

(1994) 09 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

KIRIT RAMNIKLAL PAREKH

APPELLANT

Vs

BANK OF BARODA

RESPONDENT

Date of Decision : 02-09-1994

Acts Referred:

Citation : 1995 2 CPJ 350

Hon'ble Judges : R.C.Mankad , R.K.Shah J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal is directed against the judgment and order dated August 13, 1993 passed by the District Consumer Disputes Redressal Forum, Rajkot (District Forum for short) dismissing the appellant's complaint being Complaint No. 402 of 1992.

2. THE appellant and respondent No. 2 are brothers and they are sons of one deceased Ramniklal Parekh. Deceased Ramniklal Parekh who died on August 18, 1989 was having safe deposit locker in respondent No. 1 bank at Rajkot. THERE is some controversy about the number of the locker. According to the appellant the locker number is 175-E whereas according to respondent No. 1 bank it is 175. Nothing turns on this controversy. THE appellant alleged that respondent No. 1 bank has allowed his brother, respondent No. 2 to operate the locker in the name of his father after his death on August 18, 1989. It is alleged that after the death of deceased Ramniklal Parekh, respondent No. 2 had no authority to operate the locker and, therefore, there was deficiency of service on the part of the respondent No. 1 in permitting him to do so. According to the appellant there were ornaments worth about Rs. 1 lakh in the locker. THEREfore, respondent No. 1, by permitting respondent No. 2 to operate the locker, caused to the appellant loss to the extent of Rs. 50,000/-. On the above allegation, the appellant approached the District Forum by way of the aforesaid complaint claiming Rs. 50,000/- by way of his share in the ornaments and Rs. 25,000/- by way of damages from both the respondents. Both the respondents resisted the appellant's complaint. Their main contention was that the appellant was not a

consumer and, therefore, the complaint filed by him was not maintainable. Respondent No. 1 has contended that it had not entered into any agreement with the appellant and, therefore, it was not liable to render any services to him. It is further contended that appellant has no right to approach the District Forum and seek relief in respect of the locker. Respondent No. 1 has also denied the allegation that it had allowed respondent No. 2 to operate the locker after the death of deceased Ramniklal Parekh. It is also denied that the appellant had suffered any loss as alleged. Respondent No. 2 has also contended that the appellant has no right to claim any compensation from him.

The District Forum Found that the appellant and respondent No. 2 had filed applications before the Civil Court praying for letters of administration with the Will annexed. Each one of them have propounded separate Will and sought letters of administration with the Will annexed. The District Forum was of the view that properties of the deceased Ramniklal Parekh will have to be administered and disposed of according to the Will which is ultimately held proved by the Civil Court. The answer to the question in regard to the locker and the contents thereof will also depend upon the question as to which of the two Wills is held proved by the Civil Court. The District Forum further observed that if neither of the two Wills is held proved, the third question which will arise is to administer and dispose of the properties of the deceased Ramniklal Parekh under the provisions of Hindu Succession Act and if this third alternative is required to be considered, the appellant, respondent No. 2 and their sisters would be entitled to claim shares or interest in the properties of the deceased Ramniklal Parekh including the locker. The District Forum was, therefore, of the view that the subject matter of the complaint before it was the subject matter before the Civil Court and the District Forum had no jurisdiction to resolve the controversy involved in the appellant's complaint. Under the circumstances, the District Forum dismissed the appellant's complaint. Being aggrieved by the decision of the District Forum, the appellant has preferred this appeal.

3. AS pointed out above, the controversy which is raised by the appellant in his complaint before the District Forum is with regard to the locker which stood in the name of deceased Ramniklal Parekh. It is alleged that respondent No. 1 Bank had permitted respondent No. 2 to operate the locker although he had no authority to do so and it had thereby rendered itself guilty of deficiency, of service. It is contended that since respondent No. 2 had no right or authority to operate the locker respondent No. 1 Bank could not have permitted him to operate the locker and remove articles lying therein. Respondent No. 1 Bank was either negligent or it was guilty of deficiency of service in permitting respondent No. 2 to operate the locker. Therefore, the question which arises for consideration in the light of the allegations made in the complaint of the appellant is whether respondent No. 1 bank had permitted respondent No. 2 to operate the locker and if it had done so, whether it could be held to be guilty of negligence or deficiency of service. The controversy which is before the Civil Court in the applications made by the appellant and respondent No. 2 is entirely

different. The appellant and respondent No. 2 each have propounded separate Will and prayed for letters of administration with the Will, which has been propounded, annexed. Therefore, the question which arises for consideration before the Civil Court is which of the two Wills is the last Will of the deceased. If neither the appellant nor respondent No. 2 is able to prove the Will propounded by him, both the applications for letters of administration will have to be rejected. The Civil Court is not called upon to decide the question whether there was deficiency of service on the part of the respondent No. 1 Bank. There appears to be no controversy between the appellant and respondent No. 2 in regard to their interest or share in the movable properties left by deceased Ramniklal Parekh. Whether the Will propounded by the appellant is proved or the Will propounded by respondent No. 2 is proved or neither is proved, is not relevant because both the appellant and respondent No. 2 agree that they have equal share or interest in the movable properties left by the deceased Ramniklal Parekh. The locker can contain only movable properties and as pointed above, there is no controversy that both the appellant and respondent No. 2 have interest in the movable properties of the deceased Ramniklal Parekh. In other words, both the appellant and respondent No. 2 are beneficiaries so far as the movable properties of deceased Ramniklal Parekh are concerned. In case neither of the Wills is proved, sisters of appellant and respondent No. 2 will also have share or interest in the properties of deceased Ramniklal Parekh. However, in such case also it cannot be gainsaid that both the appellant and respondent No. 2 have share or interest in the movable properties and all that will happen is that their sisters will also have equal interest or share in these properties. Whatever be the situation, the appellant and respondent No. 2 have beneficial interest in the movable properties of deceased Ramniklal Parekh. Therefore, so far as locker in the name of deceased Ramniklal Parekh is concerned, both the appellant and respondent No. 2 have beneficial interest and this interest is not affected by proving or not proving of either the aforesaid two Wills propounded by the appellant and respondent No. 2.

4. SO far as the controversy involved in this appeal is concerned, definition of "consumer" contained in sub-clause (ii) of clause (d) of Section 2 of the Consumer Protection Act, 1986 is relevant. It provides that "consumer" means any person who hires or avails of any service for consideration which has been paid or promised or partly paid or partly promised, or under any system of deferred payment and includes any beneficiary of such services, other than the person who hires or avails of the services for consideration paid or promised or partly paid and partly promised or under any system of deferred payment when such services are availed of with the approval of the first mentioned person. It would thus be clear that beneficiary of services is included in the definition of "consumer". The appellant would, in our opinion, be "consumer" within the meaning of the aforesaid definition. On death of deceased Ramniklal Parekh, the appellant would be one of the beneficiaries though not the sole beneficiary. Therefore, he would be covered by the aforesaid definition of the word

"consumer". As already observed above, controversy involved before the Civil Court is different from the controversy involved in the complaint filed by the appellant. So far as the appellant's complaint is concerned, what is required to be decided was whether the respondent No. 1 Bank was guilty of negligence or deficiency in services in permitting respondent No. 2 to operate the locker in the name of deceased Ramniklal Parekh. The short question which arose for consideration before the District Forum was whether respondent No. 1 Bank had permitted respondent No. 2 to operate the locker and if so, whether it would amount to deficiency of service on its part. This is not the controversy before the Civil Court. In any case, as observed above, the appellant is beneficiary or one of the beneficiaries so far as movable properties left by the deceased are concerned. In our opinion, therefore, the District Forum was in error in dismissing the appellant's complaint on the ground that it had no jurisdiction to entertain the appellant's complaint and that his complaint was not maintainable. The District Forum ought to have decided the question whether there was deficiency in the service rendered by respondent No. 1 so far as locker which stood in the name of the deceased Ramniklal Parekh was concerned. In other words, the District Forum ought to have decided whether respondent No. 1 Bank had permitted respondent No. 2 to operate the locker. We do not know whether the appellant has any evidence to prove that the locker was allowed to be operated by respondent No. 2. If the appellant has made baseless allegations without any evidence it will be for the District Forum to decide as to what cost it should award to the respondents. In our opinion, the proper course for us to adopt is to set aside the decision of the District Forum and remand the matter to it for fresh trial. In the result, the appeal is allowed and the judgment and order passed by the District Forum are set aside. The District Forum is directed to dispose of the appellant's complaint afresh on merits after giving adequate opportunities of being heard to all the parties. There will be no order as to costs. Appeal allowed.