclosing the pendency of disputes between the partners.

It is not necessary for us to go into the question whether the original partnership had actually been dissolved keeping in view the statement made by the Bank that the three partners (who were said to have retired) had merely expressed their desire to retire from the firm but had not signed the deed of retirement. The mere fact that the so called partnership which was stated to have been constituted on 10th May, 1989 had opened an account in the same name and style, M/s. Mahaveer Metal Industries with the Indian Overseas Bank without disclosing that the previous partnership had current account with the Indian Bank in the same name and style was sufficient ground for the appellant bank to stop the operation of the account. In fact, the appellant Bank was within its rights to ask for the production of the deed of dissolution of the erstwhile partnership firm so that it could make sure that the same had been dissolved. In our opinion, the appellant-Bank was more than reasonable inasmuch as it only stopped the operation of the account pending production of the deed of dissolution. As such, there was no deficiency in service on the part of the

appellant Bank. The appeal succeeds, the order of the State Commission is set aside and the complaint petition is dismissed. There is no order as to costs. Appeal allowed.