

AFR

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW**

APPEAL NO.806 OF 1995

(Against the judgment/order dated 27-03-1995 in Complaint
Case No.270/1994 of the District Consumer Forum, Bahraich)

HB Portfolio Leasing Limited

.....Appellant

Vs.

Sri Pramod Kumar Singh and another

.....Respondents

BEFORE:

**HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT
HON'BLE MR. CHANDRA BHAL SRIVASTAVA, MEMBER
HON'BLE MR. YASHPAL SHARMA, MEMBER**

For the Appellant : Sri R K Gupta, Advocate.

For the Respondent : None appears.

Dated : 23-03-2011

JUDGMENT

MR. JUSTICE BHANWAR SINGH, PRESIDENT (ORAL)

The case called out. Sri R K Gupta, learned Counsel for the appellant is present and ready to argue this appeal.

However, none responds on behalf of the respondent despite the cause-list of date being available on Internet through the Commission's website. The respondent's Counsel Sri Krishna Singh is not available.

Since it is an old appeal of the year 1995, we deem it appropriate to decide it on merit.

The impugned judgment dated March 27, 1995 of the District Consumer Forum, Bahraich has been subjected to challenge on the ground that it is a non reasoned judgment, nor based on any rationale finding and thus it is liable to be set aside.

A very small issue is involved as may be recapitulated below:-

The respondent/complainant Sri Pramod Kumar Singh applied for allotment of 110 equity shares of the appellant company namely HB Portfolio Leasing Limited. His application for allotment of shares was allowed on receipt of Rs.1,100/-. The company demanded a sum of Rs.2,750/- more to be deposited by the respondent by May 20, 1993. As

Beggs

:2:

there was slight delay in remittance of the amount, the complainant despatched a draft of Rs.2,775/- which was forwarded to the Allahabad Bank, Hariharpur Branch, District Bahraich. The draft could not be honoured as there was a technical omission of the issuing branch whose name had not been recorded. The complainant, as pleaded by him in his complaint, neither received the share certificates nor had any communication from the company aforesaid. In the circumstances the complainant was obliged to file his complaint No. 270/1994 before the District Consumer Forum below.

The District Consumer Forum directed for issuance of notice but when there was no response, it proceeded exparte and eventually exparte judgment, which has now been impugned, was pronounced. The District Consumer Forum arrived at a conclusion that there was a deficiency in service on the part of the HB Portfolio Leasing Limited and accordingly it directed the said company to refund the amount of Rs.1,100/-, the original draft^{to} which was allegedly dishonoured^{ed} and^{ed} a compensation of Rs.2,500/-.

Feeling aggrieved of the said judgment the appellant company subsequently questioned the propriety of the verdict.

There seems to be slight delay in filing this appeal. However, since it has remained pending for such a long time it may not be appropriate to dismiss it on that ground; and, the Assistant Secretarial Officer of the company namely Sri Sunil Kumar S/o Sri Rattan Singh has filed his affidavit that after the summons were received the concerned department of the company had sought for permission of the Chairman and the Chairman sent a letter to the District Consumer Forum, Bahraich a copy whereof is before us and since the said letter was considered to be the letter on the basis of which the matter can be dropped, the company did not pursue the proceeding further. Having regard to this explanation we condone the delay in filing this appeal.

As regards the merit of issue, it may be observed that the amount of Rs.2,775/- has not yet been credited to the account of HB Portfolio Leasing Limited. It is evident from the letter of the Chairman that the

Baugh

said draft was deposited by the company with Punjab National Bank, Sansad Marg, New Delhi and the draft ^{had been} returned ^{re} unpaid by the issuing bank i.e. Allahabad Bank. A statement of chart is also enclosed with the said letter and its perusal would reveal that the draft of Sri Pramod Kumar Singh drawn by the Allahabad Bank was not honoured on account of the issuing branch's name being missing. On the face of this statement of account, it may be observed that the HB Portfolio Leasing Limited cannot be accused of any deficiency in service. Sri Sunil Kumar the officer of the company has, in his affidavit of November 21, 1995, asserted that the said demand draft was returned by the bank uncashed to Sri Pramod Kumar Singh due to the reason that the name of the issuing branch was not mentioned thereon. We do not find any rebuttal of this asseveration and accordingly we hold that the draft was timely returned to the respondent/complainant. No doubt the possibility of ^{the complainant} having not received the draft cannot be ruled out as it might have been lost in transit but the fact remains as to whether the company can be accused of deficiency in service or not? Had Sri Pramod Kumar Singh come forward to say that he never received the draft, the position could be different but now since there is no rebuttal of Sri Sunil Kumar Singh's affidavit as referred to above a presumption may be drawn that the draft had reached the hands of the respondent/complainant. Irrespective of the fact that he got his draft back or not he had an another option open for him and it was that he should have approached his banker namely the Allahabad Bank for cancellation of the disputed draft and for issuance of a duplicate draft but he did not move further nor he ever intimated that he was willing to remit the money again. Perhaps it was in these circumstances that the HB Portfolio Leasing Company did not despatch the equirly share certificates allotted to the complainant and in our considered opinion the decision on the part of the company cannot be subjected to any criticism.

Sri R K Gupta, learned Counsel for the appellant conveys to us that the share certificates are still lying intact meaning thereby neither the allotment in the name of the complainant has been cancelled, nor these shares have been allotted to someone else. The complainant can still avail

:4:

a chance by remitting the requisite sum of Rs.2,750/- if he is willing to do so but in that case he will be required to pay the interest @ 15% per annum. The market value of the shares of the company is not before us and, therefore, we leave it to the discretion of the complainant to avail of the opportunity or not. In case the market value of the shares is down he may claim refund of his money amounting to Rs.1,100/- without any interest as the company is not at fault nor guilty of any deficiency in service. In that case he can also approach the Allahabad Bank for refund of the money of the dishonoured draft.

With these observations and two courses open to the complainant we allow this appeal, set aside the impugned judgment and dismiss the complaint of the respondent. The parties shall bear their own costs.


(JUSTICE BHANWAR SINGH)
PRESIDENT


(CHANDRA BHAL SRIVASTAVA)
MEMBER


(YASHPAL SHARMA)
MEMBER

pnt