

S. Ashok Kumar Vs. Andhra Bank and Another

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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Mar-30-2009

Judge : D. Appa Rao, President, the Honourable Mrs. M. Shreesha, Member
& the Honourable Mr. Syed Abdullah, Member

Appeal No. : F.A. 95 of 2006

Appellant : S. Ashok Kumar

Respondent : Andhra Bank and Another

Judgement :

D. Appa Rao, President:

Oral:

1. Appellant is unsuccessful complainant.

2. The case of the complainant in brief is that he had an account in R 1 Andhra Bank, Bantumilli. He presented three cheques dated 15.11.2000 for Rs. 15,000, dated 5.11.2000 for Rs. 20,000 and dated 20.10.2000 for Rs. 20,000 issued by Ramkashyap Chit Funds, Machilipatnam for realization of amount, and crediting into his account. When contacted the said bank informed that it had sent the cheques for collection.

When it did not inform, he issued registered notice, however, they did neither give reply nor realized the amount under the cheques, and therefore he was entitled to an amount of Rs. 55,000 together with compensation of Rs. 20,000, interest and costs.

3. R1 bank resisted the case. While admitting that the complainant was having an account with it, and that he presented the cheques in question, it alleged that in turn, it had sent the cheques to Andhra Bank, Pattabhi Road Branch, Machilipatnam for collection through R2 ANL Parcel and Courier Service. Later ANL Parcel and Courier Service informed that the cheques were lost in transit. The said fact was informed to the complainant. In fact the complainant had undertaken to obtain duplicate cheques from Ramkashyap Chit Funds. Instead of taking steps to obtain duplicate cheques from Ramkashyap Chit Funds, he unnecessarily filed this complaint. M/s. Ramkashyap Chit Funds and ANL Parcel and Courier Service are necessary parties and therefore it prayed for dismissal of the complaint with costs.

4. R2 filed separate counter reiterating the facts and alleged that it did not receive the cheques which were sent through courier. In fact, it asked him to furnish the details of the cheques, etc. Since the complainant did not take any action against M/s. Ramkashyap Chit Funds for getting duplicate cheques, he has no claim against it, and therefore prayed for dismissal of the complaint.

5. The complainant in proof of his case filed his affidavit evidence and got Exs. A1 and A2, while the respondents filed Ex. B1 letter addressed by ANL Parcel and Courier Service informing that the cover containing the cheques was lost in transit and Ex. B2 advising the complainant to get duplicate cheques from M/s. Ramkashyap Chit Funds basing on their letter and that of the courier.

6. The Dist. Forum after considering the evidence placed on record opined that the complainant ought to have obtained duplicate cheques from M/s. Ramkashyap Chit Funds. Since R2 admitted that the cover was misplaced in transit, it directed R2 to pay a compensation of Rs. 1,000 together with costs of Rs. 100.

7. Aggrieved by the said decision, the complainant preferred this appeal contending that the Dist. Forum ought to have awarded compensation on the ground that there was deficiency in service on the part of both the respondents. Since admittedly they misplaced the cover which in turn caused loss of amount covered under the cheques, he was entitled to the amount covered under the cheques.

8. It is an undisputed fact that three cheques that were presented by the complainant issued by M/s. Ramkashyap Chit Funds were lost in transit when they were sent through ANL Parcel and Courier Service enclosed under letter Ex. B1. The said fact was also informed under Ex. B2 asking him to get duplicate cheques so that they can credit the amount. The complainant for the reasons best known did not take any steps by invoking Section 45A of the Negotiable Instruments Act or approach the proper Forum for recovery of the amount. Instead of taking steps for obtaining duplicate cheques from the drawer viz., M/s. Ramkashyap Chit Funds, the complainant filed a complaint before the Dist. Forum against the bank claiming the amount covered under the cheques.

9. Recently the Supreme Court in Branch Manager, Federal Bank Ltd. v. N. S. Sabastian reported in 2009 CTJ 248 (SC) (CP), opined that in cases where cheques were lost, the complainants are not entitled to the amount covered under the cheques. They should resort to Section 45A of the Negotiable Instruments Act or take steps for recovery of the amount from the person who issued the cheques. The decision is applicable in all fours to the facts of the present case. We do not see any deficiency in service that could be attributed to the bank for the loss of cheques by courier service. The amount covered under the cheques cannot be recovered from the bank alleging deficiency. It is not the case of the complainant even then somebody has withdrawn the amount or that drawer refused to give duplicate cheques. He did not take any steps for realization of the amounts from the concerned. The Bank cannot be found fault with. The claim is misconceived.

10. We do not see any merits in the appeal. In the result, the appeal is dismissed. However, in the circumstances of the case no costs.

Appeal dismissed.

