

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.43 OF 2009

(Arising out of S.L.P. (C) No.21204 of 2007)

Branch Manager, Federal Bank Ltd.

...Appellant(s)

Versus

N.S. Sabastian

...Respondent(s)

O R D E R

Leave granted.

This appeal is directed against order dated 10th April, 2007 passed by the National Consumer Disputes Redressal Commission (for short “the National Commission”) whereby it dismissed the appeal preferred by the appellant against the order dated 3.4.2002 of the Kerala State Consumer Disputes Redressal Commission (for short “the State Commission”) for award of interest @18% to the complainant-respondent on an amount of Rs.9.85 lakhs.

A perusal of the record shows that while he was working as clerk at Chengannur branch of Federal Bank Limited (for short “the bank”), the complainant-respondent introduced one Mr. M.P. Anil Kumar who opened savings bank account in that branch with account no.12291. On 3.4.2000, the respondent presented a cheque drawn in his favour by Anil Kumar for a sum of Rs. 9.85 lakhs before Kunchithanni branch of the bank for collection and crediting the same in his account. It is worth mentioning that on the date of issue of cheque, Anil Kumar had less than Rs.150/- in his account. The cheque was sent for collection to Chengannur branch of

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the bank through M/s. Professional Couriers but the same was lost in transit. The respondent complained to the Manager of Kunchithanni branch of the bank about non-credit of Rs.9.85 lakhs in his account and then filed a petition before the Banking Ombudsman for the State of Kerala. The Manager of the Kunchithanni branch of the bank, vide his letter dated 5th June, 2000, informed the respondent that the cheque was lost in transit and advised him to get a duplicate cheque in lieu of the lost instrument. Thereafter, the Banking Ombudsman issued communication dated 10th July, 2000 to the respondent that there was no deficiency of service on the part of the bank and that he may take necessary steps to obtain duplicate cheque from the drawer by invoking Section 45A of the Negotiable Instruments Act or approach a court/appropriate forum for recovery of the money. However, instead of taking steps for obtaining duplicate cheque from the drawer, namely, Anil Kumar, the respondent filed a complaint before the State Commission claiming Rs.9.85 lakhs with interest @18% per annum. The bank contested the complaint by asserting that there was no deficiency of service because it had asked the complainant to obtain duplicate cheque which he failed to do. The bank also questioned the bonafides of the complainant-respondent by alleging that on the date of issue of cheque, the drawer had a negligible amount of Rs.112/- in his account.

The State Commission declined the respondent's prayer for award of Rs.9.85 lakhs but directed the bank to pay interest @18% per annum on the cheque amount from the date of its issue, i.e., 03.04.2000 till the date of payment. The National Commission dismissed the appeal preferred by the appellant and confirmed the order of the State Commission. Hence this appeal by special leave.

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Learned counsel for the appellant invited our attention to the zerox copy of the statement of account of Anil Kumar to show that between 28th March, 1998 and 29th September, 2000 he did not deposit any amount in the bank; that outstanding balance as on 28th March 1998 was Rs.148/- and as on 29th September, 1998 total balance amount was Rs.87/- to his credit, and argued that the State Commission committed grave illegality in awarding interest to the complainant-respondent by presuming deficiency of service on the part of the appellant and ignoring the stark reality that on the date of presentation of the cheque and five months thereafter, there was no possibility of its encashment. He pointed out that in spite of the communications of the bank and letter dated 10th July, 2000 of the Banking Ombudsman, the respondent did not take steps to obtain duplicate cheque from the drawer apparently because he knew that the drawer did not have the requisite money for encashment of the cheque and argued the award of interest on Rs.9.85 lakhs, by the State Commission which has been confirmed by the National Commission is legally unsustainable. As against this, learned counsel for the respondent supported the impugned orders and argued that the State Commission has not committed any error by awarding interest in lieu of the loss suffered by his client due to the appellant's failure to credit the cheque amount in his account.

We have considered the respective submissions. In our view the State Commission was not at all justified in awarding interest to the respondent. Undisputedly the drawer, namely, Anil Kumar did not deposit any amount in the bank between 28th March, 1998 and the date on which the cheque is said to have been issued in favour of the respondent. Therefore, it was impossible for the respondent to get the amount credited in his account. If the cheque had not been lost in transit, the same would have been dishonoured due to

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insufficiency of funds. On its part, the bank had advised the respondent to obtain duplicate cheque from the drawer. Banking Ombudsman gave similar advise to the respondent by pointing out that he can get duplicate cheque by resorting to Section 45A of the Negotiable Instruments Act. However, the respondent did not take any steps whatsoever for obtaining duplicate cheque from Anil Kumar. The reason for this is not far to see. Anil Kumar had sum less than Rs.200/- in his account at the relevant time. The appellant was aware of this and, therefore, he did not resort to Section 45A of the Negotiable Instruments Act. Not only this, he did not take any action for recovery of Rs.9.85 lakhs from Anil Kumar either by filing a complaint before appropriate forum or by filing a suit before the competent civil court.

This being the position, the direction given by the State Commission for payment of interest to the respondent is liable to be set aside. Consequently, the order of the National Commission is also liable to be set aside.

Accordingly, the appeal is allowed, impugned orders are set aside and the complaint filed before the State Commission is dismissed.

No costs.

[B.N. AGRAWAL]J.

[G.S. SINGHVI]J.

New Delhi,
January 07, 2009.