

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 1162 OF 2014

(Against the Order dated 27/02/2014 in Complaint No. 16/2009 of the State Commission Tamil Nadu)

1. BANK OF BARODA

THROUGH REGIONAL MANAGER, REGIONAL
OFFICE, NO. 90, C.P. RAMASAMY ROAD,
ALWARPET,
CHENNAI-600018
TAMIL NADU

.....Appellant(s)

Versus

1. P.R. DOVINDRAN KUTTY MENON & ANR.
S/O. RAMAN MENON, NO. POONGA STREET,
POOMPOZHIL NAGAR,
CHENNAI-6000062
TAMIL NADU

2. KOTAK MAHINDRA BANK LTD. (FORMERLY
KNOWN AS ING VYSYA BANK LTD.)
REPRESENTED BY ITS MANAGER, Z-192, 2ND
FLOOR, AVENUE, ANNA NAGAR,
CHENNAI-600040
TAMIL NADU

3. KOTAK MAHINDRA BANK LTD. (FORMERLY
KNOWN AS ING VYSYA BANK LTD.)
THROUGH ITS AREA OPERATIONS SERVICES
HEAD, MR. RAGHAVENDRA PRASAD R.,
REGIONAL OFFICE AT 14TH FLOOR, BUILDING
NO. 5, DLF CYBER TERRACES, DLF CYBER CITY,
GURGAON - 122 002
HARYANA

.....Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE D.K. JAIN, PRESIDENT
HON'BLE MRS. M. SHREESHA, MEMBER**

For the Appellant : MS. PRAVEENA GAUTAM

For the Respondent : In person

Dated : 15 Oct 2015

ORDER

IA 5768 & 5769 of 2015 (Amended memo of parties)

The applications are allowed subject to all just exceptions. Amended Memo of Parties name shall be filed within two days from today.

Appeals

When these Appeals had come up for motion hearing, we had asked learned Counsel appearing for the Banks to seek instructions as to whether having regard to the quantum of compensation awarded against them viz. Rs.one lakh each, they would like to press these Appeals. Learned Counsel for both the Banks state that as per their instructions, the Appeals are to be pressed. Accordingly, we proceed to decide the Appeals on merits.

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These two Appeals under Section 19 of the Consumer Protection Act, 1986 (for short “the Act”), have been preferred by the two Banks, namely, Bank of Baroda and Kotak Mahindra Bank Limited (earlier known as Ing Vysya Bank Limited), Opposite Parties no.1 and 2 respectively in the Complaint, questioning the correctness and legality of the order, dated 27.02.2014, passed by the Tamilnadu State Consumer Disputes Redressal Commission at Chennai (for short “the State Commission”) in CC no.16 of 2009. By the impugned order, the State Commission, while accepting the Complaint filed by the Respondent/Complainant, alleging deficiency in service in the encashment of a cheque in the sum of Rs.8 Lac, deposited for collection in the drop box of Kotak Mahindra Bank Limited and encashed, through a fictitious account, in Bank of Baroda, has directed both the Banks to refund the amount equivalent to the value of the cheque, i.e., Rs.8 Lac and also pay to the Complainant a total compensation of Rs.2 Lac in equal proportion.

At the outset, we may note that the amount of the cheque, i.e., Rs.8 Lac has already been paid by Bank of Baroda to the Complainant in terms of the Award made by the Bank’s Ombudsman on 20.06.2007. Thus, the question surviving for consideration is as to whether on facts at hand, the State Commission was justified in awarding a compensation

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of Rs.1 Lac each against the two Banks on account of alleged deficiency on their part in handling the subject cheque.

We find that on the basis of the pleadings, the State Commission had framed the following three Issues for consideration:

1. *Whether there is deficiency in service on the part of the Opposite Parties 1 and 2, as alleged in the Complaint;*

1. *Whether the Complainant is entitled to compensation; from the Opposite Parties; and,*

1. *To what relief the Complainant is entitled.*

Upon consideration of the material placed on record by both the parties, the State Commission answered all the issues in the affirmative, i.e., in favour of the Complainant. Answering the first issue, the State Commission observed as follows:

“ 12. It is clearly established that there is deficiency in service on the part of both the opposite parties. The 1st opposite party did not follow the procedure prescribed by the Reserve Bank of India, because of which, the SB account could be fraudulently opened by a person with the intention of committing fraud and to withdraw the amount by committing theft of a cheque from the drop box of the 2nd opposite party and depositing the cheque in his account and by committing fraud he withdrew the amount from the account. Thus, there is negligence and

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deficiency in service on the part of both the opposite parties; in consequence of which the culprit has stolen the cheque from the drop box of the 2nd opposite party and fraudulently withdrew the amount from his account with the 1st opposite party. Therefore, we hold that there is negligence and the deficiency in service on the part of the opposite parties 1 and 2 and both the opposite parties are liable to compensate the complainant for their deficiency in service.” (Emphasis supplied)

As regards issues No.(2) and (3), the State Commission has come to the conclusion that in view of the fact that the Complainant had suffered mental agony and hardship on account of being deprived of a sum of Rs.8 Lac for almost 20 months, the total compensation of Rs.2 Lac would be adequate, although the Complainant had prayed for a compensation of Rs.16,50,000/-.

Aggrieved by the said order, both the Banks are before us in these two Appeals.

We may note that the Appeal filed by the Bank of Baroda (FA no.1162 of 2014) is barred by limitation by 174 days. An application praying for condonation of the said delay has been filed along with the Appeal. Subsequently an additional affidavit was also filed, explaining the aforementioned delay. The only explanation furnished in the additional

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affidavit is that on receipt of certified copy of the impugned order dated 27.02.2014, on 04.04.2014 the matter was taken up with the Legal Department at the Regional Office of the Bank at Chennai and it was only on 03.07.2014 that authority for filing the Appeal was issued by the

Zonal Office. Thereafter, the case was referred to the Bank's Counsel in the second week of August 2014 for opinion and on receipt of the said opinion sometime in October 2014, the Appeal was filed on 31.10.2014. We are not at all satisfied with the explanation furnished. It is evident from the said reply that the file of the case had moved from table to table in months. If the Bank was so concerned about the case, it would have been on its toes to file the Appeal within the prescribed period of limitation. The Bank has been thoroughly negligent in pursuing the matter diligently and with promptitude, as expected. We are not satisfied with the explanation furnished and accordingly, we decline to condone the said inordinate delay and would dismiss the Appeal preferred by the Bank of Baroda as barred by limitation.

Now coming to the question of the quantum of the compensation awarded by the State Commission against the Appellants, we are of the view that the Complainant having been deprived of a large sum of money, i.e., Rs.8 Lac, for almost two years, the compensation of

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Rs.1 Lac against each of the Banks cannot be said to be excessive or unreasonable.

In view of the above, there is no merit in both the Appeals and the same are dismissed accordingly, with costs quantified at Rs.10,000/- in each of the Appeals to be paid to the Complainant within two weeks of the receipt of copy of this order.

Since Appeals of both the Banks have been dismissed, let the amount of compensation, directed to be deposited in this Commission vide order, dated 31.03.2015, be released to the Complainant forthwith. However, there is some doubt, whether or not the Bank of Baroda has made the deposit in terms of the said order. We direct that if the said amount had not been deposited by the Bank of Baroda, the Bank shall pay the amount of compensation of Rs.1 Lac along with the costs imposed today, directly to the Complainant within two weeks of the receipt of the copy of this order, failing which the said amount shall carry interest @ 9% p.a. from the date of this order till realization.

The statutory amounts deposited by both the Banks shall stand transferred to the Consumer Welfare Fund.

It goes without saying that the dismissal of these Appeals will have no bearing on the Civil Suit, stated to have been filed by the Bank

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of Boroda against Kotak Mahindra Bank Limited for recovery of the amount paid by it to the Complainant.

Both the Appeals stand disposed of in the above terms.

.....J

D.K. JAIN
PRESIDENT

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M. SHREESHA
MEMBER