STATE BANK OF INDIA V. SWATI DATATECH PVT. LTD.

1. STATE BANK OF INDIA
THROUGH SHRI RANJANA SINGH BRANCH MANAGER,
NAVEEN MARKET BRANCH
KANPUR
UTTAR PRADESH

……..Petitioner(s)

Versus

1. SWATI DATATECH PVT. LTD.
THROUGH MANAGING DIRECTOR, 14/130, CIVIL LINES
DISTRICT-KANPUR,
UTTAR PRADESH

……..Respondent(s)

Case No: REVISION PETITION NO. 3843 OF 2017
(Against the Order dated 21/08/2017 in Appeal No. 316/2002 of the State Commission Uttar Pradesh)

Date of Judgement: 04 October 2023

Judges:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

FOR THE PETITIONER : MR. CHANDRACHUR BHATTACHARYA, ADVOCATE
FOR THE RESPONDENT : MR TUSHAR SHARMA, ADVOCATE

Facts:

Revision Petition filed against order of State Commission dismissing bank's appeal and upholding District Forum order in favor of respondent company against the bank. Respondent company had issued stop payment instructions for a cheque which the bank initially complied with. But later when cheque was presented after 4 months, it was encashed by the bank.

Respondent filed complaint alleging deficiency in service which was decreed in its favor by District Forum. Bank's appeal was dismissed by State Commission. Present Revision Petition filed on grounds that respondent is not a 'consumer' under the Act since the transaction was for commercial purpose.

<u>Arguments by Petitioner Bank:</u>
Respondent company issued cheque admittedly for commercial purpose to another company for supply of goods. 'Commercial purpose' transactions are excluded from purview of Consumer Act. Respondent seeking unjust enrichment since goods were supplied although allegedly not satisfactory. Non-joinder of parties as complainant has not impleaded the company (M/s Teknotron) to whom goods were to be supplied.

<u>Arguments by Respondent Company:</u>
Amendment in 2002 Act excluding commercial purpose not retrospective. Ratio of Supreme Court judgments says exclusion applies prospectively only. Petitioner bank guilty of deficiency in service by allowing encashment of cheque despite written stop payment instructions. Lower fora have given reasoned findings.

<u>Court's Opinions:</u>
Petitioner's plea regarding jurisdiction and exclusion of commercial transactions untenable in light of binding precedents that 2002 amendment applies prospectively. Concurrent findings of District Forum and State Commission are based on evidence. Commission in revision can only interfere if findings are perverse or no jurisdiction. Supreme Court has held difference in interpretation of same facts cannot be permitted in revision and concurrent findings are binding. No infirmity in impugned order of State Commission to warrant interference.

<u>Referred Sections and Laws:</u>
Section 21(b) of Consumer Protection Act, 1986; Referred Case

Laws – Goyal's Timber Technicks Ltd, Laxmi Engineering Works, Birla VXL Ltd, V and S International P Ltd, T Ramalingeswara Rao and Others.

Order:
Revision Petition dismissed as being without merits.

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Full Text of Judgment:

1. This revision petition under section 21(b) of the Consumer Protection Act, 1986 (in short, the 'Act') assails the order dated 13.09.2017 in First Appeal No. 316 of 2002 of the State Consumer Disputes Redressal Commission, Uttar Pradesh, Lucknow (in short, the 'State Commission') dismissing the appeal of the petitioner against order dated of the District Consumer Disputes Redressal Forum, Kanpur (in short, the 'District Forum') in Consumer Complaint no. 532 of 1997.
2. The brief facts of the case, according to the petitioner, are that the respondent had issued directions to stop payment of a cheque issued by it to M/s Teknotron Information Systems Ltd. which the bank complied with. However, when the cheque was presented again after four months, the same was encashed. It is contended that the fora below have committed a jurisdictional error in entertaining and adjudicating the consumer complaint and appeal filed before them respectively since the respondent is a limited company that issued a cheque admittedly for a commercial purpose to another company, M/s Teknotron Information Systems Ltd. for consideration of goods to be supplied and that 'commercial purpose' is excluded under the purview of the Act as per the judgment of this Commission in M/s Goyal's Timber Technicks Ltd. Vs. Bank of Maharashtra, First Appeal No. 234 of 2014. Accordingly, the respondent is not a 'consumer' according to the petitioner and therefore not entitled to relief under the Act. It is also contended that the respondent sought unjust enrichment through the complaint

since the goods had been supplied to it although the case of the respondent was that they were not 'satisfactorily'supplied. It is also contended that the respondent had not ensured proper joinder of parties and not impleaded M/s Teknotron Information Systems Ltd. who were a necessary party. The order of the District Commission was, therefore, flawed and the State Commission erred in upholding it in appeal. The assail in this petition is against the order of the State Commission upholding the order of the District Forum.

3. I have heard the learned counsel for both the parties and carefully considered the material on record.

4. The District Forum, after due opportunity to both parties, had arrived at the finding below:

"From the aforesaid documentary evidence of the complainant and from the admissibility of the opposite party this fact is proved that opposite party bank has obtained the instructions of stopping the payment of the cheque no. 511232 amounting to Rs 250 000 on 20.09.96. It was the service of the opposite party bank that it would have complied with the directions of the complainant and would not have done the payment of that cheque but according to the admissibility of the opposite party itself they had made the payment of the aforesaid cheque despite of the directions of the complainant. In this manner opposite party bank on making the payment of the aforesaid cheque committed gross negligence in the services provided to the complainant. Resultantly this consumer case of the complainant is liable to be admitted."

The State Commission considered the submission of the petitioner/bank that the cheque was cleared not deliberately but because of human error and concluded that:

"Because for the purpose of stopping of the payment of the cheque by the respondent complainant the notice was sent through the letter dated 28.10.1996. Directions sent by the complainant are mentioned in the ledger related to their account but even after passing of the long period this direction sent by the complainant, the cheque in question was

presented for the purpose of payment on 04.03.1997. In between, the account was in function therefore for the purpose of stopping of the payment of the cheque by the complainant the directions which were sent were not paid attention to because of the human error as the page of concerned ledger was changed. This argument presented by the ld. advocate of the appellant is not liable to be admitted. When the directions were given for the purpose of stopping of the payment of the cheque in question by the account holder then it was the responsibility of the appellant bank that it should have ascertained the compliance of this direction. The bank has to ascertain whether these instructions are complied with. Responsibility of the negligence of employees of the bank is to be borne by the bank only and not by the concerned customer."

5. Learned counsel for the petitioner withdrew his argument on the issue of jurisdiction when confronted by the argument of the respondent that M/s Goyal's Timber Technicks Ltd. (supra) was not germane to the case in view of this Commission's judgments in V and S International (P) Ltd. Vs. Axis Bank & Ors. in CC No. 56 of 2013, MANU/CF/0278/2019 that when despite receiving specific instruction to stop payment against cheques the bank honours the cheques, it was deficiency in service on its part resulting in direction to credit the complainant's account with the principal amount together with savings bank interest and Birla VXL Ltd. Vs. National Insurance Co. Ltd., 2002 (2) CPC 582 which held that "commercial purpose" has to be interpreted as per the ratio laid down by the Hon'ble Supreme Court in Laxmi Engineering Works Vs. PSG Industrial Institute, 1995 SCC (3) 583 and that the provision in section 2 of the Act regarding the exclusion of persons who "avails of such services for any commercial purpose" to be treated as "consumers" under section 2(1)(d)(ii) of the Act was to be with prospective and not retrospective effect as also held in Birla VXL Ltd. (supra). It was argued by the petitioner that the impugned order amounts to unjust enrichment of the respondent since it allows payment to him even though the

consignment was delivered to him although not satisfactorily. Lastly, it was argued that the respondent was guilty of non-joinder of parties as M/s Teknotron Information Systems Ltd. had not been impleaded in the matter.

6. The learned counsel for the respondent contended that the plea of petitioner regarding jurisdiction was misplaced in view of the clear position of law that the amendment of the Consumer Protection Act, 1986 by Act No. 62 of 2002 was not retrospective but prospective as held in Birla VXL Ltd. (supra). It was averred that the petitioner bank was guilty of deficiency in service since it acted contrary to written instructions to stop payment of a cheque and therefore the lower fora had passed considered orders in his favour. It was therefore, pleaded that the petition be dismissed.

7. In view of the petitioner withdrawing his pleadings in the light of this Commission's order in Birla VXL Ltd. (supra), the issue remaining is that of unjust enrichment and nonjoinder of the party in whose name the cheque was issued. These are not issues pertinent to the review petition which essentially pertains to the issue whether the petitioner bank was guilty of deficiency in service in honouring a cheque for which stop payment instructions had admittedly been received by the petitioner. A perusal of the orders of the District Forum and the State Commission reveals that the foras below have pronounced detailed orders which have dealt with all the contentions of the petitioner and are based on evidence on record.

8. From the record it is apparent that the petitioner has challenged the impugned order on the very same grounds which were raised before the District Forum as well as the State Commission in appeal. The concurrent findings on facts of these two foras are based on evidence led by the parties and documents on record. The present revision petition is, therefore, an attempt by the petitioner to urge this Commission to re-assess, re-appreciate the evidence which cannot be done in revisional jurisdiction. Learned counsel for the petitioner has failed to show that the findings in the

impugned order are perverse.

9. This Commission, in exercise of its revisional jurisdiction, is not required to re-assess and re-appreciate the evidence on record when the findings of the lower fora are concurrent on facts. It can interfere with the concurrent findings of the fora below only on the grounds that the findings are either perverse or that the fora below have acted without jurisdiction. Findings can be concluded to be perverse only when they are based on either evidence that have not been produced or based on conjecture or surmises i.e. evidence which are either not part of the record or when material evidence on record is not considered. The power of this Commission to review under section 21 of the Act is therefore, limited to cases where some prima facie error appears in the impugned order. Different interpretation of same sets of facts has been held to be not permissible by the Hon'ble Supreme Court.

10. The Hon'ble Supreme Court in Rubi (Chandra) Dutta (2011) 11 SCC 269 dated 18.03.2011 has held that:

"23. Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a dif erent view than what was taken by the two

Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a dif erent (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting

aside the concurrent findings of two Fora."

11. Reiterating this principle, the Hon'ble Supreme Court in Lourdes Society Snehanjali Girls Hostel and Ors vs H & R Johnson (India) Ltd., and Ors (2016) 8 SCC 286 dated 02.08.2016 held:

"17. The National Commission has to exercise the jurisdiction vested in it only if the State Commission or the District Forum has either failed to exercise their jurisdiction or exercised when the same was not vested in them or exceeded their jurisdiction by acting illegally or with material irregularity. In the instant case, the National Commission has certainly exceeded its jurisdiction by setting aside the concurrent finding of fact recorded in the order passed by the State Commission which is based
upon valid and cogent reasons."

12. The Hon'ble Supreme Court in its judgment dated 05.04.2019 in the case of T Ramalingeswara Rao (Dead) Through LRs & Ors Vs. N Madhava Rao and Ors, Civil Appeal No. 3408 of 2019 dated 05.04.2019 held as under:

"12. When the two Courts below have recorded concurrent findings of fact against the Plaintif s, which are based on appreciation of facts and evidence, in our view, such findings being concurrent in nature are binding on the High court. It is only when such findings are found to be against any provision of law or against the pleading or evidence or are found to be perverse, a case for interference may call for by the High Court in its second appellate jurisdiction."

13. In view of the settled proposition of law that where two interpretations of evidence are possible, concurrent findings based on evidence have to be accepted and such findings cannot be substituted in revisional jurisdiction, this petition is liable to fail.

14. No illegality or infirmity or perversity is therefore found in the impugned order warranting interference of this Commission. The present revision petition is, therefore, found to be without merits and is accordingly dismissed.