(2006) 08 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

STOCKS AND SECURITIES (BANGALORE) PVT. ITD. APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 28-08-2006

Acts Referred:

Citation : 2006 4 CPJ 286

Hon'ble Judges : Chandrashekhar , Rama Ananth , M.Shama Bhats J.

Final Decision : Complaint dismissed

Judgement

1. THE complainant has filed this Complaint for a direction to the opposite party (for short, "OP") to pay a sum of Rs. 13,03,287.53 with interest at 18% per annum.

2. THE facts in this case are as follows: THE complainant is a Registered Stock Broker. One Mr. Sudhir Nagpal delivered Share Certificate No. 39103, Folio No. ITL 015734, of the quantity of 100 shares of Infosys Technology Limited to the complainant on 25.6.1998. THE said Shares Certificate was delivered to the National Stock Exchange of India Limited (for short, "NSE") by Delivery Slip dated 30.6.1998 vide Delivery No. 19337. THE complainant credited the proceeds of the sale of Rs. 1,92,835 in the Settlement Bill No. CC/98/24/56 dated 23.6.1998 and the net amount of that Settlement Bill of Rs. 81,168.25 was debited to the running account of the said Sudhir Nagpal. THE above said shares which were delivered to NSE were returned as bad delivery due to difference in the signature. THEreafter, the complainant re-delivered the above said shares certificate along with duly rectified fresh transfer deed to Mumbai by courier along with other shares for delivery to NSE. As there was a delay in delivery by the courier, the complainant entrusted the sale of shares by transfer to M/ s. Innova Securities & Investment Limited. But, ultimately, the said shares were also sent back to the complainant as bad delivery, since there was a difference in the signature. THEreafter, the complainant sent registered letters to Mr. Sudhir Nagpal. But, ultimately, the complainant could not trace the above said Mr. Sudhir Nagpal, from whom the shares were transferred to the complainant for

sale. Ultimately, a criminal case was also lodged. But, ultimately, even the Police could not trace and his whereabouts are not known. THE shares were returned for the second time to the complainant on the ground of difference in the signature because of the fact that one Mr. Shaji had written a letter dated 5.11.1998 stating that he is the holder of 100 shares referred to above and the same have not been received by him and, therefore, he requested for transfer of the shares in favour of M/ s. Tata Trustee Company since he had not sold the same nor did he receive the same back after transfer. After this letter, it is seen that Mr. Sudhir Nagpal is not the owner of the said shares. The OP immediately after receiving the claim petition appointed a Surveyor by name Mr. G.D. Bangard to assess the loss. The said Surveyor in turn assessed the loss at Rs. 6,05,580. A copy of the said Report is marked as Exhibit ''R-2''. The OP having not satisfied with the Report of the said Surveyor appointed another Surveyor by name M/s. Parimal R. Shah to investigate the matter and submit a report. The said second Surveyor investigated the matter and found that the complainant is not entitled for any compensation. A copy of the said report is marked as Exhibit ''R-7''. On the basis of the said report, the OP repudiated the claim stating that the complainant is not the introducing member, since the shares were sold through M/s. Innova Securities & Investment Limited. A copy of the said letter of repudiation is produced as Annexure ''R-8''. Challenging the said repudiation, the complainant has filed this complaint before this Commission.

The OP has filed its version denying its liability on the ground that the complainant is not entitled to claim any compensation. According to the OP, in the first instance, the shares that were introduced by the complainant for sale were sold but they were returned as bad delivery as there was a difference in the signature of the transferor. Thereafter, the complainant transferred the said shares to M/s. Innova Securities & Investment Limited after receiving the consideration. Subsequently, M/s. Innova Securities & Investment Limited sold the said shares through NSE. But, ultimately, the said shares were also returned with an endorsement that there was a difference in the signature of the transferor.

3. IT is further stated that since the said shares were sold through M/s. Innova Securities & Investment Limited, on transfer from the complainant, the complainant has not suffered any loss so as to claim any compensation. One other contention raised by the OP in its version is that M/s. Innova Securities & Investment Limited, NSE and Mr. Shaji, who claim to be the real owner of the shares, have not been impleaded as parties to this complaint and in their absence no relief could be granted in favour of the complainant. Both the parties have filed Affidavits by way of evidence and also produced documents in support of their case.

4. ON the basis of the pleadings, the following points arise for consideration in this complaint ? (1) Whether the complaint is liable to be dismissed for mis-joinder and non-joinder of necessary parties ? (2) Whether the complainant

proves that it is entitled for compensation from the OP as claimed in the complaint ?

Point No. 1 : The facts in this case are; that one Mr. Sudhir Nagpal transferred the shares to the complainant, which is a Stock Broker, and received the consideration of Rs. 1,92,835. Thereafter, the shares were returned as bad delivery, since there was a difference in the signature of the transferor. One Mr. Shaji claims to be the real owner of the shares. Ultimately, the shares were sold by M/s. Innova Securities and Investment Limited and they were returned again as there was a difference in the signature of the transferor. The case of the OP is that the introducing broker is ultimately M/s. Innova Securities & Investment Limited. Since even according to the complainant, it has transferred the shares to M/s. Innova Securities & Investment Limited after receiving the consideration. In order to determine who is the introducing member, in our view, M/s. Innova Securities & Investment Limited is a necessary and proper party in this proceedings. From the averments made in the complaint, it is seen that it was Mr. Sudhir Nagpal who transferred the shares to the complainant after receiving consideration from the complainant. The said shares were found to be stolen shares, since one Mr. Shaji has claimed that he is the original owner of the said shares. In order to consider who is the real owner of the shares in question, Mr. Sudhir Nagpal and Mr. Shaji are also necessary and proper parties. The NSE is the institution which sells the shares. In the instant case, the NSE returned the shares to the complainant as bad delivery considering that it is the introducing member. The case of the OP is that M/s. Innova Securities & Investment Limited is the introducing member. In order to consider who is the introducing member, in our view, the NSE and M/s. Innova Securities & Investment Limited are also necessary parties.

5. FROM the facts narrated above, it is seen that the complainant has paid certain amount to Mr. Sudhir Nagpal by crediting the same to his account. M/s. Innova Securities & Investment Limited also credited the amount to the account of the complainant consequent on the transfer of the shares to M/s. Innova Securities & Investment Limited. Under these circumstances, it is not possible to come to the definite conclusion regarding the loss said to have been suffered by the complainant. Further, in the absence of the aforesaid persons as parties to this proceedings, no relief could be granted in favour of the complainant.

6. NO doubt the risk of dealing with the stolen shares is covered under the Policy. But in order to establish that the shares which are the subject matter of this complaint are the stolen shares, the complainant is required to adduce evidence by impleading both Mr. Sudhir Nagpal and Mr. Shaji. The said fact cannot be established in a summary trial, as it requires elaborate trial, since complicated facts are involved in this case. Therefore, the proper remedy for the complainant is to avail other remedies other than the remedy under the Consumer Protection Act, 1986. Hence, we answer point NO. 1 in the affirmative. Point No. 2 : Since we have taken the view that in the absence of necessary and proper parties no

relief could be granted in favour of the complainant, we do not propose to express any view on point No. 2.

In the result, we pass the following Order: (1) The complaint is dismissed. (2) However, it is open for the complainant to avail other remedies for appropriate relief, if it is so advised. (3) Parties to bear their own costs. Complaint dismissed.