(1999) 07 NCDRC CK 0030

In the National Consumer Disputes Redressal Commission

KEDIA APPLIANCES LIMITED APPELLANT

Vs

NIHARIKA DISTRIBUTORS RESPONDENT

Date of Decision : 05-07-1999

Acts Referred:

Citation : 1999 3 CPJ 126 : 1999 3 CPR 447 : 2000 1 CPC 224

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Petition dismissed

Judgement

1. BY means of this complaint, the complainant has prayed for damages amounting to Rs. 2,07,074.50 against the opposite parties. The facts of the case, stated in brief, are that opposite party No. 1, Niharika Distributors, is a distributor of complainant for Bihar State. For distributorship, opposite party No. 1 got a Bank Guarantee from opposite party No. 2, State Bank of India for an amount of Rs. 2,50,000/- for a period of six months. This Guarantee was dated 15.3.1986. The Bank, opposite party No. 2, was liable to make upto an amount of Rs. 2,50,000/- payment to the complainant. The complainant wrote a registered letter dated 2nd September, 1986 to opposite party No. 2, the Bank, for renewal of Bank Guarantee as a sum of Rs. 1,01,527.50 was due against opposite party No. 1. This letter was received by opposite party No. 2 on 4.9.1986. Thereafter the complainant on 7.11.1986 sent a reminder to his letter dated 2nd September, 1986. BY letter dated 18th November, 1986 opposite party No. 2 acknowledged the receipt of letter but did not mention the date on which the letter was received by them. Thereafter several letters were written to the opposite party Nos. 1 and 2 but no reply was received. Opposite party No. 2 did not renew the Bank Guarantee and colluded with opposite party No. 1 and did not pay the amount of Rs. 1,01,527.50. Opposite party No. 2 is liable to pay this amount.

2. A notice dated 13.8.1991 was sent through an Advocate for an amount of Rs. 1,42,581.30 including the amount mentioned above alongwith interest. Opposite party No. 1 refused to accept the registered cover, but opposite party No. 2 got a

reply sent and denied his liability to make the payment. On these allegations, the complainant has prayed for recovery of Rs. 1,01,527.30 alongwith interest of Rs. 49,492.95 from 31.12.1991. He has also claimed a sum of Rs. 10,000/- as expenses of Advocate, witnesses, typing charges, etc. A sum of Rs. 5,000/- was also claimed as compensation.

State Bank of India, opposite party No. 2, filed written statement alleging therein that the Bank Guarantee of Rs. 2.5 lacs was given by State Bank of India, opposite party No. 2, on 5.3.1986, after opposite party No. 1 had furnished all the requisite documents including non-encumbrance certificate, sales deed, Advocate opinion, etc. The indemnity bond was furnished on 5.3.1986 for the same amount of Rs. 2,50,000/- alongwith other terms and conditions. It was also provided in the agreement that opposite party No. 2, Bank, shall be discharged from all liabilities after a period of six months which was the date fixed for expiry of the agreement. A copy of this agreement has been filed as Annexure D. It has further been alleged that by letter dated 2nd September, 1986, which was received by the bank on 8th September, 1986, requested the Bank to extend the Bank Guarantee, copy of which is annexed as Annexure F.M/s. Niharika Distributors, opposite party No. 1, never requested the Bank to extend the Bank Guarantee. Even if they would have requested for extension of the Bank Guarantee, it was not incumbent on the Bank to extend the Guarantee as there was no stipulation in the agreement of Guarantee. Therefore, the Bank was not inclined to renew the period of Guarantee. The bank was only under a legal obligation to pay a maximum amount of Rs. 2,50,000/- to the complainant if any such demand would have been made before the expiry period of Bank Guarantee. No demand was made by the complainant to opposite party No. 2 for making any payment on or before 4th September, 1986. The Bank was not under any obligation to make payment unless specifically asked for. After the expiry of the period of the Bank Guarantee, the Bank is under no obligation to pay the amount of Bank Guarantee. It is further alleged that by letter dated 7th September, 1986, complainant requested for extension of Bank Guarantee and it was also indicated in their letter that a sum of Rs. 1,01,527.50 was still outstanding against opposite party No. 1. The copy of this letter is on record. Copies of the letters written to the opposite party No. 1 have also been filed and are on record. M/s. Niharika Distributors informed the Bank on 14.11.1986 that an amount of Rs. 7,000/- was approximately due against the opposite party No. 1. The Bank had written to the complainant that as period of Bank Guarantee has expired, the Bank is not liable to make the payment. Copy of this letter is Annexure P. By letter dated 18.11.1986, opposite party No. 1 had written to the Bank that they are no longer interested in getting the Bank Guarantee renewed which had already expired. By letter dated 18.11.1986, opposite party No. 1 had asked the State Bank, opposite party No. 2, to return the agreement of Bank Guarantee. Copies of these letters are annexed as Annexures ''L'' and ''M''. By letter dated 24.12.1986, the complainant wrote to the opposite party No. 2 to send a demand draft of Rs. 1,01,527.50. Ultimately the amount was reduced to

Rs. 57,270/- vide letter dated 2nd June, 1987. Vide letter dated 18th June, 1987 the Bank had informed the complainant finally that as the Guarantee was not extended, therefore, the Bank is not liable to pay the amount to the complainant. The Bank had replied to the legal notice of the complainant and denied the liability of the Bank Guarantee.

3. MAINTAINABILITY of the petition before the State Commission was also challenged. It their affidavit-cum-rejoinder filed by the complainant, the allegations mentioned in the complaint were repeated. It is alleged that the letter dated 2.9.1986 was received on 4.9.1986 and not 8.9.1986 as alleged by opposite party No. 2. It is alleged that the Bank is liable to pay an amount of Rs. 1,01,527.50 as already alleged in the complaint. The claim of interest has also been raised in the replication.

4. AS none was present, we were deprived of the hearing of the Counsels for the parties. We have perused the file and have gone through the evidence on record. A copy of the Bank Guarantee is on record. Alongwith Bank Guarantee, there is a letter of complainant also on record which is dated 5.3.1986. It has been addressed to State Bank of India, opposite party No. 2, in which it has been agreed that the Bank Guarantee will be valid upto 4th of September, 1986. The copy of the Bank Guarantee is on record besides the terms agreed between the parties, it is mentioned in para 4 of the Guarantee that "unless this Guarantee is revoked on or before 4.9.1986, the Bank will be discharged of all its liabilities. Thus, the terms of the Bank Guarantee and the agreement between the parties are clear and they admit of no two opinions. The message is clear mat the Bank Guarantee expired on 4th September, 1986 and if any demand is to be made by the complainant for the amount due against opposite party No. 1, then it should have been made before 4th September, 1986 and not thereafter. After this date the guarantor is not at all responsible to make the payment of any outstanding dues which may be owned by the opposite party No. 1 in favour of the complainant. In the complaint, it is nowhere alleged that by letter of 2nd September, 1986 the complainant had invoked the Bank Guarantee and demanded the dues for opposite party No. 1. The complainant could have invoked the Bank Guarantee before 4th September, 1986 upto a maximum amount of Rs. 2,50,000/-. Had this been done, then the Bank was bound to pay the amount to complainant. After the expiry of the period of Bank Guarantee which was not renewed by opposite party No. 1, the complainant cannot make any demand for the amount which was due against opposite party No. 1. Copies of the letters of the Bank also clearly goes to show that as the period of Bank Guarantee has expired, the Bank is not liable to make any payment. The stand taken by the Bank is supported by evidence on record and the claimant''s prayer cannot succeed. In view of the above discussions, the claim petition is liable to be dismissed. ORDER The claim petition is dismissed. There will be no order as to the costs. Let copy of this order be made available to the parties as per rules. Petition dismissed. _____________