
(2013) 01 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

SHEELA WANTI

APPELLANT

Vs

STATE BANK OF INDIA

RESPONDENT

Date of Decision : 19-01-2013

Acts Referred:

Citation : 2013 0 NCDRC 384

Hon'ble Judges : ASHOK BHAN , VINEETA RAI J.

Final Decision : Appeal allowed

Judgement

1. COMPLAINANTS /Appellants have filed this Appeal against the judgment and order dated July 19, 2007 passed by the State Consumer Disputes Redressal Commission, Delhi (in short, "the State Commission ") in Complaint No. 300/98 seeking interest on the amount of Rs. 4,00,000 awarded by the State Commission.

2. BRIEFLY stated the facts of the case are that the Complainants/Appellants had a joint saving Bank Account No. 45656 with the Respondent No. 1 Bank (hereinafter referred to as the "Respondent "). On 2.6.1997, Appellant No. 1 deposited with the Respondent Bank an Account Payee Demand Draft No. 400564 (000892) dated 29.5.1997 in the sum of Rs. 4,00,000 payable at Canara Bank, New Delhi [Branch code No. 1745]. Presuming that the amount of the said demand draft would be credited in their account within 3-4 days, Appellants requested the Respondent Bank on 17.6.1997 to issue a demand draft in favour of HUDA for a sum of Rs. 1,10,000. The said request was declined by the Respondent for want of sufficient balance. The demand draft was obtained only after depositing a sum of Rs. 200 in cash to make up the existing balance for issuance of the draft. On verbal enquiry, Appellants were informed by the Respondent Bank that the demand draft of Rs. 4,00,000 deposited by them on 2nd June, 1997 had been misplaced. Despite repeated requests made by the Appellants, Respondent Bank failed to trace the demand draft or credit the amount of the demand draft to the their account. Complainants, being aggrieved, filed the complaint before the State Commission seeking a direction to the

Respondent Bank to pay the sum of Rs. 4,00,000 being the value of the demand draft and compensation of Rs. 1,00,000 along with cost of litigation. Respondents, on being served, entered appearance and filed their written statement resisting the complaint, inter alia, on the grounds; that as a matter of practice, all the cheques/drafts submitted by the parties for clearance with the Respondents were acknowledged by putting the rubber stamp on the counterfoil of the pay-in-slip along with signature/initials of the staff/officer with whom such cheques/drafts had been tendered but the counter foil of the pay-in slip dated 2.6.1997 produced by the Appellants did not bear any signature/initial of the any of the staff of the Respondent Bank; that it bore only the rubber stamp on which even the date of stamping was not legible; that in order to avoid any misuse of such tendered cheque/draft with the Respondents, the parties were required to put the account number at the back of such cheque/draft tendered by them for clearance with the Respondents; that as a further safeguard, all the cheques/drafts tendered by the parties with the Respondent Bank were "crossed " by putting "SBI Saraswati Vihar " endorsement on the face of it to avoid any misuse of such cheques/drafts and thereafter, the same were sent for clearing after making necessary entries in the records of the Respondents; that no entry with regard to alleged tendering of the said draft on 2.6.1997 was found anywhere in the records of the Respondents.

3. THE State Commission, after considering the material available on record and going through the evidence led by the parties, came to the conclusion that the pay-in slip with stamp of the bank manifestly indicated that the demand draft was received by the Respondent Bank and on the internal complaint of the Manager, the entire staff of the bank was transferred. It was further held that even an FIR was lodged by the Bank with the Police with regard to the loss of draft which was of a very heavy amount. Accordingly, State Commission allowed the complaint and directed the Respondent Bank to pay a sum of Rs. 4,00,000 to the Appellants along with costs of Rs. 10,000. State Commission observed thus: "8. We have accorded careful consideration to the rival contentions of the parties. In our view, none of the contentions raised by the OP has substance. No person, in whose favour a draft has been issued and has been deposited with the bank where he has an account, would on his own open an account in another bank only with a view to get the amount of draft encashed, if he has already an account in a bank. The pay-in slip with stamp of the bank manifestly demonstrates that the draft was received by the OP Bank. So much so on the internal complaint of the Manager, the entire staff of bank was transferred. Even FIR was lodged by the Bank with regard to the loss of the draft which was of a very heavy amount. On the contrary, the OP failed to produce any material to show that the Canara Bank had opened an account of the complainant on the next date. The documents on record show that it was opened in the name of somebody else and not the complainant. May be there was some conspiracy or connivance with the staff of the OP in depriving the complainant of this amount and opening an account in some other bank in the name of some other person.

9. The service of the kind the banks provide, vis-a-vis, receipt of cheques, drafts received by them from their consumers should be perfect and without any fault or inadequacy. The consumer reposes full faith in the bank when he opens an account and deposits cheques and drafts and if there is either mishandling or loss from the custody of the bank and are deposited or encashed by unauthorized person, amounts to deficiency in service for which the bank has to compensate the consumer as to the actual loss or injury suffered by him. Complainant is not concerned as to how this draft fell in the hands of unauthorized persons and was encashed in the account of the some other bank. 10. In the given facts and circumstances of the case and the report lodged with the police by the OP bank and the loss suffered by the complainant, we allow the complaint with the directions to pay the amount of draft, i.e. Rs. 4.00 lacs within one month with Rs. 10,000 as compensation and cost of litigation. 11. We are not awarding any interest in view of the peculiarity of the facts and circumstances of the case. "

4. FEELING aggrieved by the order of the State Commission, both the parties have preferred Appeals before this Commission. Appellants have filed First Appeal No. 646/07 seeking interest on the awarded amount while the First Appeal No. 624/07 was filed by the Respondents for setting aside the impugned order. First Appeal No. 624/07 filed by the Respondents was dismissed by this Commission vide order dated 12.3.2008 by observing thus: "The State Commission, after perusing the documents, has arrived at the conclusion that the pay-in slip with stamp of the bank manifestly demonstrates that the draft was received by the OP Bank. On the internal complaint of the Manager, the entire staff of Bank was transferred. Even FIR was lodged by the bank with regard to the loss of the draft which was of a very heavy amount. The State Commission has allowed the complaint and directed the Appellants to pay the amount of draft, i.e. Rs. 4 lakh within one month with Rs. 10,000 as compensation and costs of litigation. In our view, the State Commission has rightly allowed the complaint and came to the conclusion that there was deficiency in service on the part of the Bank and there is no reason for us to admit this appeal. Hence, dismissed. "

5. FIRST Appeal No. 646/07 filed by the Appellants was admitted on 12.3.2008 limited to the point of awarding interest. We have heard the learned Counsel for the parties on the question of awarding interest at some length. Learned Counsel appearing for the Appellants contends that the State Commission has committed a grave error in declining the interest on the awarded amount of Rs. 4,00,000 to the Appellants. As against this, learned Counsel for the Respondents supports the order passed by the State Commission.

6. WE find substance in the submission made by the learned Counsel for the Appellants. It is no longer in dispute that the demand draft of Rs. 4,00,000 was deposited by the Appellants with the Respondent Bank on 2.6.1997 which was misplaced by them. Finding recorded by the State Commission and upheld by

this Commission that the Respondent was negligent in providing service to the Appellants had attained finality. Bank has accepted the order passed against it and paid the sum of Rs. 4,00,000 along with costs of Rs. 10,000 to the Appellants on 4.6.2008 vide banker cheque No. 584022. Appellants have been deprived of use of their money for about 11 years and as such they are entitled to interest being the normal accretion on the capital. Supreme Court of India in Alok Shanker Pandey v. Union of India and Ors., II (2007) CPJ 3 (SC)=III (2007) SLT 27=(2007) 3 SCC 545, has held that interest is not a penalty or punishment at all, but is the normal accretion on capital; that in equity the person keeping the money is required to pay the interest being normal accretion on the principal amount. Relevant observations of the Supreme Court are as under: "It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B."

7. IN our considered view, State Commission has erred in not awarding interest on the awarded amount. Appeal is allowed and the Respondent Bank is directed to pay interest @ 6% p.a. to the Appellants from the date of deposit of demand draft till the date of payment, i.e. 4.6.2008 within a period of eight weeks from today failing which the amount shall carry interest @ 9% p.a. Respondent is also directed to pay further costs of 5,000 to the Appellants. Appeal allowed.