**(1990) 11 NCDRC CK 0040**

**In the National Consumer Disputes Redressal Commission**

SOVINTORG (INDIA) PVT. LTD. APPELLANT

Vs

State Bank of India RESPONDENT

**Date of Decision :** 29-11-1990

**Acts Referred:**

**Citation :** 1991 0 CPC 291 : 1991 1 CPJ 254

**Hon'ble Judges :** R.N.Mittal , B.L.Anand , Avtar Pennathur J.

**Final Decision :** Complaint partly allowed

# Judgement

1. BRIEFLY facts are that the petitioner had an account No. 2283 with the defendant for its business. A cheque No. 581585 dated 3rd June, 1983 for rupees one lac was received by it from its principal M/s Chinar Export Pvt. Ltd. which was deposited with the defendant for collection and crediting the proceeds to account No. 2283. The defendant collected the proceeds of the cheque on 17th June, 1983 but did not deposit the amount in the account of the complainant. Inspite of various notices, the amount has not been paid to by the defendant to the complainant. Consequently, the complaint has been filed for the recovery of rupees one lac the amount of the cheque, Rs. 3,26,000/- on account of interest 24% per annum with quarterly rest w. e. f. 18th June, 83 till 31st October, 1989. rupees two lacs on account of compensation for business losses and rupees two lacs on account of damages for loss of prestige, status and mental agony suffered by the complainant, and its Managing Director. Thus the total amount claimed by the petitioner comes to Rs. 8.26 lacs.

2. THE defendant contested the petition and took a preliminary objection that the claim was barred by limitation. It is alleged that the complainant made a specific demand for return of the amount on 5th August, 83 vide letter of that date. THE case was governed by Article 22 of the Limitation Act which provided three years limitation from the date of demand of the amount from a banker and thus the case became barred by limitation on 6th August, 1986. On merits it is stated by the defendant that the complainant was under liquidation and therefore it could not file the present complaint and that it was the official liquidator who could do

so. The amount of one lac of rupees, it is alleged, was held as margin money for a Bank guarantee favoring the Chief Controller of Imports and Exports in April 1983 issued by the Bank of the complainant. The Chief Joint Controller of Imports and Exports had advised the respondent on 3rd November, 1987 not to release the guarantee. It was, therefore, necessary that his claim should in the first instance be settled by the complainant and the original guarantee deed be returned to the defendant. Thereafter, the payment can be released in his (complainant''s) favour.

The first question that arises for determination is as to whether the complaint is barred by limitation. Article 22 of the Limitation Act, provides that for recovery of money deposited under an agreement that it would be payable on demand, the limitation is 3 years from the date of demand. The learned Counsel for the respondent submitted that demand for the amount of rupees one lac was made by the complainant vide letter dated 5th August, 1983 and the complaint was filed on 8.1.90. Thus it was filed after more than three years of the date of demand and therefore the complaint is barred by limitation. We have seen the letter referred to by the learned Counsel, but regret our inability to accept his contention. What is stated in the letter by the complainant is that a cheque No. 581585 dated 3rd June, 1983 of rupees one lac drawn on Indian Overseas Bank, Janpath was deposited on 15.6.1983 and that was not reflected in the statement which was a serious mistake.

3. IT is evident from the above letter that the complainant pointed out to the Bank the mistake in preparing the statement of accounts. IT cannot be held on the basis of this letter by any stretch of imagination that the demand was made by the complainant of rupees one lac from the defendant. Unless the amount is demanded specifically from the Bank Limitation under Article 22 of the Limitation Act does not start running against depositor. No other letter has been brought to our notice by which the amount was claimed by the complainant. After taking into consideration, the aforesaid circumstances, we are of the view that the complaint is not barred by limitation. The second question that arises for determination is whether the complainant is under liquidation or not. The complainant has produced various documents which go to show that the winding up proceedings were started against the complainant. However, at a subsequent stage the proceedings were dropped. It is not necessary 10 make a reference to all the documents produced by the complainant. Suffice it refer to the order dated 2.4.86 by B. N. Kirpal, J. wherein it is ordered by the learned Judge that Mr. A. K. Jain, learned Counsel for the petitioner stated that there had been full and final settlement between the petitioner nd the respondent company (now complainant in the complaint). That being so the petition was dismissed as withdrawn. The Provisional Liquidator, it is further ordered, should return to the company the property of the company which was taken into possession by him, within a fortnight. From the aforesaid order, it is clear that the liquidation proceedings which were initiated against the complainant came to an end on 2.4.1986. Therefore, the complainant has right to file the complaint.

 

4. THE third question that arises for determination is whether the amount of rupees one lac could be held as margin money by the Bank because of guarantee furnished by it for the complainant in favour of the Chief Controller of Exports and Imports in April, 1983. It is stated by the complainant that the guarantee was issued by the Bank after receiving margin money of Rs. 75,000/-. Thus fact is not controverted by the Bank. No agreement between the parties has been produced by the Bank, according to which it could retain the amount of the cheque till the period of guarantee expired. Therefore, we are of the opinion that the Bank had no right to keep rupees one lac the amount of cheque realised by it as margin money. It is further relevant to mention that the guarantee was given by the Bank for 3 years and it expired on 3.4.1986. The Bank admitted vide letter dated 3.10.1987, Annexure ''E'' that no amount had been claimed by the beneficiary of the guarantee from the Bank. This fact is further affirmed by the Bank in its letter dated 10th June, 1988 (page 72). The Counsel for the respondent has also admitted that an amount of rupees one lac is lying deposited with the Bank. After taking into consideration the aforesaid circumstances we are of the view that the Bank could not withhold the amount of rupees one lac as margin money because of the guarantee furnished by it in favour of the Chief Controller Imports & Exports in April, 1983. The complainant is consequently entitled to the refund of the amount.

5. THE fourth question which requires decision is whether the complainant is entitled to interest if so at what rate. As is evident from the facts stated above, the amount has been illegally retained by the Bank for all these years. Consequently, he is entitled to interest on that amount at the rate of 12% per annum with quarterly rests from the date when the amount of cheque was realised by the Bank till the date of payment.

6. THE last question to be determined is whether, the complainant is entitled to damages for loss of prestige, status and mental agony suffered by him and compensation on account of loss of business; if so how much. It is well settled proposition of law that the relationship between a banker and customer is that of a debtor and creditor AIR 1962 SC 1764. If a debtor fails to pay the debt to his creditor at the time as promised the latter does not become entitled to claim damages from the former. Therefore, we are of the opinion that the complainant is not entitled to claim damages on account of alleged loss of prestige, status, mental agony etc. on the ground that the Bank failed to pay the amount of cheque to it.

For the aforesaid reasons we partly accept the complaint and direct the respondent to pay rupees one lac with interest @ 12% per annum with quarterly rests from the date when the amount was received by it till the date of payment within six weeks from the date of the order. No order as to costs. Complaint partly allowed.