(2013) 09 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

ORIENTAL BANK OF COMMERCE — APPELLANT

Vs

Professional Couriers Sangunthapuram — RESPONDENT

Date of Decision : 09-09-2013

Acts Referred:

Citation : 2013 0 NCDRC 867 : 2013 4 CPJ 246 : 2013 4 CPR 240

Hon'ble Judges : AJIT BHARIHOKE , SURESH CHANDRA J.

Advocate : H.P.BHARDWAJ , M.ALAM , R.K.PATHAK , R.SUBRAMANIAM

Judgement

1. BY this order we propose to dispose above noted three revision petitions arising out the common order of the State Commission dated 21.11.2011.

2. BRIEFLY stated the relevant facts for disposal of the above revision petitions are that Shri R.Subramaniam, respondent no.1 in RP No. 1145 / 12 filed consumer complaint number 14 of 2004 before District Consumer Forum Karur claiming that he was having Current Account No. 109 in the name of his proprietorship concern M/s R.S.Fabs with Oriental Bank of Commerce (OP No.1 in the complaint). He deposited one cheque dated 12.01.2004 for Rs.5,00,000/ - issued in his favour by M/s Paramount Impex Private Limited Panipat with the petitioner / bank for collection of the amount from the drawee bank, namely Bank of India Panipat (OP No.2) in the complaint. The petitioner (OP No.1) failed to credit the amount of the cheque in his current account nor dishonoured cheque was returned to him. Claiming this to be deficiency in service on the part of the opposite parties, the complainant preferred consumer complaint against the petitioner M/s Bank of India Panipat. Subsequently, M/s Professional Couriers through whom OP No.1 had claimed to have signed the cheque to its local branch for collection of the amount from Bank of India G.T. Road, Panipat (OP No.2) was also impleaded as opposite party no.3. The petitioner / OP No.1 denied deficiency of service on its part by claiming that it had sent the aforesaid cheque to its local branch at Panipat for collection of amount from the Bank of India Panipat through M/s Professional Couriers (OP No.3). The OP No.3 failed to deliver the aforesaid cheque at the local branch of the petitioner / Bank which

prevented the petitioner from crediting the amount of cheque in the account of the complainant as the said amount was not received from the second opposite party, namely, Bank of India, Panipat. Bank of India Panipat (OP No.2) in its written version claimed that the complaint against him is not maintainable as there is no privity of contract between him and the complainant.

3. PROFESSIONAL Couriers (OP No.3) took the plea that there was no deficiency of service on its part for the reason that Couriers consignment no. 746303 dated 22.04.2004 was duly delivered to the addressee i.e. local branch of OP No.1 on 26.02.2004.

4. THE District Forum on consideration of evidence came to the conclusion that petitioner / OP No.1 was guilty of deficiency in service and vide its order dated 30.04.2010 directed the petitioner / opposite party no.1 to pay a sum of Rs.1,25,000/ - to the complainant as compensation for the loss of cheque and mental agony caused besides cost of Rs.3000/ -. The complaint no. 14/2004 qua OP No.2 & 3 was dismissed. While complaint no. 14 of 2004 was pending, Oriental Bank of Commerce Branch office Karur filed a consumer complaint no. 16/2006 against M/s Professional Couriers claiming deficiency of service on the part of the OP inasmuch as that the OP failed to deliver the consignment containing the above noted cheque for Rs.5,00,000/ - to the local branch of the complainant bank at Panipat. Consequently, the cheque could not be sent for collection to the Bank of India Panipat and as a result the complainant failed to credit the amount of cheque in the account of R. Subramaniam, complainant in complainant no. 14/2004 or to return the cheque.

5. M /s Professional Couriers contested the complaint no. 16/2006 claiming that consignment in question was delivered at the local branch of the complainant Bank at Panipat. As such, there is no deficiency of service on its part.

6. THE District Forum concerned on consideration of evidence in complaint no. 16/2006 held the Professional Couriers to be deficiency in service and directed the OP i.e. Professional Couriers to pay a sum of Rs.1,00,000/ - as compensation to the complainant - Oriental Bank of Commerce for the loss of cheque and mental agony caused besides cost of Rs.3000/ -. Feeling aggrieved by the order of the District Forum in complaint no. 14/2004, M/s Oriental Bank of Commerce preferred appeal before the State Commission. Similarly feeling aggrieved by the order of the District Forum in complaint no. 16/2006, both the complainant - bank as well as Professional Couriers preferred appeal before the State Commission.

7. SINCE above referred three appeals related to same transaction, the State Commission disposed of aforesaid appeals vide common order dated 21.11.2011 whereby the State Commission dismissed the appeal preferred by M/s Oriental Bank of Commerce against the order of the District Forum in complaint no. 14/2004. The State Commission however, allowed the appeal preferred by M/s Professional Couriers against the order of the District Forum in complaint no.

16/2006 and dismissed the complaint and as a consequence dismissed the appeal of Oriental Bank of Commerce Karur branch (OP No.1 in complaint no. 14/2004 and complainant in complaint no. 16/2006) seeking enhancement of compensation awarded by the District Forum.

8. SHRI H.K.Bhardwaj, learned counsel for the petitioner Bank has contended that the impugned order of the State Commission dismissing the appeal preferred by the petitioner against the respective orders of the District Forum in complaints no. 14/2004 and 16/2006 and allowing the appeal of M/s Professional Couriers against the order of the District Forum in complaint no. 16/2006 are based on erroneous appreciation of facts. It is contended that real controversy for determination in the aforesaid appeals before the State Commission was whether or not M/s Professional Couriers had actually delivered the consignment containing the cheque in question to the local branch of the petitioner Bank at Panipat. It is argued that fora below have committed a grave error in answering the aforesaid question in favour of M/s Professional Couriers on the basis of a photocopy of the delivery sheet ignoring the fact that no cogent evidence was adduced by M/s Professional Couriers to prove the genuineness of the aforesaid delivery sheet in order to establish that the consignment containing the cheque was actually delivered at the Panipat Branch of Oriental Bank of Commerce. Learned counsel further contended that in absence of any evidence to this effect, the bank could not have been held deficient in service because as a consequence, non delivery of the cheque at the local branch, the petitioner bank was prevented from collecting the amount of cheque from the drawee bank, namely, Bank of India, Panipat and since the amount of cheque was not received by the bank, it was not expected to credit the amount in the account of the petitioner. Learned counsel for the petitioner has thus urged us to accept the revision petition and set aside the impugned order of the State Commission. It is not disputed that the petitioner bank has failed to credit the amount of cheque deposited by the complainant Sh. R.Subrmaniam of complaint no. 14/2004 nor it returned the cheque to the said complainant. Thus only issue for consideration before the State Commission was whether or not the cheque was delivered by M/s Professional Couriers at Panipat branch of the petitioner bank? On perusal of the impugned judgment we find that the State Commission has effectively dealt with the aforesaid issue in paras 16 to 20 of the impugned judgment. As such there is no cause for interfering with said order.

9. IT may be noted that complaint no. 16/2006 was filed by the petitioner Bank against M/s Professional Couriers alleging that they had failed to deliver the consignment containing cheque at local branch of the petitioner Bank at Panipat. Since the petitioner had filed the complaint against M/s Professional Couriers on the aforesaid allegation, the onus of proving the allegation was on the petitioner in view of section 101 and 102 of Indian Evidence Act, 1872, which is reproduced thus: "101. Burden of proof : Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence

of any fact, it is said that the burden of proof lies on that person. 102. On whom burden of proof lies. - The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side".

10. ADMITTEDLY , the petitioner has not produced the cogent evidence from its local branch at Panipat''s end to establish that consignment containing the cheque was not received by that branch. The petitioner could have easily established non receipt of Couriers by producing its dak receipt register for the relevant period. The petitioner has opted not to produce the dak receipt register to substantiate his plea of non receipt of couriers. Since the petitioner has withheld the best evidence, an adverse inference is drawn against him that had the petitioner produced the dak receipt register of its local branch at Panipat, the entries in that register would have gone against the petitioner. On the other hand M/s Professional Couriers had produced the photocopy of delivery sheet (Run Sheet) containing an entry pertaining to delivery of the relevant consignment at Oriental Bank of Commerce, G.T. Road, Panipat. From this document, it is evident that courier consignment was actually delivered at Oriental Bank of Commerce Branch, G.T.Road, Panipat particularly when the petitioner has failed to produce its dak receipt register for the relevant period. Under these circumstances, we do not find any reason to differ with the conclusion of the State Commission that couriers consignment was actually delivered by M/s Professional Couriers at the local branch of the petitioner Bank at Panipat and that the petitioner Bank was guilty of deficiency in service and also holding that there was no deficiency of service on the part of the M/s Professional Couriers (OP in complaint case No. 16/2006). In view of the discussion above, we do not find any illegality or irregularity in the impugned order. Thus, there is no reason to interfere with the impugned order in exercise of the revisional jurisdiction. Revision petitions are accordingly dismissed. Parties are left to bear their own costs.