(1991) 10 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Panalal APPELLANT

Vs

BANK OF INDIA RESPONDENT

Date of Decision : 30-10-1991

Acts Referred:

Citation : 1992 0 CPC 10 : 1992 1 CPR 34 : 1992 2 CPJ 487

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

Judgement

1. THE complaint is that Opposite Party No. 4 (Chief Manager, Bank of India, Pune, Main Branch) has wrongfully, negligently and unauthorisedly made payments totalling Rs. 25,59,000/ - on the 3rd, 4th & 5th of May, 1990 on the authority of one of the partners resulting in debit balance in the two cash credit accounts of the partnership firm with the Bank. 1. The complainant Panalal Khemchand Shah is one of the two partners in the firm M/s. Khemchand Dayaljee & Sons. The cash credit accounts of the firm with the Bank were being operated by either of the parmers individually on behalf of the partnership firm. The Complainant informed the bank by a telegram and telex on 3rd of May, 1990 that there were differences among the two partners and that bank should not make payment of the Cheques of the Firm without joint signatures of the partners thereon. The complainant followed it with a confirmatory letter on the 4th of May, 1990. The telegram and the telex of 3rd of May, 1990 were delivered to the Opposite Party No. 4 on the 4th of May, 1990 and the confirmatory letter of 4th of May, 1990 was delivered to the Opposite Party on 5th of May, 1990.

2. THE complainant has averred that under the Partnership Act, a partner has implied authority to stop payment by the Bank of cheques issued by one of the partners and that a partner is entitled to evoke the instructions for operating the Bank accounts and that only cheques signed by all the partners alone have to be honoured. The complainant claims that the Opposite Party (Bank) is under obligation to carry out such instructions of the partner and is debarred by banking law and practice to make payment of cheques signed by one of the partners in this case.

3. IN these three days the Opposite Party No. 4. made payments of Rs. 25.59 lakhs on behalf of the partnership firm, the details of which are as under: - Date Payment made by the Bank 3 -5 -1990 Rs. 3,58,000/ - 4 -5 -1990 Rs. 10,61,000/ -

4. -5 -1990 RS. 11,40,000/ - Total RS. 25,59,000/ - 5. In consequence of these payments the case credit accounts had debit balance: Account No. 1 RS. 5.60 lakhs (round) and Account No. 2 RS. 21.45 lakhs (round). From the narration of the above facts, it would be evident that the case involves complex question of facts and interpretation of laws and rights and obligation of parties under the various statutes, (a) As between the partners it would require to be determined whether one of the partners can repudiate the original instruction, or the mandate to the bank that one of the partners can operate the accounts of the partnership firm? (b) Again whether under the Banking law and practice the banks are bound to honour the instructions of one of the partners? The precise banking law on this point has not been cited and the practice would have to be ascertained (c) Whether the bank was bound to act on the instructions issued by one of the partners telegraphically or through telex before receipt of confirmatory letter? The precise time of the delivery of the telegram and the telex and confirmatory letter might also become relevant, (d) Whether the payments made by the Opposite Party are collusive? The complainant has not only alleged that the Opposite Party No. 4 has failed to carry out its obligations towards the party (partners in the firm) but also that Opposite Party No. 4 had made these payments in collusion with the other partner who had issued the cheques, (e) Whether under the terms and conditions regulating the case credit facility, the bank could allow an overdraft and if so to what extent at a particular point of time? It is evident from the above that the Complainants is not a simple case of deficiency in service rendered by the Bank. It involves a determination of complex questions of facts and law which cannot be satisfactorily determined by this Commission in the time frame provided under the Act. It would be better for the complainant to seek redress of his grievances in a Civil Courts if so advised. With these observations the complaint is dismissed. The complainant is free to seek redress in a Civil Court if he so chooses. Complaint dismissed. -

