

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 234 OF 2017

(Against the Order dated 21/12/2016 in Complaint No. 71/2014 of the State Commission
Rajasthan)

1. KAMAL KUMAR SAJNANI

SON OF LATE VASUMAL, RESIDENT OF 1, SINDHUWARI
"B", JHULELAL COLONY,
AJMER
RAJASTHAN

.....Appellant(s)

Versus

1. BRANCH MANAGER, BANK OF BARODA
5/495, RAJA PARK, ADARSH NAGAR,
JAIPUR, RAJASTHAN

.....Respondent(s)

FIRST APPEAL NO. 304 OF 2017

(Against the Order dated 21/12/2016 in Complaint No. 71/2014 of the State Commission
Rajasthan)

1. BANK OF BARODA & ANR.

HAVING ITS REGD. OFFICE AT: C-26, G-BLOCK,
BANDRA KRLA COMPLEX,
MUMBAI-400051
MAHARASHTRA

2. THE BRANCH MANAGER,

THROUGH THE GENERAL ATTORNEY SH. O.P. GARG,
BANK OF BARODA, BARCH ADDRESS 5/495, RAJA
PARK, ADARSH NAGAR BRANCH,
JAIPUR, RAJASTHAN

.....Appellant(s)

Versus

1. KAMAL KUMAR SAJNANI

S/O. LATE SHRI VASUMAL, RESIDENT OF 1,
SINDHUWARI 'B', JHULELAL COLONY,
AJMER (RAJASTHAN)

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER, MEMBER**

FOR THE APPELLANT : MR. AKHILESH, PROXY COUNSEL FOR
MR. RITESH KHAR, ADVOCATE WITH
AUTHORITY LETTER

FOR THE RESPONDENT : MR. PANKAJ VIVEK, PROXY COUNSEL (VC)
MR. HIMANSHU CHUGH, ADVOCATE

Dated : 02 September 2024

ORDER**DR. SADHNA SHANKER, MEMBER**

1. These cross appeals have been filed under section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act') in challenge to the Order dated 21.12.2016 of the State Commission in complaint no. 71 of 2014, whereby the complaint was partly allowed.
2. We have heard the learned counsel for Kamal Kumar Sajnani (hereinafter referred to as the 'complainant') and learned counsel for Bank of Baroda (hereinafter referred to as the 'bank') and perused the record.
3. There is a delay of 04 days in filing the appeal no. 234 of 2017. Also, there is delay of 11 days in filing the appeal no. 304 of 2017.

In the interest of justice and considering the reasons mentioned in the applications for condonation of delay, the delays in filing both the appeals are condoned.

4. The facts, in brief, are that the complainant invested in fixed deposit schemes of the bank and the maturity sum of the fixed deposit were Rs.13,93,859/-, Rs.8,71,649 and Rs.4,10,066/- on the dates of maturity i.e. on 26.08.2013, 26.08.2013 and 11.05.2013, respectively. The complainant has alleged that the entire amount of the said FDRs were deposited from the means and sources of the complainant and the entire amount belonged to him and his wife had no share in the said FDRs but the investments were made in the joint names of the complainant and his wife, namely, Riya Sajnani because the complainant used to live in Spain. It is further alleged that since the relations between the complainant and his wife became strained and she lodged criminal complaint, there is an apprehension of the complainant that she may get the money released kept in the FDRs. Hence, he wrote a letter dated 07.04.2012 requesting the bank to change of operation instructions from "either-or" to "joint signatures". The complainant further sent a letter dated 23.04.2012 to the manager of the bank specifically mentioning that the FDRs in question may not be released in favour of his wife. It is the say of the complainant that even after giving letters for change of operation instructions of the account, the bank released the FDRs in favour of his wife. It is further alleged that the complainant had filed an application under Right to Information Act asking the status of the FDRs and payment thereof and the bank had informed the complainant that the payment of FDRs were made to the wife of the complainant on 11.06.2013 and 26.08.2013.

5. Alleging deficiency in service on the part of the bank in releasing the maturity amount of the FDRs to the wife of the complainant, the complainant filed a complaint before the State Commission seeking direction to the bank to pay the compensation of Rs. 33,30,574/-, together with 24% interest to the complainant.

6. The bank contested the complaint by filing written statement stating that the bank vide its letter dated 07.04.2012 informed the complainant that for any change in the operational instructions of the account, the revised instructions sought to be taken on record by the bank, the request has to be signed by both the named account holders having account operational authority and not otherwise. The bank vide its letter dated 23.05.2014 informed about the true position of existing operational and payment instructions besides the facts and

circumstances under which the operational and payment instructions could not be changed without the written request under the signature of all the signatories to the account. No written request under the signature of all the signatories to the account was made. It is stated that the payment was made through banker's cheques, which were issued only on the written instructions of the account holder as evident on the reverse side of the FDRs. It is further stated that the bank discharged its duties and obligations as per legal provisions and as per existing banking norms and rules and the payment of FDRs on maturity was made in good faith and without negligence in due course as per the written instructions of the account holder under the existing operational and payment instructions of 'Either or Survivor'. It is further stated that there is no deficiency in service on the part of the bank.

7. The State Commission, vide its order dated 21.12.2016, allowed the complainant in part and directed the bank to pay a sum of Rs. 1 lakh to the complainant towards compensation for mental agony and harassment.

8. Being aggrieved by the order dated 21.12.2016 of the State Commission, the complainant has filed appeal no. 234 of 2017 for enhancement of the compensation while the bank has filed appeal no. 304 of 2017 for setting aside of the impugned order.

9. Before this Commission, learned counsel for the complainant has argued that apart from granting Rs. 1 lakh towards mental agony and harassment, the State Commission did not go into the financial loss to the complainant despite the fact that the State Commission reached a finding that the bank was deficient in service. He further argued that the complainant informed the bank not to release the amount in favour of his wife and several correspondences have been made and the bank, despite being aware that the wife of the complaint had made a complaint, had released the amount to her account, which is a clear deficiency in service on the part of the bank.

10. Learned counsel for the bank has argued that the FDRs had been lawfully released in favour of the one of the joint account holder. He further argued that the payment had been made as per the law because the mandate in the account was 'either or survivor'. In the case at hand, it is not disputed that the bank received two letters dated 07.04.2012 and 23.04.2012 from the complainant requesting the bank to change the operating instructions, so that the FDRs would be discharged with the signatories of both the holders. Thereafter, on 04.07.2012, a legal notice on the same lines was again sent to the bank, which was duly acknowledged by the bank stating that they have marked these FDRs to be jointly operated by the complainant and his wife. However, the bank made the payment on the wife's request singly for the said FDRs. The argument of the learned counsel for the bank is that the original mandatory norms could not be changed unilaterally by one of the account holders because one of the account holder has intimated to the bank that the FDRs could not be released unless both the account holders had signed and the same had been acknowledged by the bank.

11. In this case, it is undisputed that the FDRs were opened jointly with the operating instructions of 'either or survivor'. It is also undisputed that the complainant sent letters dated 07.04.2012 and 23.04.2012 intimating the bank that the FDRs may not be released to his wife and the operating instructions be changed to joint signatories. Further, by way of a legal notice dated 04.05.2013, the said request were reiterated. It is also undisputed that the

bank in its reply dated 30.05.2012 to the legal notice intimated that the operating instructions of the said FDRs have been changed and the same would not be released without the joint signatories of both the parties.

12. In our view, once it has come to the notice of the bank that one of the joint holders is seeking to restrict the other from unilateral withdrawal, it is the duty of the bank to intimate the joint account holder in case the other seeks to discharge the FDRs. The bank has a duty to intimate both the joint holders and regardless of the original operating instructions once a requests has been duly received in the bank, it needed to intimate the other joint holder prior to discharge of the FDRs. By not doing so, the bank has definitely committed a deficiency in service. It cannot be the case of the bank that even after receiving due intimation from one of the joint holders, it can bypass that objection and release the FDRs as per the original operating instructions. Once the bank had intimated to the complainant vide letter dated 30.05.2012 that the requests had been accepted, it was incumbent upon the bank to seek the consent of both the joint holders at the time of the discharge of the FDRs. As regards the complainant’s plea that the money in the FDRs was earned by him and deposited in the joint account of the complainant and his wife, but it belonged to him, it has been rightly observed by the State Commission that it is not in the jurisdiction of the consumer forum to decide as to whom and to what extent the money actually belongs.

12. We do not find any illegality in the impugned order dated 21.12.2016 of the State Commission. Therefore, both the appeals are dismissed. Pending I.A.s, if any, stand disposed of.

.....
**SUBHASH CHANDRA
PRESIDING MEMBER**

.....
**DR. SADHNA SHANKER
MEMBER**