(1993) 07 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

SETH MOHAN LAL HIRALAL , K.MOHAN PANNIKAR APPELLANT

Vs

PUNJAB NATIONAL BANK RESPONDENT

Date of Decision : 26-07-1993

Acts Referred:

Citation : 1993 0 CPC 835 : 1993 0 NCDRC 96 : 1993 3 CPJ 264 : 1993 3 CPR 209

Hon'ble Judges : V.BALAKRISHNA ERADI , A.S.VIJAYAKAR , Y.KRISHAN , B.S.YADAV J.

Advocate : M.S.Murlidhar

Judgement

1. TIN ''s is a complaint under Section 12 read with Section 21 of the Consumer Protection Act, 1986 filed by M/s. Seth Mohanlal Hiralal through one of his partners namely Govind Prasad Agarwal. The Opposite parties are Punjab National Bank (for short the Bank) and its officers. According to the allegations contained in the complaint, the complainant is a registered partnership firm. There are four partners in the firm including Shri Govind Prasad Agarwal. Certain business of the firm was split between the partners in 1988 and all the four partners decided that the accounts of the joint business of the firm would in future be operated by the joint signature of Govind Prasad Agarwal and either Gajanand Agarwal or Shri Gopal Prasad Agarwal. Accordingly all the four partners of the firm gave written instructions to the Bank vide their letter dated 19th August, 1980 that the accounts of the complainant firm would in future be operated by 2partners which would necessarily include the signature of the complainant, Govind Prasad Agarwal. The Respondent Bank permitted withdrawal of Rs. 4 lacs from the Firm''s C.A. 1017on 12th December, 1988 contrary to the instructions and debited the firm''s account with the said amount. Govind Prasad Agarwal took objection to the said debit and asked the Respondent Bank vide his notice dated 19th December, 1988 to restore credit immediately Rs. 4 lacs in the said account of the firm. The Respondent Bank realised its negligence and liability and credited Rs. 4 lacs in the account of the firm and intimated the Complainant to this effect vide letter dated the 7th March, 1989. The Respondent

Bank started complying with the instructions dated 19th August, 1988. Accordingly the Bank asked Govind Prasad Agarwal to sign on a cheque for Rs. 5,15,000/- duly signed by another partner of the firm vide its letter dated the 1st March, 1989. By its letter dated the 5th April, 1989 the Respondent Bank informed the Complainant, Govind Prasad Agarwal that it has received an arbitration award and enquired if he has any objection if it acts upon it. Govind Prasad Agarwal immediately objected to the Bank''s letter vide his letter dated 7th April, 1989 alleging that the Award dated 28th March, 1989 was a nullity and was being challenged. He also asked the Bank not to take any cognizance of the directions given in the Award and that the Bank was bound to act as per the instructions given to it on 19.8.1988. In the Account opening form it was agreed that the firm account shall be operated as per the instructions....,'' until any one of us shall give you notice in writing to the contrary....." Therefore, even if the respondent bank was under the impression that the Award dated 28th March, 1989 was binding upon it, the Bank was bound to stop the operations as soon as Govind Prasad Agarwal objected to it. However, it is alleged that the Respondent Bank a nd its officers were in collusion with the other partners of the firm and in order to oblige them they obtained opinion from a lawyer to suit their modus-operandi and intimated the Complainant, Govind Prasad Agarwal, vide their letter dated 13th April, 1989, that it was bound to permit operation of the Grin''s account as per the Awa rd dated 28th March, 1989 and if the complainant had any objection he could seek legal remedy. Without giving an opportunity to the complainant to give Jus reply to the letter dated 13th April, 1989, the Bank allowed withdrawals amounting to Rs. 5,47,971/-on 13th April, 1989 from the firm''s account. Govind Prasad served a notice through his lawyer on 14th April, 1989 upon the Bank in reply to its letter dated 13th April, 1989 intimating that the Bank was bound to act as per the instruction dated 19lh August, 1988. Despite the notice, the Respondent Bank continued to allow withdrawals through cheques without the signatures of Govind Prasad Agarwal from the firm''s account. The amounts so withdrawn between 11.5.1988 and 6.10.1989 total Rs. 18,46,108.26. The Complainant filed a writ petition in the Madhya Pradesh High Court for restraining the Respondent Bank from allowing the unauthorised withdrawals and for restoration of Rs. 23,90,079/- (i.e. Rs. 5,47,971 plus Rs. 18,46,108.26). The High Court dismissed the Writ Petition on the ground that Writ was not a proper recourse in these matters, vide judgment dated 22nd February, 1991. hi the meantime the Respondent Bank''s senior lawyer instructed the Bank on 19th August, 1990 that the Bank should not have operated the account on the basis of the Award since the Bank was neither concerned with nor a party thereto. Realising its negligence, the Bank intimated the complainant vide letter November, 1989 that it would stop the operation of the account, unless clear instructions by all the partners of the firm are given to it. The complainant tiled Special Leave Petition against the ordcr of the High Court in the Supreme Court which was dismissed on 9th August, 1991 on the ground that the recourse to Writ was not maintainable. The Supreme Court also allowed to institute proceedings in an appropriate Court for necessary relief and also clarified that the observations made in the impugned judgment of the M.P. High Court on the merits of the case would not stand in the way of the petitioner seeking leave to withdraw Special Leave Petition. The complainant accordingly in this complain! prayed for the recovery of Rs. 23,90,791/- which " amount is alleged to have been unauthorisedly with drawn from the Finn''s Account plus Rs. 1 l,13,325/-as interest at the rate of 18% per annum from April, 1989 to March, 1992.

2. THE opposite parties contested the complaint. A preliminary objection was raised to the effect and to the complaint was not maintainable by one of tie partners of the firm especially in view of the fact that tie other three partners who were asserting their right to operate the account and have in fact been running the business of the Complainant Finn and who had been depositing and withdrawing the amount from that account for the purpose of business of the partnership were necessary and proper parties to the proceedings. It was further alleged that Gobvind Prasad Agarwal has suppressed material facts deliberately by not stating in the complaint that Arbitrator''s award dated 28th March, 1989 on the basis of which the Bank had acted has been made the rule of the Court vide order dated 1lth April, 1990 and, therefore, ft was not open to Govind Prasad Agarwal to a liege that the award was bad and unenforceable. According to the award dated 28th March, 1989 the account was to be operated upon by Gajanand Ji, Govind Prasad and Bhurelal and any two of the partners could sign the cheque and make use for firm''s work. The previous arrangement by which Gopal Prasad and Govind Prasad were dealing with tie Bank was cancelled by the award. The arbitrator also inquired into the complaint of Govind Prasad Agarwal about the withdrawal of Rs. 4 lacs, but it was held that the amount was required for the contract works and so it was withdrawn and was duly entered into the hooks of the firm and had been utilised in the contract work

3. IT was further, pleaded by the opposite parties that when the copy of the Award dated 28th March, 1989 was received by the Bank, it inquired about the same from the complainant Govind Prasad Agarwal. '' Since Govind Prasad Agarwal objected and other partners were insisting that the Bank should act on the basis of the said Award the Bank sought legal opinion into the matter and based on the legal opinion the account was allowed to be operated upon in term of the Award to which all the partners were parties. The Bank accepted the award as further instructions. The action of the bank was bona fide. According to the Bank there was no deficiency or negligence in the rendering of service to complainant Govind Prasad Agarwal.

4. WE have heard the parties. The first point to be considered is whether the complaint is properly constituted. The complaint has been filed on behalf of M/s. Mohanlal Hiralal, by one of its partners, Govind Prasad Agarwal. The other partners who are interested in the operation of the account of the firm have not been arrayed either as complainants or as respondents. When there is a dispute between the patners, the other partners ought to have been made parties to the

present complaint and they were entitled to plead if the Bank acted bona tide or not while allowing withdrawals according to the supplementary award dated the 28th March, 1989 a copy of which has been filed as Annexure 2 to the present proceedings by the Bank. According to the award, the arbitrators have allowed the remaining three partners to operate the account of the firm so as to fulfil the pending contract. The Bank after obtaining legal opinion allowed the operation of the account in terms of the supplementary award. When Govind Prasad Agarwal persisted in his objections to the operation of the account, the Bank obtained another advice from its senior lawyer and on receipt of that advice, it stopped further operation of the account. Therefore, it cannot be said that the bank''s action was not bona fide. Another aspect to be noted is that Govind Prasad Agarwal who is the main complainant had challenged the supplementary award dated the 28th March, 1989 by filing an application under Sec. 33 of the Arbitration Act. His application was rejected. The Additional District Judge, Hoshangabad vide order dated 11th April, 1990 made both the awards dated 19th August, 1988 and the supplementary award dated 28th March, 1989 as rules of Court. There is nothing on the file to show that Govind Prasad Agarwal has challenged that Order by way of appeal. Though that order was passed after the Bank had allowed the withdrawals from the account between the dates 1lth May, 1989 and 6th October, 1989, but as noticed earlier the Bank had add after obtaining the opinion from its lawyer.

5. IN the light of the circumstances of the case we art of the opinion that it cannot be held in the present case that the Bank was negligent in the performance of the service or any loss has occurred to the firm, M/s. Seth Mohanlal Hiralal. Consequently we dismiss the present complaint. We make no order as to costs.