

PETITIONER:
CORPORATION BANK & ANR.

Vs.

RESPONDENT:
NAVIN J. SHAH

DATE OF JUDGMENT: 25/01/2000

BENCH:
S.Saghir Ahmad, S.Rajendra Babu

JUDGMENT:

RAJENDRA BABU, J. :

The respondent before us filed a petition before the National Consumer Disputes Redressal Commission [hereinafter referred to as the Commission] to claim that the respondent has been exporting tea to Sudan from 1970 till 1982. The respondent had effected exports of 13 consignments of tea to M/s Sudan Tea Company, Khartoum, Sudan during the period between December 11, 1980 and March 2, 1981. The respondent who had credit facilities with the appellants entrusted the documents relating to export of tea for the purpose of realising the proceeds thereof from the consignee. The appellants issued advice of purchase of bills to the respondent in respect of the goods covered by several invoices. The appellants negotiated the documents relating to the exports effected by the respondent through M/s EL Nilein Bank, Khartoum, Sudan [hereinafter referred to as the foreign bank]. The respondent claimed that he did not ask the appellants to negotiate the export documents through any particular bank in Sudan but the appellants on their own appointed the foreign bank for realising the export proceeds from the consignee; that the appellants had not at any time consulted or even obtained the respondents opinion in the matter of appointing the foreign bank; that the appellants had to release the export documents to the consignee only on payment of the export value in U.S.Dollars and the instructions to release the shipping documents to the consignee to enable him to take delivery of the consignment as denoted by the expression cash against documents. It is further claimed that the appellants should not have realised the export documents without receiving the export value from the consignee in U.S.Dollars. It is contended that the invoices were realised in U.S.Dollars and the appellants could not have realised the export documents before ensuring that the export proceeds could be repatriated to India in U.S.Dollars. In accordance with the directions of the Reserve Bank of India in the matter of exports, the proceeds had to be realised and repatriated to India only in U.S.Dollars and not in any other currency. The appellants did not inform the respondent of any difficulties experienced by them in the matter of negotiations of the aforesaid export documents at any time prior to the

completion of the exports covered by the invoices in question. Moreover, the appellants did not approach the respondent in effecting any changes in the authority given by it in the matter of negotiating the said documents. The respondent had taken insurance coverage for the exports effected by them from the Export Credit Guarantee Corporation of India Limited [hereinafter referred to as the Corporation] to cover the risks involved in the export business. After the respondent was advised by the appellants that they could not realise the export proceeds in U.S.Dollars due to certain restrictions imposed by the Sudan Government and requested the respondent to approach the Corporation to settle the claim using the insurance policy taken by the respondent in respect of the goods covered by the documents in question. The Corporation finally paid ninety per cent of the export proceeds covered by the documents. The appellants illegally recovered the balance from the respondent by adopting the balance of ten per cent of the export value to the account of the respondent with them. The respondent also claimed a sum of Rs.52,816.76p towards interest for the period until the insurance claim was settled by the Corporation. These amounts were debited to the account of the respondent. The appellants also recovered a sum of Rs.97,482.19p towards foreign exchange fluctuations charges from the respondent. It was claimed by the respondent that the appellants had totally failed to execute the specific instructions of the respondent to realise the export documents to the consignee only after accepting in cash in U.S.Dollars but were negligent in handling the consignment given to them as a result whereof the goods released to the consignee without realising the export proceeds for and on behalf of the respondent. It was contended that the appellants had originally purchased the export documents and, therefore, the respondent could not have been held to be responsible for the delay in settling the insurance claim as also the fluctuation charges of foreign exchange from the respondent. The delay in the matter of repatriation of export proceeds are attributable to the appellants but the Reserve Bank of India had been pressurising the respondent for repatriation of the export proceeds. Therefore, it was claimed that an amount of Rs.2,25,377.04p U.S.Dollars was due to the respondent towards the export proceeds from Sudan which were covered by the documents negotiated through the appellants. It was claimed that the respondent is a consumer under the Consumer Protection Act, 1986 and had hired the services of the appellants for consideration and there has been a total deficiency or absolute breach of agreement in the performance of the duty or otherwise in relation to the service rendered by the appellants. The appellants contended that the claim had become stale as it related to the years 1979 to 1982; that the matter did not fall under the provisions of the Consumer Protection Act and accordingly, the Commission had no jurisdiction; that there was no transaction with the respondent and the banks customer was a firm carrying on business in partnership by name M/s Javerilal & Sons and thus the respondent had no locus standi at all; that there was no deficiency of service on the part of the appellant bank because it carried out its obligations by sending the documents including the bill of exchange to the named bank in Khartoum, Sudan and as a collecting bank, it was not its responsibility to ensure that payments are collected. If and when the named bank in Sudan sent the amount, the same will be to the benefit of the exporter; that in any case the exporter had received

90% of the value of the export from the Corporation and, therefore, the claim made in the petition was in excess of the actual loss suffered; that the appellant bank had already filed a suit against the export company including the respondent before the Sub-Court, Cochin in O.S.No.48/92 on February 20, 1992 for recovery of about Rs.18 lakhs due under various credit facilities.

The Commission, however, rejected the point relating to the limitation or that the claim being stale on the ground that the Reserve Bank of India has been pressurising the complainant before them for the repatriation of the export proceeds in U.S.Dollars and it is incumbent on the respondent to do so and the respondent has been obtaining the extensions from the Reserve Bank of India for realising the foreign exchange. Therefore, the amount due by way of foreign exchange is still outstanding and its recovery is not barred by limitation. On the other objection that the claim made in these proceeding was a subject-matter of a suit it was stated that the suit pertains to the recovery of the amounts due to the appellants under cash credit and packing credit loans given to the respondent. The cash credit loan was granted in 1989 while packing credit loan was granted in 1990 and 1991 whereas the transactions with which we are concerned in the present case were export of tea are in the year 1980-81. Thus the two matters had no connection.

On the merits of the matter, the Commission stated :

1. That the invoices were drawn in U.S.Dollars; 2. That the bill amount in the Advice of Bill Purchased the value recoverable from the drawee is shown in U.S.Dollars; 3. That the Reserve Bank of India directions required repatriation to India of the export proceeds in U.S.Dollars and not in any other currency; 4. That the advices issued by the appellant bank regarding having negotiated the documentary bills clearly specify that the proceeds are to be remitted to the American Express International Banking Corporation, New York with instructions to make payment to the Banks Central Foreign Exchange Department, Bombay.

The Commission further adverted to the Export Control Manual, 1978 issued by the Reserve Bank of India and held that the appellants being an authorised dealer was enjoined to receive the remittances from foreign countries or to obtain the reimbursement from their correspondent in those countries against payments due for exports from India either in rupees from the account of a bank situate in Group A countries or receive payment in any permitted currency. According to the Commission, those instructions were clear to fix the responsibility of the bank who was also an authorised dealer under the Export Control Manual and thus the Commission concluded that there was a lapse on the part of the appellant bank in realising the consignments against local currency and without ensuring realisation and repatriation of the export value in U.S.Dollars.

The respondent modified the claim in the light of the appellants response and limited the claim for damages as follows :

a. Rupee equivalent of U.S.\$ 22,538 [10% of the total amount receivable]; b. Rs.52,816.76p deducted as interest from the petitioner complainants account; c. Rs.97,482.19

deducted from the petitioner complainants account on account of fluctuating exchange rates; d. Interest on the amounts (a), (b) and (c) above.

On the question of exchange rate fluctuation charge it was held that the appellants could not realise the same from the respondent inasmuch as delay has been caused due to the lapse on the part of the appellant bank in delivering the consignments without realising their value in U.S.Dollars. As regards the interest, the Commission allowed the same at the same rate at which foreign exchange value upto April 19, 1983 and at the same rate as the appellant bank had charged from the date of the purchase of the bills. On that basis the matter was disposed of. The Commission, although the respondent had limited its claim, had given a much larger relief as had been claimed in the original petition. The appellant bank is in appeal before us.

The contentions put forth before us are as follows :

1. The respondent is not a consumer within the meaning of the expression in Section 2(d) of the Consumer Protection Act. The appellant bank had no dealing whatsoever with the respondent. The banks customer was a firm by name M/s Javerilal & Sons which was carrying on business in partnership. There was no averment in the petition before the Commission to the effect that he was acting on behalf of the firm M/s Javerilal & Sons. 2. The role of the appellant as a collecting bank was restricted to sending the bills of exchange and other documents to the named foreign bank and to receive the proceeds as and when the same is sent by the foreign bank. There was no complaint that the appellant bank failed to perform any of its duties; in fact the undisputed facts are that the appellant bank sent the documents within time to the named bank in Sudan. Thus the appellant bank had fully performed its duty as expected and, therefore, there was no deficiency in its service. 3. The claim before the Commission was wholly time barred inasmuch as the complaint relating to the transaction of 1981- 82 was filed in the year 1992. Even though no specific period of limitation applicable to the consumer protection rights in the year 1992, (w.e.f. 1993 periods of limitation are specified by Section 24A), the Commission was not to look into stale claims. 4. In a transaction like this dealing with documentary credits, banks deal only with the documents and not with the underlying transaction. Accordingly, the bank has not failed to provide the service that it was expected to. 5. The Commission seriously erred in granting the relief and that too in excess of the prayer. The respondent was not entitled to any relief whatsoever.

On behalf of the respondent the contentions raised before the Forum to which we adverted to in detail are reiterated.

The agreement between M/s Javerilal & Sons and Sudan Tea Company dated March 19, 1979 provided for sale of tea. Clause (5) thereof provided the mode of payment. It states that the payment of the seller shall be made on the basis of cash against documents on the arrival of the carrier at Port Sudan through EL NILEIN BANK, KHARTOUM and subject to the presentation of following documents:

1. Complete set of clean on board bill of lading marked foreign pre-paid in three negotiable copies. 2. Suppliers invoice in ten copies showing C&F Port Sudan in

Dollars. Details to include number of chests gross and nett weights and marks. Invoice to be certified true and correct and signed. 3. Certificate of Origin. 4. Preshipment inspection certificate covering weight, packing and quality issued by Messrs. General Superintendence Co., Inspection fees and expenses being at sellers account.

The documents in question were furnished to the appellant bank with the bills of exchange to negotiate the same through the foreign bank on arrival of the goods at Port Sudan in exchange for a sum mentioned therein in U.S.Dollars in cash against documents at site of the bills of exchange and pay to the order of the Corporation Bank for the value against the tea shipped from Cochin to Port Sudan. These bills stood purchased by the Corporation Bank with advice thereof with several conditions and the most important thereto being the following : We shall exercise due diligence in the selection of our agents. However, in the event you designate a correspondent other than the one of our own selection, we shall follow your instructions upon the explicit understanding that you assume and confirm all the acts of such correspondent of your own choosing and agree to hold us harmless from all consequences thereof.

When a bank, after purchasing or discounting an instrument from a customer, credits the customer with the amount of the instrument and allows the customer to draw against the amount as credited before the bill or instrument is cleared, then the bank would be collecting the money not for the customer but chiefly for itself. If the bills and the relevant documents presented by its drawer are accepted by a banker with endorsement in its favour and the same are immediately discounted by the banker without waiting for its collection, by giving full credit for the entire amount of the document, so presented, the banker itself becomes a purchaser and the holder thereof for full value. A banker discounts a bill as opposed to taking it for collection or as security for advances, when he takes it definitely and at once as transferee for value and that it does not matter that the amount of the bill, less discount, is carried to current account as in the case of a customer that is the usual course and where the transaction is really one of discounting, the banker is of course at liberty to deal with the bill as he pleases rediscounting or transferring it.

In the claim form filed with the Corporation, it was stated that the respondent had suffered a loss under the policy owing to a delay in transfer of the payment in respect of shipments in question. The said form was signed both by the consignor and the appellant bank. It has been declared therein that the amount shall be deposited by the buyer in the local currency with a correspondent bank in the buyers country on the date indicated against that column and proceeds are awaiting transfer to India. The claim was to the extent of 90% of the value of exports. While it is the contention of the appellants that the exporter had entrusted the bank to negotiate certain documents through a certain bank mentioned therein when in fact that bank had failed to collect the money in foreign exchange but collected only in local currency in the foreign country and not in the currency indicated in the documents and thus there was no liability at all on the part of the appellants, the respondent would submit that the appellants having purchased the documents in question were in fact collecting the monies for their own benefit and not for the benefit of

the respondent when the documents had clearly indicated the manner in which the consignee get the goods except after payment of cash no delivery could have been made, the appellant bank had acted with negligence and, therefore, is liable to make good the loss suffered by it. We have adverted to the agreement between the parties. The consignee and the consignor have clearly indicated that the documents had to be negotiated through the foreign bank and the mode of payment was through the foreign bank. If that is so, the appellants were acting for and on behalf of the respondent when they sent the documents to the named bank for negotiations and collection of the money due under the agreement the appellants could not have sent the documents to any other agent inasmuch as payments had to be made only through that foreign bank and that foreign bank as was the usual practice realise the documents against payment in local currency which was hitherto convertible in foreign exchange in U.S.Dollars could not be done on account of policy of the Sudan Government. If that is so, it is very difficult to perceive of a situation regarding the deficiency in the service rendered by the appellant bank. The appellant bank negotiated the documents as provided under the agreement; so did the foreign bank but the conversion of the local currency to U.S.Dollars became difficult on account of policy of the Sudan Government. When the realisation of the money in U.S.Dollars was frustrated by reason of the governmental action, we fail to understand as to how the appellants could be held to be responsible for the same. The Commission totally failed to appreciate this aspect. Whatever may be the position with regard to the collection procedure that by discount or purchase of the bills or otherwise, one thing is clear that all that was required to be done under the terms of the agreement and under the contract had been done by the two banks. Therefore, we do not think that the Commission was justified in having reached the conclusion the appellants services were deficient so as to attract the provisions of the Consumer Protection Act.

We may further notice that there is another strong reason as to why the claim made by the respondent should not have been granted. The transactions in question took place in the years 1979 and 1981. The difficulties in realisation of the amounts due from the consignee also became clear at the time when the claim was made before the Corporation and the claim had been made as early as on December 19, 1982. The petition before the Commission was filed on September 25, 1992 that is clearly a decade after a claim had been made before the Corporation. A claim could not have been filed by the respondent at this instance of time. Indeed at the relevant time there was no period of limitation under the Consumer Protection Act to prefer a claim before the Commission but that does not mean that the claim could be made even after unreasonably long delay. The Commission has rejected this contention by a wholly wrong approach in taking into consideration that foreign exchange payable to Reserve Bank of India was still due and, therefore, the claim is alive. The claim of the respondent is from the bank. At any rate, as stated earlier, when the claim was made for indemnifying the losses suffered from the Corporation, it was clear to the parties about the futility of awaiting any longer for collecting such amounts from the foreign bank. In those circumstances, the claim, if at all was to be made, ought to have been made within a reasonable time thereafter. What is reasonable time to lay a claim

depends upon facts of each case. In the legislative wisdom, three years period has been prescribed as the reasonable time under the Limitation Act to lay a claim for money. We think, that period should be the appropriate standard adopted for computing reasonable time to raise a claim in a matter of this nature. For this reason also we find the claim made by the respondent ought to have been rejected by the Commission.

Further we also find that the contention raised by the appellants as to the locus standi of the respondent in laying the claim has not been dealt with by the Commission at all. In the cause title, the respondent is shown to be an individual whereas in the statement of facts, the respondent is described as a company which is registered as a partnership firm engaged in business of exports and in the petition reference is made to the firm or the company and not to the individual. As to how a single individual person could have laid a claim on behalf of a firm is not clear to us at all. Whether he was a partner of the firm or he had the authority of the firm to lay the claim is not clear to us as these facts have not been pleaded.

In these circumstances, the Commission had not duly applied its mind to the relevant aspects. Any one of the reasons given above is enough to reject the claim made by the respondent. We, therefore, allow this appeal, set aside the order made by the Commission and dismiss the complaint filed by the respondent. No costs.