(2004) 01 NCDRC CK 0127

In the National Consumer Disputes Redressal Commission

RATANCHAND MORARKAR APPELLANT

Vs

BANK OF MAHARASHTRA, BOMBAY RESPONDENT

Date of Decision : 19-01-2004

Acts Referred:

Citation : 2004 1 CLT 606 : 2004 1 CPC 589 : 2004 1 CPR 66 : 2004 2 CPJ 25

Hon'ble Judges : M.B.Shah , Rajyalakshmi Rao J.

Final Decision : Appeal dismissed

Judgement

1. -AGAINST the order dated 7.9.1995 passed by the State Consumer Disputes Redressal Commission, Maharashtra in dismissing the Complaint No. 392/1993 complainant has filed this appeal.

2. BEFORE the State Commission, it was contended by the complainant that on 10.8.1990, he had deposited the amount with the Bank for issuance of pay order and a demand draft in the name of two parties. The demand draft was to be issued in favour of M/s. Pratap Rajasthan Special Steel Ltd., Jaipur for a sum of Rs. 1,50,000/- and the pay order was to be issued in favour of M/s. Indian Enterprises for a sum of Rs. 1,20,000/-. The grievance in this complaint pertains to ''pay order'' as subsequently it was cancelled and issued in favour of one M/s. J.K. Industries. It is the say of the complainant that he had not authorised any one to cancel the same and issue a pay order in favour of M/s. J.K. Industries. It is further submitted that complainant was making regular inquiry with regard to encashment of the said pay order and that by letter dated 4.11.1991 respondent Bank issued a certificate that pay order was issued in favour of M/s. Keshri Steel Limited, Bombay. On inquiry from M/s. Keshri Steels Limited, it was found that it has not received the pay order. Petitioner went on making inquiries with the Bank but there was no response. Hence, he wrote a letter dated 7.4.1993 for taking speedy action with regard to the pay order issued in favour of M/s. Keshri Steels Limited. As there was no response to the said letter, again he wrote letter dated 26.4.1993 to resolve the matter by either issuing fresh pay order or to credit Rs. 1,20,000/- in his favour. Thereafter, for the first time, the Bank disclosed to the

complainant that the said pay order was cancelled by the appellant on 30.10.1990 and a new pay order for the said amount was issued in favour of one J.K. Industries. The grievance of the complainant is that he has not authorised anyone to cancel the pay order and issue pay order in favour of J.K. Industries. It is, therefore, prayed that there is deficiency in service by the respondent Bank and as the complainant has suffered a loss of prestige and credibility in the market, petitioner is entitled to receive the damages plus refund of Rs. 1,20,000/- with interest @ 24%.

After considering the evidence which was brought on record, the State Commission arrived at the conclusion that on the instructions of the Manager of the Bank, the payment in favour of Keshri Steel Limited was withheld and fresh pay order was issued in favour of J.K. Industries. Hence, complaint was dismissed. That order is challenged in this appeal.

3. IT has been pointed out by the Bank that appellant (partnership firm) was having their current account with the Bank and the complainant had authorised their representative Mr. Lalit Seth to deal with the current account No. 7800 maintained with the Bank; Mr. Lalit Seth on behalf of the appellant firm presented a request form on 10.8.1990 for issuing a pay order in favour of M/s. Keshri Steel Limited, Bombay; he has also signed and presented on behalf of the appellant firm a form for issuance of demand draft. Thereafter, on 30.10.1990, Mr. Lalit Seth, Manager requested the Bank to cancel the pay order dated 10.8.1990 and requested to issue a fresh pay order for the said sum in favour of M/s. J.K. Industries. As per the request, pay order was issued and that pay order was encahsed by J.K. Industries. It is contended that no one on behalf of the complainant ever approached the respondent Bank during the period of 10.8.1990 and 26.4.1993. For the first time, Bank received the letter dated 10.5.1993 from the appellant that they had not authorised anyone for issuance of fresh pay order by cancelling earlier pay order. It is, therefore, submitted that respondent Bank had acted in good faith as Mr. Lalit Seth, who was the Manager of the appellant, was dealing with the Bank account for the past many months and that it was not for the first time that Mr. Lalit Seth was dealing with the branch for preparation of the pay order. Mr. Lalit Seth was signing request form voucher for preparing the pay order. Therefore, there is no deficiency in service. The Bank has relied on previous conduct of Mr. Lalit Seth in presenting cheques and taking demand drafts for the appellant firm.

4. AT the time of hearing this matter, the learned Counsel for the appellant contended that Bank could not cancel the pay order on the basis of the so called instructions by Lalit Seth who was not authorised to operate the Bank account and the Bank failed to discharge his duty. In the present case, undisputedly, representative of the appellant approached the Bank for issuance of the pay order by filling in the request form. Thereafter, there is a letter dated 20.10.1990 written by a authorised representative of the appellant to the Manager, Bank of Maharashtra to cancel the pay order and issue the fresh pay order for the said

amount in favour of M/s. J.K. Industries. Along with the said letter, he had produced the pay order dated 10.8.1990. On the basis of the said letter, the Bank had cancelled the pay order in favour of M/s. Keshri Steel Ltd. and issued fresh pay order in favour of M/s. J.K. Industries, as requested. This would indicate that representative of the appellant approached the Bank with the pay order dated 10.8.1990 for its cancellation and for issuance of fresh pay order. Appellant has not pointed out that Mr. Lalit Seth was not having access to the firm letter heads and cheque book or that he was not authorised to approach the Bank with such request forms once original pay order was produced with a request to cancel the same by the authorised representative of the appellant. It cannot be said that there was deficiency in service. In this view of the matter it is apparent that action of the Bank was in good faith on the basis of the instructions of the authorised representative. In any case if authorised representative has done something wrong, it is for the appellant to take action against its representative and not against the Bank. In the result, appeal is dismissed. There shall be no order as to costs. Appeal dismissed.