

IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution : 31.10.2019
Date of Reserving the order : 04.11.2024
Date of Decision : 10.09.2025

FIRST APPEAL NO.- FA/545/2019

IN THE MATTER OF

Naushad Ahmed
C-14/13, Gali no.8,
Kabir Singh, Delhi

(Through: Mr Zahid Hanief, Advocate)

.....Appellant

VERSUS

1. Corporation Bank & Ors.
Circle Office, Hindustan Times House Building,
K.G. Marg, Connaught Place,
New Delhi-110001
2. Corporation Bank & Ors.
Circle Office, Hindustan Times House Building,
K.G. Marg, Connaught Place,
New Delhi-110001 (Through General Manager)
3. Manger, Branch Office,
Corporation Bank, Kabir Nagar
C-5, North Chhajjpur,

Ramodevi Building, 110, Feet Road,
Chhajjupur, Delhi-110094.

(Through: Ms Indu Kaul, Advocate)

.....Respondents

CORAM:

HON'BLE MS. BIMLA KUMARI, PRESIDING MEMBER (FEMALE)

Present: None for the appellatant
 None for the respondent

HON'BLE BIMLA KUMARI, PRESIDING MEMBER (FEMALE)

ORDER

1. By this judgement, I shall dispose of the appeal filed by the appellatant against the impugned order date 13th, September 2019 passed by Consumer Dispute Redressal Forum-VI, M-Block, First Floor, Vikas Bhawan, New Delhi, in a complaint case no.1255/2012.

2. Brief facts of the case as per complaint are that the complainant was having a saving account no.207700101518296, with the opposite parties. On 26th September 2012, one Sh. Mehtab called the complainant on mobile and lured him that he would facilitate him in availing the home loan. Subsequently, a meeting was fixed on 28.09.2012 between the complainant and Mehtab where Mehtab sought documents from the complainant for processing the home loan. On the continuous persuasion of Mehtab, the

complainant delivered two blank cancelled cheques, bearing no. 398666 and 398667 to him.

3. It was the case of the complainant that on 1st October 2012, he got information from one Mr. Hakim Athar that the cheque given to him was dishonoured on account of insufficient fund. The complainant immediately rushed to opposite parties and inquired about the dishonoured cheque. He was informed by the opposite parties that an amount of Rs. 4,80,000/- was withdrawn by one Sh Ajith Singh. The complainant lodged a complaint at P. S Welcome Colony, North East, Delhi and FIR no. 342 dated 18th October 2012 was registered. The complainant also lodged a complaint with Commissioner of Police as well as DCP, North East, but all in vain. It was the further case of the complainant that due to deficiency in service on the part of the opposite parties, the cheques in question were misused and tampered and the accused succeeded in encashing a sum of ₹4,80,000/- in his favour.

4. The complaint was contested by all the opposite parties by filing the written statement, wherein the opposite party prayed for dismissal of the complaint by submitting that the complainant did not disclose in his complaint as to whether he signed blank cheque or the cheque was in the name of payee's account and also failed to disclose the amount in words and figures before giving the cheque to the person. The opposite parties also sought some information from the complainant, but complainant did not respond to the same. There was no entry in the cheque which showed that the cheque was tempered/defaced/de-filled. The complainant himself had failed to take reasonable care, due diligence and handed over the cheque negligently to

a stranger for which opposite parties cannot be held liable. The opposite parties prayed that the complaint is liable to be dismissed.

5. Both parties filed their respective evidence before the District Forum

6. After hearing arguments from counsel for the parties, the Ld. District Forum passed the following order:

7. Perusal of the present complaint shows that the case involves the complicated question of facts on various issues such as (i) whether the blank or filled cheque was issued to the stranger by the complainant as alleged in the complaint. (ii) whether the cheque in question was tampered/defaced/defilled by the official of the OP or some other person in connivance with the official of the OP. All the issues referred herein requires elaborate evidence which cannot be dealt in summary proceedings by the District Fora.

8. It is apparent that the complainant is asking for the relief which require lengthy evidence and cross-examination. The cross-examination of witness is life blood of legal system. It is only way a Judge can decide, whom to trust. An answer during the cross-examination may wreck one'case. The court duty is to get to the bottom of the matter. The Civil Court not being a summary trial court can easily go the root of every problem. Admittedly, the Consumer Forum deals with the complaint in a summary proceeding, where cases involve a great deal of evidence, the same cannot be adjudicated upon by the Forum & for which the party concerned has to approach

the civil court where elaborate procedure including recording of evidence is followed.

9. In case titled **Punjab Lloyd Ltd. Vs Corporate Risks India Pvt. Ltd.** (2009) 2 SCC 301, it was held that the complicated question of law should be decided by the regular court. It further held that the decisive test is not the complicated nature of question of fact and law arising for decision. In another case titled **LIC & Ors. VS Surinder Kaur & Ors.** Civil Appeal No.5334 or 2006 (Arising out of SLP (c) No.17866 of 2005) decided by Hon'ble Supreme Court of India on 01.12,2006, it has been held that complex question of facts cannot be decided by the consumer forum under the Consumer Protection Act and such arises can be subject matter of regular Civil Court.

10. In view of the above, we are inclined to hold that that the present complaint involves complicated questions of facts as well as law. The issues raised in the present complaint required elaborate oral and documentary evidence and the examination of the witnesses for the proper disposal of the matter. The proper forum for adjudication of the present complaint is Civil Court. Consumer Protection Act being the special Act where only summary proceedings are taken up and as such the adjudication of the present complaint is beyond the scope and jurisdiction of this Hon'ble Forum, hence the present complaint is dismissed with liberty to the complainant to approach the Civil Court as per law. So far as the question of limitation is concerned, complainant can take advantage of the

*decision rendered/in **Laxmi Engineering Works Vs. P.S.G. Industrial Institution 1995 (3) SCC 583.***

A copy of this order each be sent to both parties free of cost by post.

7. It is the case of the appellant in appeal that the Hon'ble District Forum has failed to appreciate that the respondent didn't take steps qua the circulars, notifications, directions and guidelines issued by RBI from time-to-time regarding the fraud and lodging of F.I.R., etc, which clearly indicates that there was apparent connivance and negligence on the part of the respondent bank. The Hon'ble District Forum has failed to consider that the cheque was a self-cheque i.e. in favour of the appellant and the same ought to have been encashed after due care but the respondents negligently released the amount in favour of some unknown person and did not intimate the appellant prior to the honour of the cheque. The Hon'ble District Forum also failed to consider that the amount in the cheque was not filled by the appellant and the appellant cannot write English in such fluency and the writing on the cheque was not of the appellant. The cheque was honoured by the respondents without due care and even a single authenticated document was not demanded from the person in whose favour the cheque was honored. The Hon'ble District Forum has failed to consider the photograph and video recording submitted by him. The District Forum failed to appreciate that after receipt of the complaint of cheque fraud, the respondent bank neither reported the matter to RBI nor lodged any F.I.R. which indicates that the respondent bank had apparently failed to take reasonable care and was in connivance with such mischievous person. The Hon'ble District Forum has erred in

concluding that the relief sought by the appellant required lengthy evidence and cross-examination. The District Forum did not exercise the power as prescribed under the Consumer Protection Act 1986 which includes the power of requisitioning the report from any laboratory, issuing of any commission for the examination of witnesses. Keeping the petition pending for 7 years, and after that disposing of the petition by directing the appellant to approach the Civil Court is unjustifiable. The Consumer Protection Act is a well-equipped Act but the District Forum has completely failed to exercise the jurisdiction vested in it under the Consumer Protection Act. The Ld. District Forum failed to decide the matter on the basis of 'standard of care', 'due diligence', 'reasonable care'. The Ld. District Forum has failed to consider the judgement of Hon'ble Apex Court on the point of reasonable care and negligence and other circulars, notification, guidelines, directions passed from time-to-time to prevent cheque fraud. The appellant has prayed that the impugned order dated 13.09.2019 passed by District Forum be set aside and the appeal filed by him be allowed.

8. The respondents have filed reply to the appeal, wherein they have prayed for dismissal of the appeal with heavy cost by submitting that Ld. District Forum has rightly held that the matter required detailed evidence to prove the claim of the appellant and rightly disposed of the matter with direction to the Appellant to approach the Civil Court. The Appellant did not approach Civil Court in order to avoid the payment of court fees and filed the present appeal, which is an abuse of the process of the consumer forum. The appellant has not approached the commission with clean hands. The appeal is liable to be dismissed in limine. The complainant did not disclose in his complaint

as to whether he signed the black cheque or it was in the payee's name and what was the amount in words and figure which were filled before giving the cheque. The respondents sought information in that regard from the appellant but for the reasons best known to him he did not answer to the queries till date. The complainant has alleged in his complaint that he had given the cancelled cheque to some stranger but the copy of cheque filed by the appellant with the complaint does not show that the cheque was cancelled. Further, the appellant has also alleged that the cheque was defaced/tampered but there was no such entry in the cheque. The investigation by police of Welcome Colony in FIR No.342/12 is being conducted upon the complaint of appellant and after conclusion of investigation veracity and truthfulness of allegations made by appellant could be found out. The complainant has failed to produce any document or information regarding the unknown persons and the company to whom he had handed over a duly signed cheque and negligently handed over the cheque to a stranger. There is every possibility that the appellant might be trying his luck by fabricating, false and frivolous story in order to have a wrongful gain and wrongful loss to the respondents. The respondents have handed over the original cheque no.398666 to Welcome Police Station on 05.11.2012. Further, vide letter dated 21.01.2013 Vigilance Division of Corporation Bank, now known as Union Bank of India, had written to the Branch Manager of Kabir Nagar Branch that the said transaction did not show any fraudulent connotations and thus the case was closed.

9. The appellant filed the written synopsis.

10. However, the respondent did not file written synopsis despite several opportunities. Therefore, the right of the respondent to file written synopsis was closed on 17.09.2024.

11. I heard arguments from counsel for the appellant and gone through the material on record.

12. The only question for consideration is the appeal whether there is any illegality or material irregularity in the impugned order passed by District Form.

13. To deal with this issue, I would like to refer the judgment of Hon'ble Supreme Court in **Amar Jwala Paper Mills (India) And Another vs. State Bank of India in Civil appeal no.6277 of 1997 decided on February 19, 1998** wherein it was held as under:

Admittedly, all the evidence, oral and documentary, that both sides had to lead was led before the Commission and that concluding arguments were in progress when the impugned order was passed. It cannot be that the complexity of the matter was only discovered at the stage of the concluding arguments. Relegating a complainant four years after the filing of the complaint to a civil suit might mean that the complainant has no remedy at all because limitation would have run against him.

It was further held that ordinarily, the Supreme Court would be reluctant to interfere with an order of the Commission that decides at an initial stage of a complaint that complicated questions of fact and law arise and that, therefore, the

complainant must go before a civil court, one cannot be oblivious of the fact that in this case four years have passed and all the evidence has already been led by both sides before the Commission. In the circumstances, the Commission must itself proceed to hear and decide the complaint.

14. Now coming to the facts of the present case, it is pertinent to mention that the complaint was filed by the appellant before the District Forum in the year 2012. The complaint was disposed of by the District Forum after a period of 7 years i.e. on 13th, September 2019. It is further significant to note that the complainant as well as the opposite parties filed the evidence before the District Forum, as well as the arguments. It is pertinent to mention that as per Section 13 (4) of the Consumer Protection Act, 1986 the District Forum was having the same powers, which are vested in a Civil Court under the Code of Civil Procedure 1908 while trying a suit.

15. The section 13(4) of the Consumer Protection Act are reproduced herein for ready reference: -

(4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 (5 of 190s) while trying a suit in respect of the following matters, namely-

i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath,

(ii) the discovery and production of any document or other material object producible as evidence

(iii) the reception of evidence on affidavits,

(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source,

(v) issuing of any commission for the examination of any witness, and

(vi) any other matter which may be prescribed.

16. Since, the complainant and the opposite parties have completed their pleadings before the District Forum and filed their respective evidence and the District Forum was competent to exercise power of a Civil Court thus in view of the provisions contained in Section 13 (4) of Consumer Protection Act, 1986 and the settled law discussed above, I am the considered view that District Forum was not right to hold that the complaint was beyond the scope of jurisdiction of the District Forum and the complaint was liable to be dismissed with liberty to the complainant to approach the Civil Court.

17. In view of the above discussion, the matter is remanded back to District Forum to decide the matter on merits on the basis of material available on record and after hearing the parties with directions to dispose of the matter as expeditiously as possible as the complaint is pertaining to year 2012.

18. Accordingly, the impugned order dated 13th, September 2019 passed by Ld. District Forum is hereby set aside.

19. The appeal filed by the appellant is allowed.

20. However, in the facts and circumstances of the case the parties shall bear their own costs.

21. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.

22. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986.

23. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.

24. Appeal file be consigned to record room along with a copy of this Judgment.

25. Trial court record, if any, be sent back along with copy of this Judgment.

(BIMLA KUMARI)
PRESIDING MEMBER (FEMALE)

Pronounced on 10.09.2025