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(1992) 03 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

TARUN KUMAR KANIYALAL SONI APPELLANT

Vs

PUNJAB NATIONAL BANK RESPONDENT

Date of Decision : 23-03-1992

Acts Referred:

Citation : 1992 0 NCDRC 79 : 1992 1 CPJ 234 : 1992 1 CPR 688 : 1993 0 CPC 572 : 1993 1 CLT 282

Hon'ble Judges : V.BALAKRISHNA ERADI , A.S.VIJAYAKAR , Y.KRISHAN , B.S.YADAV J.

Advocate : R.N.MEHTA , K.MOHAN PANIKAR

Judgement

1. THE appellant before us, who was the complainant before the State Commission, has impugned the Order of the State Commission on various grounds. The Bank had issued a draft in Kuwaiti Dinars in favour of the appellant payable by the Gulf Bank in Kuwait, but this was dishonoured. The State Commission held that the responsibility for the dishonour was that of the respondent-bank. According to the appellant the State Commission has failed to appreciate the gross negligence of the respondent-bank which caused a lot of inconvenience to the appellant at a time when he was very much in need of money. The appellant has asserted that he had to visit India from Kuwait to obtain payment of the dishonoured bank draft. In fact according to the appellant, it was not one bank draft but two successive bank drafts issued for the same transaction by the respondent-bank which were dishonoured causing him tremendous harm. He has also asserted that the compensation paid is not adequate and he was entitled to interest and full refund of the fixed deposits in foreign currency as they were NRI deposits.

2. FROM the perusal of the record and from the discussion during the hearing, the following facts emerged: (i) In February 1990, the complainant appellant asked the respondent-bank to refund the amounts originally deposited in Kuwaiti Dinars as an N.R.I. by way of a draft in Kuwaiti Dinars as he needed the money in Kuwait but the respondent-bank issued a draft in U.S. $18512.06 drawn on

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the Bankers Trust Company, New York. According to the complainant, after he presented the draft to his bankers in Kuwait, it was returned unpaid after one month without any reasons for non-payment

The appellant thereafter approached the respondent-bank again, returning the unpaid bank draft and requested for another draft in Kuwaiti Dinars within the period of his stay in India, i.e., 20 days. However, the respondent-bank issued a draft second time after expiry of that period. This second draft was for 4,800 Kuwaiti Dinars and drawn on the Gulf Bank, K.S.C. Kuwait favouring the appellant herein. This draft also bounced, this time the reason was that the respondent-bank''s account with the Kuwaiti Bank had been closed.

3. DURING the hearing, the appellant could not explain as to why he had not ascertained from his Bank in Kuwait the circumstances in which the first draft issued in February, 1990 was returned unpaid. The respondent-bank also could not explain the circumstances in which the first bank draft was issued on Bankers Trust Company, New York in U.S. Dollars when the appellant/complainant had requested for payment in Kuwaiti Dinars. It appeared that the respondent-bank''s Kuwaiti Dinar account with the Kuwaiti Bank had been closed even at the time when the first draft was issued. This is bourne out by the documents filed in this case. It is seen that in February, 1990, the respondent-bank had requested the Bankers Trust Company, New York to honour the U.S. Dollar bank draft on presentation. When the re-%>oo4ent bank issued the bank draft for the second time in Kuwaiti Dinars on 16th of May, 1990 on the Kuwaiti Bank, it advised its correspondent bank in New York (Bankers Trust Company) to pay the amount to Citi Bank, New York for credit to the Gulf Bank, K.S.C. Kuwait as cover for the bank draft so issued for Kuwaiti Dinars 4,800 on the 16th of May, 1990 in favour of the appellant complainant. These documents amply establish that the respondent-bank had no account with the Kuwaiti Bank and if they had such an account at any point of time this was closed when these bank drafts were issued. That is why the respondent-bank was operating via New York. This leaves no room for doubt that the bank has been grossly negligent in serving the appellant/ complainant. There is no doubt that considerable harassment and loss have been caused to the appellant/complainant who could not get the amount due to him when he needed it most and also within the time at his disposal while he was in India. We cannot also altogether ignore his statement that he had to make a trip to India to realise the amount on the second occasion.

4. THE State Commission has said that the appellant/complainant requested in May, 1990 for a draft in Kuwaiti Dinars. According to the State Commission, it can be said that by doing so the complainant has waived his right for interest from the date when the original draft was returned unpaid till the date of fresh issuance thereof. We are not in agreement with the State Commission. Firstly, the request of the appellant/complainant to issue a second draft cannot by any stretch of imagination be deemed to be a waiver in law. Again he had no choice but to make such a request when the draft had been returned uncashed. While

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awarding a token amount of Rs. 2,000/- by way of costs and damages, the State Commission was conscious of the fact that the compensation was totally inadequate for the actual pain and sufferring experienced by the complainant. In that context, the appellant has a justifiable grievance against the Order of the State Commission.

5. IN the light of the above findings, we Order that: (i) The respondent-bank has to pay interest to the complainant @ 13% p.a. from the 8th of February, 1990 when the first draft was issued and not from 17.7.1990 as Ordered by the State Commission. (ii) The respondent-bank shall pay to the complainant a sum of Rs. 15,000/- as compensation and a sum of Rs. 2,000/- as costs.

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