

(2003) 03 NCDRC CK 0052

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

UNION BANK OF INDIA

APPELLANT

Vs

MOHMAD IQBAL ABDULGANI
MEMON

RESPONDENT

Date of Decision: March 28, 2003

Citation: 2003 2 CPJ 363

Hon'ble Judges: M.S.Parikh , M.K.Joshi J.

Final Decision: Appeal allowed

Judgement

1. THIS appeal arises from order dated 10.6.1998 rendered by the learned Consumer Disputes Redressal Forum, Ahmedabad City in Complaint No. 1671 of 1993. Impugned order reads as under :

"The complaint is hereby allowed. The opponent-Bank is hereby directed to pay to the complainant the sum of Rs. 26,761.80 ps. with interest at the rate of 9% per annum from 1.1.1993 till payment and to pay the cost of Rs. 1,000.00."

2. IT was the complainant's case before the learned Forum that he had Savings Bank A/c. No. 3832 with the opponent Bank at its extension counter located in the concerned area. According to him, he deposited Rs. 25,000/- in cash on 4.11.1992 in that account. On 1.12.1992 he deposited Rs. 1,000/- in the said account and at that time credit entry of Rs. 25,000/- dated 4.11.1992 was made. He then deposited Rs. 500/- on 4.12.1992 in that account and necessary entry was made in his pass book. According to the complainant balance in his said account was Rs. 26,761.80. In the afternoon of 4.12.1992 one Mr. Satuji Udaji Vaghela, peon of the opponent Bank went to the complainant's residence and informed him to go to the Bank with his

pass book. As the complainant was busy, he handed over the pass book to said peon Satuji. This was done as it was represented that there was some mistake in his account and it was required to be corrected. He alleged before the learned Forum that the counter-foil according to which he credited Rs. 25,000/- in cash was lying inside the pass book. On 7.12.1992 communal riots broke out in the city of Ahmedabad and aforesaid branch of the opponent Bank was attacked by rioters, resulting into destruction of all the account books, ledgers, documents and other papers of the Bank by setting the said extension counter to fire. The opponent Bank invited claim forms from the customers who maintained accounts with that Bank. The complainant made his claim but his claim was not sanctioned. Thus, he alleged deficiency in service on the part of the opponent Bank in not allowing his claim of Rs. 26,765/-. He, therefore, filed complaint before the learned Forum also claiming compensation in the sum of Rs. 5,000/- on the head of mental agony and hardship and cost in the sum of Rs. 5,000/-.

The opponent Bank resisted the complaint inter alia on the ground that it was barred by limitation that the extension counter/branch was set ablaze resulting to destruction of the records, books of accounts, ledgers, furniture/fixtures, etc. in the riots which occurred on 7.12.1992. Public Notice was issued inviting claims from the customers. The complainant claimed Rs. 25,500/- but the reconstruction cell examined the same and disallowed the same as the complainant could not produce any corroborative evidence to support his claim. The opponent Bank asserted that almost 97% claims were settled by the opponent Bank but as the complainant did not have any evidence worth the name with regard to his claim, the same was not entertained. Thus, there was no deficiency in service on the part of the opponent Bank in the matter.

The complainant filed affidavit in rejoinder inter alia alleging that although all the records were destroyed, there were some records in the cellar of the building and the complainant was asked to find out the slip in question from the heap of records. The complainant showed his inability to find out such document from the said record and did not enter into any such exercise. His grievance was that it was the duty of the opponent Bank to search out the record even from the aforesaid cellar of the Bank and trace out the complainant's pass book/pay-in-slip in question and process the claim of the complainant.

3. THE learned Forum has entertained the complaint and passed aforesaid order, although while observing as under : "It is of no use to blame either the complainant or the opponent (sic.) neither the Bank nor the complainant can be blamed !" In our

considered opinion, the complainant could never have succeeded at the hands of the learned Forum no sooner the learned Forum came to the aforesaid conclusion. This was not a case for showing any equity in favour of the complainant. It was an admitted fact that the records of the Bank were totally destroyed and the opponent Bank was out to assist the consumers who had some material for their claim that might be presented to the opponent Bank. In the present case the complainant did not produce any material worth the name before the opponent Bank. Thus, *prima facie*, there was no deficiency in service on the part of the opponent Bank in entertaining the complainant's claim no sooner it was shown before the learned Forum that even in the matter of granting claims on secondary evidence or on corroborative evidence the opponent Bank had made all the possible exercise in considering and entertaining the complainant's claim. However, in order that complete justice might be done to the complainant, we had permitted the parties to adduce evidence before this Commission also.

Basic factual aspect with regard to whether the complainant might or might not succeed even on evidence is that the peon of opponent Bank had gone to the complainant's residence for taking his pass book as it was suggested that there was some mistake in making of entries in the ledger and, therefore, correction was required to be made both in the ledger as well as in the pass book. There is no difficulty with regard to that part of the matter as the peon Mr. Satuji Udaji Vaghela has been examined at Exh. 9 before this Commission and has admitted that the instance of officer Mr. Malik he had gone to the complainant's residence with a note on a small piece of paper and that note was also permitted to be produced in the examination in chief of witness Satuji Udaji Vaghela and that note has been admitted by another witness Mr. Bismilla Rasul Malik, the officer [Exh. 16]. Therefore, the fact that the peon Satuji Udaji Vaghela had gone to the complainant's residence/shop for taking the pass book at the instance of the concerned officer of the Bank on or around 4.12.1992 can hardly be disputed by the opponent Bank. We have, therefore, to proceed from that part of the case. It has been submitted on behalf of the complainant that pass book contained within it the relevant and material pay-in-slip evincing deposit of Rs. 25,000/- in cash. This factual aspect is seriously disputed by the opponent Bank. It is not in dispute that right from June 1992 to 7.12.1992 the complainant had with him and preserved all the pay-in-slips. From the pay-in-slips which have been shown to this Commission, it would appear that cash deposits did not exceed a sum of Rs. 1,000/-. Even the pay-in-slip dated 4.12.1992 was also retained by the complainant and xerox copy thereof has been shown to this Commission. The pay-in-slip dated 1.12.1992 also remained with the complainant and that is in the sum of Rs. 1,000/-. Thus, the complainant used to keep separately with him the pay-in-slips and he has failed to explain how the pay-in-slip dated 4.11.1992 for Rs. 25,000/- for the alleged cash deposit remained in the pass book. This is an unusual allegation of fact. Note Exh. 11 does not indicate retention/appearance of such pay-in-slip in the pass book.

There is no immediate communication between the parties with regard to such a pay-in-slip having erroneously or inadvertently remained in the pass book which was handed over by the complainant to the peon of the opponent Bank. It is under such circumstances that the complainant was required to adduce evidence and was permitted to adduce evidence with regard to how he had with him Rs. 25,000/- on the relevant date. He has failed to adduce any such evidence although it was submitted before this Commission that he had some transaction of transferring/selling some immovable property or some rental premises out of which he had got consideration/part consideration of Rs. 25,000/- from the proposed purchaser. We had also given opportunity to the complainant to produce evidence in respect of such transaction but the complainant has not been able to do so till such date. Thus, even if the matter went for trial before a Civil Court, the complainant would not have succeeded for want of evidence. Be that it may, insofar as the Bank is concerned, it has shown indulgence till the last minute to enable the complainant to produce evidence to support his claim of Rs. 25,000/-. In absence of any evidence worth the name, neither the opponent Bank nor any Court of law could have shown any indulgence in favour of the complainant. We have gone through the evidence of Satuji Udaji Vaghela [Exh. 9] and Bismilla Rasul Malik [Exh. 16]. However, in evidence of none of the said witnesses it has appeared that the complainant had deposited Rs. 25,000/- in cash with the opponent Bank on 4.11.1992. As a matter of fact, peon Satuji Udaji Vaghela clearly appears to be in collusion with the complainant in stretching his deposition to the extent of deposing that he had an occasion to open the pass book and see the balance in the pass book appearing to the extent of Rs. 27,000/-. He has produced evidence before this Commission to show that he was serving as peon in the aforesaid branch of the Bank. However, he clearly appears to have exceeded the limit in saying that he had seen the balance in the pass book and it was around Rs. 27,000/-. If that was so, he could have presented such fact before the opponent Bank at the time of inquiry into the matter. At that time he was serving in the Bank and was not out of the Bank. The matter could have ended at that very point. After having been out of job or having retired from the opponent Bank, he has conveniently come before the Commission to depose for the first time that he had an occasion to see the pass book and remember what was the balance. Such an evidence is not permissible in law when documentary evidence in the form of pay-in-slip would be available with the complainant. The story that the complainant had either inadvertently or in any manner retained the pay-in-slip in the pass book is not believable and it appears to be not genuine in the background of other pay-in-slips clearly available with the complainant.

4. IN above view of the matter and having regard to the facts and circumstances of the case there clearly does not appear to be deficiency in service on the part of the opponent Bank in the matter of granting of claims of the customers under the circumstances noted hereinabove. Following order is, therefore, passed. ORDER Impugned order dated 10.6.1998 rendered by the learned Consumer Disputes Redressal Forum, Ahmedabad City in Complaint No. 1671 of 1993 is hereby set aside. The complaint will stand dismissed. This appeal is accordingly allowed, with no order as to costs throughout. Appeal allowed.