(1994) 05 NCDRC CK 0038

In the National Consumer Disputes Redressal Commission

NINA ARORA APPELLANT

Vs

SR.MANAGER, CANARA BANK RESPONDENT

Date of Decision : 17-05-1994

Acts Referred:

Citation : 1994 0 NCDRC 119 : 1994 2 CPC 73 : 1994 2 CPJ 109 : 1994 3 CPR 485 : 1995 2 CLT 347

Hon'ble Judges : V.BALAKRISHNA ERADI , Y.KRISHAN , B.S.YADAV J.

Advocate : Roma Baraya , S.S.SHARMA

Judgement

1. THIS is an appeal against the order of 29th May, 1992 in O.P. No. 58 of 1992 on the file of the State Commission of Tamil Nadu. The State Commission had held that the complainant was not entitled to any relief except a direction to the O.P. bank to hand over to the complainant the original reports of the dishonoring of the 10 cheques by the various banks from which these were to be collected by the respondent bank.

2. THE brief facts are that the complainant is a financier having accounts with the Opposite Party bank. On 7th July, 1990 the appellant-complainant presented to the respondent-Opposite Party 10 cheques for collection which had been issued in her favour by her various customers on different banks. The total amount of these cheques was Rs. 46,504. The respondent bank credited the amount of these cheques to the complainant''s account in anticipation of their realisation. But these cheques were subsequently returned to the appellant-complainant by the respondent bank on 10th July, 1990 as having been dishonoured. The respondent bank, instead of debiting the amounts of the dishonoured cheques to the account of the complainant, wrongly debited the same to another account. This mistake remained undetected for nearly one year and it is only on the 2nd of July 1991 that the respondent bank informed the appellant-complainant of its failure to debit the amount to her account in the first instance and debited the same to that account. According to the appellant-complainant, the respondent-Opposite Party bank had failed to return the 10 dishonoured cheques

immediately after dishonoring of these cheques so as to enable her to recover the same from her customers. Because of this failure, the appellant-complainant has maintained that the respondent bank was not entitled to debit the amount credited in anticipation and found to have been credited erroneously viz. Rs. 46,504 (with interest Rs. 52,014).

3. IT is relevant to note that according to the respondent bank, the dishonoured cheques were returned physically across the counter without keeping any record because of the long association between the respondent-complainant and the bank.

4. THE State Commission held that i t had no reason to doubt the explanation of the respondent bank that the dishonoured cheques were handed over with the return slips of the different banks to the complainant in person and no acknowledgment was taken because of their long association and regular transactions between the parties. It noted that it is not unusual for the banks returning a customer''s dishonoured cheque without obtaining receipts therefor. In this connection, the State Commission has observed that the banks do not normally afford credit in anticipation of the realisation of the cheques but in view of long relationship between the bank and its clients, they, at times, do so and this was done in this case. We are not quite satisfied with the explanation given by the respondent bank for the erroneous debits of the amounts to some other account and for its failure to detect the erroneous debits for one year. The debits for dishonoured cheques can be made against specific credits already afforded to a party''s account and in the absence of such specific credits for the exactly same amounts, the erroneous debits would have been detected. Besides the system of monthly-balancing of ledgers and proving of ledgers and internal check should have been thrown up these errors. However, so far as the appellant-complainant is concerned we cannot accept that she is entitled to claim the amount which is not due to her from the bank. If any amount has been paid to her irregularly and wrongfully &: this is not in dispute, the respondent bank is entitled to recover the same.

5. AT the hearing, this Commission specifically asked the Counsel for the appellant whether she had filed suits for recovery of the amounts due to her on account of dishonoured cheques. It was stated by the Counsel that she did not find it expedient to take legal steps for recovery of the amounts due to her from various parties. We, therefore, feel astounded that she should make a claim for the amount against the bank for having given her credit erroneously.

6. AS observed by the State Commission, an inadvertent error committed by the bank officials cannot be taken advantage of to make an unconscionable bargain. It is also not a consumer dispute as there has been no deficiency in service on the part of the bank. We uphold the finding of the State Commission with the observation that it could have also been dismissed as not a consumer complaint. The appellant shall pay a sum of; Rs. 10,000/- as costs to the Opposite Party bank.

