(1996) 07 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

MUKUNDA INDUSTRIAL FINANCE LTD. APPELLANT

Vs

Federal Bank Ltd. RESPONDENT

Date of Decision : 23-07-1996

Acts Referred:

Citation : 1997 1 CPR 7 : 1997 2 CPC 684 : 1997 2 CPJ 140

Hon'ble Judges : D.R.Vithal Rao , Susheela Cheluvaraju , Kumar Gowda J.

Final Decision : Complaint dismissed

Judgement

1. IN this complaint, under Section 17 r/w Section 12 of the Consumer Protection Act, 1986, the complainant has sought compensation from opposite party No. 1 Federal Bank Ltd., in a sum of Rs. 5 lakhs with interest thereon. Opposite party Nos. 2 and 3-firm, are engaged in manufacturing of building rods (TOR 55) and allied processes. Opposite party No. 2 the husband of Proprietrix of opposite party No. 3, approached the complainant - a financial Company - to finance for the purchase of an equipment called heavy duty precision planing machine, from M/s. Adarsh Engineering Equipments, S.J.P. Road Cross, Bangalore-2. The complainant agreed to finance in a sum of Rs. 4 lakhs to opposite party Nos. 2 and 3, for the purchase of the said machine for a sum of Rs. 5,50,000/-.

2. OPPOSITE parties Nos. 2 and 3 made payment of a sum of Rs. 1,50,000/-to the complainant and the complainant with this amount of Rs. 4 lakhs and alongwith this amount of Rs. 1,50,000/-purchased a pay order for a sum of Rs. 5,50,000/-on 13.8.92 from M/s. Karur Vysya Bank Ltd., JC Road, Bangalore, in favour of M/s. Adarsh Engineering Equipments. The complainant gave the said pay order together with a letter dated 12.8.92 addressed to M/s. Adarsh Engineering Equipments, to opposite party No. 2 for handing over the same to M/s. Adarsh Engineering Equipments. The complainant subsequently came to know that opposite party No. 2 did not deliver the said pay order to M/s. Adarsh Engineering Equipments but opened an account in the name of M/s. Adarsh Engineering Equipments with opposite party No. 1, that is, the Federal Bank Ltd., K.G. Road, Bangalore and deposited the said pay order in the said account with

opposite party No. 1.

Opposite party No. 1 sent the said pay order to Karur Vysya Bank for collection and on realisation of the said amount, opposite party No. 1 credited the said amount to the account of M/s. Adarsh Engineering Equipments which account opposite party No. 2 had opened with opposite party No. 1. Soon thereafter, that is, before 24.8.92, opposite party No. 2 withdrew the said amount from the said account with opposite party No. 1.

3. THE complainant wrote letters to M/s. Adarsh Engineering Equipments and found that the said pay order given by the complainant to opposite party No. 2, was not received by M/s. Adarsh Engineering Equipments. It is the grievance of the complainant that opposite party No. 1 was totally negligent in permitting opposite party No. 2 to open the account in the name of M/s. Adarsh Engineering Equipments and in permitting opposite party No. 2 to withdraw the said amount from the said account. The complainant further averred that opposite party No. 1 failed to discharge its duties as a collecting Banker in accordance with the provisions of Section 131 of Negotiable Instruments Act.

4. THE complainant, on the basis of these allegations, submitted that opposite party No. 1 committed deficiency in service, so the complainant sought compensation in a sum of Rs. 5 lakhs with interest thereon from opposite party No. 1. Opposite party No. 1, filed its version and averred that having regard to the averments contained in the complaint, the complainant cannot be classified as a ''consumer'' under the provisions of the Consumer Protection Act, as far as opposite party No. 1 is concerned. Opposite party No. 1 further averred that it has not committed any deficiency in service. The account in the name of M/s. Adarsh Engineering Equipment was opened in the regular course of business on the introduction of opposite party No. 2 by its customer and the amount of pay order was collected and paid in the regular course of its business and it has not committed any deficiency in service. Opposite party Nos. 2 and 3 remained absent.

5. DURING the enquiry, the complainant filed his affidavit in evidence and got Exs. C 1 to C 19 marked in evidence.

6. WE heard the learned Counsel for the complainant, perused the pleadings and the material on record. The complainant, admittedly, obtained a pay order for a sum of Rs. 5,50,000/-from Karur Vysya Bank for and in favour of M/s. Adarsh Engineering Equipments. The complainant subsequently handed over the said pay order to opposite party No. 2 to be delivered to M/s. Adarsh Engineering Equipments.

Opposite party No. 2 opened an account with opposite party No. 1 on 14.8.92 in the name of M/s. Adarsh Engineering Equipments and delivered the said pay order to opposite party No. 1 in the said account for its realisation. Opposite party No. 1 collected the said amount from Karur Vysya Bank and thereafter opposite party No. 2 had withdrawn the said amount.

7. HAVING regard to these facts and in the circumstances of the case, there is no material on record to show that the complainant had hired or availed the services for consideration of opposite party No. 1. The complainant had neither availed the services of M/s. Karur Vysya Bank nor opposite party No. 1 - the Federal Bank Ltd. The services of opposite party No. 1 were availed by opposite party No. 2 and not by the complainant. The expression ''consumer'' has been defined under Section 2(l)(d) of the C.P. Act, 1986, which reads as under: "2(1)(d) ''Consumer'' means any person who, -(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and 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:"

8. FROM this expression, it is clear that the ''consumer'' is a person who either hires or avails the services of the other for consideration. In the present case, as far as opposite party No. 1 is concerned, that is. Federal Bank Ltd., complainant had not hired or availed the services. So having regard to these facts, the complainant cannot be classified as a ''consumer'' under the provisions of the Act. The complainant has produced a copy of the F.I.R., Ex. C 16 to show that he had made a complaint against opposite parties No. 2 and 3 for having committed offence punishable under Sections 465, 468, 471 and 420, I.P.C. That complaint, as against those persons, is still pending.

9. HAVING regard to these facts and in the circumstances of the case, we are constrained to hold that the complainant cannot be classified as a ''consumer'' and so the complaint is untenable. ORDER In the result, therefore, this complaint fails and it is dismissed as untenable. The parties are directed to pay and bear their own costs in this proceeding. Complaint dismissed.

