

**IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL
COMMISSION**

Date of Institution: 15.03.2024

Date of Hearing: 27.11.2025

Date of Decision: 24.12.2025

FIRST APPEAL NO. 191/2024

IN THE MATTER OF

KOTAK MAHINDRA BANK LIMITED,
REGISTERED OFFICE AT: GROUND FLOOR,
C-78, G/F MALVIYA NAGAR,
NEW DELHI.

(Through: Mr. Rajeev Kumar Ranjan, Advocate)

...Appellant

VERSUS

MRS. SARMILA SHARMA,
W/O MR. VINOD SHARMA,
R/O HOUSE NO. 182/L,
SHARMA HOUSE GALI NO. 2,
GURUDWARA WALI GALI,
AYA NAGAR EXTN. PHASE NO. 6,
DERA MANDI ARJUNGARH,
SOUTH DELHI-110047.

(Through: Mrs. Sarmila Sharma, Respondent)

...Respondent

CORAM:**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)****HON'BLE MS. BIMLA KUMARI, MEMBER (FEMALE)**

Present: Mr. Rajeev Kumar Ranjan, Counsel for the Appellant, E-mail: ranjan.and.company@gmail.com.
None for the Respondent.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT**JUDGMENT**

1. The facts of the case as per the District Commission record are as under:

"1. Briefly put, complainant's case is that the complainant took a loan of Rs.77,000/- for the purpose of building their own house, from Kotak Mahindra Bank (OP) by mortgaging her 24 Karat jewellery worth Rs.2,00,000/- on 29.02.2022. It is stated that complainant paid sum of Rs.29,097.59/- to OP from 15.03.2020 to 15.01.2022.

2. It is next stated that complainant received a letter dated 27.10.2021 wherein it was informed that if the complainant does not pay interest of Rs.3,260/- then the mortgaged jewellery will either be sold or auctioned. On the same date i.e 27.10.2021, complainant paid the interest amount without any delay. However, it is stated that OP with malafide intention sold the jewellery on 30.03.2022 and it is only on 26.07.2022 that the said fact came to the knowledge of the complainant.

3. Aggrieved by the circumstances above, complainant approached this Commission for directions to OP to refund Rs.2,50,000/- which is the suffered loss of the complainant; for directions to OP to pay compensation to the tune of Rs.10,00,000/- for harassment, pain and physical agony; to award interest @18% on refund and compensation and Rs.55,000/- towards the litigation costs.

4. None appeared on behalf of OP after collecting the complaint copy and right to file reply of OP was closed on 23.03.2023 as the same was not filed within the stipulated period. Evidence has been filed on behalf of the complainant. Submissions made are heard. Material placed on record is perused."

2. The District Commission after taking into consideration the material available on record passed the judgment dated **06.11.2023**, whereby it held as under:

“5. Complainant in support of her case has filed the sanctioned letter alongwith the appraisal certificate and statement of account of the complainant. On perusal of the documents, it is confirmed that credit facility for an amount of Rs.77,000/- was given to the complainant vide agreement letter dated 29.02.2020. Maturity period of the said loan account was 31.08.2023. The appraisal certificate of OP appended at Page no.13 of the complainant is reproduced as under;

APPRAISAL CERTIFICATE								
SR No	DETAILS OF GOLD	NO OF ITEMS	GROSS WT	STONE/OTHER DEDUCTION WT.	NET WT	FINENESS (KARAT)	VALUE	REMARKS
1	NECKLACE	1	25.00	0.30	24.70	20	72,977.27	
2	STUDS	3	3.40	0.10	3.30	19	9,262.50	
3	RING	1	2.30	0.10	2.20	18	5,850.00	
4	NATH	1	2.90	0.10	2.80	18	7,445.45	
5	TIKKA	1	3.00	0.10	2.90	20	8,568.18	
11								
12								74%
13								77000/-
	TOTAL	7	36.60	0.70	35.90		1,04,103.41	

6. It is clear from the chart above that the Gold of the complainant was the value of Rs.1,04,103.41/- on the date of mortgage.

7. Complainant seemingly not a very literate person and not coming from good financial background took loan from OP to build their own house and deposited a sum of Rs.29,097.59/- between 15.03.2020 to 15.01.2022 and Rs.3,260/- as OP had threatened that in case interest is not paid, jewellery/mortgaged gold will be auctioned.

8. It is seen that AR of OP appeared in the Commission and collected the complaint copy. Thereafter none appeared nor any reply was filed on behalf of OP As OP remained unrepresented, averments made in the complaint have remained unchallenged and uncontroverted, therefore there is no reason to disbelieve the version of the complainant.

9. It is seen that complainant with the evidence has filed an Email of OP, dated 18.05.2023 stating that the bank had intimated the complainant to pay dues failing which the bank would initiate legal proceedings to recover the loan amount. Since the same were not paid, OP has no option but to auction the pledged gold ornaments as per law and available

remedies as per the terms and conditions of the loan agreement duly signed and accepted by the complainant to recover the dues. OP bank further informed that after adjusting the proceeds against the dues of the loan account, an excess amount of Rs.9357.17/- was received in the auction and OP requested the complainant to collect the same.

10. The said letter is silent regarding sending notice to the complainant before selling the Gold/Mortgaged property and also at the rate on which the gold was sold. This commission is of the opinion that complainant has the right to know at what rate the gold was sold, on which date was it sold and on the said date what was rate of gold.

11. Hon'ble National Consumer Dispute Redressal Commission, New Delhi in Revision Petition no.1835 of 2013, HDFC Bank Ltd Vs Sharmila Das Gupta, it was held as under-

“It is significant to mention that in the entire record there is absolutely no documentary evidence filed by the Bank to establish the actual rate, on which the gold was sold; what was the market rate as on the date of the auction; and, further, the procedure that was followed during the auction process. A perusal of the record does not anywhere show that a notice was issued to the Complainant prior to the auction to have given an opportunity to her to exercise the option whether to participate in the auction or not. This is against the principles of natural justice and audi alteram partem. Hence, we are of the same view that the conduct of the Bank in auctioning the gold without prior notice to the Complainant amounts to unfair trade practice. In this view of the matter, the Revision Petition does not require interference.”

12. OP is found to be deficient in service for not giving any notice to the complainant prior to the auction whereby the opportunity of the complainant to participate in the auction is lost, also the bank has not provided the actual rate on which the gold was sold and what was the market rate on the date of auction.

13. Hence, complaint is allowed and OP is directed to pay the value of 35.90 gram of gold at the present market rate of gold (Date of order) to the complainant after deducting the amount due to the credit of the bank, on the date of sale of the deposited gold ornaments without imposing any delayed interest on such amount.

14. *The complaint is disposed of in the terms stated above.*”

3. Aggrieved by the aforesaid order of the District Commission, the Appellant has preferred the present Appeal, submitting that the District Commission erred in holding deficiency on the part of the Appellant. It is submitted that the Respondent had read and accepted the terms and conditions of the Sanction Letter dated 29.02.2020, including the remedies in case of continuous default payment of EMI and interest. Further, it is submitted that the Appellant had duly sent the Loan demand notice to the Respondent, intimating the Respondent of the auction for the mortgaged jewellery. Pressing the aforesaid submissions and contentions, the Appellant has prayed for setting aside the impugned order passed by the District Commission.
4. The Respondent, on the other hand, has filed its Reply to Appeal, denying all the submissions and contentions of the Appellant, and submitted that there is no error on the part of the District Commission in the impugned order as the entire material available on record was properly scrutinised before passing the said order. Pressing the aforesaid contentions and submissions, the Respondent has prayed for setting aside the present Appeal.
5. Written Arguments on behalf of the Appellant are on record, wherein, the contents of the Appeal have been reiterated, and the same have been considered. The counsel for the Appellant has relied on the judgment of the Hon'ble High Court of Madras in *Meenakshisundaram Textiles vs. Valliammal Textiles* as reported in *2011(3) CTC 168*.
6. Written Arguments on behalf of the Respondent are on record, wherein, the contents of the Reply to Appeal have been reiterated, and the same have been considered.
7. We have perused the material available on record and heard the counsel appearing on behalf of the parties.

8. The *only question* for consideration before us is *whether there is “deficiency” in service on the part of the Respondent.*

9. To address this issue, we deem it necessary to refer to Section 2(11) of the Consumer Protection Act, 2019, which provides as under:

“(11) “deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

(i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and

(ii) deliberate withholding of relevant information by such person to the consumer;”

10. Analysis of the statutory position of “deficiency” under Section 2(11) of the Consumer Protection Act, 2019 referred to above clarifies that any dereliction with respect to any fault, imperfection, shortcoming or inadequacy in performance required by law in pursuance of a contract of service on the part of the service provider including any act of negligence or omission or commission or deliberately withholding relevant information on the part of any person amounts to deficiency in service.

11. On perusal of record, we find that the Appellant had intimated the Respondent of the loan recall notice of the total amount due of Rs. 85,888/- (Rupees Eighty-Five Thousand Eight Hundred Eighty-Eight Only) vide notice dated 17.02.2022, as is evident from the Tracking Report (*annexed as Annexure A-6 on page 99 alongwith the Appeal*).

12. However, on perusal of the Sanction Letter dated 29.02.2020, we find that there is no provision regarding auction of the mortgaged jewellery in question in the event of non-payment of EMI or interest or principal loan amount sought by the

Respondent, therefore, the submission of the Appellant that there is no deficiency on the part of the Appellant has been answered in the negative.

13. Keeping in view the facts and circumstances of the present case, we are in agreement with the reasons given by the District Commission and fail to find any cause or reason to reverse the findings of the District Commission. Consequently, we **uphold** the order dated 06.11.2023 passed by the ***District Consumer Disputes Redressal Commission-II, Udyog Sadan, C-22&23, Qutub Institutional Area (Behind Qutub Hotel), New Delhi-110016.***

14. Resultantly, the present Appeal stands ***dismissed*** with no order as to costs.

15. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.

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

17. File be consigned to record room along with a copy of this Judgment.

**(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT**

**(BIMLA KUMARI)
MEMBER (FEMALE)**

Pronounced On: **24.12.2025**

LR-DK