(2012) 08 NCDRC CK 0090

In the National Consumer Disputes Redressal Commission

Punjab National Bank APPELLANT

Vs

Surinder Bansal , Madhu Bansal RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Citation : 2012 0 NCDRC 436 : 2012 3 CPJ 675 : 2012 3 CPR 589

Hon'ble Judges : J.M.Malik , Vinay Kumar , Mohit Sharma , Sangeeta Sondhi J.

Judgement

1. THE matter in this revision petition relates to payment on a cheque drawn by the Complainant. The cheque for Rs.1 lakh, was encashed by the drawee/Ashok Kumar through his bank, the Oriental Bank of Commerce. The case of the Complainant was that the cheque, bearing no.616925 was drawn by him on 5.10.2006 in favour of one Mr. Ashok Kumar. As the matter was settled between the parties, he had asked the payee/Ashok Kumar, on several occasions, to return the cheque. It was not returned and the Complainant was assured that it will not be presented for payment. The complaint petition states that- "The complainants bonfidely believed the version of Sh. Ashok Kumar because the validity of the Cheque had already been expired. But Sh. Ashok Kumar dishonestly with malafide intention to cheat and to cause financial loss to the Complainants, deliberately and inconnivance with opposite party got encashed the above said cheque dt. 5.10.2006 for an amount of Rs.100000/- on 12.4.2007 i.e. after the expiry of validation of the cheque as per law laid down in the Negotiable Instruments Act, as well as Guideline issued by RBI from the account of the Complainants. It is pertinent to mention here that the validity of the above referred cheque was expired on 4.4.07. The opposite party no.2 despite knowing the fact that the validity of the cheque had already been expired and same cannot be hounoured, deliberately encash the same and caused financial loss to the complainants, which is clear deficiency in service on the part of opposite parties."

2. THE District Forum held that the complainants are unable to prove any deficiency in service on the part of the OPs. Therefore, the complaint was

dismissed. In appeal State Commission reversed the order and has directed the OPs to pay a compensation of Rs.1,00,000/- to the Complainant along with interest at 12% from the date of the complaint. The Punjab National Bank has challenged the above order of the State Commission, Haryana.

3. WE have heard Mr. Mohit Sharma, Advocate on behalf of the revision petitioner and perused the record.

4. THE State Commission has taken note of the arguments raised on behalf of Punjab National Bank that the Complainant never stopped payment on the cheque, despite his claim that the matter has been separately settled with the payee/Ashok Kumar. The Commission also considered the contention of the Complainant that the cheque had been issued on 5.10.2006 and therefore, its validity had lapsed on 4.4.2007. While coming to the conclusion that the cheque had been allowed to be encashed by manuplating the date of issue from 5.10.2006 to read 15.10.2006, the Commission has given the following reasonings:- "The contention raised on behalf of the appellants-opposite parties is attractive in view of the facts and circumstances of the case. The perusal of the impugned order reflects that the District Forum has merely relied upon the statement of Hand Writing Expart which is contrary to the statements made by Surinder Singh, Clerk of Oriental Bank of Commerce, Nabha as well as Rajinder Kumar, Clerk-cum-Cashier, Punjab national Bank, Nabha. Both the above named officials of the Bank have stated that the said cheque dated 05.10.2006 was firstly presented with Punjab National Bank, Nabha but the same was returned and was again sent for clearance with the Ambala Branch. Thus, from the statements of the bank officials it has been established on the record that in fact the cheque in question was dated 05.10.2006 but later on the bank officials to cover up their misdeed manipulated the date from 05.10.2006 to 15.10.2006 by prefixing figure ''1'' with the figure ''5'' so as to make it as ''15''. In our view the statements made by the bank officials are cogent and convincing evidence than that of the expert opinion who was arranged by the opposite parties themselves for preparing the report."

5. WE find that in Para 3-D the revision petition itself refers to the evidence of two bank officials mentioned above, but says that- "It is from here that the transaction gets shrouded in doubt because when the cheque was received by the petitioner-bank, the same was dated 15.10.2006. The needle of suspicion directly points to some malpractice when the cheque was initially returned to OBC Nabha. Since the Oriental Bank of Commerce, Nabha has not been impleaded as party in these proceedings, no action of complainant/respondent remains.

6. FROM the above, it is clear that the revision petitioner, having raised a question, has chosen not to answer it on the technical ground of the presenting bank having not been impleaded in these proceedings. We do not find this acceptable. Interestingly, in Para 3 K the revision petition itself refers to the evidence of the Surinder Singh Clerk Oriental Bank of Commerce, Nabha to the

effect that the cheque was dated 5.10.2006. But, it goes on to add "the perusal of the cheque in question shows no ambiguity in the cheque or date of issue in this document which has been cleared by the clearing house of the petitioner on 12.04.2007". Thus, the revision petition first raises a question, leaves it unanswered and then swings to an opposite conclusion. No basis has been given to question the finding of fact given by the State Commission.

7. IT needs to be pointed out that the petitioner had sufficient opportunity to question the evidence of the two bank employees before the fora below. Having failed to exercise that option, the petitioner seeks to raise the matter in the present proceedings. Revision proceedings before this Commission have to be conducted with limited scope provided by Section 21 (b) of the Consumer Protection Act, 1986. This has been emphasized and reiterated by Hon''ble Supreme Court of India in Rubi (Chandra) Dutta Vs. United India Insurance Co. Ltd. (2011) 11 SCC 269 in the following terms-- "23. Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the courts below, but on a different (an in our opinion, an erroneous) interpretation of the same set of facts. This is not the matter in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora".

8. IN the case before us, we are of the view that the revision petitioner has failed to make out any case against the impugned order. Consequently, the order of the Haryana State Consumer Disputes Redressal Commission in FA No.349 of 2009 is upheld and the revision petition is dismissed. No order as to costs.