

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, HOOGHLY
CC OF 2021
PETITIONER
VERS
OPPOSITE PARTY**

**Complaint Case No. cc/24/2019
(Date of Filing : 18 Feb 2019)**

1. Chandra sekhar das chakladar
103 sarat sarani Narayanpur
Hooghly
WEST BENGAL

.....Complainant(s)

Versus

1. Branch manager canara bank
417 kapasdanga, chinsurah
Hooghly
West Bengal

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. Debasish Bandyopadhyay PRESIDENT
HON'BLE MRS. Babita Choudhuri MEMBER**

PRESENT:

Dated : 15 May 2024

Final Order / Judgement

In the District Consumer Disputes Redressal Commission, Hooghly, At Chinsurah.

Case No. CC/24/2019.

Date of filing: 18/02/2019.

Date of Final Order: 15/05/2024.

Chandra Sekhar Das Chakladar,

Address: flat no. 2B, Srishti Apartment,

103, Sarat Sarani, Narayanpur, Bandel,

West Bengal, PIN. 712123, P.S. Chinsurah.

.....complainant

-VS

Branch Manager,

Canara bank,

Kolkata Ballymore Sarat Sarani Branch,

Address: 417, Kapasdanga, Sarat Sarani,

Hooghly, P.S. Chinsurah, PIN. 712103.

.....opposite party

Before: President, Shri Debasish Bandyopadhyay.

Member, Babita Chaudhuri.

FINAL ORDER/JUDGEMENT

Presented by:-

Shri Debasish Bandyopadhyay, President.

Brief fact of this case:- This case has been filed U/s. 35 of the Consumer Protection Act, 2019 by the complainant stating that an a/c payee cheque bearing sl. No.019761 dated 28.5.2018 for Rs.4500/- was drawn by petitioner's wife of Union Bank of India, Chinsurah Branch, hereinafter called UBI, from her single operating savings bank a/c no.529302010000091 in favour of petitioner's son. The said cheque was deposited to Canara Bank, Kolkata Ballymore Sarat Sarani Branch, hereinafter called CB, jointly operating savings bank a/c no.1984101011051 for clearing on 28.5.2018. On 01.06.2018 a sum of Rs.177/- was debited by CB on a/c of "cheque return fee", but CB could not hand over the cheque nor the cheque return slip to the petitioner. On 02.6.2018 a sum of Rs.177/- was again debited by CB on the same ground for the same cheque but no cheque or the return slip was returned by CB to the petitioner. On 04.6.2018 petitioner's wife, closed her UBI a/c which was located far from residence and inconvenient for her due to old age ailment. On 06.6.2018 a sum of Rs.177/- was debited again for 3rd time on a/c of cheque return fee for that very cheque.

On 8.6.2018 CB handed over the cheque to petitioner alongwith an official return slip dated 5.6.2018 mentioning reason of return as account closed". However, CB failed to hand over any return slip for the same cheque on 1.6.2018 and 2.6.2018 when the account remains open at UBI. On 11.6.2018 petitioner decided to permanently close the account with CB and to lodge a complaint to the appropriate authority for redressal. On 18.6.2018 petitioner placed a complaint to CB's Circle office describing the entire fact by a registered letter endorsing a copy to the concerned branch of CB. Having neither any reply nor even an acknowledgement of receipt of the said letter, petitioner then placed online complaint to banking ombudsman on 25.7.2018 and subsequently got a complaint no.201819005001669 dated 29.8.2018.

Banking Ombudsman closed the case with comment "CB has refunded the amount of Rs.354/- (i.e 2 times of Rs.177-) and advised the petitioner to approach to any other authority for grievance redressal in case dissatisfaction still persists. Petitioner informed banking Ombudsman that the said refund had not been received and hence the statement is totally untrue. On 8.12.2018 petitioner approached consumer Affairs & Fair Business practices (CA&FBP) for settlement of the complaint through online application. The CA&FBP allotted a registration no.1995 and requested to appear before them on 5.2.2019 for mutual settlement with a copy to petitioner by their letter no.26/1(1)/CA &FBP/HLY dated 15.1.2019. Petitioner attended there on scheduled date and time, but CB neither appeared nor sent any information. The petitioner accordingly has been advised by CA&FBP to lodge complaint before the Hon'ble President, District Consumer Disputes Redressal Forum (Consumer Court), Hooghly by their note sheet dated.5.2.2019. On 14.2.2019 petitioner's wife has sent a registered letter to UBI to know the reason for return of her said cheque by them on 1.6.2018 and 2.6.2018. But no reply has yet been received by her.

Complainant filed the complaint petition praying direction upon the opposite party to refund all the money deducted as "cheque return fee" and others unreasonably and illogically i.e. Rs. 767/- [Rs. (177/- thrice + 236/-)] and pay a sum of Rs. 15,000/- towards compensation for continued harassment.

Defense Case:- The opposite party contested the case by filing written version denying inter-alia all the material allegation as leveled against him and stated that the complainant presented the cheque in this bank on 28.5.2018 and it was sent for clearance and the clearing authority deducted the amount on three occasions mentioned in the petition for reasons based known to said authority and this op cannot say what for the deduction were made and the op has no knowledge about the facts for which the clearing authority deducted the amount on the occasion mentioned in the petition and as such cannot be held responsible for the delay in making payment in terms of the cheque and the op sent back the deducted amount to the petitioner's son as per order of the RBI by two demand drafts amounting to Rs. 354/- and 177/- respectively by speed post and the postal authority attempted to hand over the same to the complainant's son on 29.8.2018, 30.8.2018, 31.8.2018, 1.9.2018 and lastly on 3.9.2018 and the same was returned by postal authority with endorsement "unclaimed" and so the op cannot be held responsible for the delay caused by the clearing authority and the op also cannot be held responsible for the inconvenience suffered by the complainant's son and the complainant is not in the picture in the transaction and as such he had no locus standi to file this petition of complaint and so the instant case is liable to be dismissed with costs.

Issues/points for consideration

On the basis of the pleading of the parties, the District Commission for the interest of proper and complete adjudication of this case is going to adopt the following points for consideration:-

1. Whether the complainant is the consumer of the opposite parties or not?
2. Whether this Forum/ Commission has territorial/pecuniary jurisdiction to entertain and try the case?
3. Is there any cause of action for filing this case by the complainant?
4. Whether there is any deficiency of service on the part of the opposite parties?

5. Whether the complainant is entitled to get relief which has been prayed by the complainant in this case or not?

Evidence on record

The complainant filed evidence on affidavit which is nothing but replica of complaint petition and supports the averments of the complainant in the complaint petition and denial of the written version of the opposite party.

The answering opposite party filed evidence on affidavit which transpires the averments of the written version and so it is needless to discuss.

Argument highlighted by the ld. Lawyers of the parties

Complainant filed written notes of argument. As per BNA the evidence on affidavit and written notes of argument of both sides are to be taken into consideration for passing final order.

Argument as advanced by the agent of the complainant heard in full. In course of argument ld. Lawyer of complainant has given emphasis on evidence and document produced by parties.

DECISIONS WITH REASONS

The first three issues/ points of consideration which have been framed on the ground of maintainability and/ or jurisdiction, cause of action and whether complainant is a consumer in the eye of law, are very vital issues and so these three points of consideration are clubbed together and taken up for discussion jointly at first.

Regarding these three points of consideration it is very important to note that the opposite parties even after appearance in this case and after filing written version, have not filed any petition on the ground of nonmaintainability of this case due to the reason best known to them. Under this position this District Commission has passed the order of further hearing of this case. On this background it is also mention worthy that the opposite parties also have not filed any separate petition challenging the maintainability point, jurisdiction point and cause of action issue. The opposite parties in their written version have only pleaded the above noted points. This District Commission after going through the materials of the case record finds that the complainant is a resident of Bandel, Hooghly which is lying within the territorial jurisdiction of this District Commission. Moreover, this complaint case has been filed with a claim of below 20 lakhs and this matter is clearly indicating that this District Commission has also pecuniary jurisdiction to try this case. Thus, the point of jurisdiction which has been alleged by the opposite parties cannot be accepted. Moreover, u/s 11 of the Consumer Protection Act, 1986 this District Commission has jurisdiction to try this case. The opposite parties also have raised the plea of limitation and in the written version it has been pointed out that this case is barred by limitation. But in this connection it is important to note that the provision of 24 A of the Consumer Protection Act, 1986 is very important and according to the provision of Section 24A complaint case can be entertained by the District Commission or State Commission or National Commission even after expiry of 2 years if the complainant satisfies the ld. Commission that he or she has sufficient ground for not filing the case within two years. Moreover in this instant case the cause of action has been continued and thus the above noted plea of the opposite parties

which has been pointed out in the written version is also not acceptable. On close examination of the pleadings of the parties it also transpires that there is cause of action for filing this case by the complainant side against the opposite parties. Moreover after going through the provisions of Section 2 (1) (d) of the Consumer Protection Act, 1986 it appears that this case is maintainable and according to the provision of Section 2 (1) (d) of the Consumer Protection Act, 1986. Complainant is a consumer in the eye of law. It is the settled principle of law that failure of the Banking Company to comply with the contractual obligation to release claim amount in deficiency in service. This legal principle has been laid down by Hon'ble State Commission, Delhi and it is reported in 2022 (2) CPR 13 (Del).

All these factors are clearly depicting that this case is maintainable and complainant is a consumer of the opposite parties and this District Commission has territorial/ pecuniary jurisdiction to entertain and try this case and there is also cause of action for filing this case by the complainant against the opposite parties. Thus, the above noted three points of consideration are decided in favour of the complainant.

The point no. 4 is related with the question as to whether there is any deficiency in the service on the part of the opposite parties or not? The point no. 5 is connected with the question as to whether the complainant is entitled to get any relief in this case or not? These two points of consideration are interlinked and/ or interconnected with each other and for that reason these two points of consideration are clubbed together and taken up for discussion jointly.

For the purpose of deciding the fate of these two points of consideration and for the interest of getting answers of the above noted questions, there is necessity of scanning the evidence on affidavit filed by the parties and there is also necessity making scrutiny of the documents filed by the parties of this case.

On comparative studies of the evidence on affidavit filed by the complainant with the evidence on affidavit filed by the opposite parties and on close compare of the documents filed by both parties it appears that the OP bank authority inspite of getting the cheque issued by the complainant has not deposited the said amount to the account of the son of the complainant but deducted the cheque clearance charges and / or cheque return fees of Rs.177/- for three times and to that effect illogically and unreasonably deducted Rs.767/-. It is also very important to note that the evidence on record is going to depict that the OP bank authority also have not returned the said cheque to the complainant. All these factors are clearly reflecting that there is fault, negligence and deficiency of service on the part of the OP bank authority. In this regard this District Commission shall not be out of mind that due to negligence on the part of the OP bank authority the complainant was compelled to close the account. This matter is also reflecting the negligent act and deficiency of service on the part of the OP bank authority.

A cumulative consideration of the above noted discussion goes to show that the complainant has proved his case in respect of all the points of consideration adopted in this case and for that reason the complainant is entitled to get relief in this case in respect of all the points of considerations.

In the result it is accordingly

ordered

that the complaint case being no. 24 of 2019 be and the same is allowed on contest. No order is passed as to costs.

Opposite party nos. 1 is directed to pay Rs.767/- alongwith compensation of Rs.15000/- to the complainant within 60 days from the date of this order otherwise complainant is given liberty to execute this order as per law.

In the event of nonpayment/ non compliance of the above noted direction the opposite party nos. 1 is also directed to pay and/ or deposit Rs. 5000/- in the Consumer Legal Aid Account of D.C.D.R.C., Hooghly which is to be utilized for the purpose of poor litigant public.

Let a plain copy of this order be supplied free of cost to the parties/their Id. Advocates/Agents on record by hand under proper acknowledgement/ sent by ordinary post for information and necessary action.

The Final Order will be available in the following website www.confonet.nic.in.

[HON'BLE MR. Debasish Bandyopadhyay]
PRESIDENT

[HON'BLE MRS. Babita Choudhuri]
MEMBER