

(1999) 10 NCDRC CK 0008

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

SURANA BANGLES

APPELLANT

Vs

Union Bank of India

RESPONDENT

Date of Decision: Oct. 15, 1999

Citation: 2000 3 CPJ 345

Hon'ble Judges: A.A.Halbe , G.R.Bedge J.

Final Decision: Complaints allowed with costs

Judgement

1. BOTH these complaints are disposed of by this common judgment as they are inter-related and call for common reasoning. The salient facts of these two complaints can be capitulated as follows :

2. THE complainant is a manufacturer, exporter and importer in plastic, aluminium, brass bangles, imitation plastic jewellery, and handicraft articles. It is a partnership firm located at Mumbai. THE complainant firm has a current account with the Union Bank of India, Kalbadevi Branch, Mumbai since last 35 years and that the complainant is having a fair record and a good-will both in the banking and in the business community. He is having international market and it is claimed that the dealings are fair and transparent. THE complainant, thus, enjoys unblemished record of solvency with the Banks as well as the market.

The complainant received the remittance of US \$ 1,00,000 from the foreign buyer M.K.B. of Singapore and that the same payment was credited to the current account under the Certificate of Foreign Inward Remittance on 7.10.1993. Since this was treated as advance, the complainant despatched goods from time to time and the

same has been confirmed by the Union Bank of India, Foreign Exchange Branch on 26.10.1993, 17.11.1993, 10.12.1993, 23.12.1993, 10.1.1994, and 18.1.1994. The Bank has put their seal behind the remittance certificate in token of having certified the despatches as against the payment of US \$ 1,00,000. The complainant, thus, utilised the advance from the foreign buyer and satisfied the said advance by despatching the goods from time to time. Surprisingly, by a letter dated 6.6.1994, the Bank informed the complainant that the foreign inward remittance of US \$ 1,00,000 was not in favour of the complainant but in fact it was in favour of some different party, viz. M/s. D.L. Tanumal Pvt. Ltd. The mistake on the part of the Bank was on account of wrong generation of data in the Nostro Account. At the time of first inward remittance, the rate of US Dollar was Rs. 33.31 Ps. and, accordingly, the amount was converted into Rs. 31.31 lakhs which, as indicated above, were credited to the account of the complainant. As indicated, the Bank discovered the wrong credit by their letter dated 6.6.1994 and, accordingly, they demanded back the amount. The complainant has contended that he got the remittances satisfied by despatches to the foreign buyer and that there was no question of paying back the amount to the Bank. However at the instance of the Bank, the entire claim was satisfied by the complainant in November, 1996 by repaying instalments. The instalments were recovered @ US \$ 10,000 p.m. and in the letter of the Bank dated 3.6.1997, it is clearly stated that the last repayment of the instalment of US \$ 10,000/- has been received by the Bank in November, 1996. The wrong credit was thus set right by fresh repayment and that there was no question of any wrong committed by the complainant. He did not wrongfully or dishonestly withheld the amount of US \$ 1,00,000/-. He could not have paid the huge amount in lumpsum as funds were locked up in the business.

The complainant has challenged the Bank when the claim of interest has been made to the tune of Rs. 9,61,195/- for the utilisation of the above advance from 1993 till November, 1996. The complainant, so far as the Complaint No. 21/98 is concerned, has claimed that he has been defamed in the business circle because of the attitude of the Bank in demanding the interest when as a matter of fact, the complainant was not at all responsible for the credit of US \$ 1,00,000/- which even otherwise, has been voluntarily repaid in fresh instalments by November, 1996. The complainant has also suffered in the market and in the business circle. His reputation in the banking circle has also been adversely affected and hence the complainant has claimed Rs. 10 lakhs by way of compensation for the wrongful action made by the opposite party-Bank.

3. IN Complaint No. 22/98, the allegation is that the Bank under pressure got the cheque of Rs. 3,10,000/- from the complainant and converted it into a Fixed Deposit so as to secure the instalments of US \$ 10,000 till the entire advance was repaid. The Fixed Deposit Receipt was given on 22.11.1995 and the maturity value has been put at Rs. 4,40,428/- as on 22.11.1997. It is stated that without the consent of the complainant, the Fixed Deposit Receipt has been renewed for a further period upto 2001 with the maturity value at Rs. 6,03,940/-. The Bank has refused to release this deposit under the pretext that the complainant was prolonging the satisfaction of the above advance of US \$ 1,00,000 which has been wrongly credited in the current account of the complainant. The complainant claims this amount with interest and cost.

In both these complaints, the Bank has taken virtually a common defence. The Bank has contended that the complainant is responsible for repaying the advance which has been wrongly credited. He has delayed the repayment for about 3-4 years. He has utilised the funds for his personal business and hence the claim for refund with interest is legitimate and that the complainant has not been able to establish the damage which is said to have been caused to his reputation in the market as well as in the banking circle. This also does not become the consumer dispute and the Bank has, therefore, claimed that both the complaints should be dismissed.

4. NOW, in the first instance, the important facts do not appear to be in doubt. The complainant has a current account with the Bank for last several years, that the amount of US \$ 1,00,000 was credited in the current account on 7.10.1993. It would be pertinent to note that the complainant despatched the goods to the foreign buyer in 12 lots and the same despatches have been indeed confirmed and attested by the opposite party-Bank and also by the Foreign Exchange Branch on the above dates between 26.10.1993 to 18.1.1994. Almost the entire advance has been satisfied. This would show that the complainant had bona fide accepted the remittance after the confirmation from the Bank. As indicated, the same has been certified under the Foreign Inward Remittance Certificate. It is, therefore, obvious that the transaction is ostensible and that there was no concealment whatsoever on the part of the complainant in receiving that advance. Had the advance been intended for misappropriation, the complainant would not have bothered to send the despatches to the tune of US \$ 90,000 to 1,00,000. This is not disputed. We also emphasise that the Bank has put the stamp of approval on the despatches which took place between 23.10.1993 to 18.1.1994. Almost the entire amount of US \$ 1,00,000 has been satisfied by the despatches of the goods as indicated. The documentary evidence supports the say of the complainant.

The Bank discovers after about 8-9 months, i.e. on 6.6.1994 that the amount belong to M/s. D.L. Tanumal Pvt. Ltd. and not to the complainant. In their letter dated 6.6.1994, it is stated that it came to the notice of the Bank that on account of the fault in the machine generating the statement, the amount was not meant for the complainant and that it was only US \$ 22,701. In that letter, it is also stated that the complainant should refund the amount. Quick compliance was sought. We may indicate that there is absolutely no mention of the claim of the interest. The Bank could not claim the interest because of the patent fact that the mistake was committed by the Bank and not by the complainant. On the other hand, the complainant soon after the remittance, bona fide believed that it was the advance and, accordingly, despatched the goods with the approval of the Bank and also the Foreign Exchange Branch between 26.10.1993 to 18.1.1994.

We must also refer to several letters which are on record. In the letter dated 31.7.1994, the Bank called upon the complainant to satisfy about the goods having been shipped to the foreign buyer in view of advance. Here also, there is no reference to the demand of interest. Likewise in the letters dated 1.12.1994 and 28.12.1995, there is no reference to the interest. Only the demand was in respect of instalment of US \$ 10,000. Even in the letter dated 27.12.1995, we find the same tone emphasising that the complainant must pay the instalment of US \$ 10,000 else the matter would go to the Court. For the first time in the letter dated 27.12.1995, the Bank has mentioned that if the instalment of USD 10,000 is not received, they shall be constrained to resort to legal measures without prejudice to Bank's right to recover the interest. In the letter dated 3.6.1997, the interest has been specifically claimed at a particular rate. On the other hand, in the letters dated 1.12.1994, 28.12.1995, 14.2.1996, 6.8.1996, and 5.9.1996, there is no reference to the claim about the interest. The Bank knew that there was no legitimacy in claiming the interest as the mistake was on its part.

5. IN this regard, we feel that the demand could not be made obviously for the reason that the Bank was responsible for the wrong credit. It is the bounden duty of the Bank to represent the true facts in the account, failing which, there is room for deficiency in service. The Delhi State Commission, in the case of INdia Cine Agencies v. UCO Bank & Anr., reported in III (1997) CPJ 436, has observed that it is the duty of the Bank to see that the amount collected from the drawee Bank was duly credited to the account of the constituent. If on account of lack of supervision, the fraud is committed, the Bank is responsible for deficiency in service. We, therefore, feel that for the wrong credit, it is the Bank which is responsible and not the complainant. It must be stated that it is the legally settled position that if the recipient changes the

position in good faith and utilises the money wrongfully credited without any benefit to himself before the mistake is detected, the constituent could not be held responsible. IN cases of gross carelessness on the part of the banker, as between the banker and the person who has received the payment thereby, it would be unfair to allow the Bank to recover the money paid by him. We feel that this is a patent case of gross negligence on the part of the Bank in crediting the above amount of US Dollars. Surprisingly, during the intervening period between 7.10.1993 to 6.6.1994, the Bank did not discover the wrong remittance. On the other hand, it allowed the satisfaction of the advance by permitting the complainant to despatch the goods towards the satisfaction of the advance. The period of 8-9 months is such that the complainant would not at all feel that he has received the wrong advance. As a matter of fact on the basis of the advance, the complainant has behaved consistently with the requirement of satisfying the advance received from the foreign buyer. We are, therefore, of the view that the complainant cannot be held responsible for the wrong credit. We also emphasise that as soon as the wrong credit was discovered, the payment has been made and the entire payment has been satisfied in November, 1996. We do not read any fraud or criminal breach of trust on the part of the complainant.

6. THE complainant is, therefore, entitled to the compensation. We find that the Bank has preferred the suit for recovery of the interest and the said interest is claimed to be Rs. 9,61,195/-. We believe that the complainant is entitled to this much amount which he may be required to pay. We convert this claim into compensation payable to the complainant for the wrong committed by the Bank. THE complainant cannot be held responsible for payment of interest when he himself did not wrongfully misappropriate the amount. He did not misguide the Bank in crediting the advance. If that be so, the complainant is entitled to this much amount because of the fact that he has been sought to be saddled with this liability. This liability cannot be imposed on the complainant. We are, therefore, justified in converting this amount into amount of compensation which the complainant is entitled to. It is a liability which has been created by the Bank for its own lapses, inefficiency and carelessness. We further feel that such a conduct must have reflected adversely on the reputation of the complainant. People might have thought that the complainant had misappropriated this wrong credit. Although no actual injury or loss has been established but we do believe that the reputation of the complainant must have harmed. People would approach him hesitantly and this we believe that in the business world is a serious damage to the reputation. In absence of accurate evidence, we quantify this damage at Rs. 25,000/-.

Now, so far as the release of the Fixed Deposit is concerned, we hold that there is no justification for the Bank to withhold back the Fixed Deposit amount of Rs. 3,10,000/-. It is stated by the Bank that the complainant has allowed the banker's lien to be created on this Fixed Deposit. However, the Bank is not justified in retaining the amount and must, therefore, refund the same. The amount now comes to Rs. 4,40,428/- as on 22.11.1997. The Bank has not paid this amount but has wrongly renewed it till 2001. The complainant is, therefore, entitled to the interest @ 13% thereon. Although on record, the Fixed Deposit Receipt has been extended upto the year 2001, we believe that with the claim made by the complainant, such amount shall have to be paid. Therefore, we pass the following order : Order

"In Complaint No. 21/98, the opposite party-Bank do pay Rs. 9,86,195/- (Rs. 9,61,195/- + Rs. 25,000/-) rounded to Rs. 9,86,000/-, to the complainant within 2 months of this order. In the event of failure on the part of the Bank, this amount shall carry interest @ 13% from the date of complaint till actual payment." "In Complaint No. 22/98, the opposite party-Bank do pay immediately Rs. 4,40,428/- with 13% interest thereon from 22.11.1997 till actual payment." "In both the complaints, the opposite party Bank do pay Rs. 20,000/- on one set to the complainant by way of cost."

Complaints allowed with costs.