(2015) 04 NCDRC CK 0219

In the National Consumer Disputes Redressal Commission

Case No : NO 4371 of 2009

ORIENTAL BANK OF COMMERCE & ANR. — APPELLANT

Vs

KRISHAN KUMAR KANSAL — RESPONDENT

Date of Decision : 15-04-2015

Acts Referred:

Consumer Protection Act, 1986, Section 21(b) - Jurisdiction of the National Commission

Citation : 2015 3 CPJ 327

Hon'ble Judges : D.K. Jain, Vinay Kumar, M. Shreesha

Advocate : Rajat Rathee, Raj Singh Phogat

Judgement

1. By this Revision Petition under Section 21(b) of the Consumer Protection Act, 1986 (for short the "Act"), the Oriental Bank of Commerce (for short the "Bank") questions the correctness and legality of the order passed by the State Consumer Disputes Redressal Commission, Union Territory, Chandigarh (for short the ''State Commission") in First Appeal No. 2325 of 2002. By the impugned order, the State Commission upheld the order of the District Forum, which had directed the Bank to pay the cheque amount of 50,000/-, together with compensation of 5,000/- and costs of 1,100/-.

2. Briefly put, the facts in the present case are that the Complainant had issued an account payee cheque no. 698251 dated 29.3.2000 in favour of Raja Stone Crushing Mills, Hissar for an amount of 50,000/-. The Complainant pleaded that the said cheque was cleared by the Hissar District Central Bank Ltd. at about 11:00 a.m. on 29.3.2000 itself. The Respondent Bank stopped the payment of this cheque at about 12.00 noon and this was informed to him by the holder of the cheque at about 1.00 p.m. on 29.3.2000. The Complainant met the Bank Manager at about 1.30 p.m. but he refused to clear the said cheque and did not disclose any reason. Thereafter, the Bank issued a memo on 29.3.2000 at about 3.00 p.m. stating that the Complainant''s account was attached by the Deputy Commissioner of Income Tax, Hissar at about 2.00 p.m. The Complainant averred that there was no reason for the Bank to stop the payment of his

cheque, which was presented in the Bank on 29.3.2000 before 11.00 a.m. during the banking hours. The Complainant pleaded that there was a credit balance of 88,496.24/- in his Account as on 29.3.2000 and the Bank Manager had sent the entire balance amount to the Income Tax Officer. Had the Bank cleared this cheque on time, this amount of 50,000/- would have been paid to the cheque holder. The Complainant averred that he is entitled to recover the said sum of 50,000/- from the Bank towards actual loss together with a sum of 25,000/- as compensation for the mental agony and damages suffered by him.

3. Opposite parties 1 and 2 filed their written version and averred that at the time of presentation of the cheque, there was only a balance of 38,496.24/- in the Complainant''s account. They specifically denied that the cheque was cleared by the concerned officer of the bank at about 11.00 a.m. on 29.3.2000 and that a token was issued for payment. In general, cash transactions take place before 2.00 p.m. and payment received by transfer through clearing cheques or otherwise is credited in the concerned account after public transaction i.e. after 2.00 p.m. The Complainant''s account was attached on 29.3.2000 at 2.00 p.m. as per the order of the Deputy Commissioner of Income Tax, Hissar Circle, Hissar and therefore, they have no authority to clear the Complainant''s cheque. The Complainant''s account did not have sufficient balance at the time of clearance of the cheque because the transfer entry of 50,000/- was credited in the Complainant''s account only after public transaction. The present dispute is between the Complainant and the Income Tax Authority and the Opposite Parties pleaded that there was no deficiency of service on their behalf and prayed for dismissal of the complaint against them.

4. The District Forum based on the evidence adduced and the pleadings put forward, allowed the complaint and directed the Bank to pay 50,000/-, which is the amount covered by the cheque together with compensation of 5,000/- and costs of 1,100/-.

5. Aggrieved by the said order, the Bank preferred an Appeal before the State Commission. The Commission dismissed the Appeal and upheld the order of the District Forum.

6. Hence, this Revision Petition.

7. Heard the oral submissions of both sides.

8. The facts not in dispute are that the Respondent/Complainant had issued an account payee cheque no. 698251 dated 29.3.2000 for an amount of 50,000/-, in favour of Raja Stone Crushing Mills, Hissar which was presented in the Bank on 29.3.2000 itself. It is the Respondent''s case that there was a credit balance of 88,497.24/- in his account and that the said cheque for 50,000/- was received from Hissar District Central Bank Ltd., Hissar, before 2.00 p.m. and hence there was no reason to return the cheque on the ground of attachment of the account of the Complainant by the Income Tax Authorities. It is the further case of the Respondent/Complainant that the entire balance of 88,497.24/-was transferred

by the Bank to the Income Tax Department.

9. The learned counsel for the Petitioner relied on the Judgment of the Apex Court reported in (1987) 2 SCC 666 between Canara Bank vs. Canara Sales Corporation and Others in which the Apex Court has discussed the Account holder''s claim against bank for recovery of amount fraudulently drawn by a third person from his account by forging his signature on cheques and observed that if the account holder informs the bank as soon as the fraud comes to his knowledge, his claim is sustainable. The facts in the instant case are different as the question of the genuineness of the signature on the cheque is not the subject matter here and further the account holder''s claim in the instant case is not for recovery of an amount fraudulently drawn by any third person.

10. The Respondent/Complainant drew our attention to the pass book issued by the Petitioner Bank in which the entries showed that there was a balance of 38,496.24/- as on 29.3.2000 and that there was also a credit transfer of 50,000/-, totalling to 88,496.24/-. The entry dated 30.3.2000 shows that an amount of 87,400/- was transferred by way of pay order to the Deputy Commissioner of Income Tax, Hissar. It is the Complainant''s case that the said cheque which was sent to Hissar District Central Bank Ltd. for clearance on 29.3.2000 was received by the Petitioner Bank before 2.00 p.m. on the very same day which is prior to the attachment order and therefore, the Bank ought to have cleared the said cheque. In the absence of any substantial material on record to evidence that the Petitioner Bank had received the cheque prior to 2.00 P.M. on 29.3.2000 and in the face of the attachment order, received by the Bank on 29.3.2000, wherein the amount to be sent to the Department on or before 30.3.2000, was specified as 2,17,530/-, we are of the considered view that the Bank was justified in not clearing the cheque. The Petitioner Bank had also issued a cheque return memo on the very same day, i.e. on 29.3.2000 clearly stating that the cheque was being returned only on account of ''the attachment by Income Tax Authorities''.

11. Keeping in view the afore-mentioned reasons, we are of the considered view that there is no deficiency of service on the part of the Petitioner Bank and therefore, this Revision Petition is allowed and the order of the State Commission is set aside and consequently the Complaint is dismissed. No order as to costs.