

(1991) 04 NCDRC CK 0004

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

RAMA CHAUDHRY

APPELLANT

Vs

CHAIRMAN, PUNJAB NATIONAL
BANK

RESPONDENT

Date of Decision: April 24, 1991

Citation: 1992 3 CPJ 318 : 1994 1 CLT 236

Hon'ble Judges: R.N.Mittal , B.L.Anand , Avtar Pennathur J.

Final Decision: Preliminary objection rejected

Judgement

1. BRIEFLY the facts are that the complainants hired a locker No. 423 jointly from the respondent No. 3. They, it is alleged, deposited gold ornaments weighing about 350 gms. consisting of 3 bangle pairs, one golden set consisting of 7 pieces, one gents-ring, two ladies rings, one necklace and two Kantass The ornaments were presented to complainant No. 1 by her parents, in-laws and husband i.e., applicant No. 1. Complainant No. 1 operated the locker from time to time and found that the ornaments were lying safe. She operated the locker lastly on 5th April, 1988.

2. ON 21st September, 1988 at about 12-30 p.m. Mr. P.K. Aggarwal and Mr. Shankar Lal both employees of the Bank contacted complainant No. 1 and requested her to check the locker. Complainant No. 2 was not presept at the residence at that time. She went to the Bank and found the door of the locker in a tapered condition. ON opening the locker it was found that the gold ornaments were missing from there.

She, it is averred, made a complaint to the In charge of the lockers and the Branch Manager of the Bank but they did not pay any heed to her. It is further averred that the locker had been tampered with by the employees of the Branch and that they

had taken away the ornaments. The complainant lodged the First Information Report on the same date with P.S. Sector 15, Faridabad, which was recorded at S. No. 421. It is therefore prayed that the respondents be directed to pay an amount of Rs. 1.20 lacs towards the price of the gold ornaments with interest @ 18% P.A. from the date the locker was operated last till the realisation of the decretal amount, Rs. 5,000/- towards expenses and Rs. 50,000/- as exemplary damages.

The complaint has been contested by the respondents. They have taken a preliminary objection that the locker was hired at Faridabad by the complainants where they were residing and therefore the Commission had no jurisdiction to try the complaint. They have also controverted the other allegations of the complainants.

3. THE contention of the learned Counsel for the complainants on the preliminary objection is that the Regional Office and Head Office of the Bank are situated at Delhi and therefore it will be deemed to be carrying on business at Delhi in addition to the other places where it has branches. Under Section 11 of the Consumer Protection Act (hereinafter referred to as the Act) a complaint can be instituted at a place within the local limits of the place(s), where the defendants reside or carry on business or personally work for gain. He submits that in view of the aforesaid circumstances this Commission has jurisdiction to decide the complaint.

On the other hand the learned Counsel for the defendants, has vehemently submitted that as the branch of the Bank, against whom the complainant has a grievance, is situated in Faridabad, and the cause of action has also arisen at Faridabad which is situated in the State of Haryana, therefore, the State Commission of Delhi has no jurisdiction to try the complaint.

4. WE have duly considered the arguments of the learned Counsel for the parties. In order to determine the question it is necessary to read section 11(2) of the Act which is as follows:

"Jurisdiction of the District Forum (1) (2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction, (a) the opposite party or each of the opposite parties, where there are more than one, at the time of institution of the

complaint, actually and voluntarily resides or carries on business, or personally works for gain, or (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business, or personally works for gain, provides that in such case either the permission of the District Forum is given or the opposite parties who do not reside or carry on business, or personally work for gain, as the case may be, acquiesce in such institution, or (c) the cause of action, wholly or in part arises".

No doubt the section relates to the jurisdiction of the District Forum and not to that of the State Commission but in the absence of any other provision, I am of the opinion that this section shall apply for determining the territorial jurisdiction of the State Commission. Otherwise also the principles contained in the section are well recognised and equitable principles for determining the territorial jurisdiction of the courts and therefore, it is proper to take them into consideration for determining the jurisdiction of the State Commissions under the Act. In the present case there are more defendants than one and defendant No. 3 is carrying on business at Faridabad, whereas the other two at Delhi and also at the places where the Punjab National Bank has branches. Clause (a) of Section 11(2) has no applicability to the present case. Clause (c) relates to cause of action. At whatever place the cause of action arises in a case, the courts having jurisdiction there, are entitled to decide the complaint. This clause applies to all cases as the cause of action at place will arise in each case. If a complainant relies on Clause (c), then it becomes superfluous for him to invoke Clause (a) or Clause (b).

The question to be determined is, whether the present case is covered by Clause (b) or not. In order to decide this question it is to be seen, whether the Bank shall be deemed to be carrying on business at the place where its head office is situated. The head office of the Bank controls all the branches of the Bank and the Zonal Offices. It is well settled that if a corporation has more than one branches, it will be deemed to be carrying on business at the head office also, from where it controls all the business and branches. It is evident from Section 11(2) that if a case does not fall within the ambit of Clause (c), it was the convenience of the defendant, which was taken into consideration by the legislature while enacting Clauses (a) & (b). That is why Clauses (a) & (b) confer jurisdiction on the courts, where defendants reside or carry on business or personally work for gain.

5. IN the above view I am fortified by the observations of the Supreme Court in Union of India & Another v. Sh. Lado Lal Jain, AIR 1963 SC 1681. IN that case the Hon"ble Supreme Court was interpreting Section 20 of the Code of Civil Procedure

which is similar to Section 11(2) of the Act. There the goods were booked by the plaintiff from a station in West Bengal for carrying them to a station in the State of Bihar. The suit was instituted at Gauhati in the State of Assam. The Headquarters of the railway were situated at Gauhati and therefore the suit was instituted there. The question arose whether the suit was maintainable at Gauhati. Reghubar Dayal J. speaking for the Court observed, that the principal behind the provisions of Clause (a) & (b) of Section 20 of the Code of Civil Procedure is that the suit should be instituted at a place where the defendant be able to defend the suit without undue trouble. The Union of India was carrying on the business of running railways and the Union Government can be sued in a Court within whose territorial jurisdiction the Headquarter of the railway run by the Union is situated. It is evident from the facts that the Court come to the conclusion that the subordinate Judge at Gauhati had the jurisdiction to try the suit as the Headquarter of the Railway was situated at Gauhati. The above observations are fully applicable to the present case.

6. THE learned Counsel for the respondents made reference to *Hakim Singh v. M/s. Gammon (India) Ltd.* AIR 1971 SC 740 and *Sushil Ansal v. Union of India & Another*, AIR 1980 Delhi 43. In the former case there was a clause in the agreement that in the event of any dispute arising out of the contract the matter would be referred to the arbitration of two arbitrators under the Arbitration Act. It was further provided that the contract would be deemed to have been entered into by the parties in the city of Bombay and the Courts of Bombay alone would have jurisdiction to adjudicate thereon. It is evident from the above clause of the contract that the facts of that case are distinguishable and therefore the ratio in that case will not apply to the present case. In *Sushil Ansal's* case (Supra) the Court was interpreting Sections 14 & 17 of the Arbitration Act. I am of the view that case is also distinguishable and the learned Counsel cannot derive any benefit from the observations therein.

It is also relevant to point out that the Chief Manager of the Bank at Delhi gave a reply dated 24.10.88 to complainant No. 2 of his complaint addressed to Zonal Manager of the Bank at Delhi. The Chief Manager informed him (complainant No. 2) that the matter regarding Faridabad Branch was under investigation by the police. There is another letter dated 27th February, 89 by the General Manager, Punjab National Bank, Head Office 17, Bhikaji Cama Place, New Delhi to the Director General of Police, Government of Haryana, Chandigarh on the record. It is stated therein that two FIRs of the locker holders were lodged on 21st September, 1988 and 23rd September, 1988 respectively at Faridabad. The locker holders were pressing the bank for making payment of their claim regarding the missing contents of the lockers but the findings of the police investigation were not made available to

the Bank. He, therefore, requested him that the matter may be got decided expeditiously. Another letter dated 26th July"89 was written by the Deputy Zonal Manager, Punjab National Bank to Sh. J.P. Chaudhry, complainant informing him that their claim cannot be granted as nothing came out of the investigations made by the Crime Investigation Agency, Haryana Police and consequently the case had been closed.

From the above said correspondence it is evident that the matter was dealt with not only by the Faridabad Branch of the respondent but by the Zonal Branch and Head Office of the Bank as well. In case the Head Office was not concerned with this matter, it would not have written to the complainant and the investigating agency in that regard. These letters also show that the business of the Bank is not being carried on at the Branch Office only but at the Head Office and Zonal Office of the Bank as well. After taking into consideration the aforesaid circumstances I am of the view that the present case falls within the preview of the Clause (b) and this Commission has jurisdiction to try the case.

7. DEFENDANT No. 3 is the Manager of the Punjab National Bank, Faridabad Branch. DEFENDANT No. 1 is the Chairman and defendant No. 2 is the Zonal Manager of the Bank. The Branch Manager has to defend the case not in his individual capacity but as a Manager of the Bank. DEFENDANT No. 1 and defendant No. 2 are residing at Delhi, where Head Office and Zonal Office of the Punjab National Bank are situated. The complaint in this case will be contested by the Bank on behalf of all the defendants. Faridabad is also at a short distance from Delhi. Therefore it will be easy for all the defendants to defend the petition at Delhi. In order to avoid the technical objection that all the defendants are not carrying a business at the same place I grant permission under Clause (b) to the complainants to institute and continue the proceedings before this Commission at Delhi.

For the aforesaid reasons, I do not find any merit in the preliminary objection and reject the same. Preliminary objection rejected.