

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 28th March, 2011

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WP(C) NO.3038/2010

KESORAM INDUSTRIES LIMITED & ORS

..... Petitioner

Through: Ms. Asha G.Gutgutia and Mr. Niloy
Dasgupta, Advocates

Versus

ALLAHABAD BANK & ORS

..... Respondents

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. This petition under Article 226 of the Constitution of India impugns the order dated 12th January, 2009 of the National Consumer Disputes Redressal Commission, New Delhi dismissing *in limine* the appeal preferred by the petitioner against the order dated 31st March, 2008 of the State Consumer Disputes Redressal Commission, West Bengal dismissing

the complaint filed by the petitioner against the respondent Bank. This petition came up first before this Court only on 5th May, 2010. However, the petitioner had preferred a review of the order dated 12th January, 2009 of the National Commission and which review was also dismissed on 27th August, 2009. Not only so, the petitioner filed SLP (Civil) No. 19246/2009 to the Supreme Court which was also dismissed *in limine* on 7th December, 2009. It is after waiting for about six months that the present petition was filed.

2. As aforesaid, the petition came up first before this Court on 5th May, 2010 when the counsel for the petitioner sought adjournment to move necessary application before the Supreme Court to seek leave of the Supreme Court to present the present petition. Thereafter the matter was adjourned from time to time. No notice has been issued. The counsel for the petitioner today contends that it was on a wrong assumption of law that it was earlier stated that the application will be moved before the Apex Court for leave to prefer this petition; infact no such leave is necessary. Reliance is placed on –

1. *Kunhayammed Vs. State of Kerala* AIR 2000 SC 2587;

2. *Indian Oil Corporation Ltd Vs. State of Bihar* AIR 1986 SC 1780;

3. *State of Kerala Vs. Kondottyparambanmoosa* (2008) 8 SCC 65;
4. *R.B. Ramlingam Vs. R.B. Bhvaneswari* (2009) 2 SCC 689;
5. *Nawab Shaqafath Ali Khan Vs. Nawad Imdad Jah Bahadur* (2009) 5 SCC 162; and
6. *S. Nagaraj Vs. B.R. Vasudeva Murthy* (2010) 3 SCC 353

to contend that even after the dismissal of the SLP *in limine*, this writ petition for judicial review of the order of the National Commission would be maintainable.

3. On inquiry as to on what ground judicial review is sought of the order of the National Commission, it is contended that the National Commission had heard the counsel for the petitioner at the time of admission, only on the aspect of whether, owing to the transaction between the petitioner and the respondent Bank being of a commercial nature, the consumer complaint was at all maintainable. Reliance in this regard is placed on a copy of the written arguments stated to have been filed before the National Commission. It is contended that the petitioner was however surprised to see that the order of the National Commission dismissing the appeal (without issuing notice to the respondent Bank) was on merits.

4. Else the facts as emerge are, that the petitioner had in January, 1984 opened an account with the respondent Bank to receive and make payment of refund warrants issued by the petitioner to its customers; the respondent Bank on 13th February, 1997 requested the petitioner not to issue any further Refund Warrants/orders; the petitioner claims to have heeded to the said request and contends that since the life of the Refund Warrants was of six months, the Refund Warrants issued till 13th February, 1997 could have been debited to the said account for maximum six months and not thereafter; that the respondent Bank on 20th April, 1999 certified to the petitioner that the petitioner had a credit balance of Rs.4,94,024.80p in the said account; however subsequently the respondent Bank debited a huge amount of Rs.45,55,257.45p in the said account and ultimately claimed a debit balance of Rs.42,77,444.64p in the said account.

5. The complaint of the petitioner before the State Commission was that the Bank had kept the petitioner in total darkness with respect to the amount so debited. The petitioner claimed the relief of refund of the credit balance of Rs.4,94,024.80p (supra) together with interest and also damages for harassment of Rs.20 lac.

6. The Bank contested the complaint aforesaid *inter alia* on the ground that the transaction between the parties being for commercial purpose, the consumer complaint was not maintainable and on the ground that as per the arrangement of the Bank with the petitioner, the Bank was to honour the Refund Warrants out of its own monies and to claim reimbursement from the petitioner; that on reconciliation of the accounts of all the branches of the respondent Bank which had honoured the said Refund Warrants, the amount debited to the account of the petitioner was found due; that the petitioner inspite of requests had failed to give the requisite information to the respondent Bank and which led to the delay in collating of the entries.

7. The State Commission negated the contention of the respondent Bank of the complaint being not maintainable and held the complaint to be maintainable. However, no deficiency was found in the services rendered by the Bank to the petitioner and rather it was found that the huge debit balance occurred due to the failure of the petitioner to make timely deposit of funds in its account in proportion to the Refund Warrants issued by it. Accordingly the complaint was dismissed.

8. The National Commission in appeal held that the State Commission had given cogent reasons for holding that no deficiency in service on the part of the respondent Bank was proved and observed that no case for interference in the order of the State Commission was made out.

9. The aforesaid would show that the order of the State Commission as well as the National Commission are based on findings of fact of the petitioner having not established any deficiency in service on the part of the respondent Bank.

10. I have minutely perused the writ petition. No ground for judicial review of the said finding of fact is made out. The ground urged by the counsel for the petitioner of the hearing before the National Commission having been on the maintainability and the petitioner having not been heard on merits cannot be accepted. It may be mentioned that it is not as if the State Commission had decided the aspect of maintainability against the petitioner; the said aspect was decided in favour of the petitioner and there is no reason to believe that the occasion for hearing only on the aspect of the maintainability would have arisen. Moreover at the time of admission, the matter is considered from all aspects and not from the point

of maintainability only. The petitioner in any case had an opportunity of review and availed of the same as well and the National Commission has held no case for review to have been made out. Thus, the said argument cannot be the basis of judicial review.

11. On merits the only ground made out in this petition is that after having shown the credit balance as aforesaid the respondent Bank could not have shown the debit balance. However, the State Commission has given a reason therefor i.e. that since the account had to be collated from a large number of branches and the petitioner was not cooperating in reconciliation thus the debit balance could not be reflected in the accounts immediately. The said finding is again a finding of fact not capable of interference under Article 226.

No case for interference is thus made out. Dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

28th March, 2011
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