(1997) 09 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

SENIOR BRANCH MANAGER, BANK OF BARODA — APPELLANT

Vs

Feroz Khan — RESPONDENT

Date of Decision : 30-09-1997

Acts Referred:

Citation : 1998 2 CPC 689 : 1998 2 CPJ 594 : 1998 3 CPR 538

Hon'ble Judges : P.K.Shamsuddin , K.Balakrishnan Nair , K.M.Latha J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is directed against the order passed by the District Forum, Kollam in O.P. No. 399 / 1993. The opposite party is the appellant.

2. THE case of the complainant is that he maintained FCNR fixed deposit in the opposite party-Bank, which got matured on 18.12.1991. He instructed the opposite party to transfer the amount to the National Commercial Bank, Riyadh on 17.12.1991. THE amount in the deposit was Rs. 7,90,000/-. THE grievances of the complainant was that the amount was not transferred and he suffered loss. The opposite party filed a version stating that the instruction to transfer the amount to National Commercial Bank, Riyadh was given. But unfortunately that was not credited in the account of the complainant and in the circumstances there is no deficiency on their part.

Initially the District Forum dismissed the complaint saying that this is not a matter which can be adjudicated before the Consumer Court and the parties have to be relegated to a Civil Court. On appeal this Commission remanded the matter stating that no reason has been stated to find the matter cannot be adjudicated by the Consumer Court. Thereupon it was again taken and the District Forum held that there is deficiency in service and in that view an order was passed by the District Forum, directing the opposite party to pay to the complainant interest on the amount of Rs. 7,90,000/- for six months and to pay further compensation of Rs. 10,000/- and cost of Rs. 1,000/- was also ordered.

3. IN this appeal, learned Counsel appearing for the appellant submitted that the

opposite party did not commit any deficiency. Their service is only a gratuitous service, in which case there is no consumer relationship. However on going through the version we find that no such contention has been taken. During March, 1992 the complainant sent a letter to the opposite party complaining about the non-remittance of the money. Then the opposite party contacted Cochin Branch which appears to have forwarded the remittance. The complainant again contacted the opposite party in March, 1992 with the same complaint. It is admitted that the complainant was manufacturing foreign currency dollar deposit with opposite party and the maturity date is 18.12.1991 and the complainant instructed the opposite party to remit the proceeds of the deposit on the due date for crediting to the account of the complainant in National Commercial Bank, Riyadh. The authorised Branch to effect U.S. Dollar remittances is the Cochin Branch of Bank of Baroda. The opposite party stated that they passed instructions on 13.12.1991 to the Cochin Branch to effect U.S. Dollars. The Cochin Branch of the Bank of Baroda is not having any working arrangements with National Commercial Bank, Riyadh. But is having agency and other reciprocal arrangements with Arab National Banks. Hence the Cochin Branch of Bank of Baroda sent a telegraphic transfer of the amount on l7.12.1991 to Arab National Bank, Riyadh, with instruction to pay the amount to the National Commercial Bank, Riyadh to the account of complainant; Though it gave instruction to Arab National Bank in time the reimbursement of the funds to Arab National Bank is channelled through Bank of Baroda''s New York Branch. This was also done on 17.12.1991 by directing their New York Branch to pay the amount to Arab Bank, New York for credit to the Arab National Bank. It is contended that they have done everything possible. However it is seen that the opposite party has not made any enquiry as to the fate of this transfer until a complaint was made to the opposite party about six months after the instruction. Even after complaint was made in March, 1992, the opposite party did not do anything effectively to get the amount credited to the account of the complainant in National Commercial Bank, Riyadh and the complainant raised complaint in May, 1992. Instead of sending the amount to National Commercial Bank, Riyadh as instructed by the complainant what was done by the opposite party was to send the money through the Arab National Bank which committed negligence in transferring the amount to the National Commercial Bank, Riyadh. They are only acting as the agent of the opposite party and in the circumstances it cannot be said that there is no deficiency on the part of the appellant. In the circumstances we do not find any error in the order passed by the District Forum directing the opposite party to pay interest at the rate of 18% and also to pay cost of Rs. 1,000/-.

4. HOWEVER we do not find any justification to award a further compensation of Rs. 10,000/-. We vacate that direction. Subject to this modification appeal is dismissed. Appeal dismissed.

