(2015) 03 NCDRC CK 0062

In the National Consumer Disputes Redressal Commission

Case No : NO 304 of 2001

PANNA LAL KANKARIA & SONS — APPELLANT

Vs

H.D.F.C. BANK LTD. — RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Indian Penal Code, 1860, Section 420, Section 468, Section 467, Section 406 - Cheating and dishonestly inducing delivery of property - Forgery for pur

Citation : 2015 2 CPJ 705

Hon'ble Judges : J.M. Malik, S.M. Kantikar

Advocate : J.M. Sharma, Vibhor Verdhah, Rishab Raj Jain, Shariqui Hussain, Rajesh Gupta

Judgement

1. This is one of the oldest cases filed in this Commission, on 25.09.2001, wherein the complainant has claimed a sum of Rs.1,10,00,000/- and interest thereon due to deficiency in banking services by HDFC Bank, Opposite Party (OP), which was earlier the Lord Krishna Bank, which again merged into Centurion Bank of Punjab Ltd., and thereafter the Centurion Bank got amalgamated into the present HDFC Bank, the OP.

2. The complainant is a Proprietory firm which transacts the business of trading in cotton, having its office at Beawar. The Proprietor of the firm, is Mr. Nemichand Kankaria, HUF, whose Karta is Gyan Chand Kankaria. At the relevant time, the complainant was dealing with a single concern, i.e., M/s. Assam Yarn Suppliers and its sister concern of Mumbai to whom the complainant used to supply cotton bales and used to receive payment against the supply through cheques payable at Mumbai. Sh. Pramod Kumar Jain and Sh. Ratanlal Jain were owners of

Assam Yarn Suppliers, Mumbai. At their instance, the complainant opened a current account with the then Lord Krishna Bank Ltd. The complainant made various deposits and withdrawals from the aforesaid current account in its ordinary course of business, in the year 1999. According to the complainant, the object of opening the account was to save the time for realisation of funds as the buyers were issuing cheques on Bank based in Mumbai.

3. The OP Bank issued two cheques on 15.03.1999 and 20.03.1999 to the representative of Assam Yarn Suppliers on authorisation. The complainant had authorised Mr. Pramod Kumar Jain of Assam Yarn Suppliers to operate the aforesaid current account also, vide letter dated 15.03.1999. Copy of letter dated 15.03.1999 and copy of the fax have been placed on record as Exs. 1 & 2.

4. Sharp differences between the owners of M/s. Assam Yarn Suppliers, i.e. Sh. Pramod Kumar Jain and the complainant, cropped up in the month of September, 1999. The complainant instructed Sh.Pramod Kumar Jain not to operate the account of the complainant and also to return the remaining cheque book which was duly signed by the Karta of the complainant, Sh. Gyan Chand Kankaria. Sh. Pramod Kumar Jain replied that the cheque book was missing. On 15.09.1999, the complainant instructed the OP to stop transaction in the aforesaid current account in view of the loss of cheque book from Nos. 201468 onwards. Copy of the said letter dated 15.09.1999 sent to the Bank has been annexed with the complaint as Ex. 3. The Bank also provided copy of the statement up to 16.09.1999, copy of which has been placed on record as Ex.3A. The complainant thereafter, vide letter dated 30.09.1999 and fax message of even dated, wrote to the OP Bank for not allowing operation in the aforesaid current account and also about cancellation of authority of Sh.Pramod Kumar Jain, copies of which have been attached with the complaint as Exs. 4 & 5.

5. However, the Bank most illegally, unauthorisedly and in clear cut connivance with Sh. Pramod Kumar Jain, allowed huge cash withdrawals in two days, i.e., on 28.09.1999 and 29.09.1999. The details of which have been given in the complaint, amounting to Rs.1,10,00,000/-, which is apparent by the copy of statement dated 12.10.1999, marked as Ex. 6. The complainant wrote various letters to the Bank which are filed as Ex. 7 (colly) but they did not bring the desired result. Sh.Gyan Chand Kankaria fell sick and he was taken to Chennai for his treatment by his brother, Mr. Narendra Kumar Kankaria, the Manager of the complainant company. They had to stay in Chennai from November, 1999 to September, 2000, vide Certificate marked as Ex.8. On return from Chennai, Gyan Chand Kankaria filed a criminal complaint against the conspirators in the aforesaid illegal withdrawal of funds from the said current account, at P.S. Beawar. Copy of the said FIR has been placed on record as Ex.9. The complainant has claimed interest @ 18% on the above said amount, i.e. Rs.1,10,00,000/-.

6. The present complaint was contested by the OP, but before embarking upon the defences, it would be worthwhile to look at the FIR lodged by the complainant. Counsel for the OP vehemently argued that the facts mentioned in the FIR are altogether different. It was alleged that the five accused, namely, (1) Sh. Pramod Kumar Jain (2) Sh. Rattanlal Modi (3) Sh. Vinod Kumar Jain (4) Smt. Uma Devi and (5) Manager, Lord Krishna Bank Ltd, hatched a conspiracy, while

working in collusion with each other and forged the signatures of Sh. Gyan Chand Kankaria. The complainant opened a new account, pursuant to that, the above said accused made transactions therein to the tune of Rs.3.8 crores in it. The said accused accordingly received goods worth Rs.5,24,58,486/- and they misappropriated the said amount. The accused had tendered cheques only to the tune of Rs.5,20,000/- less of which had been dishonoured. It was alleged that the accused were not remitting payment despite making repeated demands for the

same. Consequent to which, case under Sections 406, 420, 467 and 468 of IPC was made out. The police investigated the case and came to the conclusion that it is a case of civil nature. There was no written agreement between the complainant and the accused. There was no creation and entrustment of any trust available in the above said behalf. Both the parties were indulging in old money transactions.

7. FIR was also filed by Sh.Pramod Kumar Jain, on 22.09.2000, in respect of the amounts of Rs.3,86,00,000/- against the complainant at Mumbai. Anticipatory bail was granted to the complainant in that case.

8. Now, let us turn to the defences set up by the OP bank in its written statement. There is no deficiency of service on the part of the Bank. It has acted in accordance with the rules and banking norms and also in terms of the instructions received from the complainant. Various cheques in question were duly signed by the Proprietor of the complainant firm and presented during normal course of banking business hours of the OP and the same were paid/ honoured in due course of business by and on behalf of OP. This is a vain attempt made by the complainant for undue enrichment. Despite knowing the facts as well as his conduct and also the conduct of his authorised persons, Sh. Pramod Kumar Jain, Proprietor of Bahubali Syn-Fab Pvt. Ltd., who is a necessary party but was not made a party to this case, has filed this frivolous case. The complainant himself had admitted that there is a dispute between the complainant and Sh.Pramod Kumar Jain, as is apparent from the complaint. The Bank has acted in accordance with the instructions given by the complainant. All other allegations have been denied.

9. I have heard the counsel for the parties. Counsel for the complainant made the following submissions. He has invited my attention to the account opening form (individual) for current and Savings Bank account which goes to show that the complainant was introduced by a firm for Bahubali Syn-Fab Pvt. Ltd, which bears the signatures of Sh. Pramod Kumar Jain. It is explained that the mode of receipt of communication was through a person, for example, its letter dated 15.09.1999, runs as follows :- " As above Current Account No.1581, I say that please stop our account till further instructions by me. Our cheque book is lost from 201468 onwards. So please stop our account till further instructions. Please do the needful.

Thanking you,

Yours faithfully,

Sd/- Received 17/9/99

Gyan Chand Kankaria

Account complete

Sd/-

17/9/99

Sd/- ".

It bears the stamp of Lord Krishna Bank Ltd., which, according to the counsel for the complainant meant that it was sent through a person. However, it also reveals that it was sent through fax, as well. The main question raised by the counsel for the Complainant is that the other documents were not sent by person, but were sent by fax and are forged ones. He contended that other alleged letters received by the Bank from him are forged ones.

10. The other letter sent to the complainant is dated 24.09.1999, which runs as follows :- "24.9.99 The Manager Lord Krishna Bank Ltd. BNG House 201 DN Road Fort Mumbai - 23 Dear Sir, Fax No. 022-2618731 Reg. CA No. 1581 We would like to request you to treat our letter 15.9.99 cancelled. Kindly honour cheques from 201468. Kindly do the needful. Please issue new cheque books.

Thanking you,

Yours faithfully,

Sd/-

Gyan Chand Kankaria".

Counsel for the complainant submits that this document is forged one. My attention was invited towards the Heading of this document, wherein it is mentioned (hand written) at page 59 of the paper-book, on the top of the page, as under :-

" Mr.Joji,

This is inoperative A/c.

Why, issue cheque book? Sd/- 25/9".

At the foot of this document, it was written as under:

" Entered 27.9.99".

Meaning thereby, that, that letter was accepted. This document is the bone of contention. This was sent by fax and was not sent by hand, though it also bears the stamp of the Bank in token of its receipt.

11. Learned counsel for the complainant vehemently argued that this was a serious matter. The account of the complainant was frozen, before opening the account, it was the bounden duty of the Bank Manager to confirm this fact from the complainant. The counsel for the OP has tried to explain that he had made an enquiry on the telephone and after satisfaction, he allowed the account to be re-opened. Counsel for the complainant contended that the position does not begin to jell when it is not known as to who made the telephone call, who received it, no record in this context was ever maintained. The learned counsel for the complainant further submitted that the basis while dealing with the Bank is trust and confidence. Since it entailed big amount, on the two next very days, therefore, it should have taken precautions. The Bank did not act as a prudent person. The Bank Manager was working in cahoots with Sh. Pramod Kumar Jain and without satisfying the facts, he released the amount/money in favour of Sh. Pramod Kumar Jain. It clearly goes to show that the Bank did not care for the letter sent on 15.09.1999.

12. Attention of this Commission was invited towards the statement of account which clearly goes to show that the above said amount was released in favour of Sh. Pramod Kumar Jain or his firm on 28.09.1999 and 29.09.1999. The statement of account has been placed on record. The following extracts are relevant :- Date Particulars Chq.No. Withdrawal Deposit Balance

28/09/1999 CATO CASH 201473 1500000.00 3004860.00

28/09/1999 CA TO CASH 201474 1000000.00 2004860.00

28/09/1999 CA TO CASH 201475 2000000.00 4860.00

XXXX XXXX XXXX XXXX XXXX XXXXXX

29/09/1999 CA TO CASH 201476 2000000.00 4504820.00

29/09/1999 CA TO CASH 201477 2000000.00 2504820.00

29/09/1999 CA TO CASH 201478 2500000.00 4820.00

The total amount comes to Rs.1,10,00,000/-.

13. All these arguments have left no impression upon this Commission. The facts are to be read holistically and not in a vaccua, for the benefit of one and to the detriment of another.

14. The following documents carry utmost importance. Letter dated 15.03.1999 sent by Sh. Pannalal Kankaria & Sons, which indisputably bears the signature of Sh. Gyan Chand Kankaria, Proprietor, to the Manager, the then Lord Krishna Bank, Mumbai, has already been detailed above. The instructions issued to the Bank on 15.09.1999 are vague, evasive and lead this Commission, nowhere. This letter does not explain that the complainant had already signed the cheques. It is also noteworthy that, authority of Sh. Pramod Kumar Jain was not cancelled,

meaning thereby, that the letter dated 15.09.1999 does not mention a word, a hint or a syllable in respect of the letter dated 15.03.1999. The authority of Sh.Pramod Kumar Jain was never withdrawn.

15. Letter dated 24.09.1999, already discussed above, which is the bone of contention, is signed by Sh.Gyan Chand Kankaria. His signatures are never disputed. No expert evidence saw the light of the day. The signatures and hand-writing appears to be of Sh.Gyan Chand Kankaria himself. Again, it is difficult to fathom, why did the complainant issue letter dated 30.09.1999, after the amount had already been withdrawn.

16. A bear reading of the FIR clearly goes to show that and there is not even a scintilla of doubt in my mind that this is a civil nature dispute which requires elaborate evidence and entails complicated and intricate questions of forgery, misrepresentation and settlement of accounts. This Commission cannot arrogate to itself the powers which do not fall in its realm.

17. Secondly, Sh. Pramod Kumar Jain is a necessary party in this case. The real dispute is inter se , between the complainant and Sh.Pramod Kumar Jain. All the allegations have been made against Sh.Pramod Kumar Jain. The question of his non-presence further makes it clear that this is a case of civil nature and accounts.

18. Last, but not the least, it is not understood, what is the fault/ discrepancy on the Bank. All the documents appear to be genuine. The Bank has discharged its duties, as per the Banking Rules and norms. The authority of Sh.Pramod Kumar Jain was never withdrawn. He has been depositing as well as withdrawing the amount, time and again. The complainant has tried to make bricks without straw. He cannot be permitted to get the money from OP as well as from Sh. Pramod Kumar Jain. As a matter of fact, the case of the complainant is littered with the evidence of its weaknesses. The case of the complainant is, therefore, dismissed. However, nothing will debar the complainant to approach the civil court or appropriate court, as per law, within the ambit of authority reported in Laxmi Engineering Works Vs. P.S.G. Industrial Institute, (1995) 3 SCC 583.