

(1997) 06 NCDRC CK 0022

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

R.PARAMESHWARA

APPELLANT

Vs

CHIEF MANAGER/STATE BANK
OF PATIALA

RESPONDENT

Date of Decision: June 19, 1997

Citation: 1997 3 CPJ 237 : 1998 1 CPR 508

Hon'ble Judges: B.Jagannatha Hegde , Kumar Gowda , B.H.Kamalamma J.

Final Decision: Complaint dismissed

Judgement

1. THE case of the complainant in brief may be stated thus: Complainant's father late Sri. B. Rudrappa had deposited in the opposite party Bank a sum of Rs. 7,50,000/- in fixed deposit on 30.8.1992 for a period of 46 days. Unfortunately Rudrappa expired on 25.8.1992. THE complainant contended that Rudrappa had executed a Will on 16.8.1992 which was registered after his death. THE complainant claims to have been appointed as Executor under the Will and he approached the Bank for encashing the same on 17.3.1994 in order to make payments to the persons entitled for the same under the terms of the Will. Though the opposite party Bank requested the complainant to produce affidavits, indemnity bond and other records, ultimately they sent a letter, dated 3rd August, 1995 stating that they were not in a position to ascertain that the Will is a last and genuine Will. THE letter further stated that in view of the fact that the claim involves a heavy amount, the complainant was requested to bring a legal representation from the Court of competent jurisdiction entitling him to receive the amount. THE complainant has, therefore, filed this complaint before this Commission, for a direction to the opposite party to make full payment of the proceeds of the fixed deposit with up-to-date interest and costs of this complaint.

2. THE opposite party Bank has filed a detailed objection, inter alia, contending that this Commission has no jurisdiction to adjudicate the genuineness of the Will. It was also contended that according to me Banking procedure when a depositor dies, the claimant generally has to produce a probate from a competent Civil Court.

During the course of enquiry the complainant examined himself and two witnesses, who are stated to be the attestors of the Will to prove the genuineness of the Will.

The opposite party Bank examined its General Manager, who has stated that the Bank is not in a position to say that the Will is genuine or not, and that it is the last Will of the testator.

3. FOLLOWING points would arise for our consideration:

(1) Whether the Bank's instance of production of legal representation amounts to deficiency of service ? (2) Whether the Consumer Court can give finding as to the genuineness or validity of the Will? (3) If point No. 2 is answered in the affirmative, whether the complainant has proved the Will ? (4) What order?

In our view, point No. 2 can be taken first, as it relates to question of jurisdiction of this Commission. The ultimate decision of this case depends on this finding.

4. SRI. B.P. Jayakar, learned Advocate for the complainant contended that the opposite party Bank has not seriously disputed the genuineness of the Will. This has been opposed by the learned Advocate appearing for the opposite party Bank. It is clearly stated by him that they are not admitting the genuineness of the Will, they are not in a position to say whether that was his last Will or whether that testator had executed the Will in a sound state of mind.

The complainant has examined himself and other 2 persons as attestors to the Will. Will is a solemn document. Heavy responsibility is cast on the Courts while giving a finding on the genuineness of the Will. The party must satisfy the conscience of the Court that the Will profounded is the last Will of a free and capable testator. It must also be proved in accordance with law.

We do not want to comment on the evidence placed by the complainant in this regard. All that we say is that we do not wish to go into that aspect at all. It is the

province of the Civil Court of competent jurisdiction but not of a Consumer Court. Without holding that the Will is genuine, this Commission cannot give a direction to the opposite party Bank to pay the amount. This Commission invested with the summary power cannot go deep into the appreciation of evidence without which the genuineness of the Will cannot be given.

5. THE learned Counsel for the opposite party Bank relying on Section 214 of the Indian Succession Act contends that this Commission has no jurisdiction to make an order as to the payment of the amounts in question.

6. WE do not want to enter into this controversy. It is for the complainant to approach the Civil Court of competent jurisdiction. Hence we answer Point No. 2 accordingly.

In view of our finding on Point No. 2, Point No. 3 will not arise. Point No. 1:

It is not in dispute that the complainant is not a nominee for the fixed deposit in question. His claim is only under the Will. Of course, he is also a heir being a son of the deceased. But the Bank in its letter dated 3.8.1995 states thus:

"Please refer to your captioned application dated 30th January, 1995 on the captioned subject. Our Bank has examined your application and is of the view that we are not in a position to ascertain that the Will of the deceased is the last and genuine Will. In view of this fact and also the fact that claim involves a heavy amount, you are requested to bring a legal representation from a Court of competent jurisdiction entitling you to receive the amount in question to enable us to pay the amounts to you."

7. MR. Jayakar, learned Advocate for the complainant contends that the Bank need not have collected the documents, affidavits, indemnity bonds and other papers from the complainant and then issued a letter dated 3.8.1995. It may be that the

Bank has to take a decision whenever a claim is made and it is normal for the Bank to seek necessary papers to substantiate their claim. If the Bank has taken a decision as stated in their letter dated 3.8.1995 after collecting the documents, we cannot term the stand of the Bank as deficiency in service. It is not open to the complainant to say that the Bank is bound to accept his claim on the basis of the documents collected.

We, therefore, hold that the Bank's insistence of production of legal representation does not amount to deficiency of service.

8. IN the result, therefore, this complaint fails and it is dismissed. No costs. Complaint dismissed.