(1994) 01 NCDRC CK 0059

In the National Consumer Disputes Redressal Commission

SAROJ DEVI LATH APPELLANT

Vs

Canara Bank RESPONDENT

Date of Decision : 06-01-1994

Acts Referred:

Citation : 1994 3 CPJ 328

Hon'ble Judges : R.N.Mittal , S.Brar , A.N.Saxena J.

Final Decision : Complaint allowed with costs

Judgement

1. THE complainant has a current account in the name of her firm M/s. Jay Bajrangbali and Co. with Canara Bank, Stock Exchange Counter, Asaf Ali Road, New Delhi.

2. IT has been alleged that the respondent bank has committed fraud by debiting and crediting the following amounts in the account of the complainant''s firm :- Date Particulars 14-10-89 Rs. 50,000/- Dr. 16-10-89 Rs. 65,869.75 Dr. 18-10-89 Rs. 50,000/- Dr. 21-10-89 Rs. 50,000/- Cr. Complainant has stated that she never issued any cheques for debited amounts nor deposited Rs. 50,000/- on 21-10-89 while debits and credit have been shown by the respondent bank. IT is further claimed that the respondent Bank is legally bound to remove all the above noted entries from the account of the complainant and pay Rs. 1,15,869.75 being the principal difference amount which has been wrongly shown debited to her account as also to pay Rs. 86,000/- being the interest on the abovenoted amount of Rs. 2,13,869.75 w.e.f. 21-10-89. The total amount to be paid by the bank works out to Rs. 2,01,869.75 on the date of filing the present claim which is 30-9-92. The complainant has prayed for directing the respondent-bank to pay Rs. 2,01,869.75 (Rupees two lakhs, one thousand eight hundred sixty nine & paise seventy five) and she has also claimed future and pendentelite interest @ 24% P.A. on the claim amount alongwith costs.

The complaint has been opposed by the respondent on many counts. It has been claimed that the complainant is not a consumer and cannot claim benefit under the Act, in view of the National Commission''s judgment in C.P. 32/89 titled

Special Machines v. Punjab National Bank & Others, where it was held that the transactions of borrowings from the bank cannot be entertained under the Consumer Protection Act and only Civil Courts were the proper Forum.

3. IN the present case the question is not of borrowing and can be differentiated from that case is that here it is a matter of rendering service by the respondent-bank to the complainant who maintains a current account with the said bank and therefore falls within the purview of the Consumer Protection Act under Section 2(1)(o). The respondent-bank has further pleaded that the issues in the complaint involve elaborate oral and documentary evidence which can only be preferred before the Civil Courts. This Commission is the right forum for dealing with cases concerning deficiency in service with respect to its Account holders by the respondent-bank.

4. THE respondent-bank has further pleaded that the complaint is not maintainable for want of non-joinder of necessary parties namely M/ s. V.P. Rastogi & Company, with whom the complainant has had dealings in respect of the entries in question in the complaint being the other effected party is a necessary party for proper adjudication of the complaint. Since the complainant has failed to implead the above referred party, the complaint is bad for non-rejoinder of necessary parties. Moreover, the complainant has malafide intentions in keeping quiet for nearly two and a half years about the entries in her account since the pass sheets had been regularly supplied to her which impliedly means acceptance of the entries. She is, therefore, stopped from filing the present complaint which deserves to be dismissed. The complainant has controverted the plea of the respondent-bank vehemently. The bank has alleged that the transactions in question were made at the behest of the complainant but in support of their contention the respondent-bank has not produced any documentary evidence on the basis of which the debit and credit entries were made/authorised by the complainant. The bank has stated that they are not bound to rectify any entries from the accounts of the complainant and not are they liable to pay the claim of the complainant. We have heard the Counsel of both the parties and are of the view that the respondent-bank''s prime duty is to safe guard and protect the interest of its clients. The bank cannot of its own sweat will keep debiting and crediting amounts in the accounts of its clients without their specific instructions in bank and while to that effect, oral instructions are not to be acted upon unless these are confirmed by written communication, cheques or pay-in-slips.

5. THE complainant has stated that her husband used to look after her bank affairs and he was taken ill and under treatment for Cancer at the Tata Memorial Hospital, Bombay on account of which he could not regularly check up the Bank accounts. THE alleged Bank statement was attained from the bank in June, 1992 when the entries came to light. THE complainant met the Manager personally many times but did not receive any favourable response. A written complaint was lodged with the bank but still there was no response. THEreafter the complainant

was left with no alternative except to file the present complaint.

6. THE complainant has supported her claim with an affidavit, the respondent-bank though in the affidavit of Shri S.C. Chugh, Manager of Canara Bank, Extension Counter, of Asaf Ali Road, New Delhi, stated that the split transfers as shown in the complaint were effected as there was no balance as such in the account of the complainant to meet the cheque of Rs. 1,65,869.75 issued by her. It is interesting to note that split entries were made by the bank in the account of the complainant even when the cheque had been cancelled as admitted in the affidavit of the Manager of the bank. No reference has been made to any treatise/ instructions of the bank that if the amount of the cheque presented can not be paid from the account, the payment of the cheque can be made in instalments. Normally, if sufficient amount is not available in the a/c of the drawer of the cheque, the drawee bank does not honour the cheque. It is not understandable as to why this curious method was invented by the bank. It is noteworthy that the cheque issued by the complainant is alleged to have been cancelled by her. After taking into consideration all the above said circumstances, we are of the view that the amount of Rs. 50,000/- and Rs. 65,869.75 could not be debited to the account of the complainant, and the complainant is entitled to recover the said amount from the respondent. The complainant has been deprived of the use of the amount of Rs. 1,15,869.75, consequently, she is entitled to interest on that amount. We award interest at the rate of 15% p.a. from 16-10-89 till the date of realisation of the amount.

For the aforesaid reasons we accept the complaint with costs and direct the respondent to pay Rs. 1,15,869.75 with 15% interest from 16-10-89 till the date of payment within a period of three months failing which action shall be taken under Section 27 of the Consumer Protection Act, 1986. Costs of Rs. 2,000/- awarded. Complaint allowed with costs.