(1991) 09 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

S.KAMALA DEVI APPELLANT

Vs

UCO Bank RESPONDENT

Date of Decision : 30-09-1991

Acts Referred:

Citation : 1992 3 CPJ 43

Hon'ble Judges : R.G.Desai , K.R.Ramaswamy Iyengar J.

Final Decision : Complaint dismissed

Judgement

1. THE Complainant had opened two Savings Bank Accounts bearing Nos. 3172 and 3244 in the name of her minor children Chi. V.S. Balasubramaniam and Chi. V.S. Jaya Prakash represented by herself as Guardian and in her own name respectively with the Respondent Bank''s Branch at Peenya as per her applications Exs. R-1 and R-3. Exs. R-2 and R-4 are the specimen signature cards of the complainant in respect of the said accounts. Her husband Shri V.S. Sathyanarayan had introduced her to the Bank at the time of opening the said accounts. Complainant''s husband had also an S.B. Account bearing No. 3245 in the said Bank. Her husband was Proprietor of the business concern called M/s. Essay Steel Traders and he had opened Cash Credit Account bearing No. 25/88 in the name of his business concern in the said Bank. THE transactions with the Respondent Bank were going on smoothly till the complainant and her husband along with their children shifted over to new residence at No. 211, 17th "D" Cross, III Block, IV Stage, West of Chord Road, Bangalore79 in September 1989. At the same time, the complainant started her own business in Iron & Steel in Peenya Industrial Estate and opened an account in the name of her business concern in the Bank of India, Basaveswara Nagar Branch which was nearer to the residence. So she thought that it would be convenient to her to operate on her and on her minor children''s accounts if maintained with Bank of India, Basaveswara Nagar Branch. So she decided to transfer major portion of her funds to Bank of India Branch leaving small business with the Respondent Bank. So on 19-7-1989, a cheque, Ex. C-1, for Rs. 2,74,500/- in her S.B.A/c No. 3224 was drawn upon the Respondent Bank in favour of Bank of India for crediting to

her account in that bank and the said cheque was presented to the Respondent Bank on 1-9-1989. Similarly, Ex. C-2, dated 19-7-1989 for a sum of Rs. 85,000/- in the S.B.A/c No. 3172 on behalf of her minor son, Chi. V.S. Balasubramaniam drawn on the Resp. Bank in favour of Bank of India was presented to the Respondent Bank on 1-9-1989. So also in respect of Ex. C-3 pertaining to her minor son Chi. V.S. Jaya Prakash''s account for Rs. 84,500/- drawn on the Respondent Bank in favour of Bank of India was also presented to the Respondent Bank on 1 -9-89. All the 3 said cheques were returned on the ground that the drawer''s signature differs as per Ex. C-4. Similarly, Cheques, Exs. C-5, C-7 and C-9, drawn on me Respondent Bank for Rs. 2,75,000/-, Rs. 85,000/- and Rs. 84,500/- respectively were returned by the Respondent Bank on the ground that the drawer''s signature differed and as the cheques contained extraneous matter along with the slips Exs. C-6, C-8 and C-10 respectively On 6-9-1989, a sum of Rs, 2,10,000/- was transferred from her S.B. Account No. 3224 to the Cash Credit Account of her husband''s business account number unauthorized. On 3-10-1989, cheque, Ex. C-13 issued by the Complainant for Rs. 2,75,00/- in her favour was returned on the same day for want of so much of cash on that day along with Memo, Ex. C-14. Hence the complainant has filed this complaint, for re-transfer and re-credit of sum of Rs. 2,10,000/- which was illegally transferred from her S.B. Account No. 3224 to Cash Credit Account of her husband and for special damages of Rs. 7,90,000/- on account of loss of business and reputation due to the wrongful dishonoring of the cheques by the Respondent Bank.

2. THE complaint is resisted by the Respondents by contending inter-alia, that the complainant is not a "Consumer" within the meaning of Section 2(1)(d)(ii) of the Consumer Protection Act, 1986 (hereinafter referred to as ''Act'') and so the complaint is not maintainable; that this commission has no jurisdiction to award damages prayed for by the complainant as she has not alleged negligence on the part of the compensation in her complaint; that there has been delay of 9 months in filing the complaint; that the amount of Rs. 2,10,000/- was transferred from the S.B. Account of the complainant to the business account of her husband to satisfy in part over-drawings of her husband on her specific oral instructions; that the cheques were returned for valid reasons as the signatures of complainant on those cheques did not tally with her specimen signature and as there was extraneous matters on the reverse of some cheques and cheque, Ex. C-13 was returned for want of sufficient funds as stated in the Memo, Ex. C-14 and that the complainant is not entitled to any complainant as claimed. The complainant has given evidence as C.W-1 and has produced Exs. C-1 to C-22. On behalf of the respondents Sri. R.G. Ramaswamy, R.W-1 has given evidence and has produced Exs. R-1 to R-10.

The first point that arises for determination in this case is whether the complainant is a "Consumer" within the meaning under Section 2(1)(d)(ii) of the Act. According to the said provision, she will be a consumer if she shows that she has hired the services of the Respondent for consideration. Providing facilities in connection with banking will be "Service" according to the Clause (6) of Section 2(i) of the Act The complainant was having her S.B. Account No. 3224 and another S.B. Account No. 3172 as Guardian of her minor children with the Respondent Bank. Mr. Sreevatsa, learned Counsel for the respondents urged that no service charge is levied on S.B. Accounts and so the services rendered by the respondent Bank was free of charge and, therefore, complainant will not be a "consumer". Mr. Ponnappa, learned counsel for the complainant urged that as interest paid by the Respondent Bank on the S.B. Accounts of the complainant and her minor children is much less Than what the Bank charges for the advances made by it to borrowers, it can be said that the complainant had hired the banking service of the respondent for consideration. In support of his contention he relied upon the decision of the Andhra Pradesh State Consumer Disputes Redressal Commission in P. Nagabhushana Rao v. Union Bank of India & Another, I (1991) CPJ 352. It cannot be disputed that the interest paid by the Respondent Bank on the amounts deposited by the complainant in the S.B. Account of herself and her minor children is much less than what the Resp. Bank charges on the advances made by it to the borrowers. So Bank earns some money on the amounts deposited in the S.B. Accounts of the complainant. Hence it can be said that amount is consideration for the "service" of the Bank. That view finds support from the above quoted decision of the A.P. State Commission Hence, we hold that the complainant is a "consumer" and complaint before this Commission is maintainable.

3. THE next question that arises for determination is whether the respondent Bank was justified in transferring a sum of Rs. 2,10,000/- from the S.B. Account of the complainant to the account of the complainant''s husband''s business concern. According to the complainant, she had not given oral instructions to R.W-1 to transfer the said sum. But according to R.W-1, she had instructed him over the phone to transfer the said sum and so he transferred it and thereafter he wrote a letter as per Ex. C- 15 to confirm the same by issue of cheque for the said sum. THE transfer was effected on 6-9- 1989 and it was done on telephonic instructions from the complainant according to R.W-1. THE complainant (C.W-1) has denied the said facts. So the question is which of the two rival versions is probable and true. C.W-1 has said in Cross-examination that she had no financial transaction with her husband. But when she was confronted with Ex. R-9, she admitted that she had issued a cheque in favour of her husband for Rs. 30,000/- and that he has got it encashed. She first stated that she never transferred any amount from the account of herself or her minor children to the account of her husband on oral instructions and all transactions of transfer of amounts have been effected by cheques. But when she was shown Ex. R-10, she admitted that it is a Debit Voucher dated 17-4-1989 whereby a sum of Rs. 25,000/- was transferred from her children''s account to the account of her husband''s concern on her oral instructions and that later she had confirmed it by signing on the reverse of Ex. R-10. From these admissions, it is clear that the Complainant was in the habit of issuing oral instructions for transfer and later confirming the

same. THE conduct of R.W-1 in writing Ex. C-15 on the same day to the complainant probabalises his contention. R.W- 1 is the Manager of the Nationalized Bank and has absolutely no reason to give false evidence against the complainant. Admittedly, the complainant''s husband was a Bank Official formerly and he has taken to business after resigning that job. He appears to be behind the whole affair and it appears that he has instigated the complainant to file this complaint to make unlawful gain. Hence we accept the version of R.W-1 in preference to the interested version of C.W-1 and hold that the transfer of the said sum was authorized by the complainant and it is not illegal. The next question for determination in this case is whether R.W-1 was justified in returning the cheques, Exs. C-1to C-3, C- 5, C-7 and C-9 for the reasons stated in Exs. C-4, C-6, C-8 and C-10. Exs. C-1to C-3 were returned along with Ex. C-4 for the reason that the drawer''s signature differs in that below signature of the complainant in Exs. C-1 to C-3 there is a horizontal line but the said line is not there in the specimen signature contained in Exs. R-2 and R-4. In the complaint, the complainant has gone to the extent of stating that the said line was drawn by the Bank officials But no suggestion was made to R.W-1 in his cross-examination. In Ex. R-9 also there is horizontal line below her signature. This shows that she was also in the habit of drawing horizontal line below her signature. In view of the variation in the signature, R.W-1 is justified in returning the cheques. Cheque, Exs. C-5, C-7 and C-9 were also returned for two reasons. Firstly, the drawer''s signature differs and secondly the cheques contained extraneous matters on the reverse. R.W-1 has stated that alphabets "S" and "1" in the disputed signatures and the specimen signature differ. Those cheques also contain the signature of her husband as proprietor of M/s. Esskay Steel Traders and statement to the effect that he has attested the signature of Smt. Kamala Devi S. on their reverse. Under the circumstances, it cannot be said that the Manager was not justified in returning those cheques. Moreover, returning the cheques on the ground that the signature differs cannot be said to have affected the credibility or reputation of the complainant. The complainant has admitted that on 15-9-1989, she came to know about the transfer of amount of Rs. 2,10,000/- from her account to the account of her husband. Ex. C-13 is dated 3-10-1989. It pertains to her S.B. Account and it is for a sum of Rs. 2,75,000/-. Ex. R-6 shows that there was no amount to that extent in her account on that day. Knowing this full well she had issued the said cheques. She ought not to have issued that cheque when there was no cash balance to her account and when she has issued it the Manager was justified in rejecting it and so she cannot make any grievance out of it. Hence the complainant is not entitled to any damages on account of the return of the said cheques Exs. C-1 to C-3, C-5, C-7 and C-13.

4. IN the result the complaint is dismissed and the complainant shall pay costs of Rs. 1,000/- (Rupees one thousand only) to the respondent and bear her own costs. Complaint dismissed.

