

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, PALAKKAD

Dated this the 5th day of November, 2024

Present : Sri. Vinay Menon V., President
: Smt. Vidya A., Member
: Sri. Krishnankutty N.K., Member

Date of Filing:

27/02/2023

CC/61/2023

Muhammed Basheer K.,
S/o. Late Muhammed,
Kalathil House, Alanallur (PO),
Mannarkkad, Palakkad – 678 601
(By Adv. A.K. Joseph)

- Complainant

Vs

1. The Managing Director,
Axis Bank Ltd.,
Axis House, C2, Wadia International Centre,
Pandurang Bubhakar Marg,
Worli, Mumbai – Maharashtra – 400 025
2. The Manager,
Axis Bank Ltd.,
Mannarkkad Branch, Palakkad – 678 582
(OPs by Adv. M/s. Bindhu G & Aswathy R.)

- Opposite parties

ORDER

By Sri. Vinay Menon V., President

1. Complainant, a business man, had availed financial assistance from the OP bank. For repayment of one of the installments, the complainant could not credit money to his account on the prior day of due date since the prior days were holidays. On the due date even before the start of banking hours complainant had credited the cheque amount by 7 AM i.e. before the banking hours. The OP had submitted the cheque at midnight and got the cheque dishonoured. Since there was dishonour, the OP bank levied bouncing charges of Rs.400/-.

Thereafter the complainant closed the said loan account when the list of documents were handed over to him there was mistake in the number of sale deed that was provided as security.

This complaint is filed by the complainant aggrieved on 2 counts, i.e. charging of Rs.400/- as cheque bounce charges and for providing a list of document with the mistaken number of the document.

2. OP bank filed version denying the complaint pleadings stating that the cheque



presentation date was on 9 and the OP bank had presented the cheque early in the morning of owing to the automated status of the banking systems. The complainant had ample opportunity and was aware of the functioning of the banking system. With regard to the mistaken no. of document the OP pleaded that there was a mistake on the part of bank which was corrected after due verification. They sought for dismissal of the complaint.

3. Pleadings considered, following issues were framed:

1. Whether there was any illegal collection of charges from the complainant by the OP bank?
2. Whether the error in number of documents tantamount to deficiency in service in the facts and circumstances of the case?
3. Whether there is any deficiency in service or unfair trade practice on the part of OPs?
4. Whether the complainants are entitled to any of the reliefs sought for?
5. Any other reliefs?

4. (i) Documentary evidence of complainant comprised of proof affidavit and Exhibits

A1 to A17.

(ii) Marking of Exts.A1 & A4 are objected to on the ground they were photocopies. Ext.A5 is objected to as it was an email addressed to a 3rd party without a S.65(B) certification. Ext.A6 & 7 are objected to as they are unaccompanied by S65(B) certification.

O.P. has no case that these documents were forged or concocted. That, coupled with the fact that this Commission is not bound by the strait jackets of BSA or IEA, we overlook the objection.

(iii) Ext.A8 is objected to as it is a contract between complainant and a third party and the same can be marked only through the person who executed it and its contents cannot be relied upon.

On a perusal of Ext. A8, we find that this is an agreement between the complainant and a third party. This document is not connected with the facts as revealed by the pleadings. Hence this document will not be relied on.

(iv) Ext.A10 is objected to as it is a WhatsApp screen shot without any particulars.

We find that this objection is valid. The said document does not reveal the identity of the issuer or the recipient. This document is rejected.

- (v) Ext.A11, 12, 14 and 16 are printouts of photograph and scanned documents without any authentication and hence marking is objected.

The afore said objection apart, the O.P. has no objection that the said documents are forged or that they do not pertain to the transaction which is the subject matter of the dispute herein. Hence objection is overruled.

- (vi) Ext.A17 is objected to as it is a document produced by OP and can be marked only in Ext.B series.

We do not find any defect in the conduct of the complainant, since whoever marks the document, the same can be taken up for perusal and appreciation. Such a marking will not in any manner affect the case of the O.P. adversely.

- (vii) OPs filed joint proof affidavit. Their exhibits was already marked as Ext.A17.

Issue No.1

5. Per pleadings of the complainant, he had availed a loan of Rs.2,50,73,484/- from the OP bank. EMI payable was Rs.2,67,983/- payable on 10th of every English calendar day by withdrawal from complainant's account. During the month of July, 2022, complainant could not deposit his account with the said amount since 8th and 9th of July were holidays. On 10th of July, 2022, even before starting the banking hours the complainant arranged for funds in his account to facilitate payment of loan account. But, in order to harass and vex the complainant the OP had presented the cheque for encashment by the midnight of 9/7/2022. The cheque obviously got dishonoured and the OP penalized the complainant to a tune of Rs.400/-. To the said pleading the OP filed version stating that the complainant was aware that due dates fell on 10th of every month and had agreed to the said terms and condition. The collection of EMI accounts is an automated process and are done at the stipulated time.
6. Facts are undisputed.
7. We went through the calendar of 2022. July 8th is a Friday. 9th is a 2nd Saturday &

Bakrid. 10th is Sunday. The Govt. calendar does not show 8th to be a holiday. Hence the contention of the complainant that 8th was a holiday cannot be agreed upon.

8. The next question that is to be answered is whether presenting of a cheque by the OP at the early hours of a day is legal. O.P. has not adduced any documents evidencing the plea that the complainant had agreed to have his account debited at the early hours of morning. Therefore, we need to resort to statutory provisions.

Section 65 of the Negotiable Instruments Act, 1881, dealing with presentment of a cheque is reproduced herein below:

S.65: Hours of Presentment – *Presentment for payment must be made during the usual hours of business and if at banker's, within banking hours.*

We can see that the Act contemplates that presentment of a cheque shall either be during the hours of business or within banking hours. The OP has not stated what their business or banking hours are. We reasonably presume the same to be from 9.30 AM to 5PM.

9. The complainant had deposited the EMI instalment amount even before the banking hours. But admittedly, the cheque was presented for encashment by the O.P. bank at the beginning of the day, immediately after midnight. O.P.s attribute automated processing to be responsible for such presentation. A subsequent cheque was issued in place of the dishonoured one on 14/7/2022 which was honoured on 15/7/2022.
10. The question is not whether a subsequent cheque was issued or honoured. The OP has not disputed the case of the complainant that the complainant had credited his account with the EMI amount on the due date itself. So, the only question that needs answer is whether deposit of cheque at the beginning of the day, immediately after midnight was legal or not.
11. As per law stated supra, a cheque has to be presented during business hours or banking hours. It goes without saying that cheque was presented for encashment before business hours or banking hours. Thus, the OP bank has acted in contravention to the provisions of law. Even if they are at liberty to present the cheque at any time, 10th being the due date, the complainant is also at liberty to



deposit the aforesaid amount before the office hours.

In the absence of any contra evidence, we can only hold that there is no valid presentation as contemplated under law. We are also not able to subscribe to the view that the automated process is to be taken into account.

If the opposite party bank has programmed their system to act in contravention of statutory provisions, then the automated process is not to be blamed. The responsibility/culpability lies entirely on the bank that authorized, sanctioned and programmed the automation system that facilitated presentation of cheque before banking/business hours in contravention to legal provisions. Nothing prevented the O.P. bank from programming the automated system from presenting the cheque at the end of the banking hours of the due date, granting the customers time till the expiration of legally sanctioned hours.

Indubitably, had the OP deposited the cheque at the end of the business hours or banking hours, it would have been honoured on the due date itself.

12. We hold that the OP has acted in violation of law by presenting cheque for encashment before business hours, getting the cheque dishonoured and levying bouncing charges.

Issue No.2

13. The 2nd dispute is that the OPs provided the complainant with a list of documents showing that Sale Deed bearing No.68/2003 was mistakenly shown as Sale Deed bearing No.62/2003 and the OP took time to have the error corrected.
14. The list of documents was handed over to the complainant on 29th July,2022 which was prior to closure of the loan account. Ext.A12 deposit receipt dated 10th August,2022 evidencing final payment for closing the loan account. Even though it can be seen that a couple of communications were made between the complainant and OPs with regard to change in the number of documents, there is nothing in documents to show that there is inordinate delay. Ext.A4 is endorsed by the OP bank on 8th September,2022, showing the correction in the number of sale deed(Date is taken as 8th September,2022 eventhough it is seen written as 8/9/2022 since the communications of the O.P. bank are seen dated in the

Month/Day/Year format).

15. It is true that subsequent to closure of loan account, there was a delay in correcting the number of sale deed which was offered as security. But this is only a clerical mistake, which was corrected by the O.P. bank, albeit with a minor delay. There is no case for the complainant that such an error has led to any losses or damage or such a delay was of vital in nature so as to render any material grievance to the complainant.
16. Consequently, we hold that the causing of a mistake and its delayed correction, in the facts and circumstances of the case, is not a deficiency in service.

Issue No.3

17. Based on the discussions in issues 1 & 2 we hold that there is deficiency in service on the part of OP bank in the collection of charges for bouncing of cheque.
18. There is no deficiency in service on the part of O.P. in wrongly recording the number of documents or major delay in correction of the said mistake.

Issue No.4

19. The reliefs that the complainant had sought for are for direction to pay for Rs.10,00,000/- as compensation and for cost of the entire proceedings and for other incidental reliefs.
20. In the facts and circumstances of the case we find a compensation of Rs.10 lakhs to be exorbitant. But the complainant is entitled to a much-reduced compensation and cost.

Issue No.5

21. Based on the discussions and findings above, we allow the complaint in part on the following terms:
 1. There is illegality on the part of OP 2 bank in presenting the cheque before the
business / banking hours.
 2. The 2nd OP is directed to refund Rs.400/- charged as penalty with interest @10% thereon from the date of charging till the date of repayment.
 3. The 2nd OP is directed to pay a compensation of Rs.25,000/- for illegally charging
bouncing charges.
 4. The 2nd OP is directed to pay cost of Rs.10,000/- to the complainant.

5. 2nd O.P. shall comply with the aforesaid order within 45 days of receipt of a copy of this Order failing which the 2nd OP shall pay a solatium of Rs.1,000/- per month or part thereof to the complainant.

Pronounced in open court on this the 5th day of November, 2024.

Sd/-
Vinay Menon V
President
Sd/-
Vidya.A
Member
Sd/-
Krishnankutty N.K.
Member

APPENDIX

Exhibits marked on the side of the complainant

- Ext.A1 - Copy of lawyers notice dated 30/9/2022
Ext.A2 - Original communication from department of post
Ext.A3 - Copy of communication to Superintendent of HPO
Ext.A4 - Copy of list of document dated 29/7/2022
Ext.A5 - Original e mail print out dated 9/8/2022
Ext.A6 - Original e mail print out dated 23/8/2022 from complainant to OP issued at 5.42pm
Ext.A7 - Original e mail print out dated 23/8/2022 from complainant to OP issued at 4.59pm
Ext.A8 - Original sales contract dated 8/8/2022
Ext.A9 - Original list of document dated 29/7/2022
Ext.A10 - Whatsapp printout
Ext.A11 - Print out of photograph of cheque dated 8/8/2022
Ext.A12 - Print out of photograph of deposit receipt
Ext.A13 - Same as Ext.A9
Ext.A14 - Copy of foreclosure letter
Ext.A15 - Original no dues certificate dated 20/8/2022
Ext.A16 - Print out of scanned letter dated 10/8/2022
Ext.A17 - True copy of account statement dated 14/3/2023

Exhibits marked on the side of the opposite party: Nil

Court Exhibit: Nil

Third party documents: Nil

Witness examined on the side of the complainant: Nil



Witness examined on the side of the opposite party: Nil

Court Witness: Nil

NB : Parties are directed to take back all extra set of documents submitted in the proceedings in accordance with Regulation 20(5) of the Consumer Protection (Consumer Commission Procedure) Regulations, 2020 failing which they will be weeded out.

Forwarded/By Order,

Assistant Registrar

Fair copy on : 05/11/2024
Despatched on:

