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(2000) 06 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

MANIMEKALAI KANNAN — APPELLANT

Vs

BHARATH OVERSEAS BANK LIMITED — RESPONDENT

Date of Decision : 02-06-2000

Acts Referred:

Citation : 2000 3 CPJ 240

Hon'ble Judges : M.S.Janarthanam , Banumathi Baskaran J.

Final Decision : Complaint rejected in limine

Judgement

1. THIS action has come up for admission before us today. We perused the averments in the complaint and other connected documents filed alongwith it. Such perusal reveals the following factors :

2. THE complainants, mother and son, are the Directors of a Company registered under the Companies Act, 1956, and they are engaged in the manufacture of HDPE/PP Circular Woven Sacks, having their factory at No. A-4, SIPCOT Industrial Estate, Cuddalore (for short, "the Company"). The 1st opposite party is the Bharath Overseas Bank Ltd., represented by its General Manager, Head Office at No. 756, Anna Salai, Chennai-600 002.

The 2nd opposite party is the Branch Manager, Bharath Overseas Bank Limited, Cuddalore O.T. Branch, Cuddalore-607 002.

3. THE 3rd opposite party is the Branch Manager, Indian Bank, Purasawalkam Branch, Purasawalkam High Road, Chennai-600 007. The complainants approached the 1st and 2nd opposite parties for a loan of Rs. 45,00,000/- on 30.5.1998. On 3.7.1998, it appears the loan amount had been sanctioned. On 10.7.1998, an Advice Letter had been issued sanctioning (1) Cash Credit Facility for Rs. 25,00,000/-, (2) Letter of Credit for Rs. 10,00,000/- and (3) for Bill Discounting Rs. 10,00,000/-.

4. THE complainants were permitted to operate the account on and from 11.7.1998. On 11.7.1998, the complainants appeared to have issued two demand drafts for Rs. 5,00,000/- each in favour of their clients. On 13.7.1998,

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they also issued three demand drafts, one for Rs. 5,00,000/-, another for Rs. 3,00,000/- and yet another draft for Rs. 30,300/- in favour of their clients. The two demand drafts issued on 11.7.1998 each for Rs. 5,00,000/- it appears were deposited by their clients in their account with the 3rd opposite party. The opposite parties 1 and 2 issued "stop payment order" to the 3rd opposite party in respect of these two demand drafts and the 3rd opposite party in turn also complied with the instructions issued by the opposite parties 1 and 2. The demand drafts issued on 13.7.1998 one for Rs.5,00,000/- and another for Rs. 3,00,000/- were recalled by the opposite parties 1 and 2 and the complainants in turn returned the said drafts to them. So far as the other Demand Draft issued on 13.7.1998 in favour of their clients for Rs. 30,300/- had been encashed by their clients and the amount of the said draft was directed to be deposited by the complainants and they in turn deposited the same with the opposite party. As a consequence of the acts of the opposite parties the complainants were put to incur heavy expenses nearly Rs. 1,26,000/-.

5. THE acts of the opposite parties in such circumstances amount to deficiency in service on their part.

6. ALLEGING the factors as above, the complainants knocked at the doors of this Commission by instituting the complaint for certain reliefs as prayed for in the complaint. We heard the arguments of Mr. J. Raja Kalifulla. According to him, the acts of the opposite parties on the facts and in the circumstances of the case, amount to gross deficiency in service and for such deficiency in service the complainants are entitled to get compensated.

We tested the arguments of the said learned Counsel in the light of the averments made in the complaint and also the actual material in the shape of the documents filed along with the same. On the scrutiny of such materials, we are of the view that the complainants cannot at all knock at the doors of this Commission for the reliefs as had been prayed for in this complaint and they have to knock at the doors of the Civil Forums alone if they are so advised. It would be patently clear from the documents listed in Serial No. 12, namely advice of sanction of credit facility for cash credit available at page 31 of the documents that the sanction of the credit facility had been made subject to certain reservations on the part of the Bank opposite parties 1 and 2. What is stated in the relevant portion of paragraph 1 in the said document may be penned down here and it is to the following effect : "We also reserve our right to amend, after the terms and conditions cancel/withdraw all or any of the limits sanctioned at any time at our sole discretion without assigning any reason whatsoever. These limits shall not be operative until proper documents are executed and the terms and conditions of sanction are complied with."

7. NO doubt true it is that the opposite parties 1 and 2 sanctioned the loan amount of Rs. 45,00,000/- and the cash credit facility to the tune of Rs. 25,00,000/- and discounting of bills facility to the tune of Rs. 10,00,000/-. The complainants were also allowed to operate the account and in the operation of

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the account, they have issued certain demand drafts in favour of their clients. After the issue of those drafts, the opposite parties 1 and 2 bankers either issued stop payment order or recalling the drafts issued by the complainants or directing them to reimburse the amount of the draft which had been encashed. This sort of a right the opposite parties bankers 1 and 2 is definitely possessed of on the face of the power reserved in their favour which is found traceable in paragraph 1 of the advice of sanction of credit facility document about which we have already referred to. The 3rd opposite party acted upon the instructions of the opposite parties 1 and 2 in stopping payment in respect of the two Demand Drafts issued each for Rs. 5,00,000/- and deposited in their Bank on 11.7.1998. It is not a simplicitor dishonour of the two demand drafts by the 3rd opposite party. It cannot be stated as a dishonour arising on account of oversight or negligence on their part. As already indicated, they have dishonoured the two drafts acting on the instructions of the opposite parties 1 and 2. So far as the opposite parties 1 and 2 are concerned, they are having every right to stop payment in exercise of the power inhering their favour as per the terms and conditions as contained in the document captioned as Advice of Sanction of Credit Facility. There is no need at all for the opposite parties 1 and 2 to issue any notice to the complainants before ever they issued orders stopping payment and that is also patently clear from the terms and conditions of the document as we have above referred to. In such state of affairs, it cannot at all be stated that there is any sort of deficiency in service on the part of any of the opposite parties.

8. IN this view of the matter, the complaint is rejected in limine. Complaint rejected in limine.

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