

SUPREME COURT OF INDIA

Hubert J. D'souza

Vs.

Corporation Bank

C.A.No.2482 of 2001

(B.N. Agrawal and G.S. Singhvi JJ.)

21.01.2009

ORDER

1. Heard learned counsel for the parties.

2. By the impugned order, the National Consumer Disputes Redressal Commission [for short, "the National Commission"] dismissed the complaint filed by the appellant, in effect and substance, on the ground that the same was barred by limitation.

3. A perusal of the complaint and the documents filed by the appellant shows that Respondent No.3-M/s. Rao Constructions gave a post-dated cheque bearing No.929131 dated 17th October, 1996, to the appellant on 17th April, 1996 for repayment of the loan. The Manager of Chembur Branch of the Bank guaranteed encashment of the cheque. However, on 16th July, 1996, that is a day before the due date of payment, the Branch Manager asked the appellant not to present the cheque. On the next day, cheque No.929131 was taken from the appellant and another cheque bearing No.217401 dated 17th October, 1996 was issued for Rupees twenty lakhs. The bank gave fresh guarantee to the appellant that the cheque will be honoured on its presentation. The appellant presented the cheque on 10th April, 1997, for encashment but it was returned on the same day with the remark "insufficient funds". The appellant represented to the bank for payment of Rupees twenty lakhs by relying upon the guarantee given on 17th July, 1996. The Chief Manager of the Bank sent communications dated November 16, 1998 and February 5, 1999 and assured the appellant that the matter is being looked into and they will get back to him within few days. After fifteen days, the Chief Manager vide his letter dated 20th February, 1999 denied the liability of the Bank to pay the amount of the cheque. Thereupon, the appellant filed complaint before the National Commission on 18th October, 1999 which, as mentioned above, was dismissed as barred by time.

4. From the facts narrated above, it is clear that cause of action to file the complaint had arisen on receipt of communication dated 20th February, 1999, by which the bank denied its liability to pay the amount of cheque in spite of the fact that the payment of the said sum was guaranteed. Therefore, the complaint filed on 18th October, 1999 was well within limitation

and the National Commission committed serious error by dismissing the complaint on the ground that the same was barred by limitation.

5. Accordingly, the appeal is allowed, impugned order is set aside and the matter is remitted to the National Commission which shall now dispose of the complaint in accordance with law after giving opportunity of hearing to the parties, which would obviously include opportunity to adduce evidence.

No costs.