(1997) 08 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

PUNJAB AND SIND BANK — APPELLANT

Vs

Arvind Sahni — RESPONDENT

Date of Decision : 06-08-1997

Acts Referred:

Citation : 1997 3 CPJ 290

Hon'ble Judges : J.B.GARG , SADA NAND , P.OJHA J.

Judgement

1. THE complainant has a Savings Bank Account No. 37598 in Punjab and Sind Bank, Sector 17C, Chandigarh. On 14.11.96 when his wife went to the Bank and collected upto date entries in the pass book she noticed that on 6.11.96 there were two with -drawls; one of Rs. 30,000/ - and another of Rs. 4,000/ - but in reality these were never made by her husband. This irregularity was brought to the notice of her husband who approached the appellants and was told that the withdrawal of Rs. 4,000/ - was made on a loose withdrawal slip and similarly second withdrawal of Rs. 30,000/ - was made within 1 or 1 1/2 hours of the first withdrawal on a loose cheque bearing No. 44410, the same day. It was alleged that on account of negligence/connivance of the Bank employees, the aforesaid two withdrawals were made. On a complaint instituted by him the Consumer Disputes Redressal Forum, Union Territory, Chandigarh, ordered on

2. 5.1997 THAT the Bank shall make credit entries of the aforesaid two sum because the Forum came to the conclusion THAT the debit entries were made on the basis of forged documents. Besides this the Bank was ordered to pay interest @18% per annum from the date the disputed debit entries were made and the Bank was also ordered to pay a compensation of Rs. 5,000/ - to the complainant on account of harassment and mental agony. The costs were also awarded to the tune of Rs. 2,000/ -. Besides this the Forum also ordered THAT the matter should also be brought to the notice of the local police for appropriate action and THAT a copy of the judgment be sent to the Senior Superintendent of Police, Chandigarh. Aggrieved against it, the respondents have attempted the present appeal. 2. In this case though the complainant possessed a chequebook and not only had been

a resident of Chandigarh but had been working in the neighbourhood of the Bank itself, yet two fake withdrawals were fastened on him. The Bank was able to collect sufficient evidence of the Expert THAT signatures on the withdrawal slip/ loose cheque were fabricated and not genuine. Besides this during the course of arguments it was brought to our notice THAT there is a specific column printed on each withdrawal slip/form THAT passbook must accompany this order form. This goes to show THAT if the withdrawal is made through a regular chequebook, it has much more veracity. But if it is to be made with the help of a withdrawal slip/form the Bank requires THAT the customer should bring the passbook also. If the passbook is also brought it would show genuineness of the demand made by or on behalf of the depositor. The fact THAT all these essential requirements were ignored established not only deficiency but also mala fide intention, which one or two persons had to cheat the customer as well as the Bank. For reasons best known to the appellants they had been protecting the defaulters. There is another important part of this dispute. Instead of immediately restoring the money and compensating the client regarding the loss of interest etc, the Bank had been insisting THAT the complainant should first furnish an indemnity bond. Our attention has been invited to a letter issued by Punjab & Sind Bank from its Head Office at Karol Bagh, New Delhi on 3.1.94. These instructions are contained in Annexure (sic.) 3 and it is reproduced as under: "Circular No. PSB: INSP: 1C: BR: 127/94 Dt: 3.1.94 Reg: Delegation of powers to debit O.D. Suspense A/c to meet claims of fraudulent withdrawals in Deposit Accounts. 1. It has been observed from the day to day working of fraud cases THAT requests from the branches/controlling offices are received to allow them to release funds in cases where fraudulent withdrawals have taken place in the accounts of the depositors through various modus operandi. The parties'' request for reimbursement of such amounts in cases where the culprits are not traceable and police investigation is in progress or otherwise not available. 2. In order not to let our valued customers face harassment due to procedural formalities it has been decided to delegate the undernoted powers to various executives for releasing amount from OD Suspense a/c to meet the exigencies in such cases: (i) Management upto Rs. 10.00 lacs Committee" (ii) Chairman & Managing Director " Rs. 8,00 lacs (iii) E.D. " Rs. 6.00 lacs (iv) GM " Rs. 4.00 lacs (v) DGM " Rs. 2.00 lacs (vi) AGM " Rs. 0.50 lacs (vii) ZM Scale IV/ " Rs. 0.25 lacs CM (Branch Incharge) The above authorities will be the competent authorities to meet the claim from O.D. Suspense A/c under their discretionary powers in case of fraudulent withdrawals in deposit accounts. 3. The amount may be released to the parties after taking necessary indemnity bond and legal opinion from the Bank''s approved Counsel. The fact of allowing funds from O.D. Suspense A/c to meet such claims be communicated to H.O. Inspection Deptt. after meeting such a claim in each case separately. The funds from O.D. Suspense A/c be allowed after completion of fact -finding report and on full satisfaction by the Sanctioning Authority THAT the party was, in any way, not involved in the fraud. Sd/ - (C.S. Rajwant) Dy. Gen. Manager We have considered this letter not with standing the fact THAT the appellant Bank is a Government of India Undertaking, the instructions contained therein cannot be said to be binding on a customer who has deposited money with the Bank and if some persons other than the depositor successfully cheat the Bank. In such a case it shall be deemed THAT the deposit was still lying with the Bank and the depositor was entitled to withdraw it. The learned Counsel for the respondents has drawn our attention to Canara Bank v. Canara Sales Corporation and Others, AIR 1987 Supreme Court 1603 and the relevant lines from para 42 of the aforesaid judgment are reproduced as under: "There is always an element of trust between the Bank and its customer. The Bank''s business depends upon this trust. Whenever a cheque purporting to be by a customer is presented before a Bank it carries a mandate to the Bank to pay. If a cheque is forged there is no such mandate. The Bank can escape liability only if it can establish knowledge to the customer of the forgery in the cheques. Inaction for continuously long period cannot by itself afford a satisfactory ground for the Bank to escape the liability. The plaintiff in this case swung into action immediately on the discovery of the fraud committed by its accountant as in the case before the Privy Council." It was not a case THAT the customer himself was negligent in any manner. It was not a case THAT the cheque was issued in a negligent manner to facilitate or almost invite an increase in the amount by forgery if the cheque got into the hands of a dishonest person. Here the facts speak for themselves and the appellant was something more than deficient. In such cases no indemnity bond can/could be demanded from the depositor.

3. THE learned Counsel for the appellant while supporting the plea of indemnity bond drew our attention to H. Sivaswamy v. Branch Manager Canara Bank & Another, 1996 (1) CPR 42 and in the aforesaid case the customer applied for a loan of Rs. 95,000/ - against his own Fixed Deposit of Rs. 1,80,000/ -. However, at the time the loan was granted the sum was deposited to the account of some other customer, this was found to be incidental and thus the facts and circumstances of the case now in hand are distinguishable. In the aforesaid case also no indemnity bond was furnished. The learned Counsel for the appellant has also drawn our attention to Harbhajan Singh v. Dayanand Medical College & Another, 1994 (1) CPR 518, where the word ''free'' was allegedly added later on, the Punjab Commission held that where the word ''free'' was added it involved complicated question of fact and the matter was beyond the jurisdiction of the aforesaid Commission. This authority has no relevancy with the present case.

4. THE learned Counsel for the appellant has disliked para No. 13 of the impugned judgment. In the aforesaid para the District Forum, Chandigarh has simply directed that the local police should be informed to take legal action in the right earnest. We have come to know that though the occurrence took place in November 1996 and an FIR has also been registered. There shall be no justification for this Commission to stop or delay the investigation which in fact should have been pressed by the appellant themselves. It is surprising that the Bank is feeling shy, from investigation of this case by the police. The conclusion is that the appeal fails and it is hereby dismissed with costs. Counsel fee Rs. 2,000/ -. Appeal dismissed with costs.

