(2017) 02 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

Case No : 68 of 2009

STATE BANK OF INDIA, & ORS. — APPELLANT

Vs

SATYA RANJAN DAS, & ORS. — RESPONDENT

Date of Decision : 08-02-2017

Acts Referred:

Consumer Protection Act, 1986, Section 19 - Appeals

Citation : 2017 1 CPR 341

Hon'ble Judges : M. Shreesha

Advocate : Arun Gupta, S.L. Gupta, Soumitra Chatterjee, Himanshu Dubey

Final Decision : Appeal Allowed

Judgement

1. Aggrieved by the order of the State Consumer Disputes Redressal Commission at West Bengal (for short "the State Commission"), in SC Case No. 19/0/2007 dated 28.11.2008, Opposite Parties No. 3 to 5 State Bank of India (for short "SBI") preferred this Appeal under Section 19 of the Consumer Protection Act, 1986 (for short "the Act"). By the impugned order the State Commission allowed the Complaint and directed SBI to pay an amount of 10,00,000/-, being the cheque amount together with compensation of 25,000/- and costs of 1,000/- with a default interest @ 10% p.a., if the amount was not paid within a period of two months from the date of the order.

2. Briefly put, the facts material to the case are that the Complainant, the Sole Proprietor of M/s Shaon Classics Company, Kolkata, during the course of his business, procured an order for supply of Gas Producer Plant of M/s Allied Minerals & Industries, Madhya Pradesh, for which, an Account-payee cheque bearing No. 145618 dated 30.07.2005 drawn on State Bank of India, Katni Main Branch, for a sum of 10,00,000/- as part-payment, was issued. On 29.09.2005, the Complainant deposited the said cheque with Opposite Parties -1 & 2 Banker, i.e. Bank of India, Free School Street Branch, Kolkata (for short "Bank of India") where he was maintaining a Current Account bearing No. 0/D 45414. It was

stated that Bank of India sent the said cheque to State Bank of India for clearing and thereafter instructions were received from SBI that the said cheque was out-dated and the same was returned by Bank of India along-with letter dated 18.10.2005 to the Complainant. On receipt of the same, Complainant found that the date of the cheque was changed from 30.07.2005 to 30.07.2004 by over-writing. It was averred that Bank of India, as per banking practice and procedure, deducted 2040/- towards cheque transfer charges.

3. Complainant wrote a letter dated 22.11.2005 to Bank of India raising his genuine grievance about the said interpolation and dishonor of the cheque. In their reply dated 23.11.2005, Bank of India acknowledged receipt of cheque dated 30.07.2005 for an amount of 10,00,000/- which they state they had sent to Katni Branch of SBI for clearing, but does not give any reply regarding interpolation of the said cheque. The Complainant issued a legal notice seeking explanation for tampering and interpolation of the said cheque, for which he had received a reply dated 16.05.2006 stating that the cheque with interpolation in the date was received from SBI, Katni Branch with the reason "Instrument Out-dated". SBI also received a legal notice and replied that the local head office at Bhopal would look into the matter. As there was no response, Complainant approached State Commission seeking directions to all the Opposite Parties to pay the cheque amount of 10,00,000/- together with compensation of 16,50,000/- incurred towards financial loss and other costs.

4. Bank of India filed written version admitting that a cheque of 10,00,000/- was deposited by the Complainant in his account No. 0/D 45414 on 20.09.2005. After receiving the said cheque the same was sent to Katni Branch of SBI for clearing. It was pleaded that the cheque was returned unpaid by SBI through its written memo. with the remarks "instrument outdated". Upon the receipt of the said cheque the same was forwarded to the Complainant with the return memo. It was pleaded that the cheque was forwarded by following the normal banking practices and that they are not responsible for any interpolation as their duty was only to collect the proceeds of the cheque after realization from SBI. The Complainant had unnecessarily impleaded them as a party to the case as the interpolation was done in the Katni Branch of SBI. Bank of India has nothing to do with the non-payment of the said cheque and no deficiency can be attributed against them.

5. SBI filed their written version to the effect that one account-payee cheque bearing No. 145618 dated 30.07.2005 drawn on SBI, Katni Main Branch, for an amount of 10,00,000/- issued by one M/s Allied Minerals & Industries was received in their Branch for payment through Bank of India, which was returned as the cheque was "outdated". It was specifically denied that there was interpolation in the date made by them and it was stated that the cheque in question was received in their Branch after the date was interpolated from ''5'' to ''4''. They deny that there was any interpolation done by them in collusion with Bank of India. It was pleaded that SBI cannot be held responsible for any

inconvenience or loss alleged to have been suffered by the Complainant as allegations are not substantiated by any reliable document or evidence and therefore, no deficiency in service can be attributed to them.

6. The State Commission allowed the complaint for cheque amount by observing as follows:- "In the written objection filed by the OPs 3, 4 & 5 it has been stated in paragraph 5 thereof that the said cheque contained overwriting which was ''strolled through'' and as such the correctness of the content of the alleged cheque is not admitted. Again in paragraph 7 of the said written objection the OPs 3, 4 and 5 stated that they received the alleged cheque in an interpolated condition. But, surprisingly, the OPs did not return the cheque on the ground of interpolation but treating the said cheque as dated 30.7.2004 returned the same as ''outdated cheque''. It may be noticed that the said OPs 3, 4 & 5 even did not admit the correctness of the content of the cheque as it contained overwriting but accepting the overwriting as a valid alteration returned the cheque as outdated. Therefore, the case made out by the OPs 3, 4 and 5 is self-contradictory whereas the contentions of the OPs 1 & 2 are consistent and it has been categorically stated by OP1 & 2 that the said cheque was dated 30.7.2005 and was sent for clearing to OP5. The OPs 1 & 2 by their letter dated 23.11.2005 categorically described the cheque as dated 30.7.05. In above view of the findings it appears that OP1 & 2 received the cheque as clearly dated 30.7.2005 and sent it to the OP5 also in the same condition. But OP5 returned the cheque as outdated which shows that it acted on the altered date 30.7.2004 treating the alteration as a proper correction. But in course of the proceeding the said OPs have stated that the said cheque was interpolated and even did not admit the correctness of the cheque due to such interpolation. But it is also noticed that the cheque was not returned on the ground of interpolation but on the ground of it being outdated. Therefore, it is apparent that the OP5 has tried to make out two inconsistent cases of interpolation as also the cheque being outdated. Therefore, there is no reason to accept self-contradictory cases made by the OP5 and as there is no other party involved which had dealt with the cheque keeping in its custody the only conclusion can be reached that said alternation/interpolation has been done on the said cheque while it was in the custody of the OP5. As it is not the case of the OP5 that the envelope containing the cheque received for OP1 and 2 was tampered or damaged, the alteration was not possible while the cheque was in transit. Therefore, the said OPs are held responsible and are, therefore, liable to compensate the complainant and also to make payment of the amount covered by the said cheque".

7. Ld. Counsel for SBI submitted that the State Commission has failed to appreciate that the cheque came into the hands of the SBI only on 10.10.2005 whereas the cheque was deposited with Bank of India on 28.09.2005 and therefore, the cheque in question remained with Bank of India or in transit for more than 13 days. He further submitted that the Complainant did not contact the drawer of the cheque and did not make M/s Allied Minerals & Industries as a party to the Complaint. He vehemently argued that the State Commission had

erred in allowing the full amount of the cheque towards compensation without appreciating that there was no evidence that SBI had made any interpolation on the cheque with respect to the date.

8. Bank of India filed their written submissions stating that SBI had taken contrary and false stand that the cheque in question was received in an interpolated condition. This plea was taken only to escape from their liability. It is an admitted fact that the cheque in question was returned unpaid by SBI for the reason "instrument outdated" and not for "interpolation" as alleged. It is stated that Bank of India has been falsely implicated.

9. Vide order dated 22.04.2016 this Commission had directed SBI to produce "Cheque Referral Register", referred to in the impugned order and also the evidence with regard to the enquiry conducted by it from the drawer. There was also a direction to Bank of India to produce the relevant register in which the entry for forwarding the cheque for clearance must have been made.

10. In compliance with the said directions, the true certified copy of the relevant portion of the Register containing the entry of forwarding the said cheque was duly produced by Bank of India. It is pertinent to note that despite ample opportunities and a specific direction given by this Commission to produce the cheque referral register the same was never produced by SBI. On a specific question it was stated by their Counsel that the relevant record was not available. There was also a direction on 26.08.2016 that if the Bank failed to file the documents, as directed vide order dated 22.04.2016, the Appeal may be dismissed for non-prosecution. Despite this direction, no documents have been filed. Keeping in view the submissions of Bank of India and also certified copy of the extract containing the entry of forwarding the said cheque to SBI, it is proved beyond doubt that Bank of India forwarded the cheque dated 30.07.2005 to SBI, which was returned to them as "outdated". This establishes that SBI had received the cheque dated 30.07.2005 and the interpolation was done at their end and it is pertinent to note that the cheque was returned on the ground of it being ''outdated'' and not ''interpolated''. I do not see any illegality in the finding of the State Commission that the said alteration/interpolation on the said cheque was done while it was in the custody of SBI. The State Commission also observed that there was no pleading on the part of SBI that the envelope containing the cheque received from Bank of India, was either tampered or damaged for any sort of alteration to have been possible while the cheque was in transit.

11. The final submission of the Counsel for the SBI was that the State Commission has erred in allowing the entire cheque amount, together with compensation and costs. I rely on the order of the Hon''ble Apex Court in Vijaya Bank Vs. Gurnam Singh, (2010) 13 SCC 775, in which the Hon''ble Apex Court had directed the Bank to release the entire cheque amount when deficiency of service was established against the said Bank.

12. For all the above reasons, I do not see any infirmity in the order of the State

Commission and, therefore, this Appeal is allowed in part only with respect to the modification of default interest rate @ 10% p.a. awarded by the State Commission, in case the amount was not paid within the period of two months from the date of order. Four weeks time is being granted from the date of receipt of this order, for payment of the said amount, failing which, interest @ 6% p.a. is directed to be paid by SBI. No order as to costs.

13. As aforementioned, this Appeal is allowed in part, modifying only the interest awarded in case of any default in payment within the time frame directed by the State Commission.

14. The Statutory deposit shall stand transferred to the Consumer Welfare Fund.

