

(2012) 08 NCDRC CK 0087

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Chairman And Managing
Director Indian Overseas Bank ,
Chief Manager

APPELLANT

Vs

N Devadas Pakkala

RESPONDENT

Date of Decision: Aug. 6, 2012

Citation: 2012 0 NCDRC 433 : 2012 3 CPJ 671 : 2012 3 CPR 587

Hon'ble Judges: Anupam Dasgupta , Suresh Chandra J.

Advocate: S.S.Saluja , B.S.Sharma , V.B.Bhandarkar

Judgement

1.1. THIS revision petition challenges the order dated 21.07.2006 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore (in short, "the State Commission") in Appeal No. 1823 of 2004. By this order, the State Commission allowed the appeal filed by the complainant (respondent in this revision petition), set aside the order dated 17.11.2004 of the Bangalore Urban District Consumer Disputes Redressal Forum, Bangalore (in short, "the District Forum") in complaint case No.637 of 2004. The operative part of the State Commission's order reads as under:

"Appeal is allowed. Impugned order is set aside. The complaint filed by the complainant is allowed in part. The OPs are jointly and severally liable to pay Rs.5,000/- as compensation to the complainant within two months from today. In the event if the OPs failed to pay the amount of Rs.5,000/- within two months as directed above, the OPs are directed to pay interest at 6% per annum on the said sum of Rs.5000/- from the date of the complaint filed before the DF till realization. The parties are directed to bear their own costs in this appeal."

2. IT is an admitted position that the respondent/complainant had five accounts with the petitioner Bank's branch at Residency Road, Bangalore. Two cash credit accounts and one housing loan account were closed in 2004 and two accounts (a small loan account of Rs.1.5 lakh and Savings Account No. 6047) were in operation. The complainant's housing property situated at No. 18, Purushothama Road, Ulsoor, Bangalore was offered and accepted as collateral security for both the housing loan and the small loan account of Rs.1.5 lakh. However, at the request of the complainant on closure of the housing loan account, the title deeds of the aforesaid house (which, as stated above, was also concurrently hypothecated to the Bank as security for the housing loan account no. 350000003) were released and handed over to the complainant on the condition that he would deposit Rs.1 lakh as collateral security for the small loan account of Rs.1.29 lakh. The complainant agreed to deposit the aforesaid sum of Rs.1 lakh before 27.03.2004 as "substituted security". However, instead of separately depositing Rs.1 lakh by 27.03.2004, the complainant deposited Rs.97,000/- in his savings account on 29.03.2004, creating a credit balance of Rs.1,01,892.70 in that account. The Bank marked a lien on Rs.1 lakh out of the above credit balance in the savings account because the complainant was required to keep a security of Rs.1 lakh with the Bank against his small loan account. On 30.03.2004, however, the complainant issued cheque no. 756566 for Rs.95,000/- in favour of his wife. The Bank returned this cheque unpaid on the same day in view of the Bank lien of Rs.1 lakh on the credit balance in the savings account, towards collateral security of the small loan account.

3. AGGRIEVED by the action of the petitioner bank, the complainant filed a consumer complaint before the District Forum on 25.02.2004 alleging deficiency in service on the part of the bank and praying for award of compensation of Rs.2 lakh towards loss, damage and injury alleged to have been suffered by him with interest @ 18% per annum as well as cost of legal proceedings.

4. THE petitioner/OP/Bank denied the allegations in its written version and stated that the Bank was constrained to return the cheque dated 30.03.2004 unpaid on account of the lien for Rs.1 lakh that had to be created by the Bank on the credit balance in the complainant's savings bank account for the latter's failure to separately deposit the collateral security for his small loan.

5. ON appraisal of the pleadings and evidence brought on record, the District Forum dismissed the complaint by its order dated 17.11.2004.

6. AGGRIEVED by this order, the complainant filed an appeal before the State Commission with the result stated above.

7. WE have heard Mr. S.S. Saluja, learned counsel for the petitioner Bank and Mr. B.S. Sharma, Advocate on behalf of the respondent.

8. THE reasoning of the State Commission in arriving its finding in regard to deficiency in service on the part of the petitioner Bank is as under:

"The case of the OP bank is that as per the undertaking the complainant has not deposited the amount. If that is so, the OP bank could have informed the complainant that they would withhold Rs.1,00,000/- available in the S.B. Account as a security for the small loan facility. In the instant case, there is no such information to the complainant. The complainant came to know only when the cheque issued to him was returned by the bank. Not intimating the fact of earmarking Rs.1,00,000/- which is available in the S.B. account of the complainant, as security deposit by the bank for other loans itself in our opinion is a deficiency in service on the part of the OP. Therefore, in order to recognize the right of the complainant, we are of the view that awarding a sum of Rs.5,000/- as compensation in favour of the complainant would meet the ends of justice."

9. THIS finding/reasoning is completely at variance with the letter written by the complainant/respondent in his hand seeking return of the title deeds of the house and undertaking to make a deposit of Rs.1 lakh "before 27.03.2004" as "substituted security" for the small loan account. It is not the complainant's case that he actually deposited this amount to be kept in a separate deposit as "substituted security" for the small loan. Hence, there was no question of the Bank having to inform him of creating a lien on the savings account balance for the substituted security when he failed to deposit the requisite amount. The complainant's action of depositing Rs.97,000/- on 29.03.2004 into his savings account and issuing a cheque for Rs.95,000/- in favour of his wife the very next day was thus a crude, fraudulent attempt to evade the responsibility of fulfilling his own written undertaking to the Bank, subject to which the title deeds for his house were returned.

10. IN view of the foregoing discussion, we have no hesitation in allowing the revision petition and setting aside the impugned order of the State Commission. The parties are, however, left to bear their own costs.