

(1999) 11 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

UDAI BEER SINGH

APPELLANT

Vs

Branch Manager, State Bank of India

RESPONDENT

Date of Decision : 04-11-1999

Acts Referred:

Citation : 2000 1 CPJ 29 : 2000 2 CLT 478 : 2000 2 CPC 474 : 2000 2 CPR 45

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal against the judgment and order dated 6.9.1993 passed by District Consumer Forum, Meerut in Complaint Case No. 986 of 1993.

2. THE facts of the case stated in brief are that the complainant filed a complaint before the District Consumer Forum for deficiency in not granting total amount by the opposite party for purchase of seeds and for directing the purchase of seeds from a particular shop. The learned District Forum, after perusing the complaint, came to the conclusion that the transaction relates to the loan. Hence the same is not triable by the District Forum and hence it dismissed the complaint.

Aggrieved against this order, the complainant has come in appeal and has challenged the correctness of the order passed by the learned District Forum.

3. BEFORE this Commission the State Bank of India, respondent No. 1 filed objections alleging therein that the appeal is not maintainable and the order of the District Forum is perfectly right. It is further alleged that a loan of Rs. 40,000/- was sanctioned to the appellant on 23.6.1993. A sum of Rs. 11,000/- was credited into the savings Bank account of the complainant on the same day. On the request of complainant a voucher for Rs. 29,000/- was issued in the name of the supplier of the seeds but the payment of the amount was stopped on the instructions of the complainant. On 7.7.1993 the appellant submitted fresh quotations before the Bank and till then the rain had already started. Therefore, the sowing season had expired. At that time the cultivation of

Rajnigandha was not profitable. Hence this information was conveyed to the complainant by letter dated 2.8.1993 by registered post. On these facts the appeal is liable to be dismissed. Notices were issued to respondent No. 2 which was served by registered post, but none appeared from the side of respondent No. 2 who is also a Field Officer of the State Bank of India. It appears that he also did not put in appearance because Branch Manager of the Bank was already a party to these proceedings as respondent No. 1.

4. ON the date of hearing Counsel for the appellant was present but opposite party was absent in spite of information of the date fixed. The dates were fixed in continuation and hence it was the duty of the opposite party to have appeared before this Commission and watched the progress of the appeal from day-to-day. The learned District Forum has placed reliance on two cases which shall be discussed later on and came to the conclusion that the District Forum has no jurisdiction to entertain this complaint because it is a case of simple loan and beyond the jurisdiction of this Forum. The above finding of the learned District Forum is not correct and cannot be said to be a case of advancement of the loan. We have to go to the root of the controversy in order to find as to what is the real dispute between the parties. It is an admitted case of the complainant that for cultivation of Rajnigandha flowers, a loan of Rs. 40,000/- was sanctioned to the complainant by the Bank out of which a sum of Rs. 11,000/- was credited to his account and a cheque of Rs. 29,000/- with the consent of the complainant was issued in the name of the supplier of the seeds. This means that the loan had already been sanctioned and advanced to the complainant. There was only a dispute as to whether the direction of the Bank to purchase seeds from a particular shop and consequently the failure of that shop to supply the seeds amounted to deficiency in service or not.

5. THE first case relied upon by the learned District Forum in *Jagan Nath Mehar v. Branch Manager, State Bank of India & Ors.*, II (1993) CPJ 147 (NC). In this case the facts were entirely different. In this case it was held that the complainant was lured by the advertisement published by the State Bank of India seeking applications from candidates with proper aptitude and attitude in starting industry. In this scheme, training assistance was assured to the selected candidates. Consequently the complainant appeared for the test and was selected for the training. He submitted a proposal to start a handloom manufacturing unit. A loan was sanctioned but the loan was inadequate to establish the unit. On these facts it was held that there has been no deficiency on the part of the Bank, because it was the Bank who had to judge as to whether the amounts which were required by the complainant were justified or not. This was left to the discretion of the Bank. This is not the case here.

6. IN the second case of *Kottayam Cooperative Agricultural Development Bank Ltd. v. Savita Chandran & Ors.*, 1993 (1) CPR 603 (Kerala State Commission), there was a delay on the part of the Bank in advancing instalment of the loan. the Commission found that there was a deficiency in the service on the part of

the Bank. It was further held that the Bank has a right to grant or refuse the loan but causing undue delay in releasing the instalment of the sanctioned loan, for no fault of the lonee, is a negligence and deficiency in service. The facts of this case are identical to the facts of the present case. Thus we find that the District Forum has jurisdiction to decide the controversy in this case.

According to the appellant/complainant, seeds were directed to be purchased from a particular shop but good quality seeds were not available in that shop for which the cheque was issued by the Bank. The Bank should not have issued for a particular firm, but should have invited quotations through the complainant for good quality seeds and thereafter the order should have been placed for purchasing of the good quality seeds. All these points have to be decided by the learned District Forum after hearing both the parties whether the shop on whose name the amount was drawn had good quality seeds with him or not and whether they were available immediately or not and whether the sowing season had already expired when the complainant submitted his quotation for purchase of seeds on 7.7.1993 are also to be gone into and decided by the learned District Forum.

7. THEREFORE the case needs remand to the learned District Forum in order to decide all these points. Order The appeal is allowed and the case is remanded to the District Forum, Meerut for trial according to the law and the directions given above. After giving opportunities to both the parties to file evidence. The complainant shall appear before the learned District Forum on 28th October, 1999. The District Forum shall inform both the parties of the date fixed. Let copy of this order may be made available to the parties as per rules immediately. A copy be also sent to the District Forum concerned immediately. Appeal allowed.