(1996) 07 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

State Bank of India APPELLANT

Vs

CITIZEN PROTECTION FORUM RESPONDENT

Date of Decision : 09-07-1996

Acts Referred:

Citation : 1996 3 CPJ 302

Hon'ble Judges : A.P.Chowdhri , S.Brar , Desh Bandhu J.

Final Decision : Appeal partly allowed

Judgement

1. BRIEF facts of the case are that Ravi Khanna, sole proprietor of Sunshine Industrial had two accounts in the State Bank of India, Industrial Complex, Nangloi, Delhi. One was current account No. 3/486 and the other was a loan account having a certain cash credit limit. One Group Housing Cooperative Society called DSIDC Friends Cooperative Housing Society Ltd. also had an account with the said branch of the Bank. Ravi Khanna, aforesaid, was an office bearer in the Management of the said Cooperative Society at the relevant time. On 22.5.90, Ravi Khanna issued a cheque for Rs. 30,000/- in favour of the aforesaid Cooperative Society. The amount was credited to the account of the Society and debited to the account of Mr. Ravi Khanna. Later on, it came to the notice of the Bank that the two accounts, namely the current account and the cash credit account, had been amalgamated by a decision of the Bank dated 22.5.90. As a result of the amalgamation, there was no balance left to the credit of Mr. Ravi Khanna as the cash credit account had been over drawn. Accordingly, the bank made a reverse entry dated 3.6.90 debiting the amount of the cheque of Rs. 30,000/- in the account of the Society.

2. THE complaint from which the present appeal has arisen was instituted by Citizen Protection Forum and it was contested by the Bank. THE District Forum-II, by its order dated 22.4.94, allowed the complaint and directed the Bank to pay to the Cooperative Society Rs. 30,000/- with interest @ 15% p.a. from 2.6.90. Aggrieved by the order, the Bank has preferred this appeal. Reply has been filed by the respondent alongwith affidavit of one Ravinder Khanna. We

have heard Mr. S.L. Gupta, Advocate for the appellant and Mr. Rajiv Vig, Advocate for the respondent.

The first contention of Mr. Vig is that the appeal is barred by limitation. The relevant dates are: District Forum-II disposed of the complaint by its order dated 22.4.94. The appeal was filed on 16.8.94: According to the assertion of the appellant, certified copy was obtained from District Forum on 15.7.94. There is nothing on record to show that certified copy of the order had been received by the appellant on a day prior to 15.7.94. The appeal was filed within 30 days of the date of receipt of the certified copy of the order. The appeal is, therefore, within limitation.

3. THE next question, which arises for consideration is, whether the District Forum was justified in awarding interest especially when the affected society had not claimed any interest nor. had it come forward to show how. it had suffered loss by reversal of the entry. We, therefore, set-aside direction of the District Forum in so far as award of interest is concerned. The next question is whether the Bank was entitled to reverse the entry at its own level. We put it to the learned Counsel for the appellant whether it was open to the bank to make a reverse entry where payment had been wrongly made. Mr. Gupta, learned Counsel for the appellant, examined the question and as a result of his study he has not been able to refer us to any decision or established practice in banking that it is within the power of the Bank to reverse the entry where wrong payment had been made. Mr. Gupta has, however, brought to our notice a decision of the Supreme Court in the Sales Tax Officer, Banaras v. Kanhiya Lal Mukand Lal Saraf AIR 1959 Supreme Court 135. Their Lordships in this decision construed the provisions of Section 72 of the Contract Act. on the one hand and Sections 21 and 22 of the Contract Act on the other hand and laid-down that if one party under a mistake, whether of fact or law, pays to another party money which is not due by contract or otherwise that money must be re-paid. There is no dispute with the principal laid-down in the above authority. The real question is whether the Bank should file a suit for the recovery of the amount or make a reverse entry after having credited account of the payee. As already pointed out, no such proposition has been brought to our notice. We are unable to accept that the Bank can make the reverse entry at its own level.

4. THE other authority cited by Mr. Gupta is Jammu & Kashmir Bank Ltd. v. Attar-ul-nisa AIR 1967 SC 540. We have gone through this authority and it concludes the matter against Mr. Gupta in so far as power of the Bank to make the reverse entry is concerned. THE relevant observation occurs in para 8 of the report as under : "As soon as the money is credited in the account of the constituent even though the person paying in may have paid by mistake, it becomes the money of the constituent, and the bank cannot pay it back to the person who paid it to the account of the constituent on his representation that it was paid by mistake, without obtaining the consent of the constituent."

THEir lordship referred to certain instances where mistake could be corrected by the Bank. THEse instances do not cover the case of Mr. Gupta. For the foregoing reasons, we partly allow the appeal, set-aside the order of the District Forum. We hold that it is not open to the Bank to reverse the entry crediting the amount to the account of the Co-operative Society. It would, however, be open to the Bank to carry out the proposed correction by filing a suit in the Civil Court, if so advised. The reverse entry, already made, stands set-aside as being beyond the powers of the Bank. The amount on account of the said cheque shall, however, not be withdrawn by or on behalf of the Co-operative Society for a period of three months from the date of receipt of a copy of this order by the parties to enable the Bank to approach the Civil Court, as indicated above. On the expiry of the said period and in the absence of any direction from the Civil Court, the amount would be dealt with by the said constituent, according to law. The parties shall bear their own costs throughout. A copy of this order be communicated to both the parties as well as District Forum-II. Appeal partly allowed.