(2005) 02 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

MOHAN SETHIA And ASSOCIATES APPELLANT

Vs

BANK OF BARODA RESPONDENT

Date of Decision : 14-02-2005

Acts Referred:

Citation : 2006 1 CPJ 332

Hon'ble Judges : V.K.Agrawal , Veena Misra , R.S.Awasthis J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal, under Section 15 of the Consumer Protection Act, 1986, is directed against the order dated 17.8.2004 in Complaint No. 191/2001 by District Consumer Disputes Redressal Forum, Durg (hereinafter called the District Forum, in short), dismissing the complaint.

2. INDISPUTABLY the complainant/appellant has a current account No. 1753 with the respondent Bank with cheque book facility. It is also not in dispute that vide cheque bearing No. 776145 an unidentified person in the name of Roshanlal, withdrew Rs. 75,000 from the said account. The averments of the complainants were that the complaint did not issue the said cheque and the amount was withdrawn by the said unknown person in conspiracy with the employees of the respondent Bank. It was further averred by the complainant that the said cheque did not bear his signature and should not have been permitted to be encashed. The complainant reported the matter to the Bank and its head office, as well as to the police. He also approached Bank Ombudsman for resolving the dispute. However, since the complainant did not get any redressal from the Bank authorities, he approached the Consumer Forum and filed the complaint. He prayed that the amount of cheque with interest be directed to be paid to him.

The complaint was resisted by the respondent Bank. It was averred by the respondent that the complainant was negligent in keeping his cheque book safely. It was also averred that even prior to the issuance of cheque in question, he had already obtained another cheque book. It was further averred that the said cheque No. 776145 was issued by the complainant under his seal and signature and the amount of Rs. 75,000 thereunder was paid to the person presenting the cheque. It was further averred by the respondent/Bank that there was no negligence on its part in paying the amount of the said cheque.

3. THE District Forum in the impugned order held that the aforesaid dispute regarding payment of cheque cannot be decided without recording detailed evidence. It was further held that since the consumer Forum cannot decide the question as to whether cheque was forged one, the complainant cannot be given any relief and that he should seek redressal of his grievance in Civil Court. The learned Counsel for the parties were heard. Record perused.

4. IN this appeal the learned Counsel for the appellant filed documents along with an application under Order 41 Rule 27, C.P.C. The said application is considered. The documents include final report submitted by the police as well as the report of State Examiner of Questioned Documents, Government of M.P. The learned Counsel for opposite party also filed an application with documents which are copy of specimen signature of the complainant, as well as replies sent to the complainant Counsel by the respondent/Bank. We have considered the said applications under Order 41 Rule 27, C.P.C. Since the documents are necessary for adjudication of dispute, and have been issued by the authorities of the State Government, the application is allowed and the said documents shall be taken into consideration. The main question that arises for consideration is: as to whether the complainant satisfactorily established that the cheque was negligently permitted to be encashed by the respondent Bank? As noticed earlier, there is no dispute that cheque No. 776145 issued to the complainant, was presented in the respondent Bank and encashed on 16.6.1999 purportedly by one Roshanlal. However, the person encashing the said cheque could not be traced by the police and, therefore, the police filed final report, copy of which has been placed on record. It may also be noticed that ''the police got the signatures on the said cheque examined by State Examiner of Questioned Documents, who in his report opined that the signature of the said cheque was not that of the complainant/appellant.

5. IT may also be noticed in the above context that the copy of the specimen signature of the complainant retained in the respondent Bank has been filed on record. Similarly, copy of the cheque No. 776145 has also been placed on record. The signatures of the complainant/appellant in the cheque even on first glance itself, do not appear to tally with the specimen signature. The report of the handwriting expert - State Examiner of Questioned Documents also confirms that the cheque does not bear the signature of the complainant. Though, it is true that the rubber stamp of the appellant Shri Mohan Sethia and Associates has been affixed on the said cheque. However, that by itself does not lend any authenticity to the cheque nor does it permits its encashment, without properly tallying the signature and satisfying that the cheque bears signatures of the account holder. This does not appear to have been done on behalf of the respondent/Bank. In fact the respondent even failed to submit the affidavit of the

person responsible for permitting encashment of the cheque.

6. IN the light of the report of the hand-writing expert as well as material on record mentioned above, it is clear that the respondent Bank failed to exercise due care in permitting encashment of cheque. It may not be out of place to mention that the cheque was of Rs. 75,000, which is a substantial amount. The responsibility of the respondent Bank to properly verify and satisfy itself about the genuineness of the signature on the cheques before permitting its encashment was, therefore, heavier and more onerous. The respondent Bank appears to have failed in its duty as above. Consequently we hold that respondent Bank was deficient in service. It is, therefore, clear that the complainant/appellant is entitled to recover the amount of cheque from the respondent Bank. The impugned order dismissing the complaint, therefore, cannot be sustained. The appeal is accordingly allowed. The impugned order is set aside. The complaint is allowed and it is directed that the respondent Bank shall pay to the complainant/appellant Rs. 75,000 and shall also pay interest @ 9% p.a. on the above amount, from the date of encashment of the said cheque i.e., from 16.6.1999. The respondent shall also pay to the complainant/appellant the cost of this litigation, which is quantified at Rs. 2,000 (two thousand) only. Appeal allowed.