(1993) 05 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

SUMITRA RANI MALIK — APPELLANT

Vs

JASPAL SINGH BHATIA — RESPONDENT

Date of Decision : 20-05-1993

Acts Referred:

Citation : 1993 2 CLT 386 : 1993 2 CPJ 1190

Hon'ble Judges : S.S.Sandhawalia , Basanti Devi , S.Kulwant Singh J.

Final Decision : Appeal dismissed

Judgement

1. THE successful complainants have preferred this appeal against the order of the District Forum, Ambala for seeking the relief that both the respondents should be held liable and the amount of compensation be enhanced from Rs. 250/- to Rs. 50,000/- only.

2. THE two complainants are husband and wife who had hired a locker from the respondent Punjab and Sind Bank at its Ambala Branch. On the 10th of December, 1991, they went to the bank for operating the said locker and respondent No. 1 pointed out that the rent of the locker was in arrears and asked them to deposit Rs. 360/-, therefore and also security and only then he could allow them to operate the same. It is the case that the complainants told him that they had two bank accounts and these may be debited for this amount. It is the allegation that respondent No. 1 declined their request and instead became furious, despite the age, health and special status of the complainants. An exchange of hot words seems to have ensued where after the Complainants made protestations to the higher authorities of the bank and not securing any recompense, presented the complaint for compensation to the tune of Rs. 50,000/-. In defending the complaint, the respondents in separate written statements took up preliminary objections to which reference now becomes unnecessary. On merits, it was admitted that respondent No. 1 had demanded the rent of the locker in arrears. But all allegations of any misbehavior were categorically denied. According to them as per condition No. 9 of the lease, the respondents had a clear right to refuse access to the locker until the arrears

were cleared. It was pleaded that however as a gesture of good will, the respondent No. 1 allowed the complainants to operate the locker, but asked them to wait for some time as some other person was inside the strong room. Upon this the complainants got pointlessly annoyed and left the bank without operating the locker.

In support of their case both the complainants stepped in the witness box as PW 1 and PW 2. On behalf of the respondents Mr. Inderjit Singh Walia, Senior Manager of the respondent-bank appeared as RW-1, Jaspal Singh one of the respondents appeared as RW-2 and Wazinder Singh as RW-3. The documentary evidence with regard to the instructions pertaining to the lease of the locker was also placed on the record.

3. THE District Forum in its considered order relied on a judgment of the National Commission against the appellants & opined that the only point which survived was whether there had been any deficiency in service by not allowing the complainants to operate the locker. After adverting to Condition No. 9, the District Forum held that it entitled the respondents to refuse access to the locker, but somewhat technically observed that this stand was beyond the scope of the pleadings and cannot be entertained in arguments. Consequently, it moved on to Condition No. 11 of the lease and took the view that a 15 days notice has not been served on the complainants and the lease deed has not been terminated and, therefore, there was a deficiency in service. However, it absolved the bank from all liabilities, but directed the payment of Rs. 250/- as compensation by respondent No. 2. Smt. K.B. Jain, the learned Counsel for the appellant had first half-heartedly contended that the respondent-bank should also have been made equally liable. However, apart from baldly stating so, no meaningful argument could be raised against the view taken by the District Forum which we consequently affirm.

4. SMT. Jain had then contended that the Complainants firm plea was that the arrears of rent be debited to their accounts with the bank and this request had been wrongly refused and thus there was a glaring deficiency in the service by the bank which merited the enhancement of compensation granted to the tune of the claimed amount of Rs. 50,000/- only. We are afraid that there is not the least merit in the aforesaid submission. However, since the argument herein revolves around Condition No. 9, the same may be first noticed in extenso for facility of reference : "All rents shall be payable in advance at such rate fixed by the bank from time to time. If the rent due is in arrear the bank shall have the right to refuse access to the locker until the arrears is paid."

It needs no great erudition that even a plain reading of the aforesaid condition would make it manifest that the bank has reserved a categoric right in its favour to refuse access to the locker until and unless the arrears are cleared of. The District Forum itself opined so. However, it appears to us that it took an overly hyper-technical stand that reliance on the admitted condition No. 9 was beyond the pleadings and could not be allowed to be raised in arguments. It deserves highlighting that the consumer jurisdiction is not to be again shackelled by the intricate hyper-technicalities of procedure which are characteristic in the civil jurisdiction under the Civil Procedure Code. Even otherwise, we fail to see how an admitted condition No. 9 which governed the rights of the parties could not be made the basis of submissions arising there from.

5. HEREIN, the admitted position is that rent for the locker was due from the 1st of June, 1991 and when it was sought to be operated on the 10th of December, 1991, the same was clearly in arrears. Mrs. Jain had very fairly conceded that, but attempted to argue that this was over-ridden by the fact that the complainants had orally offered the debiting of their bank accounts with the said arrear.

6. WE are afraid that this plea cannot hold water. Smt. Sumitra Rani, complainant as PW-1 had categorically conceded in her cross-examination as follows : "WE have not given any written authorisation to the bank for debiting the rent of the locker from the account of Mr. Malik my husband and my son Pravesh, but we have told them orally." Mr. Malik Dayal Pal, Complainant in his cross-examination again made an identical confession by admitting that he has not given any written authorisation for debiting the accounts. Once that is so, it is manifest that a banking organisation cannot and in any case is not bound to act on a mere alleged oral request to debit the account of its customer. The respondent No. 1 was, therefore, virtually right in his insistance on denying access to the locker until the arrears were cleared. Even if at all as a gesture of good will, he offered to allow the operation and requested the complainants to wait for a while, the said concession cannot be taken against him or the bank.

In the end it has to be observed that we are somewhat sceptical of the view which the District Forum has taken with regard to conditions Nos. 9 and 11 read together for its opinion that even for the purpose of recovering arrears, the lease must be terminated and a 15 days notice must be given. However, since no appeal has been preferred on behalf of the respondents, we decline to go in this matter which must be relegated to a more appropriate case in which it directly arises.

7. FOR the fore-going reasons, this appeal must fail and is hereby dismissed. We were inclined to burden the appellants with costs, but refrain to do so because of their consumer status. Appeal dismissed.

