

(1994) 09 NCDRC CK 0037

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

AHUJA TRADERS

APPELLANT

Vs

Canara Bank

RESPONDENT

Date of Decision: Sept. 29, 1994

Citation: 1995 1 CLT 481 : 1995 1 CPC 189 : 1995 1 CPR 106

Hon'ble Judges: R.N.Mittal , S.Brar J.

Advocate: S.L.Gupta , P.N.Sethi

Judgement

1. - BRIEFLY, the facts are that the complainant is exporting goods to various countries. Two bills were drawn by them () on M/s. Tiru Garment Industries, Kathmandu; one for Rs. 1,78,947/- and the other for Rs. 6,24,541.71 on 26th September 1988. The bills were submitted to the (O.P.) for collection around 26.9.88 against the letters of credit opened by Rashtriya Banijya Bank Ltd. Kathmandu, Nepal, (hereinafter referred to as the Nepal Bank) on behalf of the drawees of the bills.

2. IT is alleged that generally bills are received within 2 weeks or so from the date of submitting them to the O.P. for collection, but the proceeds in the present case were credited to the account of the complainant on 9th December, 1988. They received a letter dated 15th Jan., 90 from the O.P. informing that the proceeds of the bills had been received by them on 29th March, 1989 whereas the credit for the amount had been given in their account on 9.12.88. Consequently, they were liable to pay interest amounting to Rs. 43,587.10 Ps. from 9th December, 88 to 28th March, 89. IT is alleged that the O.P. was not entitled to charge any interest from them as the amount had been rightly credited to their account on 9.12.88. Consequently, they

have prayed that the O.P. be directed to refund the amount of Rs. 43,587.10 Ps. with interest @ 30% p.a, with quarterly rests and pay a sum of Rs. 2,50,000/- as damages.

The complaint has been contested by the O.P. They have controverted the allegations of the complainant and inter alia pleaded that the amount of the bills had been received by them from the City Bank on 29th March '89. The amount of Rs. 8,03,488.71 Ps. was credited to the complainant on 9.12.88 on account of temporary advance to tide over their financial difficulties.

The 1st question that arises for determination is, whether the amount of Rs. 8,03,488.71 Ps. was credited to the account of the complainant on 9th December '88 as temporary advance. No documents have been brought on record by the O.P. to show that the said amount was credited to the account of the complainant as temporary advance against the bills. No agreement has been shown by the bank that the complainant was entitled to temporary advance against the bills. There is also no letter of request by the complainant to the O.P. that till the realisation of the bills, they be given temporary advance against them.

3. THE complainant has brought to our notice Telex Message dated 25th November, 1988 (Annexure VI) from Nepal Bank to City Bank directing them to pay Rs. 8,03,488.71 Ps. to the O.P. on account of the bills sent by them. THE Nepal Bank simultaneously sent a letter of confirmation after the telex message to the City Bank with a copy to the O.P. In this letter they have asked the City Bank to pay the aforesaid amount to the O.P. After receipt of the said letter an amount of Rs. 8,03,488.71 Ps. was credited by the O.P. to account of the complainant on 9.12.88. From the aforesaid circumstances it is evident mat the said amount of Rs. 8 lakhs and odd was credited by the O.P. to the account of the complainant on account of the value of the bills and not on account of temporary advance as pleaded by them.

It is not disputed that the O.P. debited the account of the complainant with an amount of Rs. 43,587.10 Ps. on account of interest for the period from 9th December '88 to 28th March, 1989 after more than one year from 9.12.88 when amount was credited to their account. If they had received the amount from the City Bank in March, 1988, they should have informed the complainant immediately and told them, that the amount of Rs. 8 lacs and odd had been desposited in their account on account of temporary advance, but it was not done. This further shows that the plea now taken by the O.P. is false.

4. FTER taking into consideration all the aforesaid circumstances, we are of the view that the service rendered by the O.P. was deficient and they are entitled to the refund of the amount Rs. 43,587.10 Ps., which was debited to their account on 16th Jan. '91.

The complainant has been illegally deprived of the use of the said amount of Rs. 43,587.10 Ps. from 16.1.91 till date. Consequently, they are entitled to interest on that amount from the O.P. The rates of interest have gone very high. Consequently, in the present case we grant interest to the complainant @ 18% p.a. We have given interest at sufficiently high rate and therefore, we are not inclined to give any further damages to them.

For the aforesaid reasons we accept the complaint with costs and direct the O.P. to pay the amount of Rs. 43,587.10 Ps. say Rs. 43,600/- with interest @ 18% p.a. from 16th January '91 till the date of payment within 3 months, failing which action shall be taken against them under Section 27 of the Consumer Protection Act. Costs Rs. 1,500/-. Complaint allowed with costs.