

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

Complaint Case No. CC/75/2019
(Date of Filing : 01 Jul 2019)

1. Manika Das
 Naldanga, chinsurah, 712123
 Hooghly
 West Bengal

2. Krishna Das
 Naldanga, Hooghly, 712123
 Hooghly
 West Bengal

.....Complainant(s)

Versus

1. The Branch Manager, Uco Bank
 Bandel, 712123
 Hooghly
 West Bengal

2. Deputy Zonal Manager, Uttarpa
 Uttarpa, 712258
 Hooghly
 West Bengal

3. Zonal Manager, Uttarpa
 Uttarpa, 712258
 Hooghly
 West Bengal

4. Chief Manager, Uco Bank
 10,BTM Sarani, Brabourne Road, 700001
 kolkata
 West Bengal

.....Opp.Party(s)

BEFORE:

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

PRESENT:

Dated : 24 May 2024

Final Order / Judgement

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

Case No. CC/75/2019.

Date of filing: 01/07/2019.

Date of Final Order: 24/05/2024.

1. Manika Das,

d/o Late Dharendra Nath Patra,

2. Krishna Das,

w/o Swapan Kumar Karmakar,

both are resident of Dakshin Naldanga,

P.O. South Naldanga, P.S. Chinsurah,

Dist. Hooghly, PIN. 712123.....complainants

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1. The Branch Manager,

UCO Bank, Bandel Branch,

Hooghly, P.S. Chinsurah, PIN. 712123.

2. Deputy Zonal Manager,

UCO bank, Hooghly,

Zonal office, 21 G.T. Road, 2nd floor,

P.O. Uttarpara, Dist. Hooghly, PIN. 712258.

3. Zonal Manager,

UCO bank, Hooghly,

Zonal office, 21, New G.T. Road,

2.

4. Chief Manager,

UCO bank, office at-

10, B.T.M. Sarani, Brabourne Road, Kolkata- 700001.

.....opposite parties

Before: President, Shri Debasish Bandyopadhyay.

Member, Debasis Bhattacharya.

Member, Babita Chaudhuri.

FINAL ORDER/JUDGEMENT

Presented by:-

Shri Debasish Bandyopadhyay., President.

Brief fact of this case:- This case has been filed U/s. 12 of the Consumer Protection Act, 1986 by the complainant stating that the petitioners are account holders under UCO Bank, Bandel branch in respect of S.B account no. 006651 presently being no.02200100002655. The petitioners were also holder of a locker maintained with UCO bank Bandel branch being no.D-26. At the time of opening of the locker aforementioned the petitioners purchased a certificate under KUBER YOJANA Deposit scheme on 2.12.2002 being 1863/02-03/ 769285 for an amount of Rs.25000/- which was kept as security against the aforesaid locker being no.D-26. The maturity of the said aforementioned certificate was on 2.12.2003 i.e. 12 months from the date of purchase. Due to inconvenience the petitioner on 22.4.2013 by a written communication expressed to the Branch Manager, UCO Bank, Bandel branch, that they are not in a position to continue with the locker being no.D-26 and requested the Branch Manager to make the necessary arrangement with immediate effect which was duly acknowledged by official seal of the bank. It was mentioned here that the petitioner at the time of withdrawal of the locker facility did not encash or withdraw or take back the amount covered by the certificate of KUBER YOJANA DEPOSIT SCHEME being no.1863/02-03 dated 2.12.2002 after its maturity and the same was lying till date with the said bank i.e., UCO Bank, Bandel Branch. After withdrawal of the said locker facility the petitioner on several occasion approached the branch Manager, UCO Bank, Bandel branch to release back to them the entire amount covered by the aforesaid mentioned certificate under KUBER YOJANA DEPOSIT SCHEME after maturity but the branch Manager on the pretext of this and that bullied the petitioners and the petitioners got frustrated.

Thereafter on 6.1.2018 the petitioners getting no other alternative communicated the entire matter to the Branch Manager, UCO Bank, Bandel branch in writing and the same was acknowledged by the bank under proper seal. On 18.1.2018 the Chief Manager, UCO Bank communicated to the petitioner no.2 in writing and stated that they have failed to detect the presents status of the said KYC in question and also stated that they are still in job but not in a position to through further life at this juncture. Thereafter on 9.3.2018 the complainant again made written communication to the Zonal Manager stating that he is in dark about the position of the certificate sought for the information and immediate action, so that the matured value may be returned. The complainant also forwarded the copy of the letter to Branch Manager, UCO Bank, Bandel Branch for necessary action. The complainant did not receive any communication from the Branch Manager, Chief Manager, Zonal Manager and for the reason on 16.4.2018 made

application stating all facts before the banking ombudsman. That as per sl. No.7 of the prescribed format of application the complainant had enclosed a details complain of irregularities in respect of the F.D. scheme under Kuber Yojana Deposit scheme which was duly acknowledged by the authority under proper seal.

Astonishingly enough after silence of almost 7 months on 4.1.2018 at 16:13 hrs. the banking ombudsman forwarded on e-mail giving details workout on their part which itself shall speak and in the e-mail in para no. 3 it has stated by the banking ombudsman that they has asked the UCO bank to submit the documentary proof of discharge of F.D. proceeds on maturity along with interest to the complainant and on 29.6.2018 vide e-mail UCO bank informed that the F.D. proceeds has already been paid on 27.2.2004 and the bank has no document as it is 14 years old and having held the e-mail as authenticated proof of payment to the complainant the banking ombudsman closed the case and under para no. 4 stated that the complaint is not constrained from approaching any other legal forum or authority in accordance with law for redressal of the grievances.

There has been continuous deficiency of service on the part of the bank as the complaint is a valid consumer of the bank as account was maintained in their name and since after valid maturity of the deposit certificate till date the complaint has not got the maturity valued returned with intent deposit several correspondences and the op no. 1 has falsely stated that payment was made to the complaint on 27.2.2004 vide e-mail dt. 29.6.2018 to the banking ombudsman and there is no proof of payment also and it is apparent from the e-mail dt. 4.1.2019 from banking ombudsman that they are in connivance with the UCO bank and are trying of shield the latches and faults of op no. 1 and is also biased because they have only admitted that on 29.6.2018 they got the e-mail from op no. 1 stating of making payment to the complaint on 27.4.2004 so why they had till 4.1.2019 waited to inform the complaint regarding the same and the op no. 1 as the banking ombudsman is stating false facts and trying to deceive the complaint because is lying with the complaint and the complaint has not received the maturity amount with interest.

Complainant filed the complaint petition praying direction upon the opposite parties to immediate disbursement of the matured value along with interest occurred till date in respect of Deposit Certificate of Kuber Yojana Deposit scheme bearing no. 769285 dt. 4.12.2002 and to pay a sum of Rs. 50,000/- for harassment and to pay the litigation cost and to give any other relief(s) as deem fit and proper.

Defense Case:- The opposite party No. 1 contested the case by filing written version denying inter-alia all the material allegation as leveled against them and stated that the petitioners were account holder and they were a locker holder once upon a time which was closed by them in the year 2013 maintaining all due formalities by the op no. 1 and no question as regard to the alleged service arose in between 2013 to 2018 when the petitioners sent legal notice long after expiry of two years. The notice was sent with a view to create a cause of action of the instant case so as to establish the fact that the instant case has been filed within two years from the date of cause of action but the facts remains that the petitioners failed to establish by cogent evidence or by any supportive documents to show that any communications stating the grievance has been filed within two years from the date of closing of the locker account as alleged. However, the provisions as laid down in the consumer Protection Act does not provide any opportunity to file a petition of complaint before Forum showing vague and baseless cause of action.

The FDR as alleged by the petitioner was matured on 2.12.2003 and the petitioners gave an application on 6.1.2018 firstly to the op no. 1 after 15 years of the maturity date. Even if the letter was given on 6.1.2018 it is near about 5 years after closing of the locker account on 22.4.2013 and that actually the op no. 1 at several point of time informed the petitioners by a written communication that the FDR receipt no. 1863/2002-2003 as alleged as closed on 27.2.2004.

The op nos. 2 and 4 are mis joinder of necessary parties as the above authority have no connection to that of the closing of the account or maturity of the fixed deposit as it was lying with the op no. 1 till 27.2.2004.

After appearing in the said case the op no. 1 filed a petition for directing the petitioners for supplying the documents which has been replied upon by them to substantiate their case and the Id. Forum directed to supply the copy of all documents so relied upon the op no. 1 but till date no documents have been served by them and therefore failing to peruse the documents relied upon the op no. 1 is not in a position to file the proper Written version stating the facts properly. However, the op no. 1 prays for a leave to file an additional Written version if any after perusing the documents and to reserve their rights without any prejudice.

After getting all the documents from the petitioners the op no. 1 filed additional written version and here the op no. 1 also stated that the petitioners vide letter dt. 22.4.2013 asked the op no. 1 for withdrawal of the locker facilities being no. D-26 but never asked for the return of the fixed deposit kept as caution money as the petitioners are very much aware of the fact that the FDR no. 1863/2002 was closed on 27.2.2004 and the Data Archival and Retrive system also shows that the FDR was matured on 27.2.2004 and the op no. 1 also informed the same to the banking ombudsman vide letter dt. 8.6.2018 and there is no continuous deficiency in service on the part of the op no. 1 toward the petitioners as alleged as the account (FD 1863/2002) of the petitioners does not exist as it was closed on 27.2.2004. So, the instant complaint case should be dismissed.

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 parties.

The answering opposite party no. 1 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 and opposite party no. 1 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 agents of the complainant and the opposite party no. 1 heard in full. In course of argument ld. Lawyers of both sides have 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 Chinsurah, Hooghly and OP No.1 is carrying on business at Bandel, Hooghly which are 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 24A 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, 2019 it appears that this case is maintainable and according to the provision of Section 2 (1)(d) of the Consumer Protection Act, 2019. Complainant is a consumer in the eye of law. It is the settled principle of law that failure of the

Bank Authority 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 complainant by way of submitting evidence on affidavit and supported documents has proved the fact that the fixed deposit (KUBER YOJANA DEPOSIT SCHEME) started on 2.12.2002 being no.1863/02-03/769285 for an amount of Rs.25000/- has not been paid to the complainants although the said fixed deposit certificate was kept as security of Locker no.D-26 of the complainants which was lying on OP-1 bank. In this regard it is important to note that the OP in respect of their evidence on affidavit has failed to produce any documents to show that the matured value of the above noted fixed deposit scheme was credited in the account of the complainants or it has been paid to the complainants. In this regard it is very surprising to note that the OP Bank Authority alongwith their brief notes of argument has filed two documents showing that the above noted fixed deposit scheme has been disbursed but no document has been filed by the OP bank authority to show that the matured value of the said fixed deposit scheme has been paid to the complainants. It is also evident from the case record that the OP-1 has filed the said documents on 6 December 2023 but in course of trial those documents have neither been produced nor been proved by the OP bank authority. This matter is clearly indicating that there is a continuous deficiency of service on the part of the OPs. There is no explanation on the part of the OP bank authority as to why those documents have not been produced in this case in course of trial. At the argument stage the OP bank authority tried to impress upon the District Commission that those documents have been collected from 'Archieve' which is situated at Bangalore. However, this District Commission cannot be out of mind that at the relevant point of time manual register relating to maintenance of such documents have been maintained by the OP bank authority but no such Manual Register has neither been produced before this District Commission in connection with this case nor been proved. This matter is also clearly reflecting that there is negligence 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 complainants have proved the case in respect of all the points of consideration adopted in this case and for that reason the complainants are entitled to get relief in this case in respect of all the points of consideration.

In the result it is accordingly

ordered

that the complaint case being no. 75 of 2019 be and the same is allowed on contest but in part.

Opposite party nos. 1 to 4 are directed to pay the amount of fixed deposit scheme which is stated above alongwith interest and to pay compensation of Rs.25000/- and litigation cost of Rs.5000/- to the complainants 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 to 4 are 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**

**[HON'BLE MR. Debasis Bhattacharya]
MEMBER**