

BEFORE THE DISTRICT CONSUMER FORUM :: GUNTUR

Present: Sri B. Rama Rao, B.Com., M.L., President
Smt T. Suneetha, M.S.W., B.L., Member

Thursday, the 4th day of January, 2018

CC.No.64 of 2017

BETWEEN:

Kandru Venkateswarlu, S/o. Tirupathaiah,
Police Constable, Rajupalem PS,
Guntur District.

...Complainant

and

Kapil Chits Private Limited,
Rep. by its Branch Manager,
Piduguralla Branch, Main Road,
Dr.No.9-114, Andhra Bank Centre,
Janapadu Road, Piduguralla Mandal,
Guntur District.

...Opposite party

This complaint coming-up before us for hearing on 20-12-2017 in the presence of Sri P. Chinna Rao, advocate for complainant, and of Sri K. Venkata Reddy, advocate for opposite party, and after hearing both-sides and upon perusing the material on record, and having stood over till this day for consideration, this Forum made the following:

ORDER

Per Sri B. Rama Rao, President: This complaint is filed u/s.12 of the Consumer Protection Act, 1986 for passing of award, by directing the opposite party to pay Rs.30,828/- towards interest @24% p.a., on Rs.2,20,198/- from August, 2016 to March, 2017; Rs.50,000/- towards damages and compensation; Rs.2,000/- towards expenses spent for correspondence; Rs.5,000/- towards travelling charges and incidental expenses; and Rs.2,000/- towards costs of the complaint; to the complainant.

2. The material averments in the complaint are that, the opposite party is a chit fund company, running the chits business, having its branch at Piduguralla. The complainant joined as member and subscriber with FP DT03H-25, dated 20-10-2014, for a chit value of Rs.3,00,000/-, on monthly installment of Rs.6,000/- in 50 equal monthly installments, subject to variation upon the dividend, and he became the highest bidder in the auction of the chit, held in June, 2016 and he has furnished the necessary formalities, to receive the prize amount, thereupon the opposite party issued cheque dated 27-01-2017, for Rs.2,20,198/- drawn on Andhra Bank, to the complainant towards due of prize amount, and he presented the same for collection, but it was dishonored on the reason of insufficient funds

in the account of opposite party, again on the request of opposite party, the same cheque was presented for collection on 20-02-2017 and the same was also dishonored on 28-02-2017, with the same reason of insufficient funds. These facts brought to the notice of the opposite party, but in vain. Indeed the complainant was in dire need of this prize amount, to perform the marriage of his sister, but due to the gross negligence of the opposite party, he could not avail the prize amount in-time, hence he borrowed amount from 3rd party on huge interest, to perform the marriage of his sister and thus, he was put to great inconvenience and loss, which amounts to deficiency of service on the part of the opposite party, hence the complainant got issued legal notice, dated 25-04-2017 to the opposite party claiming damages of Rs.50,000/- besides interest on the chit amount, and having received the same, the opposite party neither replied nor responded, hence the complaint.

3. The essence in the version of opposite party is that, the complainant at the time of receiving the chit amount, received an amount of Rs.6,872/- towards penalty of the cheque amount, along with prize amount. All the allegations in the complaint are not true, hence they are denied, therefore the complainant is put to strict proof of each and every allegation in the complaint, and there are no grounds to allow the complaint, hence the complaint may be dismissed with costs.

4. At the time of enquiry, complainant filed his evidence affidavit as PW1, reiterating the contents of the complaint, and marked Exs.A-1 to A-7, whereas Sri B. Srinivasa Rao, Branch Manager of opposite party, filed his evidence-affidavit as DW1, reiterating the contents of version and marked Exs.B-1 to B-3. Counsels of both parties argued the matter, asserting the above respective contentions of the parties.

5. On consideration of the complaint, version, evidence and the arguments, the points that arise for consideration in this case are:

1. Whether there is deficiency in service on the part of opposite party, as averred in the complaint?
2. Whether, the complainant is entitled to the claim, as prayed-for?
3. To what relief?

6. POINT No.1:- In order to decide this point, it is essential to examine the documentary evidence. Ex.A-1 is the photo-copy of chit pass-book, dated 20-10-2104 issued by the opposite party to the complainant. Ex.A-2 is the photo-copy of the chit receipt, dated 01-10-2016, Ex.A-3 is the another chit

receipt, dated 01-10-2016, Ex.A-4 is the computerized receipt, dated 15-03-2017 for Rs.23,529/-, issued by the opposite party to the complainant, Ex.A-5 is the photo-copy of the statement of account of the complainant in the State Bank of India, Ex.A-6 is the office-copy of the legal notice, dated 25-04-2017 got issued by the complainant to the opposite party, demanding the interest and compensation, Ex.A-7 is the acknowledgment under which, opposite party received the original of Ex.A-6.

7. Now coming to the documents of opposite party, Ex.B-1 is the photo-copy of the letter, dated nil, handed-over by the complainant to the opposite party stating that, he was the highest bidder in the auction held on 31-08-2016 and the cheque for the prize amount of Rs.2,20,198/- given by the opposite party to him was cleared on 11-03-2017, hence the interest arrears given to him. Ex.B-2 is the photo-copy of the statement of opposite party shows, the accrued interest of Rs.6,872/- for the delay in payment of the amount given by the opposite party to the complainant. Ex.B-3 is the photo-copy of the chit account statement of the complainant prepared by the opposite party shows, the adjustment of interest amount of Rs.6,872/- in respect of future installment of the chit, of the complainant on 02-04-2017.

8. It is manifestly clear from the above documentary evidence that, the cheque, dated 27-01-2017 towards prize amount of the complainant, issued by the opposite party was twice dishonored and later it was honored and adjusted on 11-03-2017, and thus admittedly there was sufficiently long delay in payment of the prize amount to the complainant, which amounts to gross negligence on the part of the opposite party and it establishes the deficiency in rendering service by the opposite party to the complainant. The interest of Rs.6,872/- paid by the opposite party to the complainant at a later point of time, does not relieve the opposite party from the obligation to see that, the cheque issued by it, shall be honored immediately, as admittedly the opposite party without keeping sufficient amount in its account, issued cheque to the complainant towards prize amount and thus the opposite party is responsible for dishonor of the cheque twice, which amounts to misrepresentation, fraud and unfair trade practice, which also tantamount to deficiency of service.

9. It is pertinent to note that, the complaint as framed and filed consisting of several material defects, such as, the date of the auction of the chit is not mentioned, and also the date of the honor of the cheque is not mentioned, and also the date of furnishing of sureties, to obtain the prize

amount is not mentioned and that, the receiving of interest of Rs.6,872/- is suppressed in the complaint and the factum of Ex.B-1 is also suppressed in the complaint and on the other hand, it is falsely mentioned in the complaint that, the complainant was participated in the auction of the chit in June, 2016. In-fact, according to Ex.B-1 letter of the complainant, the chit auction was held on 31-08-2016, in which he was participated and declared as highest bidder, but this fact was deliberately suppressed by the complainant in his complaint, which is one of the material facts, to decide the complaint properly. However, it is already observed supra that, admittedly the opposite party committed default in arranging the funds, for honoring the cheque for more than 162 days, as mentioned in the evidence-affidavit of opposite party and further caused dishonor of the same cheque twice, which amounts to deficiency of service. Accordingly, this point is answered.

10. **POINT No.2:-** In the light of the observations and finding on point No.1 supra, this Forum is of the considered opinion that, it is just, fair and reasonable, to award compensation of Rs.40,000/- towards the physical exertion, mental harassment and agony, of the complainant, caused by the opposite party; besides costs of Rs.3,000/-, and that the complainant is not entitled to the interest claimed in the complaint, in view of the suppression of the material facts by him, as referred in point No.1 supra, and also in the light of the interest paid by the opposite party, for the delayed payment, as referred in Ex.B-3. The complainant is not entitled to the rest of the claim. Accordingly, this point is answered.

11. **POINT No.3:-** In the result, the complaint is allowed in part, as indicated below:

1. The opposite party is directed to pay compensation of Rs.40,000/- (Rupees forty thousand only) towards physical exertion, mental harassment and agony of the complainant, to the complainant.
2. The opposite party is directed to pay Rs.3,000/- (Rupees three thousand only) towards costs of the complaint, to the complainant.
3. The opposite party is directed to comply the above order, within a period of six weeks from the date of this order.

Dictated to Stenographer, transcribed by her, corrected by me and pronounced in the open Forum dated this the 4th day of January, 2018.

MEMBER

PRESIDENT

APPENDIX OF EVIDENCE

For complainant: K. Venkateswarlu - PW1
 For opposite party: B. Srinivasa Rao - DW1

DOCUMENTS MARKED

For complainant:

Ex. Nos.	DATE	DESCRIPTION OF DOCUMENTS
A1	20-10-2104	Photo-copy of chit pass-book issued by the opposite party to the complainant
A2	01-10-2016	Photo-copy of the chit receipt
A3	01-10-2016	Photo-copy of the chit receipt
A4	15-03-2017	Computerized receipt for Rs.23,529/-,
A5	27-02-2017	Photo-copy of the statement of account of the complainant in the State Bank of India
A6	25-04-2017	Legal notice got issued by the complainant to the opposite party
A7	-	Acknowledgments

For opposite party:

Ex. Nos.	DATE	DESCRIPTION OF DOCUMENTS
B1	-	Photo-copy of the letter handed-over by the complainant to the opposite party
B2	22-03-2017	Photo-copy of the statement of opposite party
B3	21-11-2017	Photo-copy of the chit account statement of the complainant

PRESIDENT