

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 123 OF 2019

1. KAVITA CHOWDHARYComplainant(s)

Versus

1. CANARA BANK

Head Office at 112, J.C. Road, Bengaluru Branch Office at
Ashram Chowk,

NEW DELHI-110014

.....Opp.Party(s)

CONSUMER CASE NO. 124 OF 2019

1. PRIYA CHOWDHARYComplainant(s)

Versus

1. CANARA BANK

.....Opp.Party(s)

BEFORE:

HON'BLE MR. JUSTICE SUDIP AHLUWALIA, PRESIDING MEMBER

FOR THE COMPLAINANT : MR. VINOD AGARWAL, ADVOCATE.

FOR THE OPP. PARTY : MR. ARJUN MALIK, ADVOCATE.

Dated : 24 September 2024

ORDER

JUSTICE SUDIP AHLUWALIA, MEMBER

These Consumer Complaints have been filed under Section 21(a)(i) of the Consumer Protection Act, 1986 alleging deficiency in service on the part of the Opposite Party and, seeking compensation along with interest.

2. The facts and question of law involved in these Complaints are similar in all material particulars, therefore these Complaints are being disposed off by this common Order. However, for the sake of convenience, CC No. 123 of 2019 is treated as the lead case and the facts enumerated hereinafter are extracted from this Complaint.

3. The factual background, in brief, is that the Complainant holds a Savings Bank Account with the Opposite Party at its Maharani Bagh Branch (Ashram Chowk), New Delhi, with Account No. 0349101015565. On 29.05.2018, she deposited two CTS cheques into this account. The first cheque No. 46382 dated 03.03.2018 was for Rs. 11,36,868/- while the second cheque No. 46381 dated 03.03.2018 was for Rs. 94,73,900/-. Both these cheques were issued in the Complainant's favour by Assotech Ltd. and drawn on Vijaya Bank, S.S.I. Branch, Noida. On 01.06.2018, the Opposite Party credited the amounts of Rs. 11,36,868/- and Rs. 94,73,900/- into the Complainant's account. These transactions were recorded at 13:01:34 hrs. and 14:55:06 hrs., respectively, as indicated by the description "clg New Delhi accounts section, Vijaya Bank (VJB)" on the account statement. However, on the same day, both amounts were debited from the Account under the description "Online cheque return".

4. Later in the day, the Complainant received SMS notifications on her registered mobile number indicating that Rs. 11,36,868/- and Rs. 94,73,900/- had been debited from her

Account. Another SMS followed stating that cheque No. 46381 for Rs. 94,73,900/- which was deposited on 29.05.2018, had been returned due to a “connectivity failure”. On 05.06.2018, the Opposite No. 46381 into the Complainant's account at 11:41:18 hrs. Yet, later that day, the same amount was debited once more, recorded at 17:48:40 hrs. with the same “Online cheque return” description. The Opposite Party also debited Rs. 177/- from the Account as collection charges for the cheque return. Subsequently, cheque No. 46381 for Rs. 94,73,900/- was returned to the Complainant with a return Memo dated 05.06.2018 stating the reason “Instrument out dated/stale”. On 11.06.2018, the Opposite Party credited the amount of Rs. 11,36,868/- from cheque No. 46382 into the Complainant's account at 12:21:12 hrs. Once again, the amount was debited from her Account the same day under the “Online cheque return” description, and another Rs. 177/- was debited as collection charges for the cheque return. The cheque no. 46382 for Rs. 11,36,868/- was returned to the Complainant with a return memo dated 11.06.2018, citing “Instrument out dated/stale”.

5. According to the Complainants, the Opposite Party failed to present the cheques for clearing or collection to the drawee Bank within the validity period, causing those cheques to expire. Due to the Opposite Party's negligence in not presenting the cheques on time, the Complainant incurred a loss amounting to Rs.1,06,10,768/-. This negligence also deprived the Complainant of the legal remedies against the drawee of the cheques, Assotech Ltd., including those available under Section 138 of the Negotiable Instruments Act. The Opposite Party is therefore liable to compensate for the loss incurred by the Complainant. On 26.07.2018, through her Advocate, Sri Vinod Agarwal, the Complainant issued a Legal Notice to the Opposite Party demanding compensation for the loss of Rs. 1,06,10,768/-. Despite receiving the notice, the Opposite Party failed to make the payment. Due to a typographical error in the initial notice, where the date of deposit was mistakenly mentioned as 29.06.2018, instead of 29.05.2018, a corrected notice was issued on 02.08.2018, and sent to the Opposite Party via registered post with acknowledgment due. The corrected notice was duly served upon the Opposite Party. While the Opposite Party responded to the first notice through their Advocate, Sh. Santosh Kumar Mishra, denying the Complainant's claims, they failed to reply to the corrected notice dated 02.08.2018. Aggrieved by the deficiency of service, the present Complaint has been filed.

6. In view of the aforesaid facts, the Complainant has prayed as following -

“(i) To pass necessary order directing the Opposite party to pay Rs. 1,06,10,768/- (Rupees one crore six lakhs ten thousand seven hundred sixty eight) to the complainant along with the interest @ 18% P.A.

(ii) To direct the opposite party to pay Rs. 25,00000/- (Rupees twenty five lakh) to the complainant towards interest/ compensation/damages.”

7. The Opposite Party filed its Reply and resisted the Complaint. At the outset, the Opposite Party has denied all the allegations, statements, contentions, and submissions raised by the Complainants in the present complaint, except those specifically admitted; The Opposite Party has averred that they lodged the cheques on the same day they were deposited by the Complainant, i.e. on 29.05.2018, which is reflected to the paying Bank on next day, i.e. 30.05.2018. However, there was a nationwide strike of the Banks on 30.05.2018 and 31.05.2018, which is why the Payee Bank returned these cheques and the same was shown to the presenting Bank on 01.06.2018 in the evening. Thereafter, again on the request of the

Complainant, these cheques were punched for clearing on 04.06.2018, and sent for clearing on 05.06.2018. As 03.06.2018 was a Sunday, the cheques expired on 02.06.2018; That the Complainant has not served the Opposite Party any Notice under Section 80 of the Code of Civil Procedure; That the Complaint is bad in law for non-joinder of proper party i.e. Vijaya Bank, because it is the Bank which had generated the reason for return of cheque; That the Complainant can recover the amounts from the Drawer of the cheque in case there is a legally recoverable debt; That it is a settled proposition of law that Banks cannot be held liable for any damage or loss caused to the consumer in case of a legal strike. The strike on 30.05.2018 and 31.05.2018 was a proper strike after giving due public notice.

8. Rejoinder on behalf of the Complainants to the Reply of the Opposite Party has been filed; The Complainant has averred that the clearing statement shows the negligent approach of the Opposite Party in presenting the cheques for clearing after almost 5 days the cheque was expired, and therefore wilfully causing wrongful loss to the Complainants; That the clearing statement filed by the Opposite Party shows that the cheques were presented for clearing on 29.05.2018. However, they deposited only one cheque amounting Rs. 94,73,900/- for clearing on 04.06.2018, whereas the other cheque was presented for clearing on 08.06.2018; That the Opposite Party was well aware of the fact that the cheques were due for expiration but still neglected in sending it for clearance on proper time; That the Complainants sent the notice to the Opposite Party in the month of July 2018, and therefore fulfilled the condition under Section 80 of the CPC; That Vijaya Bank is not a necessary party in the present Complaint as there was delay only on the part of the Opposite Party.

9. Evidence by way of Affidavit has been filed in CC No.123 of 2019 by Ms. Kavita Chowdhary and in CC No.124 of 2019 by the Complainant Ms. Priya Chowdhary; Evidence by way of Affidavit has been filed on behalf of Opposite Party in CC No.123 of 2019 and CC No. 124 of 2019 by Ms. Richa Amrita, Manager, Canara Bank.

10. Ld. Counsel for Complainants has argued that after failing to receive information on the status of the two cheques, the Complainants filed a Right to Information (RTI) request with the Opposite Party, which declined to provide the requested details. Subsequently, the Complainants filed an Appeal with the Opposite Party's Appellate Authority, which again refused to provide the necessary information. With no other options, the Complainants filed a Second Appeal before the Chief Information Commissioner (CIC). After hearing both the parties, the CIC, in its order dated 31.10.2023, directed the Opposite Party to furnish the information sought;

11. During the course of hearing on 07.02.2023, this Commission noted discrepancies regarding the date stamping on the back of the cheques by the Opposite Party and directed its clarification on Affidavit. On 13.03.2023, the Opposite Party filed an Affidavit in compliance with this Commission's order. In paragraph 5, the Opposite Party stated under oath that the cheques were returned on the evening of 01.06.2018, which contradicts the Return Memo dated 30.05.2018. This false statement made under oath warrants penalization; That even assuming, for argument's sake, that the cheques were returned on the evening of 01.06.2018, the Opposite Party has not provided a specific reason for this return, such as insufficient funds, a signature mismatch, or outdated cheques, despite the Bank being open that day. The issuer of the cheque, Assotech Ltd., had issued post-dated cheques to secure the repayment of money borrowed from the Complainants;

12. According to the Complainants, the issuing Company, Assotech Ltd., is under liquidation and a provisional liquidator has been appointed, proceedings under Section 138 of the Negotiable Instruments Act were the only legal remedy available to the Complainants. It has been held by the Hon'ble Supreme Court and various High Courts that proceedings under Section 138 of the Negotiable Instruments Act are still maintainable even if a Company is under liquidation. In such proceedings, the Company's Directors are personally liable. Assotech Ltd., which is under liquidation, had borrowed money and issued post-dated cheques to several other entities and individuals, settling their claims in proceedings under Section 138 of the Negotiable Instruments Act, as evidenced by the judgment of the Delhi High Court in "Manmohan Singh Bhalla Vs. Assotech Limited, 2018 SCC OnLine Del 9805".

13. This Commission has heard both the Ld. Counsel for Complainants and the Opposite Party, and perused the material available on record.

14. As noted in para 11 earlier, the Opposite Party was directed to submit its clarification on Affidavit regarding the date stamping on the back of the cheques. In compliance thereof, the Affidavit of Ms. Supriya Dogra, Manager of Canara Bank, Maharani Bagh Branch, was filed along with an application for condonation of delay, which was allowed on 14.3.2023, and the aforesaid Affidavit was accepted. Some material statements made by the deponent Supriya Dogra, which were contained in the said Affidavit are extracted below –

“6. That again on the request of the Complainant, these cheques were punched for clearing on 04/06/2018 after cheque being returned on 01.06/2018.

7. That any stamp to the contrary may have been put inadvertently on 04/06/2018.

8. That it is also a matter of record that even if the cheques were scanned and sent to paying Bank by OP on 02/06/2016, the same could have been presented to Paying Bank only on 04/06/2018 as 03/06/2018 was Sunday. The validity of the cheque was only till 02/06/2018 by which date, the said Cheques could not have been honoured by the Payer Bank. Thus even then the cheques on being scanned and sent on 02/06/2018, would have returned as stale.”

15. It is thus case of the Opposite Party that clearing report was received by it in the late hours of 1.6.2018 at 6:50:28 p.m. as can be seen from Annexure P2 which is page 15 of the Written Statement. If that be so, the question arises as to why the cheques were not submitted again on 2.6.2018 which undoubtedly was a working day. No satisfactory explanation in this regard has been forthcoming from the side of the Opposite Party at all. On the other hand, it is seen that a fresh Affidavit by Ms. Supriya Dogra was filed on 4.4.2024 on behalf of Opposite Party in purported compliance of earlier Order dated 7.2.2023, in spite of the fact that her earlier Affidavit in compliance of the same Order had already been filed which had been even accepted on 14.3.2023, as already noted in the earlier Para No. 14.

16. From a careful reading of the entire Written Statement, the Affidavit in Evidence filed by the earlier Manager Ms. Richa Amrita and the two Affidavits filed by the subsequent Manager Ms. Supriya Dogra it is seen that no explanation whatsoever has been forthcoming from the side of the Opposite Party as to why cheques in question were not re-forwarded/endorsed to the payee Bank on 2.6.2018 which was a working day. In this regard, in a rather disguised manner, the blame has been sought to be passed on to the Complainant herself by contending that the cheques in question were re-forwarded to the payee Bank on her instructions on 4.6.2018 and 8.6.2018, which is not at all a convincing excuse as there is nothing on record to show that any of the Complainants had given any such instructions. To top it at all, it is remarkable that no Written Synopsis/arguments have been filed at all on

behalf of the Opposite Party in both these Complaints in spite of clear directions to do so. But at the stage of final hearing, Ld. Counsel for Opposite Party orally raised a contention that it was the incidence of a “technical failure” 2.6.2018 on account of which the cheques could not be endorsed to the payee Bank. But this oral submission is palpably beyond the own pleadings of the Opposite Party, and even the statements made by its Managers in their three Affidavits on record. The Ld. Counsel for Opposite Party, however, in seeking to substantiate this contention regarding ‘technical failure’ sought to draw attention to document No. 4 filed along with second Affidavit of Ms. Supriya Dogra which contains a list of some of 55 cheques with the stamp of 2.6.2018, which were “not cleared due to technical issue”. But as already noted earlier, this contention is palpably beyond the pleadings and no reference to such technical failure whatsoever was made even in the Affidavit dated 4.4.2014 along with which this particular document had been filed.

17. In such circumstances, this Commission has no hesitation in holding that there has been manifest deficiency in service on the part of the Opposite Party/Bank in dealing with the cheques delivered by the Complainants, which could not be encashed as the same had become stale by the date on which those were passed on to the payee Bank I.e. Vayasa Bank. The Complainants in the circumstances would certainly be entitled to a reasonable compensation on account of such deficiency in service.

18. Now it has been argued on behalf of Opposite Party that in case the cheques had been endorsed to the payee Bank on 2.6.2018, still the same could not have been encashed as the next date i.e. 3rd June was a holiday and, therefore, no payment could have been realized. This is ex facie a fallacious contention because had that been the position, the payee Bank would have become liable to compensate the Complainants instead of the present Opposite Party, but the fact that the cheques were not endorsed at all to the payee Bank on the relevant critical date of 2.6.2018 renders the Opposite Party squarely responsible for the consequences.

19. Thereafter, it has been contended on behalf of the Opposite Party that the drawer of the cheque namely (Assotech Limited) was a Company already under liquidation and so no withdrawal from its account could in any case have been effected as the Liquidator for the Company had already been appointed.

20. The above contention has been countered on behalf of Complainants by contending that due to the deficiency on the part of the Bank, they have been deprived of their valuable rights to initiate proceedings u/s 138 of the Negotiable Instruments Act. against the Directors of the Company in case those cheques were to be dishonoured due to insufficiency of funds, since it is trite law that criminal proceedings u/s 138 are maintainable even if a Company is under liquidation and its Directors are personally liable in the event of any cheque being dishonoured. In support of this contention, Ld. Counsel for the Complainants has cited various judgments, the details of which are as follows –

- i) Manmohan Singh Bhalla Vs. Assotech Limited, 2018 SCC OnLine Del 9805, Delhi High Court;
- ii) Indorama Synthetics Vs. State of Maharashtra, 2016 (4) Mh. L.J. P 249;
- iii) DintaKurthi Krishna Moorthy Gupta Vs. State of Andhra Pradesh, Criminal Petition No. 10630 of 2013, Andhra Pradesh High Court;
- iv) Shah Brothers Ispat Pvt.Ltd. Vs. P. Mohanraj & Ors., NCLAT, Company Appeal (AT) No. 306 of 2018;
- v) Chief Administrator, Haryana Urban Development Authority & Anr. Vs. Shakuntla Devi, (2017) 2 SCC 301, Supreme Court of India;

vi) Charan Singh Vs. Haling Tough Hospital & Ors, (2000) 7 SCC 668, Supreme Court of India.

21. In this view of the matter, there is no doubt that the valuable rights of the Complainants to initiate proceedings u/s 138, against the Directors of the drawer Company were scuttled by deficiency on the part of the Opposite Party/Bank, but it is uncertain as to what could have been the final relief realized by the Complainants in case the criminal proceedings u/s 138 of the Negotiable Instruments Act were to be actually launched. The offending Directors could have escaped any liability on any technical grounds which we need not speculate upon is one of the possibilities. On the other hand, it is also quite possible that they could have under pressure come to some settlement with the Complainants and made some payments, but what the quantum of those payments could have been is in itself a very speculative question, as the Complainants would have to show in the first place that the Directors in their personal capacity did actually have the money to pay up for the cheque amounts in their totality or not, and even if they had the same, would they have been inclined to pay the same in totality, which is practically an unlikely possibility. It is also possible that the Directors could have been convicted of the offence u/s 138 of the Negotiable Instruments Act, but how much could have been the monetary compensation which the Complainants might have extracted in all these circumstances is a virtually indeterminate question. So in the opinion of this Commission only a reasonable token compensation of an amount assessed at 10% of the face value of the cheques deposited by the Complainants is liable to be awarded to them by way of compensation.

22. The Complainants are, therefore, allowed with a direction upon Opposite Party/Bank to pay 10% of the total amount of Rs.1,06,10,768/-(Rs. One Crore Six Lacs Ten Thousand Seven Hundred Sixty Eight) to each of the Complainants along with interest @ 8% p.a. from the date of filing these Complaints within two months from the date of this Order. In addition, litigation costs assessed at Rs.50,000/- in favour of each of the two Complainants are also awarded to them. Any delay in making the aforesaid payments by the Opposite Party shall result in enhanced interest @ 10% p.a. till the date of final realization.

23. Pending application(s), if any, also stand disposed off as having been rendered infructuous.

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SUDIP AHLUWALIA
PRESIDING MEMBER