

Bright Transport Company Vs. Sangli Sahakari Bank Ltd., 2012 PLRonline 0110 (NCDRC), II(2012) CPJ 151 (NC),

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

(New Delhi)

Before:- Justice R.C. Jain, Presiding Member and S.K. Naik, Member.

Bright Transport Co. – Complainant

Versus

Sangli Sahakari Bank Ltd. – Opposite Party

Consumer Complaint Nos. 286 and 287 of 2011.

12.1.2012.

Consumer Protection Act, 1986 Sections 2(1)(d), 2(1)(g) and 21(a)(i) - Jurisdiction - Fraud, forgery - Cheque - Forged signature - Bank alleged to be negligent - Complaint - Maintainability - Complaints which are based on allegations of fraud, forgery, etc. and trial of which would required voluminous evidence and consideration are not to be entertained by this Commission - This complaint is an attempt to misuse jurisdiction of this Commission only with a view to save on Court fee payable in a suit before Civil Court - Complaint not maintainable - Banking

Cases Referred :-

1. Bhagwanji D. Patel v. The Chairman & Managing Director, Indian Bank, Complaint No. 217 of 2006 : (2011) 3 CPJ 175 (NC). D/d. 6.5.2011.

2. Synoo Industries v. State Bank of Bikaner & Jaipur, (2002) 2 SCC 1.

3. V.S. Badlani v. Indian Bank, OP No. 24 of 2005 : (2008) 1 CPJ 76 (NC).

For the Complainant :- Abhinay Ramkrishna, Advocate. For the Opposite Party :- None.

ORDER

Justice R.C. Jain, Presiding Member. (Oral) – In CC No. 286/2011, the complainant company has made a claim of L 1,27,35,431.59 along with interest @ 24% p.a. besides a compensation of L 50,00,000 for pain, suffering and mental agony. In CC No. 287/2011, he has made a claim of L 63,14,267.28 along with interest @ 24% p.a. besides a Compensation of L 50,00,000 for pain, suffering and mental agony. These amounts are claimed by the complainant from the opposite party, Sangli Zila Sahakari Bank Ltd., a cooperative bank existing in Sangli District, Maharashtra where the complainant had a current account with overdraft facility in connection with its business. These amounts are claimed alleging deficiency in service on the part of the opposite party Bank and its official in encashing and making payment of several cheques allegedly bearing forged signature of the complainant over a period of four years from 2005 to 2009. The precise allegation of negligence is that officials of the Bank did not exercise due care in comparing the signatures on the cheques from the specimen signature of the Director of the complainant. It is, however, averred in the complaint that the matter was reported to the Bank Authorities and also to the Police. FIR was registered vide No. 13110 dated 18.1.2010 under Sections 408, 465, 407, 468, 471, 420 and 34 of IPC and a charge-sheet stands filed and the same is awaiting trial by the concerned criminal Court. According to the complainant, it has been established by the evidence of handwriting expert that the signatures on the

cheques were forged.

2. We have heard Mr. Abhinay Ramkrishna, Advocate for the complainants on the question of maintainability of these complaints before a consumer Fora like this Commission. In our view, having regard to the nature and gamut of controversy which is raised in the present complaints, it cannot be decided by a consumer Fora in exercise of its summary jurisdiction under the Consumer Protection Act, 1986 because the trial of such complaints would require voluminous documentary and oral evidence including cross-examination of various witness and experts, which cannot possibly be done by this Commission in such a jurisdiction. The trial and disposal of such complaints cannot be done within the stipulated time span of 3 or 4 months or even a year or so as it would require protracted trial and hearings. Needless to mention that hundreds of complaints are still pending disposal in this Commission for over a decade.

3. That apart we may notice that as per the complainants own showing they had availed the sendees of the opposite party bank in connection with their business/of commercial purpose inasmuch as it was having a current account with overdraft facility in the OP Bank and the alleged negligence/deficiency in service is relatable to the said business transactions. For this reason also we are of the view that the complainant is not a consumer within the provisions of Section 2(1)(d) of the Consumer Protection Act, 1986, more particularly as it stands after its amendment by the Amending Act 62 of 2002 effective from 15.3.2003.

4. Yet another reason why we would discourage the complainant from approaching this Commission is that as per the complainants there are several acts of forgery for which a criminal trial is pending. The said case is yet to be decided and the decision of the criminal cases may have a bearing on the claims made by the complainants in these complaints. This Commission has consistently taken the view in the past that complaints which are based on allegations of fraud, forgery, etc. and trial of which would require voluminous evidence and consideration are not to be entertained by this Commission.

5. In this view we are fortified by the decisions of the Supreme Court and this Commission. In the case of **Synoo Industries v. State Bank of Bikaner & Jaipur & Ors., (2002) 2 SCC 1**, where the Apex Court held as under:

“Given the nature of the claim in the complaint and the prayer for damages in the sum of rupees fifteen crores and for an additional sum of rupees sixty lakh for covering the cost of travelling and other expenses incurred by the appellant, it is obvious that very detailed evidence would have to be led, both to prove the claim and thereafter to prove the damages and expenses. It is, therefore, in any event, not an appropriate case to be heard and disposed of in a summary fashion. The National Commission was right in giving to the appellant liberty to move the civil Court. This is an appropriate claim for a civil Court to decide and, obviously, was not filed before a civil Court to start with because, before the consumer forum, any figure in damages can be claimed without having to pay the Court fees. This, in that sense, is an abuse of the process of the consumer Forum”

6. In the case of **OP No. 24 of 2005 titled as V.S. Badlani v. Indian Bank, I (2008) CPJ 76 (NC)** this Commission held as under:

“Seeing various judgments of the Supreme Court and this Commission, it is evident that wherever not only the complicated questions of law but dispute questions of facts, relating to unauthorized representations made about paying higher rate of interest and requirement of recording voluminous evidence etc. and relating to forgery and conspiracy involving eight persons and other points mentioned earlier

are involved, it would be desirable that the matter should not be dealt with by this Commission and could be relegated to the civil Court. We feel that in the present state of law and observation of the Supreme Court itself and the aforesaid circumstances, we cannot take any other view.

It is submitted that facts of the above mentioned case were broadly similar to the instant matter where there are allegations of fraud, forgery and fabrication of documents. This Hon'ble Commission refused to exercise its jurisdiction in such dispute and relegated the matter to the Civil Court."

7. These decisions were followed by this Commission in consumer **Complaint No. 217/2006 titled Bhagwanji D. Patel v. The Chairman & Managing Director, Indian Bank, III (2011) CPJ 175 (NC), decided on 6.5.2011** by holding as under:

"Learned Counsel for the complainants have not denied the above circumstances/pleas but he has submitted that the complainant is not concerned with the said transactions because the opposite party-bank having not disputed the deposit of sum of 1,96,749.24 GBP in the FCNR (B) account, they are liable to repay the said amount along with interest and compensation because the bifurcation of the account on the basis of the instructions issued by the attorney of the complainant was in clear violation of RBI guidelines. In our view, it will amount to over simplifying a complicated issue. Whether the opposite party-bank acted in violation of the RBI guidelines or not while effecting the bifurcation of the account of the complainant is only one circumstances in the chain of circumstances under which several transactions were effected in fraudulent manner by several persons purportedly engaged by the complainant as financial advisors/consultants/commission agents. What was the role of the bank manager and those persons purporting to act on behalf of the complainants has been a subject matter of investigation by the economic wing of the CBI and a charge-sheet stands filed against eight accused persons. Whether the transactions were genuine/fake or fraudulent and what was the modus operandi of the perpetrators of the said transactions is the matter on which the special Court is yet to give its verdict On the face of this position, we must consider the question whether this Commission in exercise of its summary jurisdiction would be able to adjudicate all those issues arising on the complaint in an effective manner. If this Commission ventures to do it, it may have to record the evidence of all those persons whose evidence was collected by the CBI. It is only after detailed examination and cross examination of those witnesses and the documentary evidence i.e. voluminous record involved in the said bank transactions that the Commission may perhaps be able to adjudicate on the said question. We have, therefore no hesitation to hold that the complaint indeed raises very complicated question of facts and law which can only be answered by a regular Civil Court and the complainants should be relegated to the Civil Court to work out their remedy for the entire claim made by them in the present complaint or this Commission can decide upon the claim in regard to which there is no dispute between the parties."

8. It also appears to us that filing of present complaints before this Commission are nothing but an attempt to misuse the jurisdiction of this Commission only with a view to save on the Court fee payable in a suit before the Civil Court.

9. Having considered the matter from different angles and having given our thoughtful consideration to the submissions made by the learned Counsel for the complainants, we are of the view that these consumer complaints are not maintainable before this Commission. However, the complainants shall be free to work out its remedy in accordance with law before the appropriate Court/Tribunal. With these observations, the consumer complaints

are dismissed.
Complaint dismissed.