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N. Sudha Vs. the General Manager, City Bank and Others

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Court : Tamil Nadu State Consumer Disputes Redressal Commission SCDRC Chennai

Decided On : Mar-29-2011

Judge : Honourable Thiru Justice M. Thanikachalam President, Thiru J. Jayaram, M.a., M.L., Judicial Member &Amp; Thiru S. Sambandam, B.SC., Member II

Appeal No. : F.A.29 of 2008 [Against order in C.C.No.128 of 2005 on the file of the DCDRF, Chennai (South)]

Appellant : N. Sudha

Respondent : The General Manager, City Bank and Others

Judgement :

(Prayer: The appellant as complainant filed a complaint before the District Forum against the respondents/opposite parties praying for the direction to the opposite parties to pay Rs.5,10,000/- together with interest at 18% per annum from the date of filing till the date of realization with cost. The District Forum dismissed the complaint, against the said order, this appeal is preferred praying to set aside the order of the District Forum dt.31.10.2007 in C.C.128/2005.

This appeal coming before us for hearing finally on 02.03.2011, upon hearing the arguments of the either counsels and perused the documents, as well as the order of the District Forum, this Commission made the following order.)

M. THANIKACHALAM J, PRESIDENT

1. The unsuccessful complainant is the appellant.

2. The complainant is having Savings Bank Account in the Citi Bank and the account No.5-362152-447. In addition, she is also having Debit Card bearing No.5081-5944-0493-4096 as well as Credit Card No.4550-3889-9098-6007 respectively.

3. The complainant has not availed the Credit Card facilities at any point of time, whereas the Statement issued by the opposite parties would reveal that they have debited a sum of Rs.1291.82 on 20.10.2004 and another sum of Rs.1,330.50, thus wrongly debiting the amount from the Savings Bank Account of the complainant, the opposite parties have committed negligent act as well as deficiency in service. The complainant informed the deficiency committed through email also.

4. The complainant under the hope, she is having sufficient balance, issued a cheque to third party, which was dishonoured, as if, the complainant was having insufficient funds, for which, criminal action was also threatened, for which, the opposite party should be held responsible. Because of the negligent act committed by the opposite parties, which caused mental agony and other sufferings, the complainant is entitled to a sum of Rs.5,10,000/- as compensation.

5. The opposite party admitting that the complainant is the account holder as well he is owning Debit Card as well as Credit Card, opposed the case, inter alia, contending that as per the usage of the Card, debit entries were made in the Savings Bank Account of the complainant, as per the standing instruction, which cannot be termed as negligent act or deficiency in service and that without any basis, for the damage claimed by the complainant, they are not answerable.

6. The District Forum taking into account the disputed documents, as if that proves the case of the opposite parties, has come to the conclusion that the complainant has not made out a case, thereby dismissed the complaint, as per the order dated 31.10.2007, which is under challenge.

7. It is the specific case of the complainant, that though she is possessing a Credit Card, she never used the same, whereas, from her account, amounts were

debited, as if, Credit Card was used, which should be construed as negligent act. The specific accusation is not very much challenged, as seen from the Written Version and we find only evasive reply. The credit card of the complainant number is 4550-3889-9098-6007. If the Credit Card holder used the card elsewhere, while shopping, the bill will reach the bank concerned. For each and every month, according to their schedule of time, the Bank will send a statement, to the card holders for payment or if there was a standing instruction to debit the Credit Card usage amount, that amount will be deducted/debited from the Savings Bank Account, and to our understanding, this is the procedure. Therefore, the opposite party should posses the document, regarding the demand made, by the shop establishment, if the complainant had purchased any goods from any shop, which is not produced. On the other hand, statement of account was sent to the complainant, which revealed, as if, the complainant had used the Credit Card, twice, for that debit entries were made, as seen from Ex.A2 and Ex.A8. The dispute is only regarding two entries namely Rs.1,291.82 and another sum of Rs.1,330.50. When these entries are challenged, it is for the bank to establish that the Credit Card of the complainant was used, followed by debit entry in the Savings Bank Account of the complainant. Probably to establish the above, Ex.B1 was produced.

8. Ex.B1 relates Credit Card No.4550-3889-9098-6031 and the name of the card holder is also given as N.Sudha and the complainants name is also N.Sudha. But, as seen from the address given in Ex.B1 and in the complaint, the address is different. Ex.B1 itself makes it clear, that the card used for the purchase, as indicated in Ex.A1, was not the card of the complainant. Therefore, on the basis of Ex.B1, the opposite party cannot justify the debit entry in Ex.A8 or in Ex.A2. When the complainant has sworn an affidavit, that she has not used the credit card, it is for the bank to establish that this credit card was used, whoever may be used and that is why, as per the standing instruction, debit entries were made. From the perusal of the records, as well as from the perusal of the affidavit also, we are unable to find any material, indicating that the Credit Card of the complainant was used, for the purchase of any goods elsewhere and therefore, collecting the amount for debt. Credit Card number of somebody, from the complainant, in the Savings Bank Account, debiting the above said two amounts, should be

construed, as negligent act, as well as deficiency in service, which was not properly considered by the District Forum.

9. In the appeal stage, to make out a case, as if, the complainant had used the Credit Card No.4550388990986007, a new statement was filed as typeset, which is opposed by the complainant. In this typeset, as seen from the print out under the name N.Sudha, correct Credit Card Number of her is given, wherein, we find, the disputed entries also namely Rs.1,291.82 as well Rs.1,330.58, without the particulars stating SI payment received thank you, not giving any other bills. The same particulars are available in Ex.B1 also, wherein, we find the Credit Card number, differently ending with 6031. As rightly urged on behalf of the respondent, except the correct Credit Card number in the new typeset, all other particulars available in Ex.B1 are available in new print out also. Therefore, it is highly impossible and unbelievable, to accept the new statement as correct statement, in the absence of actual proof regarding the use of the Credit Card by the complainant, either for the purchase or for the withdrawal of the amount as the case may be, for which, we do not have any particulars. Thus, we conclude, the attempt made before us also, failed to establish the use of the card, by the complainant and we find no reason to take different view as taken above.

10. The complainant since has not utilized the Credit Card, had the hope of maintaining sufficient balance, in her Savings Bank Account and on that basis, she had issued a cheque to one Harini, which was returned unpaid due to insufficient funds, for which, the first and second opposite parties should held responsible. In view of the mistake committed by first and second opposite parties, the complainant was put to shame, mental agony, for which, she should be compensated. Unfortunately, the District Forum not properly considering the case, relying on Ex.A8, which is under challenge, not corroborated, has come to an erroneous conclusion, as if, entries are proper, which finding, we are unable to support. For the above said reasons, we are inclined to issue appropriate direction, to repay the sum of Rs.1,291.82 + Rs.1,330.50 along with compensation of Rs.10,000/-, having regard to the facts and circumstances of the case, considering the mental agony of the complainant also.

11. In the result, appeal is allowed, order of the District Forum is set aside, the complaint is allowed in part, directing the first and second opposite parties alone, to pay a sum of Rs.2,621/-, which was wrongly debited, in addition to, pay a sum of Rs.10,000/- as compensation, for mental agony and other sufferings, within two months from the date of receipt of this order, failing which, the above said amounts shall carry interest at 12% per annum from the date of default, till the date of payment. The first and second opposite parties are also directed to pay a sum of Rs.2,000/- as costs in the complaint. No order as to cost in this appeal. Complaint as against the third and fourth opposite parties is dismissed.

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