
(1996) 04 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

STATE BANK OF INDIA

APPELLANT

Vs

KALIKA CHARAN DUBE

RESPONDENT

Date of Decision : 26-04-1996

Acts Referred:

Citation : 1996 2 CPC 331 : 1996 2 CPJ 27 : 1996 2 CPR 110 : 1997 1 CLT 127

Hon'ble Judges : V.BALAKRISHNA ERADI , B.S.YADAV , S.S.CHADHA ,
R.THAMARAJAKSHI , S.P.BAGLA J.

Judgement

1. FIRST Appeal No. 446 of 1994 We have heard the learned Counsel appearing for the appellant and the respondent in this First Appeal No. 446 of 1994 and perused the record. We find that the appeal filed by the Canara Bank is time barred and, therefore, dismiss this appeal. No order as to costs. First Appeal No. 412 of 1994 The facts in this Appeal No. 412 of 1994 filed by the State Bank of India relate to the issue of a wrong draft for Rs. 36,000/- by the appellant to the respondent, Dr. Kalika Charan Dube, resulting in a loss to him in a transaction of shares. Dr. Dube was issued with a draft for Rs. 36,000/- by the State Bank of India, Agra, which was drawn on their branch in Parliament Street in New Delhi, for the allotment of right issue shares in TISCO. He deposited that draft and the application for shares in the Canara Bank which informed him vide their letter dated the 25th August, 1992 that the draft had been dishonoured. Consequently, the application and the demand draft were returned by the Canara Bank to him. Thereafter, Dr. Dube got a fresh draft from the Appellant herein and sent it to TISCO at their Bombay address. However, they returned the application form and the draft saying that the matter may be pursued with the opposite party No. 5, the Tata Iron and Steel Co. Ltd., Bombay and not with the share Registry. In effect, the application for the allotment of shares could not be entertained at that later stage and consequently the shares could not be allotted to him. Dr. Dube, the respondent herein, filed a complaint before the State Commission, Delhi, claiming Rs. 6.57 lakhs for the loss suffered by him alongwith interest at 18% per annum on the amount of Rs. 36,000/- with quarterly rests from 11.7.92 till the date of payment and adequate amount as damages on account of mental

and physical agony and pain. In this complaint, two Banks are involved, namely, the State Bank of India and the Canara Bank. The Canara Bank in their reply stated that the draft issued by the State Bank of India and deposited with them, when sent to the State Bank of India for clearance was returned for the reason that the name of the issuing branch with its code number was not indicated on the face of the draft. The mistake of not putting the name of the issuing branch and its code number is admitted by the State Bank of India. However, their contention is that the last date of closure of rights shares of TISCO was 21st July, 1992; whereas the application was presented to the Canara Bank on 13th July, 1992. The Canara Bank in turn presented this draft quite later on 23rd July, 1992. If they had presented the same on 13th July, 1992, the clerical mistake of not showing the name of the issuing branch and its code number on the draft could have been rectified in time and before the last date of the closure of rights shares issue. The State Commission after going through the record carefully decided that both the State Bank of India and the Canara Bank were responsible for negligence in rendering the required service to the respondent. After having arrived at this decision, the State Commission further considered the question of apportioning the negligence on the part of both the Banks so as to award the compensation accordingly and came to a view that the Canara Bank and the State Bank of India are negligent in the ratio of 1 : 4.

2. HAVING decided the ratio of negligence as between the Canara Bank and the State Bank of India, the State Commission further considered the question of the amount of loss on account of non -allotment of shares to the respondent. The respondent had placed on record the news paper, the Karobar, dated the 9th October, 1992 in which the prices of TISCO shares had been quoted to substantiate his claim of loss. The State Commission has observed that there was no dispute to the fact that the shares could be sold by the respondent only after the scrips had been issued to him on the basis of the terms and conditions of the issue. The last date for the closure for the rights shares was the 21st July, 1992. The State Commission after careful consideration came to the view that taking a period of six weeks from the date of closure of the subscription list, which was not extended, the shares would have been allotted in the 1st week of September, 1992. The price of each share on 6th August, 1992 is quoted at Rs. 301/- and on 9th October, 1992 as Rs. 370/-. The price of the shares in September, 1992 has not been quoted, by any party. The State Commission after taking into consideration the attendant circumstances in this case assessed the price of the shares in the 1st week of September, 1992 at Rs. 325/-. The respondent was entitled to an allotment of 728 shares at the rate of Rs. 80/- per share. Therefore, the State Commission assessed the loss of the respondent at the rate of Rs. 245/- per share and the total loss accordingly, on 728 shares, at Rs. 1,79,400/-. Keeping the ratio of 1 : 4 in view, the State Commission apportioned the liability for this loss between the Canara Bank and the State Bank of India accordingly; and also awarded interest at the rate of 15% per annum from 1st September, 1992 till the date of payment. The State

Commission further awarded a sum of Rs. 15,000 / - as damages. All these amounts are to be shared in the same ratio of 1 : 4. The State Bank of India came in appeal admitting the mistake of not showing the name and code number of the issuing branch on the draft resulting in the delay which ultimately caused loss to the respondent. But, their contention has been that if the Canara Bank had shown diligence and acted promptly, the loss to him would have been avoided as the mistake could have been corrected by them promptly. Their main contention is as to why the Canara Bank presented the draft deposited with them on 13.7.92 only, on 23.7.92 i.e. after more than 10 days. They even alleged that the Canara Bank took more than one month time to inform Dr. Dube about the dishonouring of the draft and further took an entire month to return the draft to the respondent. They have also stated that Shri Dube had received the draft in question and the application form from the Canara Bank on 22.9.92, but waited for another month and then left for abroad on 22.10.92 and came back to India, on 2.2.1993 and thereafter approached the State Bank of India on 15.3.1993 for removing the defect in the draft in question and for revalidating the same. Therefore, there has been a considerable laxity on his part also in regard to this transaction. Hence, their contention is that even if there has been some negligence on their part in not putting the name of the branch and the code number on the draft, the other two parties, namely, the Canara Bank and Dr. Dube, have been more negligent in doing what they should have done at the proper time so as to avoid the losses.

3. WE have heard the learned Counsel for the State Bank of India and the Canara Bank and Dr. Dube and have given our careful consideration to the facts and circumstances of this case. There is no doubt that the State Bank of India has been negligent in rendering the service properly to the respondent. It is also established that the Canara Bank too has been negligent. Therefore, we do not feel inclined to interfere with the findings and conclusions of the State Commission as regards the ratio of negligence between the State Bank of India and the Canara Bank and the determination of losses on account of non - allotment of shares which the respondent could have sold in September, 1992. We, however, are of the view that having given the benefit of spurt in prices of the shares, which benefit in the present case is at the rate of Rs. 245/ - on each share, there is no justification for awarding interest to the respondent at the rate of 15% per annum or the damages at Rs. 15,000/ -. We, therefore, allow this appeal to the extent of striking down the award of interest and damages to be paid by the State Bank of India and the Canara Bank.

4. WE uphold the decision as regards the determination of the quantum of loss, the ratio in which it is to be shared by the State Bank of India and the Canara Bank and also as regards the costs awarded by the State Commission, Delhi. The parties will bear their respective costs in this appeal. Ordered accordingly.