
2001 3 CPJ 329

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

SHIV DIAL SUD

APPELLANT

Vs

STATE BANK OF
PATIALA

RESPONDENT

Date of Decision: April 26, 2001

Citation: 2001 3 CPJ 329

Hon'ble Judges: K.K.Srivastava , P.K.Vasudeva , Devinderjit Dhatt J.

Final Decision: Complaint partly allowed

Judgement

1. THE complainant M/s. Shiv Dial Sud & Sons is the partnership firm dealing in the business of import and export of scientific goods and instruments at Ambala. This complaint has been filed against State Bank of Patiala, Branch Office Ambala Cantt., Haryana through its Branch Manager and State Bank of Patiala, Regional Office II (Haryana), SCO Nos. 103-107, Sector 8-C, Chandigarh through its Regional Manager for issuance of a direction to the opposite party Bank to give a credit of the amount of Rs. 5,97,106/- in the current account of the complainant with opposite party No. 1-State Bank of Patiala, Ambala Cantt. THE complainant has further claimed interest @ 18% per annum i.e. at commercial rate on the said amount w.e.f. 6.8.1998 when the said amount was debited from the account aforesaid till its realization. THE complainant has sought compensation of a sum of Rs. 25,000/- from opposite parties Bank for causing wilful financial loss of rendering the most deficient and negligent services to it. THE cost of litigation has also been claimed. This complaint case was filed on 23.4.2000 on the allegations that the complainant received order for supplying of scientific goods from the foreign concern M/s. Filla International, Uganda in the month of March, 1998 and received a cheque of 14,000 US Dollars drawn on a Foreign Bank i.e. Provident Bank. It was the settled commitment of the complainant firm with the buyer aforesaid that the ordered goods shall be despatched only after realization of the amount of the cheque. On 16.3.1998, the complainant deposited the said cheque with State Bank of Patiala, Ambala (opposite party No. 1), in its current account for collection and crediting of the amount of the cheque after collection of its proceeds. THE opposite party No. 1 gave credit for a

sum of Rs. 5,52,565/- in the current account aforesaid of the complainant on 29.4.1998 i.e. after the lapse of period of around 45 days. THE complainant, thereafter, shipped the goods to the said foreign buyer and also refunded the balance amount of 4,000 US Dollars, which was received in excess against the value of goods. THE complainant also declared in the various documents like invoices that "Payment received". THE State Bank of Patiala, Ambala Branch/opposite party No. 1 allowed the complainant to send a refund of 4,000 US Dollars to the said foreign buyer - M/s. Filla International, Uganda out of the credited proceeds. It was mentioned that the remittance of the money in Foreign Exchange is regulated under Foreign Exchange Regulation Act (for short to be referred as F.E.R.A.).

2. IT was alleged that the opposite party No. 1 all of a sudden debited a sum of Rs. 5,97,106/- from the said current account of the complainant firm on 6.8.1998 on the ground that the said cheque was forged and altered. The contention of the complainant is that though the amount of the cheque of 14,000 US Dollars which was credited in Indian currency was of a sum of Rs. 5,52,565/- whereas the amount debited from the current account of the complainant was Rs. 5,97,106/-. Thus a sum of Rs. 44,541/- was debited in excess of the amount, which was credited in the current account of the complainant.

The complainant alleged that it was the duty of the opposite parties to realize the amount after its complete satisfaction and complainant had not shown any impatience in taking the credit of the amount as 45 days were taken from the date of deposit of the cheque to the date of its credit in the said account. The action of the opposite party No. 1 in debiting the amount from the current account of the complainant was totally illegal and unjustified as the contract between the complainant and opposite party No. 1-Bank with respect to the deposit of the cheque stood completed immediately on the credit of its proceeds in the current account of the complainant and DPS became functus officio. The complainant took up the matter with the higher Bank Authorities in this regard and after a lot of correspondence which was exchanged between the complainant and opposite party No. 1 - Bank, it was disclosed to the complainant by the Bank vide letter dated 8.1.2000 that the amount has been deposited after the cheque deposited by the complainant was received back unrealized. According to the averments made by the complainant, once credit of the amount of cheque had been given in the account to the complainant, then the action of the opposite parties in debiting the amount from the said account amounted to grave negligence and deficiency in rendering service to the complainant. The complainant was never informed by the opposite parties that the credit of the amount of cheque given was not a confirmed one but was yet to be confirmed. The complainant alleged that he was a consumer within the meaning of Consumer Protection Act, 1986 while the opposite parties are rendering service to the complainant as a banker and the

same was covered under the provisions of the C.P. Act. The complainant suffered loss to the tune of Rs. 5,97,106/- which was debited from its current account as the goods had already been shipped and excess amount of price i.e. 4,000 US Dollars was remitted back to the party placing the order. The complainant suffered huge financial losses due to incurring of heavy interest @ 18% per annum which is to be compensated by the opposite parties due to whose negligence and deficient service, the loss was caused to the complainant. The complainant had been put to great harassment. It was further contended that the limitation for filing the complaint arose firstly on 6.8.1998 when the debit entry was made in the said current account of the complainant and on 8.1.2000 when the opposite party No. 2 sent letter to the complainant regarding its decision in not giving the credit of the debit amount.

Notices were issued to the opposite parties who filed joint written statement denying the allegations of negligence and deficiency in rendering services to the complainant and contended further that the complainant had tried to defraud the opposite parties by presenting the forged cheque and as such the complaint was liable to be dismissed and the complainant was liable to be prosecuted under the ordinary criminal law of the land. The complaint was also liable to be dismissed on the ground of non-joinder of necessary parties to the complaint as neither the person who issued the cheque nor the bankers who returned the cheque unpaid have been arrayed as necessary parties to the complaint. The territorial jurisdiction of this Commission was also challenged and it was contended that this Commission had no territorial jurisdiction to try and adjudicate the same as the cheque was deposited at the branch at Ambala Cantt. And as such the cause of action arose therein and not within the territorial jurisdiction of this Commission. Apart from it, it was contended that the complaint under the provisions of the C.P. Act was not an appropriate remedy for the complainant as the complaint raised matters which required huge oral and documentary evidence and the dispute was of a civil nature which could only be adjudicated by a Civil Court. The complaint was also liable to be dismissed on the ground that it was not presented through a proper person. The authority of Shri Arvind Sud to file the complaint and to sign the same was seriously disputed. On merits, it was admitted that the complainant firm was running its Cash Credit/Packing Credit Account with the opposite party No. 1, which merely acts as collecting agent of the customer. In the instant case, the opposite party No. 1 acted as collecting agent. The deposit of the cheque in the opposite party No. 1 - Branch of State Bank of Patiala on 16.3.1998 by the complainant was not disputed. The said cheque was bearing No. 7988 issued by the Society for the Propagation of the Faith Cleveland, OHIO, drawn on the Provident Bank, Cleveland Ohio, 6-124-410 for 14,000 US Dollars. The said cheque was despatched to the concerned drawee Bank for collecting the proceeds through the Foreign Department of the opposite parties functioning as Chandralok Building, 8th Floor, 36 Janpath, New Delhi. On the presentation of the said cheque, the Marine Midland Bank, 140 Broadway, New York, N.Y. giving the credit of the amount of 14,000 US Dollars to the Nostro account of the Bank and on the receipt of the said cheque amounting to Rs. 5,52,565/- to the Packing Credit Account of the complainant on

29.4.1998 in Indian currency. It was submitted that when the Marine Midland Bank presented the said cheque to the Drawee Bank, the same was returned unpaid with the remarks "the Original Payee was altered to Payee, Shiv Dial Sud & Sons and the original cheque amount US Dollar 500.00 (five hundred only) was altered to amount US Dollar 14,000.00 (Fourteen thousand only)" and also submitted a copy of the original cheque of 500.00 US Dollars and on the receipt of this unpaid cheque, the said Marine Midland Bank again debited the Nostro Account No. 000036455 of the opposite party-Bank with the said sum of 14,000 US Dollars on 18.6.1998 and informed the Foreign Department of the opposite party-Bank at New Delhi through message dated 19.6.1998. Accordingly, the Foreign Department advised the opposite party No. 1 about the receipt of the said cheque unpaid through their letter dated 29.7.1998 on receipt of the said advice of the Foreign Department of the opposite party - Bank, the Packing Credit Account of the complainant - Shiv Dial Sud & Sons was also debited for a total sum of Rs. 5,97,106/- on 6.8.1998 in Indian currency being the proceeds of 14,010.00 US Dollars i.e. US Dollars 14,000.00 being amount of unpaid cheque plus US Dollars 10.00 being the bank charges. The opposite party has thus acted merely as a collecting agent of the complainant and the transaction is not complete and final by the credit of the proceeds of the aforesaid cheque presented to the opposite party No. 1 for collection. It is customary with the Foreign Bank to release the payment on receipt pending scrutiny of the instrument and as such there is absolutely no negligence on the part of the opposite party-Bank and the complainant is not entitled to get any compensation from the opposite parties.

3. THE complainant filed replication to the written statement contending, inter alia, that there was no element of fraud involved on the part of the complainant. It was alleged that the complainant received a cheque from one of the prospective buyer and in good faith, the same was presented before the opposite party for collecting the proceeds by the Bank. It was after the credit of the cheque proceed was given in the account of the complainant that the scientific goods were despatched as ordered by the buyer. THE amount was lying in the account of the complainant who did not withdraw the same. THE negligence on the part of the opposite party was established beyond doubt. THE allegations made in the written statement contrary to the averments made in the complaint were denied and the averments made in the complaint case were reiterated.

Shri Arvind Sud, the authorised signatory of the complaint filed its affidavit while the opposite parties - Bank filed the affidavit of Shri K.L. Sindwani, Manager, State Bank of Patiala, Ambala Cantt. Both the parties placed on record relevant documents.

4. WE have heard Mr. Ashok Sharma, Advocate, learned Counsel for the complainant and Mr. R.K. Aggarwal, Advocate, learned Counsel for the opposite parties. WE have carefully gone through the record of the case.

It will be apparent from the narration of events and facts as averred in the complaint case and the reply of the opposite parties that the disputed cheque was initially acted upon by the opposite party and the amount of the cheque converted into Indian currency at the then prevalent rate was credited in the current account of the complainant-M/s. Shiv Dial Sud & Sons. The amount was credited in the said account on 29.4.1998 and the amount credited was Rs. 5,52,565/-. The cheque of 14,000 US Dollars was deposited by the complainant on 16.3.1998. The amount of the cheque was credited after a lapse of about 44 or 45 days from the date of deposit of the cheque. The contention of the complainant is that during this period from 16.3.1998 up to 24.8.1998, no hurry was shown by the complainant in seeking the credit of the amount of the cheque nor any enquiry or reminder was sent by the complainant. It was the opposite party No. 1 i.e. State Bank of Patiala, Branch Office Ambala Cantt., which credited the amount of the cheque in the current account aforesaid of the complainant. The complainant was led to believe that the cheque aforesaid had been duly given effect to and the amount of the cheque was duly entered in his current account. It was after the amount of the cheque had been credited in the aforesaid current account of the complainant, that the complainant shipped the goods to the foreign buyer. Not only this, the amount of the cheque of 14,000 US Dollars was in excess of the due amount which was to the tune of 10,000 US Dollars. The excess amount of 4,000 US Dollars was refunded by the complainant to the purchaser. The opposite party No. 1 allowed to send the refund of 4,000 US Dollars to the foreign buyer out of the credited proceeds. Besides it, the complainant also declared in various documents like invoices about the payment having been received. The grievance of the complainant is that the opposite party No. 1 suddenly on 6.8.1998 debited the sum of Rs. 5,97,106/- from the aforesaid account of the complainant and that too without any prior notice to the complainant. Though the amount of the cheque that was credited in the account was Rs. 5,52,565/- yet the amount debited on 6.8.1998 was Rs. 5,97,106/-, which means that a sum of Rs. 44,541/- was debited in excess of the amount of the cheque, which was credited on 29.4.1998. The allegation of the complainant is that this action on the part of the opposite party No. 1 as well as opposite party No. 2 amounts to grave deficiency in service and it has put the complainant to great financial loss. It was the duty of the opposite parties to realise the amount of the cheque after its complete satisfaction and then to give the credit of the amount of the cheque in the account of the complainant who had not shown any impatience in taking the credit of the amount though the opposite parties had taken already 45 days in crediting the amount of the cheque in the current account of the complainant. In nutshell, it was urged that the action of the

opposite party No. 1-State Bank of Patiala, Branch at Ambala Cantt., in debiting the amount from the account of the complainant is totally illegal and unjustified as the contract between the complainant and the opposite party No. 1-Bank with respect to the deposit of the cheque stood completed immediately on the credit of its proceeds and DPS became functus officio. The core facts of the case are not in dispute inasmuch as it is not in dispute that the cheque for 14,000 US Dollars had been deposited by the complainant with Branch Office of State Bank of Patiala at Ambala Cantt., and the amount of the cheque in terms of Indian currency at prevalent exchange rate had been credited in the account on 29.4.1998. It is also not in dispute that the debit entry was made on 6.8.1998 of a sum of Rs. 5,97,106/-. The opposite parties have, however, contended that the cheque which had been initially cleared by the agent of the Bank later on came to know that the aforesaid cheque was fake and forged. Initially this cheque was for the amount of US Dollars 500 only which was altered to US Dollars 14000. The name of the original payee was altered to Shiv Dial Sud & Sons. Since the said cheque had not been cleared by the concerned Bank i.e. the Marine Midland Bank whom it was returned by the Drawee Bank, the amount of the cheque had not been debited from the opposite party-Bank and consequently the Foreign Department of State Bank of Patiala located at New Delhi advised the opposite party No. 1 about the receipt of the said cheque unpaid through their letter dated 29.7.1998 and thereafter the debit entry was made to a sum of Rs. 5,97,106/- in the Indian currency being proceeds of 14,010 US Dollars which included US Dollars 10 as bank charges. The learned Counsel for the complainant contended that the complainant had deposited the cheque as it had been received by him from the foreign buyer and he had no role to play in the issuance of the said cheque and as such he is not a party to any such transaction and forging the cheque. It was for the opposite parties-Bank to fully satisfy itself and to give the credit of the amount of the cheque in the account of the complainant only after the proceeds of the cheque had been received by the Bank from the drawee Bank through its agent - Marine Midland Bank. Since the opposite parties did not properly act in this regard and gave an entry of credit in the account of the complainant in respect of the amount of the cheque which led the complainant to believe about the receipt of the sale proceeds in advance and the goods were duly despatched to the foreign buyer and in terms of payment received was made on relevant documents. Besides this, the excess amount of 4,000 US Dollars had also been refunded to the buyer. A perusal of letter dated 28.10.1998 written by the State Bank of Patiala, Ambala Cantt. to the Deputy General Manager, Foreign Department, State Bank of Patiala, New Delhi regarding encashment of the cheque for US Dollars 14,000; Account - M/s. Shiv Dial Sud & Sons that the facts given by the complainant to the opposite party No. 1 in the letter dated 24.8.1998 were correct. The complainant was described as a very valuable client of the branch who had been dealing with the opposite party No. 1 in most satisfactory manner for more than 14 years. It will be useful to refer to the contents of the letter, which reads as under :

"Sir, I enclose a copy of letter dated 24.8.1998 from the party to us with copies to you, and A.G.M., Chandigarh. The party which is a very valuable client of the branch and has

been dealing with us in a most satisfactory manner for more than 14 years, is pressing us for a reply. As the amount was debited back to the account of the party under your instruction, you are requested to instruct us further in the matter. I may point out that the cheque was presented to us from collection on 16.3.1998 and the amount was credited to the party on 29.4.1998 only after receipt of your advice of its encashment, i.e. after a period of 44 days. It was after receipt of the amount that the party shipped the goods to the foreign buyer and also remitted the balance amount to him. The facts given by the party in its letter are correct. Kindly also instruct us as to what steps we should take to ensure that such a thing does not happen in future. Thanking you, Sd/- Branch Manager."

It is thus apparent that even the opposite party No. 1 was satisfied about the correctness of the facts mentioned by the complainant in its letter dated 24.8.1998, a copy of which has also been placed on record. The complainant had in its letter dated 24.9.1998 stated, inter alia, as under :

"(1) (2) We proceeded to ship the goods to the buyer and also to remit him the balance amount of \$ 4,000 only after the amount of the cheque was credited to our account. Had the cheque not been encashed, we would not have done so. (3) Under these circumstances, you should ask your Foreign Department to lodge a protest with the foreign Bank and refuse to pay this amount to it. It is wrong of you to take recourse to an easy, though wrong, course and debit the amount to our account. Kindly, inform us as to what the position would have been, if meanwhile we had closed our account with you. (4) Please also inform us as to how we shall be able to conduct our export business if cheques which are credited to our account after realisation are again debited without any fault of ours. (5) You already have got the particulars of the buyer to whom we sent the goods and draft. You have not informed us if this information has been sent by you to the foreign Bank so that it could trace the ultimate beneficiary and the person who altered the cheque and recover the amount from him. (6) We may also draw your attention to the fact that we have been your clients since more than 14 years. You can see that our dealings throughout have been most satisfactory. Would you imagine that we could have taken resort to illegal methods by altering the amount of the cheque and that too for no benefit to us. You are, therefore, requested to take up our case strongly with the foreign Bank and also reverse the debit entry in our account immediately. (7) (8) This is without prejudice. Yours faithfully, For Shiv Dial Sud & Sons Partner"

The reply to this letter was sent by the opposite party No. 2-State Bank of Patiala, Regional Office-II, (Haryana), Sector 8-C, Chandigarh, which is, dated 8.1.2000. The relevant para of this communication is para No. 2, which reads as under :

"2. In this connection, we have examined the matter and found that your account with our Ambala Cantt. Branch was credited on the strength of realization advice under cash order from foreign correspondent. It is pertinent to mention here that credit received from foreign correspondents are with recourse and are subject to the relevant state laws

(applicable in USA) particularly those relating to counterfeit, forgeries, etc. In your case after a gap of some time the foreign correspondent returned the cheque to our Foreign Deptt., New Delhi who advised Ambala Cantt. Branch to debit your account for as sum equivalent to US \$ 14,010/- with objection on that the cheque in collection was altered from US \$ 500 to US \$ 14,000 and payee"s name was also given by the drawer confirming issuing cheque for US \$ 500 and not for US \$ 14,000. Therefore, on receiving the unpaid cheque your account was debited and amount remitted to Foreign Deptt."

It will thus be seen that the credit entry was made in the account of the complainant-firm after the foreign correspondent issued cash order to the Foreign Department of the Bank at New Delhi. Later on the foreign correspondent wrote to the Foreign Department while returning the cheque was forged and fake and had been altered from originally US \$ 500 to US \$ 14,000 and the payee"s name had also been altered and that the cheque being forged was not honoured and encashed by the drawee Bank. Be that as it may, the fact remains that the opposite parties i.e. State Bank of Patiala, Ambala Branch as well as State Bank of Patiala, Regional Office - II, (Haryana), Sector 8-C, Chandigarh acted rather hastily in crediting the amount of the cheque without satisfying themselves about the realisation and collection of the amount of the cheque. This is particularly more evident considering the fact that the complainant-firm did not press for the early credit of the cheque and did not show any impatience regarding the encashment of the cheque and making of the credit entry in its account. It also remains a fact that after the credit entry was made in the account of the complainant on the basis of the aforesaid cheque, the complainant honoured the order placed by the foreign buyer and shipped the goods ordered and also refunded the excess price amount of Rs. \$ 4,000. Not only this, in the relevant documents, endorsement of payment received was also made by the complainant. The complainant all of a sudden found itself in a strange situation when the opposite party No. 1 debited the aforesaid amount of Rs. 5,97,106/- from the said current account of the complainant. The complainant was thus considerably put to embarrassment and harassment by the action of the opposite parties and in our considered view the complainant has rightly averred that the opposite parties were deficient in rendering service to the complainant. In our considered view, the amount of compensation claimed i.e. Rs. 25,000/- is just and appropriate keeping into consideration the facts and circumstances of complainant"s case and the same should be awarded to the complainant.

We are, however, of the considered opinion that since the aforesaid cheque was found forged and fake and not honoured by the drawee Bank and was returned unpaid, hence the complainant cannot be granted the relief regarding the re-crediting of the amount of the cheque by the opposite parties in the current account of the complainant and consequently the relief regarding the payment of interest on the said amount of the cheque cannot be granted to the complainant. The complainant would be at liberty to initiate appropriate proceedings in a Court of competent jurisdiction against the defaulting parties to claim relief regarding the transaction, which it had entered into for the supply of

the goods as per order placed by the aforesaid foreign buyer.

5. RESULTANTLY, the complaint succeeds partly. The complaint is dismissed insofar as the relief for re-crediting the amount of the cheque in the current account of the complainant and to pay interest thereon is concerned. The complaint is allowed to the extent that the opposite parties are directed to pay the sum of Rs. 25,000/- as compensation for rendering deficient and negligent services to the complainant. The complainant is also allowed costs of litigation, which we quantify at Rs. 2,500/-. The opposite parties are directed to pay the aforesaid amount of compensation including costs of litigation within one month from the date of receipt of this order failing which the complainant will be entitled to get interest @ 9% per annum on the amount of compensation of Rs. 25,000/-. The complaint is decided accordingly. Copies of this judgment be supplied to the parties free of charges. Complaint partly allowed.