
(2023) 09 NCDRC CK 0096

National Consumer Disputes Redressal Commission

Case No: Revision Petition No. 3160 Of 2017

Narendra Ojha & Anr

APPELLANT

Vs

District Co Operative Officer & Anr

RESPONDENT

Date of Decision: Sept. 21, 2023

Acts Referred:

- Consumer Protection Act, 1986 - Section 21(b)

Hon'ble Judges: Subhash Chandra, Presiding Member; Bharatkumar Pandya, Member

Bench: Division Bench

Advocate: Sanjeev Kumar Verma

Final Decision: Disposed Of

Judgement

Subhash Chandra, Presiding Member

1. This revision petition under section 21 (b) of the Consumer Protection Act, 1986 (in short, the "Act") assails the order dated 07.07.2017 in Appeal No. 338 of 2015 of the State Consumer Disputes Redressal Commission, Bihar, Patna (in short, the 'State Commission') setting aside the order dated 14.07.2015 of the District Consumer Disputes Redressal Forum, Gopalganj (in short, the 'District Forum') in Consumer Complaint no. 19 of 2011 holding deficiency in service by the respondent in not refunding the petitioners' deposit with interest and directing the repayment of the maturity amount with interest @ 9% p.a. from the date of maturity till the date of repayment within one month. The State Commission held the complaint barred by limitation with the delay not being sufficiently explained.

2. The brief facts of the case according to the petitioners, who are husband and wife, are that they had opened a joint account under the 'Laxmi Savings Scheme' with the Gahani Chakia Mini Bank Branch, Gopalganj of the respondent no. 2 bank on

19.02.1999 and deposited Rs. 12,000/- for 66 months with a maturity value of Rs 24,000/- on 19.08.2004. Subsequently, two more deposits were made similarly for Rs 10,000/- for 72 months on 14.07.1999 with maturity value of Rs 20,000/- on 14.07.2005 and Rs 2,000/- on 25.09.2000 for 72 months with maturity value of Rs 4,000/- on 13.09.2006. On maturity of the first deposit, respondent no 2 informed that the deposit would be repaid on receipt from the Head Office at Gopalganj which was not done despite the petitioners making repeated enquiries. The petitioners state that they were similarly informed when the other two deposits also matured. They subsequently learnt that the bank had been closed and therefore they sent a legal notice on 25.10.2010 but received no reply. The District Forum was approached by way of a complaint which was decided in their favour, on contest and the refund of the three deposits amounting to Rs 52,000/- with 12% interest and Rs 25,000/- as compensation was awarded. In appeal, the State Commission held that the complaint was barred by limitation and set aside the order of the District Forum. This order is impugned before us.

3. The petitioner has challenged the State Commission's order on the grounds that the State Commission's order erred in not appreciating that there was a continuing cause of action since the money received by the bank respondent no 2 had not been refunded and, therefore, as laid down by the Hon'ble Supreme Court in **Meerut Development Authority Vs. Mukesh Kumar Gupta**, IV (2012) CPJ 12 there was a continuing cause of action. It is therefore argued that the State Commission's order is seriously flawed, and the petition deserves to be allowed.

4. We have heard the learned counsel for the petitioner. The respondents continued to remain unrepresented despite notice and were therefore declared as ex parte after a final notice to be present or be represented to present their case. We have carefully considered the material on the record.

5. The District Forum's findings in its order are as below:

The respondent has stated in reply that on 12.09.2002 the respondent no.2 had given the charge to the other manager and the respondent has also filed the document of the charge, which is marked as Exhibit A but as per whose order the respondent gave the charge, has not filed any document pertaining to this and the respondent has stated in the cross examination that respondent has been working in the above bank since 2998 and on 12.09.2009 the respondent has been relieved from the above bank and has started working in Maharajganj. When the respondent has himself admitted that the respondent has been relieved from the above bank on 12.09.2009, then in the reply of the respondent to state that he has given the charge to the other Manger on 12.09.2002, does not appear reliable. The respondent has also admitted this in the cross examination that the above said

bank is closed.

As per the contention of the complainant, the complainant has been visiting the respondents for the payment but on not making the payment the complainant has sent legal notice but no reply of the legal notice has also been received then complainant has filed the case.

The complainant has sent the legal notice to the respondents on 25.10.2010 which has been marked Exhibit 6 and Exhibit 7. The receipts of money deposited by the complainant are marked Exhibit 1, Exhibit 2 and the respondent has admitted in the cross examination that the amount of the complainant has been deposited only by the respondent and signatures of the respondent are on the receipt.

The witnesses present on behalf of the complainant has fully supported the contention of the complainant.

Conclusion:

From the perusal of the record and the evidence produced it appears that the complainant has deposited the money with the respondents and respondents have not make the payment of the amount. The complainant has been running to the respondents for payment of his money and in the event of not making the payment, the complainant has sent the legal notice to the respondent but the respondent have not given reply to the notice and has not made the payment of money which shows the deficiency in the service of the respondents.

6. The State Commission in its order dated 07.07.2017 states as under:

7. Having considered the submissions of parties and on perusal of the order passed by the District Forum, it appears that the District Forum has not considered the matter in right perspective. The complainants are wife and husband, who invested the amount from 19.02.2009 to 25.09.2000 and the amount, was matured till 13.02.2006. When the matured amount was not paid they should had to file a complaint within two years till 2008. But complaint was filed in the year 2011 without sufficient explanation for condoning the delay. It is hopelessly barred by limitation. All opposite parties did not submit response in this case. District Co-operative Bank and the present Manager were not heard. The appellant is the Ex - Manager who handed over the charge on 12.09.2002. He has been made a party in personal capacity. At the time of maturity, the appellant was not the manager of the said Bank. So, he cannot be made liable for payment. It is said that now the said Bank is not in existence. For the reasons stated above, the order under appeal is set aside. The appellant is exempted from liability to pay the matured amount. The appeal is allowed.

7. From the material on record and the submissions on behalf of the petitioners, it is evident that the respondent has admitted that there were deposits that were accepted. The only grounds taken are that respondent no. 1 had been transferred to another branch and that he was therefore not liable and that the complaint was barred by limitation. When the respondents accept the deposit and do not deny the fact that the amounts were deposited by the petitioners, non-suiting them on the ground of delay, especially when the cause of action has continued as is evident from the efforts made by the petitioners, including issue of legal notice, is not justified. The Consumer Protection Act is a benevolent legislation that is intended to provide relief to consumers for deficiency in service and protect them against unfair trade practices. The impugned order of the State Commission has held that the matter is barred by limitation and that at the time of maturity respondent no 2 was not the Manager. In the light of the law laid down in Meerut Development Authority (supra), the State Commission's finding on limitation cannot be sustained since the deposited amounts and the interest thereon have not been paid by the respondent.

14. For the aforesaid reasons, we find merit in the complaint which is accordingly allowed. Order of the State Commission is set aside. Pending IAs, if any, stand disposed of with this order.