REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7289 OF 2009

THE CHAIRMAN & MANAGING DIRECTOR,
CITY UNION BANK LTD. & ANR. .....APPELLANTS

VERSUS

R. CHANDRAMOHAN .....RESPONDENT

J U D G M E N T

BELA M. TRIVEDI, J.

1. The appellants – the Chairman and the Manager of the City Union Bank Limited have preferred the present appeal against the Judgment and Order dated 01.02.2007 passed by the National Consumer Disputes Redressal Commission, Circuit Bench at Chennai (hereinafter referred to as the 'National Commission') in First Appeal No. 29 of 2005 arising out of the Judgment and Order dated 23.12.2004 passed by the State Consumer Disputes Redressal Commission, Chennai in O.P. No. 103/99.

2. The short facts giving rise to the present appeal are that the respondent - original complainant Mr. R. Chandramohan had filed the complaint being O.P. No. 103/99 against the appellants – original opponents before the State Commission seeking direction

against the appellants to re-credit rupees eight lakhs covering two demand drafts - one bearing No. 166570 dated 28.06.1996 for rupees five lakhs and the other bearing No. 177923 dated 18.11.1996 for rupees three lakhs in his Current Account No. 3600. It was alleged in the complaint *inter alia* that the respondent-complainant was the Managing Director of “D-Cube Constructions (P) Ltd.” having its registered office at Chennai. Shri R. Thulasiram and Shri R. Murali were the other directors of the said Company. As per the further case of the respondent, a Current Account bearing No. 3600 was opened in the name of the said company with the appellants’- bank on 13.04.1995 and the respondent alone was permitted to operate the said account. During the end of 1996, there was misunderstanding between the respondent and one R. Kularaireman and, therefore, he had written a letter to the appellant no. 2 on 08.01.1997 requesting it not to allow withdrawals from the said current account. It was further case of the respondent that one Ravindra, an NRI residing at Malaysia had purchased three flats in the respondent’s projects and had informed the complainant that he had sent two drafts i.e., draft bearing No. 166570 dated 28.06.1996 for Rs. 5 lakhs and draft bearing no. 177923 dated 18.11.1996 for Rs. 3 lakhs, totally amounting to Rs. 8 lakhs. On the reconciliation of the accounts, it

was found that the said two demand drafts were not credited in the said current account of the company opened with the appellant no. 2 - bank. Despite the information sought by the respondent-complainant, the appellant no. 2 did not furnish any information. Subsequently, the respondent came to know through Indian Overseas Bank that the said demand drafts were presented through the second appellant bank for clearing and the same were paid to the City Union Bank, Ram Nagar Branch. The respondent therefore once again requested the appellant no. 2 on 03.08.1998 informing it that the amount of the said two drafts were credited in some other accounts and therefore the same be re-credited in his current account.

3. Thereafter, correspondence ensued between the appellants and the respondent and it was found that a separate account in the name of “D-Cube Construction” was opened and the said two drafts were credited in that account, as the said demand drafts were in the name of “D-Cube Construction”. The respondent alleging collusion and negligence on the part of the appellants filed the complaint before the State Commission.

4. The State Commission allowing the said complaint with cost of Rs. 1,000/- directed the appellants-original opponents to pay the respondent-complainant a sum of Rs. Eight lakhs along with compensation of Rs. one lakh towards mental agony, loss and

hardship. Being aggrieved by the said order, the appellants had preferred the First Appeal being 29/2005, which came to be dismissed by the National Commission vide the impugned order.

5. The learned counsel appearing for the appellants submitted that the State Commission and the National Commission had committed an error in not appreciating the fact that in absence of any fault, imperfection, shortcoming or inadequacy in the performance, which was required to be maintained by the appellants' bank, it could not be presumed that there was deficiency in service as defined under Section 2(1)(g) of the Consumer Protection Act, 1986 (hereinafter referred to as the 'said Act') He has relied upon the decision of this Court in case of ***Ravneet Singh Bagga vs. KLM Royal Dutch Airlines and Another***[1] and in case of ***Branch Manager, Indigo Airlines Kolkata and Another Vs. Kalpana Rani Debbarma and Others***[2] to submit that the complaint filed by the respondent-complainant was not maintainable before the State Commission, and even otherwise the respondent had failed to discharge the burden of proof that there was deficiency in service on the part of the appellants. He further submitted that the two demand drafts in question were issued in the name of "D-Cube Construction" only,

1 (2000) 1 SCC 66
2 (2020) 9 SCC 424

and it was on the instructions of R. Thulasiram one of the Co-directors, the amounts of the said drafts were credited in the Current Account No. 4160 opened in the name of “D-Cube Construction”. According to him, as per the letter dated 15.02.1997 addressed to the appellant-bank by the “D-Cube Constructions (P) Ltd.”, stating that the said Company had no objection if current account in the name of “D-Cube Construction” was opened, the said account was opened by Shri R. Thulasiram in his capacity as the proprietor of the proprietary concern. According to him, if any fraud was committed by the Co-director of the “D-Cube Constructions (P) Ltd.”, such disputes pertains to fraud would not fall within the jurisdiction of the State Commission or the National Commission to decide.

6. However, learned counsel for the respondent-complainant submitted that when the two forums have consistently held the appellants liable for the deficiency in service, this Court should not interfere with the same. He further submitted that the bank would be vicariously liable for the acts of its employees. As per the General Banking Principles and Guidelines laid down by the RBI, the account should not have been opened with the similar name of the company of which the complainant was the Managing Director. According to him, without the involvement of the officers of the

Bank, R. Thulasiram would not have encashed the drafts in question by opening a new current account in the name of "D-Cube Construction". He further submitted that there was a clear deficiency in service on the part of the appellant -bank. In this regard he had relied upon the decision in case of ***Kerala State Cooperative Marketing Federation Vs. State Bank of India and Others***[3] and in case of ***Indian Overseas Bank vs. Industrial Chain Concern***[4].

7. Having regard to the submissions made by the learned counsel for the parties and to the documents on record, the question that falls for consideration before this Court would be, whether the Commission/Forum under the Act could have entertained the complaint involving highly disputed questions of facts or involving allegations of tortious acts, the proceedings before the Commission/Forum being summary in nature?

8. In the instant case, it is not disputed that three drafts were issued by an NRI from Malaysia for the purchase of three flats. Out of three, one draft was for the sum of Rs. 5 lakhs dated 28.06.1996 and two drafts were for Rs. 3 lakhs & Rs. 6 lakhs dated 18.11.1996. It is also not disputed that the two drafts in question were issued in the name of "D-Cube Construction" and not in the name of "D-Cube Constructions (P) Ltd." The Current Account No.

3 (2004) 2 SCC 425
4 (1990) 1 SCC 484

3600 was in the name of “D-Cube Constructions (P) Ltd.”, whereas the Current Account No. 4160 was opened on 15.02.1997 in the name of “D-Cube Construction” by Shri R. Thulasiram, as the proprietor of his proprietary concern, when he was one of the Directors of “D-Cube Constructions (P) Ltd.” It is also not disputed that appellant no. 2 - bank had received a letter dated 15.02.1997 from the “D-Cube Constructions (P) Ltd.” giving “no objection” for opening the current account in the name of “D-Cube Construction”. It is also not disputed that there were certain disputes going on between the Directors of the said company - “D-Cube Constructions (P) Ltd.”.

9. Under the circumstances, when the Current Account No. 4160 was opened by R. Thulasiram as the proprietor of “D-Cube Construction”, relying upon the letter dated 15.02.1997 written on behalf of the “D-Cube Constructions (P) Ltd.”, and when the disputed two drafts in question which were in the name of “D-Cube Construction”, were credited in the account of “D-Cube Construction”, it could not be said that there was any willful default or imperfection or short coming so as to term it as the deficiency in service on the part of the appellant-bank within the meaning of Section 2(g) of the said Act. The counsel for the appellants has

rightly relied upon the decision of this Court in case of *Ravneet Singh Bagga* (supra) as under:

> "5. Section 2(*i*)(*o*) defines "service" to mean service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service. Section 2(*i*)(*g*) defines "deficiency" to mean any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service".
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> "6. The deficiency in service cannot be alleged without attributing fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be performed by a person in pursuance of a contract or otherwise in relation to any service. The burden of proving the deficiency in service is upon the person who alleges it. The complainant has, on facts, been found to have not established any wilful fault, imperfection, shortcoming or inadequacy in the service of the respondent. The deficiency in service has to be distinguished from the tortious acts of the respondent. In the absence of deficiency in service the aggrieved person may have a remedy under the common law to file a suit for damages but cannot insist for grant of relief under the Act for the alleged acts of commission and omission attributable to the respondent which otherwise do not amount to deficiency in service. In case of bona fide

> disputes no wilful fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in the service can be informed (*sic*). If on facts it is found that the person or authority rendering service had taken all precautions and considered all relevant facts and circumstances during the transaction and that their action or the final decision was in good faith, it cannot be said that there had been any deficiency in service. If the action of the respondent is found to be in good faith, there is no deficiency of service entitling the aggrieved person to claim relief under the Act. The rendering of deficient service has to be considered and decided in each case according to the facts of that case for which no hard and fast rule can be laid down. Inefficiency, lack of due care, absence of bona fides, rashness, haste or omission and the like may be the factors to ascertain the deficiency in rendering the service"

10. The ratio of the aforestated decision has also been followed in case of *Branch Manager, Indigo Airlines Kolkata* (supra). In ***Oriental Insurance Co. Ltd. vs. Munimahesh Patel***[5]*,* this Court held that the proceedings before the Commission are essentially summary in nature and the issues which involve disputed factual questions, should not be adjudicated by the Commission.

11. So far as the facts of the present case are concerned, even if the allegations made in the complaint are taken on their face value, then also it clearly emerges that there was no wilful fault, imperfection, shortcoming or inadequacy in the discharge of the

5 (2006) 7 SCC 655

duty on the part of the employees of the appellants' bank, which could be termed as "deficiency in service" under Section 2(1)(g) of the said Act. As emerging from the record, some disputes were going on amongst the Directors of the Company and one of the Directors, if allegedly had committed fraud or cheating, the employees of the bank could not be held liable, if they had acted bona fide and followed the due procedure.

12. The proceedings before the Commission being summary in nature, the complaints involving highly disputed questions of facts or the cases involving tortious acts or criminality like fraud or cheating, could not be decided by the Forum/Commission under the said Act. The "deficiency in service", as well settled, has to be distinguished from the criminal acts or tortious acts. There could not be any presumption with regard to the wilful fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in service, as contemplated in Section 2(1)(g) of the Act. The burden of proving the deficiency in service would always be upon the person alleging it.

13. In the instant case, respondent-complainant having miserably failed to discharge his burden to prove that there was a deficiency in service on the part of the employees of the appellants-bank within the meaning of Section 2(1)(g) of the Act, his complaint deserved to be dismissed, and is accordingly dismissed. The

impugned orders passed by the State Commission and the National Commission are therefore quashed and set aside. The appeal stands allowed accordingly.

……. J.
[AJAY RASTOGI]

…….J.
[BELA M. TRIVEDI]

NEW DELHI;
27.03.2023