(1999) 05 NCDRC CK 0081

In the National Consumer Disputes Redressal Commission

Punjab and Sind Bank APPELLANT

Vs

B.H.S.MONEY CORPORATION RESPONDENT

Date of Decision : 11-05-1999

Acts Referred:

Citation : 2000 1 CLT 472 : 2000 1 CPC 481 : 2000 1 CPJ 602 : 2000 2 CPR 558

Hon'ble Judges : A.L.Bahri , Jasbir Singh J.

Final Decision : Appeal dismissed

Judgement

1. THE present appeal is by Punjab and Sind Bank challenging order of the District Forum, Ludhiana dated December 19, 1997 whereby direction was given to the appellant Bank to pay token compensation of Rs. 5,000/- to the complainant B.H.S. Money Corporation.

2. SINCE on facts there is no dispute, thus, they are summarised as arising out of pleadings of the parties. The complainant B.H.S. Money Corporation is engaged in the business of lending money on interest (a financial corporation). The complainant is having a bank account with Vijya Bank, Mata Rani Chowk, Branch Ludhiana. One of the customers of the complainant gave a cheque for Rs. 40,000/- in favour of the complainant on June 6, 1996. The same was given to their Banker Vijya Bank for collection and credit in their account. Vijya Bank, for clearance, handed over the cheque to the agent of Punjab and Sind Bank in the clearing house. The cheque was drawn on Punjab and Sind Bank, Extension Counter, Khalsa College for Women, Ludhiana No. X-910. The cheque was returned un-encashed by Punjab and Sind Bank, Extension Counter, G.G.N. Khalsa College, Ludhiana, Extension No. X 1013. Subsequently the cheque having been represented was encashed. In the meantime, the complainant had issued cheques to his different customers. Particulars of 5 such customers to whom said cheques were issued for a sum of Rs. 6,500/- each were given in the complaint. For want of sufficient funds in their account, the cheques were dishonoured. Thus, alleging negligence in the matter of handling the cheque for Rs. 40,000/- by Punjab and Sind Bank as briefly noticed above, compensation

was claimed by the complainant who had suffered loss in reputation as well as mental tension and inconvenience on account of threats of criminal prosecution as complainant''s cheques bounced. A sum of Rs. 5 lacs was claimed as compensation. Punjab and Sind Bank, though admitting the broad facts as stated above, denied their negligence. There was no privity of contract between the appellant and complainant. Vijya Bank broadly admitted the facts as alleged by the complainants. The District Forum, holding negligence on the part of the Punjab and Sind Bank in the matter of returning the cheque for Rs. 40,000/-, directed payment of compensation as above. The question for consideration in the present appeal as pressed by Counsel for the appellant is about the status of the complainant in filing the complaint. According to the Counsel, the complainant could not be treated as a consumer as defined under the Consumer Protection Act entitled to file the complaint. There was no contract between the complainant and the appellant bank. There is fallacy in these arguments and the same cannot be accepted legally. Section 2(1) (d) of the Consumer Protection Act defines ''consumer'' as under : "Consumer" means any person who- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not includes a person who obtains such goods for resale or for any commercial purpose; or (ii) {hires or avails of} any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary or such services other than the person who {hires or avails of} the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payments, when such services are availed of with the approval of the first-mentioned person."

From Sub-clause (ii) as reproduced above, it would be clear that not only the person who hires the services of the opposite party is a consumer but the beneficiary of such services is also a consumer. Since the cheque was drawn on Punjab and Sind Bank, Extension Counter, Khalsa College for Women, No. X 910 by the drawer of the cheque who was having account therein, the aforesaid bank was duty bound to clear the cheque. Since the cheque was issued in the name of the present complainant, hence the complainant is a beneficiary of such services and a ''consumer'' as defined entitled to file the complaint. Looking from another angle, the complainant, otherwise, would be a beneficiary since he was having an account with the Vijya Bank and had given a cheque for collection and credit in his account and in consequence thereof, Vijya Bank had sent cheque to appellant bank for clearance. In that sense also, the complainant is a beneficiary of this transaction of clearance of the cheque and a ''consumer''.

3. THE fault lies with the Punjab and Sind Bank by their branch No. X 1013 in wrongly returning the cheque as the same was not drawn on them. It was duty

of the Punjab and Sind Bank to present the aforesaid cheque before the appropriate branch that is Extension Counter, Khalsa College for Women, Ludhiana No. X 910. Since, cheque was not presented before the appropriate branch and was wrongly dishonoured, there was deficiency in rendering service and on account of the aforesaid negligent act, the complainant was put to harassment for which he was to be compensated. The matter of determination of compensation in such like matters has to be in accordance with the provisions of Section 14(1)(d) of the Consumer Protection Act. No doubt, some evidence was produced by the complainant that on account of aforesaid negligent act, the complainant had to suffer as his cheques subsequently issued bounced for non-availability of funds, still element of guess work has to be introduced in determining compensation. It is not brought on the record as to whether any of the clients initiated any action on such bounced cheque against the complainant. In this view of the matter, only token compensation was required to be determined and a sum of Rs. 5,000/- is not considered highly excessive to call for interference in appeal.

4. FOR the reasons recorded above, this appeal fails and is dismissed with costs of Rs. 500/-. The directions aforesaid to be complied within one month from receipt of copy of this order, if not already complied. Appeal dismissed.