(2000) 07 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

R.K.FLORICULTURE (P) LIMITED APPELLANT

Vs

PUNJAB AND SIND BANK RESPONDENT

Date of Decision : 18-07-2000

Acts Referred:

Citation : 2000 2 CPC 440 : 2001 1 CPJ 585

Hon'ble Judges : S.C.Datta , S.Majumder , D.Karformas J.

Final Decision : Complaint disposed of

Judgement

1. THE case of the petitioner in short is that it is a Company as defined in the Companies Act, 1956. THE said Company opened a Bank Account with the opposite party/Bank on 16.7.1997 by depositing a sum of Rs. 2,500.00. Accordingly the petitioner had become a consumer. At the time of opening the account the petitioner/Company, specifically instructed the opposite party that the said account would be operated jointly by Mr. Raj Kr. Sethi and Mrs. Gyana Devi Sethi and the specimen signatures of those two persons have been furnished to the Bank.

2. AFTER the Bank Account was opened the opposite party issued one cheque book bearing Folio No. 270621 to 270740 containing 20 number of cheques as per normal practice of the Bank. The Company kept the said cheque book in safe custody. Subsequently, the Company deposited Rs. 7,50,000/- on different occasions and issued only one cheque bearing No. 270721 amounting toRs. 1,00,000/- in favour of R.K. Floriculture (P) Ltd. on 14th August, 1997. The petitioner was not furnished with any statement of accounts but after repeated requests the statement of accounts was furnished after a lapse of four months on 21.11.1997. From the statement of accounts the petitioner understood that a sum of Rs. 6,50,000/- was withdrawn from the account of the petitioner through cheque No. 270702 dated 21.7.1997 and Cheque No. 270703 dated 5.8.1997. According to the petitioner second cheque book was never issued to it. But only one cheque book containing 20 cheques was issued to him. The petitioner alleges that the sum of Rs. 6,50,000 / - was withdrawn by the Bank employee in

collusion with third party and the Bank released the said amount without proper verification of cheque. The petitioner/Company wrote to the Bank complaining of withdrawal of the sum of Rs. 6,50,000/- so as to defraud it. According to the petitioner there was deficiency in service on the part of the Bank and as such Company approached the Commission claiming compensation for the sum of Rs. 6,50,000/- together with interest @ 18%. The opposite party has filed a written objection denying the allegation contained in the complaint petition. According to the opposite party, the issues involved in this case are complicated in nature involving taking of elaborate evidence and adducing of voluminous documentary evidence and detailed security and assessment of such evidence. So this Commission should refuse to entertain the complaint. It has been further stated that the nature of the complaint being one of fraud and the said incident having been brought to the notice of Police Authorities i.e. Central Bureau of Investigation, this Commission should not entertain the petition in view of pending criminal investigation. According to the opposite party the main question to be decided in the present case is whether the two cheques in question were fraudulently drawn or not and whether the signatures appearing therein are genuine or not. The opposite parties stated further that, in fact, at the request of the complainant two cheque books were issued to the complainant. The opposite party denies any deficiency in service on its part. It has been stated that the C.B.I. is still investigating the matter and pending investigation the complaint petition should not be heard and determined.

The learned Lawyer for the opposite party submits that when the allegation of deficiency in service is only incidental to deception, fraud and cheating, the determination of this question should not be undertaken by the Consumer Disputes Redressal Forum. In this connection, he has cited a case reported in III (1995) CPJ 120, K.V. Subbanna v. Kusuma & Ors. It appears there from that the Karnataka State Commission in arriving at the conclusion relied upon the principle laid down by the National Commission in case reported in I (1992) CPJ 30 (NC), Debashis v. Managing Director, Lakshmi Varshe Co. & Anr.

3. THE facts involved in this case are that the complainant deposited Rs. 7,50,000/- with the Bank with a specific direction that it would be operated jointly, but on receipt of statement of accounts it came to learn that Rs. 6,50,000/- was withdrawn by somebody by means of two cheques. According to the complainant only one cheque book was issued to him and only one cheque was utilised in withdrawing the sum of Rs. 1,00,000/-. But a second cheque book was utilised to withdraw Rs. 6,50,000/-. It has been stated that the C.B.I, is investigating into the case and the investigation is still on. Learned Lawyer appearing for the opposite party submits that all the relevant papers have been seized by C.B.I, and as such it is not possible on their part to show who were the drawees of the disputed cheques and who had received the second cheque book on behalf of the complainant and whether the recipient of the cheque book had authority to receive the same. THE learned Lawyer for the opposite party has cited the case of M/s. Singhal Swaroop Ispat Limited v. United Commercial Bank,

decided by the Hon''ble National Commission on 4.9.1992. In the said case, the National Commission observed as below : "From the pleadings filed in this case it is seen that serious allegation of forgery, fraud etc. have been made by the parties against one another requiring elaborate oral or documentary evidence being adduced and a protracted trial in order to fully and satisfactorily adjudicate upon the complicated issues that are involved. In the circumstances we hold that this is not a case that can be satisfactorily adjudicated upon in the time bound proceeding under the Consumer Protection Act. We dismiss this petition on this limited ground reserving liberty to the parties to take resort to the ordinary remedy by way of suit before the appropriate Civil Court, if so advised."

THErefore, having regard to the principle laid down by the National Commission and the facts and circumstances of the case we are inclined to hold that the complainant cannot involve the Consumer Disputes Redressal machinery for relief. THE complainant is, however, given liberty to take resort to the ordinary remedy by way of suit before the appropriate Civil Court, if so advised. With this observation the case is disposed of. Complaint disposed of.

