

Surendra Chugh Vs. the Branch Manager, State Bank of India

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Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : Jan-17-2014

Judge : The Honourable Mr. S.a. Siddiqui, Member (Judicial) & the Honourable Mr. S.C. Jain, Member

Appeal No. : FA No. 282 of 2011

Appellant : Surendra Chugh

Respondent : The Branch Manager, State Bank of India

Judgement :

S.A. Siddiqui(Oral Judgement):

1. This appeal has been filed under Section 15 of the Consumer Protection Act 1986 (hereinafter called the Act).2. The complainant/respondent is a professional singer of high repute. He had taken a car loan from the HDFC Paharganj Bank Branch, New Delhi. The complainant was maintaining saving bank account No. 10117163266 with the State Bank of India, Appellant Bank and also having a current account No.10117107347. For payment towards monthly installments of loan, issued two cheques from his SBI account maintained with the OP/appellant Bank for an amount of Rs. 6789/- each on 7.11.09 and 7.12.09 respectively. The complainant also issued two cheques of Rs. 6789/- each from his current account maintained with the OP Bank on 7.6.2010 and 7.7.2010 in favour of the HDFC

Bank. The earlier two cheques issued on 7.11.09 and 7.12.2009 were sent by the HDFC Bank to the appellant/OP Bank Khureji Khas for clearance which the appellant/OP Bank returned to the complainant/respondent with the remarks Refer to Drawer i.e. to be presented again with a correct mandate, for the reason that as per RBI guidelines published widely, complainant was to surrender all old cheques and cheque books in the branch and to receive new cheque books from the OP/Appellant Bank in this regard. The HDFC Bank when sent two cheques dated 7.6.2010 and 7.7.2010 for clearance to the OP Bank, the OP Bank returned those cheques to the HDFC Bank with the remark mandate not received meaning thereby that the HDFC had not mentioned on the ECS mandate, user ID, user name and user code etc., in the absence of which the OP Bank would not be able to honour Electronic Debit Clearing System (ECS). The complainant/respondent, therefore, approached the OP Bank with a complaint in this regard which the OP/appellant did not care and the complainant filed a complaint on the above allegations before the District Forum with the prayer that the OP Bank be directed to pay a sum of Rs. 10 Lacs as damages and compensation of Rs. 5 Lacs towards harassment, mental pain and agony and Rs. 25,000/- towards litigation costs.

3. OP filed written version and opposed the claim of the complainant. It was admitted that the aforesaid two cheques were deposited by the complainant with the HDFC Bank, which have been sent to the OP Bank and payment has not been made on the ground that since 1.5.2010, new ECS system was introduced and the payments were made through CPs system for which necessary mandate from concerned bank to paying bank was required along with the necessary information such as user ID, user name, user code etc. The rest of the allegations were denied. It was maintained that in the year 2007, CPS system was introduced by the Reserve Bank of India (RBI) and as per instructions of the RBI, all old cheques and cheque books were to be surrendered in the concerned branch by account holders and new cheque books were to be issued by the Banks. These instruction were duly displaced in the branch premises and were also orally intimated to each account holder including the complainant/respondent. The Cheques were not dishonoured for want of sufficient funds but due to the reasons mentioned above, were returned to the drawer.

4. On consideration of evidence of both the parties, Ld. District Forum allowed the complaint and directed the OP to pay a sum of Rs. 2 Lacs for loss of business to the complainant and Rs. 1 Lakh as compensation for mental pain and agony inclusive of litigation charges.

5. The OP felt aggrieved and preferred this appeal which is before us for consideration.

6. After admission of the appeal, notices were issued to the respondent/complainant, who appeared and filed reply.

7. Both the sides were heard carefully and the record was perused.8. It has not been disputed that the complainant/respondent is a professional singer of high repute. He sings Sai Baba Bhajan and Punjabi folk and Sufi Singer for the last 30 years. However, it was argued by the Ld. Counsel for the appellant/OP that a sum of Rs. 2 Lacs were awarded as compensation towards loss of business without any sound reasoning. The payment was to be made towards reimbursement of the loan which the complainant/respondent had taken from the HDFC Bank. The cheques which were returned to the drawer had no linkage with the professional career of the complainant/respondent. There was no loss of business in actual sense. Cheques were neither commercial in nature nor related to any actual business. The complainant/respondent did not suffer any business loss or professional loss on account of the return of the cheques. There was no deficiency in service as the SBI was bound to work within the guidelines of the RBI. As against this it was argued on behalf of the complainant/respondent that cheques were dishonoured/returned though a sum of Rs. 2,43,377.80p and a balance of Rs. 2,48,657.80p were available in saving bank and current account respectively being maintained for the last several years. It was emphasized that there was no RBI instructions to the effect that old cheques will be put to no use or to be stopped from the use. The complainant/respondent has a high status and reputation in the society and he suffered incalculable damage to his professional business and reputation and that there was no infirmity or illegality in the impugned judgment and order dated 25.5.11. He was honoured even by the SBI.

9. The cheques were dishonoured/returned by the OP/appellant on account of new CPS System, which was introduced by the RBI. According to this system for making payment through CPS, necessary mandate from concerned bank to paying bank was required such as user ID, user name, user code etc. However, it is a fact that no evidence worth the name has been filed to show/prove that new ECS system introduced by the RBI Bank w.e.f. 1.5.2010, has been actually communicated to the complainant orally or in writing through notice. If a new system was introduced, it was incumbent on the part of the Bank to have intimated to the account holder notifying that from such and such date no payment shall be made on the basis of the old cheques and that old cheque books should be surrendered to the concerned Branch of the Bank and new cheque books be got issued. There is no evidence to show that complainant/respondent was even orally informed about this new system and therefore, the findings of the Ld. District Forum to the effect that the appellant/OP Bank was guilty of deficiency of service was beyond doubt. However, we are only partly in agreement with the finding of the Ld. District Forum.

10. In all proceedings before the Consumer Courts, full application of Natural Justice has to be ensured. The aim of the application of Natural Justice is to secure justice or, to put it negatively or to prevent miscarriage of justice.

11. In our considered view, there was no professional loss in this case. The cheques were not commercial in nature. They related to the payment of loan (EMI) of a car loan. A sum of Rs. 2 Lacs were awarded as loss in his profession without any justification or reason. There appears no sound basis for this award. However, we agree with the finding of the Ld. District Forum that due to negative conduct of the OP/appellant Bank, the complainant/respondent was compelled to file a consumer complaint. He was definitely put to harassment, mental pain and agony and therefore award of compensation on this account was justified. We are, therefore, inclined to partly allow the appeal and modify the impugned judgment and order dated 25.5.11 in the following manner:

(a) The OP/appellant Bank will pay a sum of Rs. 1 Lakh as compensation for mental pain and agony, which is inclusive of cost of litigation.

12. The payment shall be made within 30 days of the receipt of the copy of the judgment failing which complainant/respondent shall be at liberty to invoke the provisions of Section 27/25 of the Act.

13. The complaint stands decreed accordingly.

14. FDR, if any, be released in favour of the appellant as per rule.

15. A copy of this order as per the statutory requirement be forwarded to the parties free of cost and one copy be sent to the District Forum concerned to place it in the complaint case file No. 876/10, thereafter the file be consigned to Record Room.

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