

(2000) 06 NCDRC CK 0037

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

CANARA BANK

APPELLANT

Vs

PREM TEXTILES

RESPONDENT

Date of Decision: June 20, 2000

Citation: 2000 2 CPC 447 : 2000 3 CPJ 115

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

Final Decision: Appeal Nos. 298/1996 & 308/1996 dismissed and Appeal No. 309/1996 partly allowed

Judgement

1. ALL the three appeals arise out of the judgment and order dated 22.1.1996 passed by District Consumer Forum, Etah in Complaint Case No. 469/1993. Since the facts of the case in all the three appeals are similar, therefore, these appeals are being adjudicated by a single judgment. The facts of the case are as follows.

2. THE complainant M/s. Prem Textiles, Railway Road, Gunjandwara, District Etah is engaged in the business of textiles and Sri Prem Chand Gupta is the sole proprietor of the said firm. THE complainant had sent two bundles of clothes from Gunjundwara Railway Station to Khalilabad Railway Station through Railway Receipt No. 485923, on 2.6.1993. THE goods consigned were made for a customer M/s. Handloom Cloth Stores at Gorakhpur. THE ownership of the goods was intended to be passed only after the cost had been paid by the said customer. THE railway receipt alongwith bill were handed over by the complainant to Canara Bank, Gunjandwara on 3.6.1993 for collection of payment before delivery of railway receipt to the customer concerned. Canara Bank, Gunjandwara sent the above railway receipt to Punjab National Bank, Urdu Bazar Branch, Gorakhpur vide registered

letter No. 2746 dated 3.6.1993 for collection of payment. THE registered letter was delivered to Punjab National Bank on 7.6.1993 by the concerned Post Office. THE registered letter containing the railway receipt was not entered in the "receipt register" of the Bank and the employee concerned of the Punjab National Bank appears to have handed over the railway receipt to the party concerned without collection of payment of the bill and the party concerned took delivery of the goods fraudulently from the Railways in collusion with the Bank employees. THE complainant approached the Canara Bank, Gunjandwara and proceeded to Gorakhpur with the letter of Canara Bank for Punjab National Bank, Gorakhpur. On 6.9.1993 the Bank made an enquiry on the letter of Canara Bank and found that no railway receipt has been received. This has resulted into considerable loss to the complainant. THE value of the goods sent was Rs. 31,517/-.

The opposite party in spite of repeated demands and requests were not willing to pay the amount. Hence a complaint was lodged in the District Consumer Forum, Etah. The relief asked by the complainant is value of the goods amounting to Rs. 31,517/- alongwith interest at the rate of 24% from 15.7.1993 to 25.11.993 and travelling expenses of Rs. 1,000/-.

In Appeal No. 298/1996, the case of the opposite party Canara Bank before the District Forum was that there was no firm in the name of M/s. Handloom Cloth Store at Gorakhpur in whose favour the bills were drawn but it was admitted that the complainant delivered to the appellant the above railway receipt alongwith bill for collection of payment before delivery of railway receipt to M/s. Handloom Cloth Store on 3.6.1993. The appellant, Canara Bank forwarded the railway receipt alongwith bill to Punjab National Bank, Gorakhpur vide registered letter No. 2746 of 3.6.1993 for collection of payment. The registered cover so sent to Punjab National Bank, the other opposite party, was delivered to them on 7.6.1993 by the concerned Post Office. The opposite party, Canara Bank further stated that the Punjab National Bank, respondent No. 2 in the appeal, handed over the said documents to the party concerned without taking payment and the party took delivery of the goods from the Railways of the consignment.

3. IN Appeal No. 308/1996, the case of the opposite party, appellant in this appeal, Punjab National Bank before the District Forum concerned was that on enquiry it has been found that there was no such firm with the name and style of M/s. Handloom Cloth Store at Gorakhpur. The complainant appears to have in conspiracy with some fictitious and fake firm made such a firm to cheat the Bank and other tax authorities. The alleged railway receipt was never delivered to the answering party

and no such registered cover containing alleged railway receipt was received in the office of the Punjab National Bank, Urdu Bazar, Gorakhpur. It was denied that there was any collusion between the Bank employees and the Railway department. It was also stated that the alleged transaction was for commercial purpose and the alleged consignee was a fictitious concern receiving goods for re-sale, therefore, the complaint was not maintainable. On enquiry it was found that there was no firm existing in Gorakhpur with the name of Handloom Cloth Sotres. No service or consideration was rendered by the complainant under the Consumer Protection Act to the answering party. The case is such that it needs oral evidence and cross-examination of parties and investigation is also required. The remedy, therefore, lies in the Civil Court and not in the Consumer Court.

The District Consumer Forum, after hearing both the parties, came to the conclusion that the opposite party Canara Bank sent the railway receipt and the documents to the opposite party No. 2 Punjab National Bank and without taking payment from the consignee the RR was handed over to the party and, therefore, there was clear deficiency on the part of the opposite parties. The Forum, therefore, decreed the complaint in favour of the complainant and awarded a sum of Rs. 31,517/- alongwith 10% per annum interest to the complainant.

4. AGGRIEVED against the orders passed by the District Consumer Forum, the opposite party Canara Bank has filed Appeal No. 298/1996 and the opposite party No. 2 Punjab National Bank has filed Appeal No. 308/1996 before this Commission. The complainant M/s. Prem Textiles also aggrieved of the above said order of the learned District Forum, filed a cross appeal bearing No. 306/1996 before this Commission.

In this case the appellant, Prem Textiles, has alleged that the District Forum did not consider the facts in the right perspective. The complainant had sent the railway receipt and other documents to the opposite party, Canara Bank, and 24% interest was payable but the District Forum only allowed 12% per annum interest which is against the agreement entered into with the Canara Bank. It was the duty of the opposite party, Canara Bank, to whom the RR alongwith bills was sent on 3.6.1993 to have ensured the payment of the consignment and there was deficiency on the part of the Canara Bank. The interest awarded at the rate of 12% per annum is without any basis. The appellant, the complainant before the learned District Forum, underwent a lot of mental torture and had to incur cost of proceedings and no compensation was awarded on this count. Since the opposite party, Canara Bank, had sent the documents to Punjab National Bank, Gorakhpur, another opposite

party, and the cost of consignment was not realised by the Canara Bank and the complainant had to go to Gorakhpur, therefore, he is entitled to the travelling expenses for going to Gorakhpur. The complainant is, therefore, entitled to 24% per annum interest alongwith cost of Rs. 2,000/- and Rs. 1,000/- as compensation.

In the Appeal No. 298/1996 the appellant in the memo of appeal, besides supporting the pleas taken by them before the District Forum, stated that they had handed over the documents to the respondent No. 2, Punjab National Bank and without payment made to the Bank, the party concerned took delivery of the goods. The place Khalilabad is itself a Railway Station and the complainant failed to show as to why the bills were drawn on M/s. Handloom Cloth Store. The complainant wanted to derive unlawful gains and even FIR of the case was not lodged. The contents of memo of appeal has been supported by an affidavit sworn by Sri. K.N. Anil, Principal Officer of the Canara Bank.

5. IN Appeal No. 308/1996, the appellant Punjab National Bank, opposite party No. 2 in the District Consumer Forum, reiterated the points raised before the District Forum. The alleged RR was never delivered to the Bank and there is no endorsement either of respondent No. 1 or the Canara Bank endorsing the RR in the name of the appellant. There is no direct contact between the appellant and respondent No. 1, Prem Textiles. The Canara Bank did not make any endorsement in the RR authorising Punjab National Bank to receive the money and then deliver the RR to the consignee. The Sales Tax Officer has confirmed that there is no firm in the name of M/s. Handloom Cloth Store - as such a firm is not registered with them. Enquiry from the railway revealed that the original RR was submitted by Sri Ramji, partner of Handloom Cloth Store, Gorakhpur and delivery of goods bears signature of Sri Ramji who got the delivery of the consignment. The original RR on its back had an endorsement and seal of Canara bank, Gunjandwara and does not contain any endorsement in the name of Punjab National Bank. No postal receipt or any documents have been produced by the complainant that the Punjab National Bank has received the original RR with the alleged registered cover.

6. WE have gone through the evidence on record. A careful examination of the judgment and order passed by the District Forum will show that postal department

on 14.9.1993 had clearly stated in the letter that the registered letter in question was delivered to Punjab National Bank, Gorakhpur on 7.6.1993 which is also the case advanced by Canara Bank. The letter of the Senior Manager, Punjab National Bank dated 16.8.1995 also indicates that in the original RR no endorsement has been made by respondent Nos. 1 and 2, complainant or Canara Bank. This clearly goes to show that the documents were received in the office of the Punjab National Bank, Gorakhpur and without payment the RR was given to the consignee and payment was not made. Even if there was no endorsement on the back of the RR it was the duty of Punjab National Bank to have ensured the delivery is made to the consignee only after the consignee has cleared the amount of the total bill with the Bank.

The case of the Punjab National Bank is that their services have not been hired. It is true that the complainant has no direct contact with Punjab National Bank, Gorakhpur. The complainant sent the documents through Canara Bank, Gunjandwara who in turn sent the documents for retirement to Punjab National Bank, Urdu Bazar, Gorakhpur. The contract is, therefore, an implied one and does not absolve both Canara Bank and the Punjab National Bank, appellant in Appeal Nos. 298 and 308 respectively from the responsibility of making payment to the complainant. Banks discharge such functions charging interest and other charges from the complainant, and, therefore, a service is deemed to have been rendered for a consideration and there is no doubt that both the Banks have been deficient in their service, inasmuch as the amount involved in the consignment was not received by the complainant.

We have heard the arguments of Mr. Rajesh Chadha, learned Counsel for the complainant and Mr. A.K. Jain, learned Counsel for the opposite party, Canara Bank. Mr. S.S.D. Verma, who appears for Punjab National Bank was not present on the date of arguments in spite of notice. In the order sheet dated 29.4.2000 it was stated that the case was adjourned for arguments from 17.3.2000 to 19.4.2000 on the request of Mr. S.S.D. Verma and the date was fixed for arguments. In spite of that the learned Counsel was not present on that date. The appeals were called several times and the learned Junior Counsel of Mr. S.S.D. Verma, who appears for Punjab National Bank, requested before this Commission that the case may be taken up later on that date, but even at 3.05 p.m., Mr. S.S.D. Verma was not present. Arguments were, therefore, closed and permission was granted to file written arguments within 10 days. It was not done by the Counsel on behalf of the appellant, Punjab National Bank.

7. THE learned Counsel for Canara Bank has admitted that the RR was sent to Punjab National Bank and the same was received by that Bank. Thus on the face of the records available and the arguments advanced by the learned Counsels, we come to the conclusion that the complainant was deprived of the value of the goods although he had sent the documents through the Bank at Gunjandwara who in turn sent the documents to the Punjab National Bank, Gorakhpur and in spite of the denial of the Punjab National Bank that they have not received the documents, it has been proved beyond doubt as also evident from the judgment and order of the learned District Forum, that this document was sent by post under registered cover to Punjab National Bank, Gorakhpur and its postal delivery was taken by the consignee which is a clear deficiency of service on the part of the appellant, Punjab National Bank and Canara Bank. In the circumstances we do not find any reason to interfere with the opinion expressed by the learned District Forum.

However, when we come to the cross appeal of Prem Textiles, we find that in the complaint before the District Forum, the complainant had asked for interest at the rate of 24% per annum to be payable to the Bank. The learned District Forum ordered that a sum of Rs. 31,517/- with interest at the rate of 12% per annum be awarded to the complainant. The learned District Forum ought to have considered, that in the banking transaction, especially where the retirement of document is involved, the expenses incurred by the complainant are much more and at no cost shall be less than the interest equivalent to 18% p.a. Moreover the award of interest is also regarded as compensation to the complainant. Therefore, the interest awarded by the learned District Forum at the rate of 12% needs to be modified to 18% per annum. In addition to this the complainant is also entitled to Rs. 1,000/- as travelling expenses from Gunjandwara to Gorakhpur and back. The expenses on travelling appears to be justified because the route from Gunjandwara to Gorakhpur is not a straight one and the complainant would have had to travel locally from one place to another. In view of this, the order of the learned District Forum needs to be modified accordingly.

8. APPEAL No. 298/1996 and 308/1996 are liable to be dismissed and the APPEAL No. 309/1996 is liable to be partly allowed. Order

Appeal Nos. 298/1996 and 308/1996 are dismissed with cost of Rs. 2,000/-. Appeal No. 309/1996 is partly allowed. It is ordered that the opposite parties jointly and severally shall pay to the complainant a sum of Rs. 31,517/- alongwith 18% per annum interest. The interest so awarded shall be charged from 1.7.1993 till the date of payment. The appellant shall also be entitled to the travelling expenses of Rs.

1,000/-. The claim for payment for compensation is rejected as the same was not agitated in the complaint before the learned Distict Forum.

The payment shall be made within six weeks of the date of this order failing which 18% interest shall also be charged on the travelling expenses awarded to the complainant.

9. LET compliance be made within a period of two months from the date of this order.

10. LET copy as per rules be made available to the parties. Appeal Nos. 298/1996 & 308/1996 dismissed and Appeal No. 309/1996 partly allowed.