

Dispute over lost title deeds deposited with Indian Bank as collateral security for loan: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI

A.C. DHARMADEVI

...Appellant

INDIAN BANK & 2 ORS.

...Respondent

Case No: FIRST APPEAL NO. 871 OF 2015

Date of Judgement: 02 January 2024

Judges:

A. P. SAHI – PRESIDENT

For Appellant: MR. ARAVINDH S., ADVOCATE

For Respondent: MR. S.R. SHARMA, ADVOCATE

Facts:

In 1966, complainant's late father, who was Managing Partner of M/s Swasthik Tobacco Factory, availed loan from Indian Bank and deposited 12 title deeds in 1967 as collateral security. In 1988, when complainant wanted to continue loan and inspect documents, found original deeds missing from Bank's custody. Complainant along with family visited Bank in 1988 to find documents but could not be traced. In 1988 and 1989, complainant informed Bank's vigilance cell about missing documents. Bank said attempts were being made to trace them.

Between 1990-2000, complainant wrote several letters to Bank about missing documents. Bank kept assuring to look into the matter. In 1998, Bank proposed that complainant provide certified copies of deeds so that equitable mortgage can be created. Complainant agreed. Loss of originals was published in newspaper. Business with Bank continued. Another gap from 2001-2007 where complainant did not communicate with Bank. In 2007, complainant filed RTI application with Bank seeking information on missing documents. Bank reiterated originals could not be traced and certified copies were accepted in 1998 to continue business. In 2008, complainant filed consumer complaint alleging deficiency in service by Bank in not returning original deeds. Damages of Rs.40 lakhs claimed.

Court's Opinions:

It is undisputed that original title deeds deposited with Bank as collateral security were lost while in custody of Bank. This amounts to deficiency in service by the Bank. However, complainant agreed in 1998 to provide certified copies of deeds and create equitable mortgage so that loan facilities could continue. This amounts to acquiescence by complainant. There is a long gap from 2001-2007 where complainant took no steps. Complaint in 2008 is thus barred by limitation under Section 24A of Consumer Protection Act, 1986. Loan was taken by complainant's late father for commercial purpose of running tobacco business. Consumer Fora have no jurisdiction on disputes arising from such commercial transactions. Complainant agreed to continue transactions with Bank using certified copies in 1998. Hence, no deficiency can be attributed to Bank in providing loan facilities thereafter. Although loss of originals shows negligence by Bank, complaint does not lie before Consumer Fora for commercial transactions as per law laid down by Supreme Court.

Complainant's Arguments:

Loss of original title deeds is gross deficiency in service by Bank which led to immense hardship. Compensation awarded by State Commission is inadequate and disproportionate considering huge consequential loss. Value of deeds has to be considered in terms of current market value of property which has appreciated. This has not

been considered while calculating compensation. Cited NCDRC order where compensation was awarded for loss of originals by Bank.

Bank's Arguments:

Complaint is barred by limitation as it was filed 20 years after cause of action for loss of documents arose in 1988. Complainant acquiesced by agreeing to continue transactions using certified copies in 1998, hence there was no deficiency by Bank thereafter. Loan was availed for commercial purpose of running a tobacco business, so no consumer complaint is maintainable. Complainant's status and capacity is vague. Mere letters do not extend limitation period. Cited SC judgments that delay has to be explained in filing consumer complaint beyond 2 years of cause of action. Complaint before Consumer Fora does not lie for commercial transactions as per recent SC judgment.

Referred Laws:

Section 2(1)(d) and 2(1)(o) of Consumer Protection Act, 1986.

Section 24A of Consumer Protection Act, 1986.

Supreme Court decision in Shrikant G. Mantri v. Punjab National Bank, 2022 about no jurisdiction of consumer fora on commercial transactions.

Conclusion:

Though Bank was negligent in losing original title deeds, continuing transactions with certified copies amounts to acquiescence by complainant. Limitation period under Section 24A for filing complaint cannot be overridden merely by sending letters. Transaction was commercial in nature so consumer fora have no jurisdiction. Complaint is not maintainable. However, Bank should return certified copies of deeds to complainant and issue certificate clarifying status of title. Complainant can pursue remedies in appropriate forums as per law for loss of original deeds by Bank.

Case Laws Referred:

No case laws were referred in the order

Download

Court

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Full Text of Judgment:

1. These two first appeals arise out of a common order of the State Consumer Disputes Redressal Commission, Tamil Nadu (hereinafter referred to as 'the State Commission) dated 23.07.2015, where the complainant, Smt. A. C. Dharmadevi in complaint no. 3 of 2008, alleged deficiency in service on the part of the Indian Bank, Chennai for not returning the original documents/ title deeds deposited with them that was transferred to the Esplanade Branch of the Bank, and were ultimately lost in their custody. The complainant's late father, who was the Managing Partner of M/s. Swasthik Tobacco Factory, Vedaranyam had availed loan facilities from the Indian Bank since the year 1966. In order to secure the loan which was advanced on 24.06.1966, 12 documents/title deeds were deposited on 19.12.1967.

2. The loan facilities were desired to be continued and for that the complainant approached the Bank for extending the security and also to inspect the original documents. The said documents/ deeds were kept in a box in the strong room of the Bank. On 28.11.1988, the complainant along with her son-in-law and the Manger of the Bank of the Vedaranyam branch visited the Indian Bank, Esplanade, Chennai to find out about the missing documents but the same could not be traced.

3. The said fact was also brought to the notice of the vigilance cell of the Indian Bank at Chennai on 20.12.1988 and the Chief Vigilance Officer intimated her that attempts were being made to trace out the said documents. The complainant was also informed that the said matter had been taken up with the zonal inspectorate and further information would be furnished after further investigation.

4. A communication on 30.08.1989 was tendered, whereafter a reminder was sent on 26.07.1990, whereafter the complainant was informed that the Zonal Manager, Tiruchy has been instructed to sort out the matter.

5. Since the business run by the complainant was dependent on the finances as also the loan transactions that were subsisting with the Bank, the complainant agreed to a proposal of the Bank to obtain certified copies of the said documents/title deeds, which were lost

and substitute the same for creating an equitable mortgage. On acceptance of this proposal, the loss of the original documents was published in the newspapers. The business of the complainant with the Bank continued but the original title deeds were neither recovered by the Bank, which had been lost in its custody nor were they returned to the complainant.

6. After 1991 there seems to be a gap in the pursuit of this attempt to search out and find the documents, and on 05.12.1998, the complainant again sent a letter to the Regional Manager, Kumbakonam Branch of the Indian Bank about the delay in the tracing of the original documents, followed by a reminder on 29.05.1999. Personal letters were also sent and then a reply dispatched by the Zonal Manager, Pondicherry was received informing that the complaint was receiving their attention. On a reminder, reply was received from the Bank on 27.09.2000, that since the original documents were not traceable, the certified copies as tendered were entertained and an equitable mortgage had been created at the Esplanade Branch. The complainant pursued her representation and renewed her request directly to the Chairman and the Managing Director of the Indian Bank, Head Office, Chennai on 02.05.2001, followed by a presentation dated 06.12.2002.

7. There is again another gap of almost 5 years, when the complainant moved an application under the Right to Information Act on 16.08.2007, to which a reply was sent that the loan account had been closed and the certified copies of the title deeds would be returned to the complainant along with a certificate of no dues. Thus there appears to be a gap of five years between the communications made by the complainant.

8. The complaint before the State Commission was filed in the year 2008 alleging serious deficiency in service on the part of the respondent/ Bank and the consequential loss being suffered by the complainant on account of non-availability of the original documents/ title deeds. The complainant submitted that in the absence of the original title deeds neither the property can be negotiated for any purpose of transaction nor any financial institution would be

accepting the certified copies of the title deeds for the purpose of any equitable mortgage or otherwise. Hence the deficiency is not only on account of the loss of the documents but also of the consequences thereafter. Hence damages were claimed to the extent of Rs.40,00,000/- towards deficiency and a sum of Rs.20,000/- as a cost of the complaint.

9. The claim was resisted by the Bank mainly on the ground of limitation and then also on the ground of acquiescence as the complaint was filed after almost 20 years of the cause of action of the loss of documents in 1988. The acquiescence of the complainant to continue the banking business with the respondent Bank on the strength of the certified copies of the deeds, that was also accepted by the Bank, is also a ground taken to resist the claim. Other issues were also raised and ultimately five issues were framed by the State Commission holding that the claim was not barred by any limitation nor by acquiescence or misjoinder of parties. It was further held that the failure to return the original documents to the complainant amounts to a gross deficiency in service on the part of the opposite parties and it was also held that the complainant was entitled to compensation. Accordingly the claim was partly allowed, awarding Rs.3,00,000/- as reasonable compensation for negligence and deficiency in service on the part of the respondent Bank, coupled with a sum of Rs.50,000/- for mental agony and Rs.10,000/- for costs.

10. First appeal No. 871 of 2015 has been filed by the complainant contending that the complainant was virtually denied actual compensation that was required to be awarded as claimed in the background that all the title deeds were lost and the complainant was facing immense hardship in negotiating the property at any commercial or financial level. It has also been urged on behalf of the complainant that having found favour with the complainant on all issues of law and fact, the State Commission committed an error in diluting the relief and denied the entire claim made by her, keeping in view the fact that the consequential loss to the complainant was huge and the damages/compensations awarded by the State Commission are disproportionate.

11. Apart from this, it has also been stated that the value of the

title deeds of the properties have to be gauged in terms of the current value of the property that existed when the lis was raised and that ought to have been compensated with the adequate compensation, keeping in view the rate of inflation of property and the escalation in prices thereof. It was also urged that the rate of inflation as well as the rate of interest which could be computed on the tangible value of the property has not been taken into account and the State Commission has very casually proceeded to partly allow the claim. It is urged that the relief granted is totally insufficient and nowhere commensurate to the deficiency which has been established. Learned counsel for the complainant has relied on an order dated 31.08.2023 passed by a coordinate Bench of this Commission in Consumer Complaint No. 129 of 2007, Manoj Madhusudhanan Vs.. ICICI Bank Ltd. & Anr., to contend that the loss and misplacement of original documents being admitted, the relief prayed for deserves to be granted.

12. Responding to the argument of the complainant/ appellant in First Appeal No. 871 of 2015, learned counsel for the opposite party/ Bank, who is the appellant in First Appeal No. 906 of 2015, urged that none of the contentions raised can be entertained and that the impugned order of the State Commission deserves to be set aside in its entirety, as the complaint was entertained in respect of a commercial transaction that was beyond the purview of the Consumer Forum. It was also submitted that the complaint was barred by limitation and hence the issue of limitation decided by the State Commission suffers from lack of appreciation of the law applicable to this controversy in terms of Section 24 (A) of the Consumer Protection Act, 1986. The submission is that the complaint could have been filed in 1988 or at the highest when the communication in the year 2000 was made to the complainant, confirming the loss of documents. The cause of action had arisen two decades ago and therefore entertainment of the complaint in the year 2008, was far beyond the limitation prescribed under Section 24 (A) of the Consumer Protection Act, 1986. Neither there was any explanation for this inordinate delay nor there was any plea on behalf of the complainant to condone the delay, which otherwise could not have been condoned because of the heavy laches.

13. Learned counsel then emphasised that once the complainant had agreed to transact business with the bank and create an equitable mortgage on the strength of the certified copies of the lost documents, this was a clear acquiescence and there remained no lack of deficiency on the part of the Bank in honouring the transactions of the loan, where the documents had been lodged as collateral security for creating an equitable mortgage, it is therefore submitted that there was no cause of action so as to be instituted before the Consumer Forum. The services of the Bank were availed uninterrupted and the Bank extended its fullest cooperation. Thus no deficiency could be complained of.

14. It is then urged that the transaction was a pure commercial transaction, in as much as the title deeds had been deposited for creating an equitable mortgage in order to secure a loan for the running of a tobacco business, which was purely a commercial purpose. The loan was availed not for any individual earning or otherwise and therefore the complainant was not a consumer nor the complaint was a consumer complaint either entertainable or maintainable as it arose out of a commercial transaction. It is submitted that there was no deficiency in extending the loan facilities or any financial transactions that were complained of. Thus, the loss of title deeds was totally alien for the purpose of instituting the consumer complaint.

15. It was then urged that the capacity of the complainant as a consumer is vague and opaque, in as much as Smt. A.C. Dharmadevi and her status vis-à-vis the tobacco business and the loan transaction is not clear. The pursuit was made for these 20 long years by moving applications after severe gaps in between as recorded above that nowhere explains the limitation period. Writing of letters and communications with huge gaps cannot extend the period of limitation as provided for under Section 24 (A) of the Consumer Protection Act, 1986. Learned counsel relied on the following judgments and orders to substantiate his submissions:

1. Kandimalla Raghavaiah & Co. Vs. National Insurance Company & Anr., (2009) 7 SCC 768

2. State Bank of India Vs. B.S. Agriculture Industries (I), (2009) 5 SCC 121
- 3.State of Tripura & Ors. Vs. Arabinda Chakraborty & Ors., (2014) 6 SCC 460
- 4.Surjeet Singh Sahni Vs. State of U. P. & Ors., 2022 SCC OnLine SC 249
5. Shrikant G. Mantri Vs. Punjab National Bank, (2022) 5 SCC 42
6. Sahil Garg Vs. Chief Manager/ Manager, Bank of Baroda & Ors., RP/2870/2018 decided on 02.04.2019

16. Having considered the submissions raised there is no escape from the fact that the title deeds that were deposited and mortgaged with the bank for securing a loan were admittedly in the custody of the bank. It is also now undisputed that the bank lost the title deeds which were kept in a strong room of the bank. The appellant started complaining about the same, way back in 1998 and after it was confirmed that the said documents were re-retrievable, the bank itself offered to continue the loan facilities on the strength of the certified copies of the said deeds. This offer of the bank was accepted by the appellant which stands admitted in paragraph 8 of the complaint itself and which fact has been also confirmed by the bank in the appeal filed by it being F.A. No. 906 of 2015. It is the categorical acceptance as well as the statement of both sides that when this issue of the loss of deeds was raised, the complainant made a request to the bank to continue the credit facilities in its favour on the basis of the certified copies of the documents in question. The bank agreed to the said request where after the complainant had obtained the certified copies and presented it to the bank for creating the collateral security for loan facilities that was availed of by the complainant. The bank in its turn had accepted the certified copies as the basis for extending the loan facility to the complainant and which also is indicated in the letter of the bank dated 27.09.2020 extracted herein under:—

27.09.2000

The Manager

M/s Swasthik Tobacco Factory

Vedaranyam

Nagai 614810

Sub.: Your original title deeds – Letters dated 1.7.2000 and 31.7.2000 addressed to our Chairperson and Managing Director.

With reference to the above, we acknowledge receipt of the captioned letters.

The bank has taken all possible steps to trace out your original documents and unfortunately we are unable to trace the same.

However, certified copies of documents were obtained and EM has been created in 1998 at our Esplanade branch, Chennai.

We regret for the inconvenience caused to you in the matter.

Yours faithfully,

Sd/-

ASSISTANT GENERAL MANAGER (DC)

17. As noted above, the complainant does not dispute this position of having continued to avail the financial facilities upon equitable mortgage having been created in 1998 with the concerned branch on the strength of certified copies of the lost original documents. This information was again repeated by the bank in its response dated 26.09.2007, which is extracted herein under:

Reg. HO : CSC: RTI:154 2007-08:295 27.09.2000

Smt. A C Dharmadevi,

Managing Partner,

M/s Swasthik Tobacco Factory

Vedaranyam – 614810

Madam,

Sub.: Right to Information Act, 2005 – your application dated 28.08.07.

This is in reference to your application dated 28.08.07 under RTI Act seeking certain information pertaining to missing of original documents deposited for creation of EM for the facilities extended by the Bank as under:

1. Whether the search for missing documents is still on or had it been abandoned.

2. In the event of not providing the original documents for inspection and return what the bank intends to do in the matter.

In this regard we inform that the Bank has taken all possible steps to trace the original documents but despite our best efforts we have not been able to trace the same. We confirm that the original documents have been misplaced at our end and that is why we have taken efforts to obtain certified copies and with same, EM has been created in 1998 at our Esplanade Branch, Chennai. We deeply regret the inconvenience caused in this regard. Once the loan dues and direct/indirect liabilities with Bank are discharged, the Bank will return back the certified copies and confirm that all dues against property as discharged.

Yours faithfully,

Sd/-

(V. Srinivasan)

Public Information Officer &

General Manager (H & M).

18. Thus from the aforesaid facts it is confirmed that the title deeds were lost and therefore, in the opinion of this Commission, there was a clear deficiency in the services of the bank in not handing back the original title deeds that were lost by it while the documents were in its custody. Learned counsel for the complainant is, therefore, right in his submission that such loss of title deeds is deficiency in service. Learned counsel has cited the order passed by this Commission in the case of Pooja Pincha & Anr. Vs. State Bank of India (2016) CPJ 28 and a couple of more judgments that have been dealt with by this Commission in C.C. No. 129 of 2017. Paragraph 8 and paragraph 12 to paragraph 16 of the said order is extracted herein under:

8. Learned counsel for the complainant argued that he was a 'consumer' under the Act qua opposite party 1/bank having availed of banking services of obtaining a bank loan from it. The loss of the original papers by it amounts to deficiency in service. It is contended that opposite party 1 having been guilty of deficiency of service has also been hypocritical in claiming compensation of Rs 2,50,00,000/- from opposite party 2 while offering to compensate the complainant through waiver of 2 EMIs payable by the complainant. Reliance is placed on the judgment of the Hon'ble Supreme Court in Charan Singh Vs. Healing Touch Hospital & Ors. 2000 SAR (Civil) 935 which held that "consumer

forums are required to make an attempt to serve ends of justice so that compensation is awarded, in an established case, which not only serves the purpose of recompensing the individual but also at the same time aims to bring about qualitative change in the attitude of the service provider."

Complainant also relies upon this Commission's order in Pooja Pincha & Anr. Vs. State Bank of India, IV (2016) CPJ 28 (NC) that held that "The loss of documents of ownership is not venial and trivial matter, the wearer knows where the shoe pinched and the Bank is terribly remiss in discharge of its duties."

Reliance was also placed upon this Commission's orders in:

a. Citi Bank & Ors. Vs. Ramesh Kalyan Durg & Ors. MANU/CF/0180/2016 wherein it was held that the complainant would be compensated, publication cost shall be borne by the bank and the bank will get certified copies of all documents at its cost apart from suitably compensating and indemnifying the complainant if he suffers in the future due to the loss of the documents; and

b. Bank of India Vs. Mustafa Ibrahim Nadiadwala, MANU/CF/0809/2016 which held that the bank is liable to pay compensation to the complainant because the value of the property is bound to be affected if the original title deed is lost by the bank.

12. From the facts of the instant case and consideration of the material on record and averments of the parties it is manifest that the opposite party 1 was responsible for the custody and security of the original title documents pertaining to the housing loans sanctioned by it to the complainant. The contention of opposite party 1 that the complaint against it was misplaced since the papers were lost by opposite party 2 and hence any liability must be borne by it and that since the matter has been decided by the Ombudsman the complaint did not lie against it cannot be sustained for the reason that the papers were in the custody of the Bank in view of the plot having been mortgaged to it and the ombudsman having provided liberty to the complainant to seek further remedy if so desired. Its contention that the claim was excessive as no basis for claiming Rs 5,00,00,000/- had been provided and that this was not the value of the property which was in possession of the complainant can also not be sustained. It is pertinent to note that opposite party 1's own legal notice to the

opposite party 2 had sought damages of Rs2,50,00,000/-. The claim that the complainant is not entitled to damages is not justifiable as deficiency in service on its part is writ large. Opposite party 2's averment that it was only an agent of the opposite party 1, the principal, and was bound by the terms of the Service Level Agreement which defined the relationship as per Clause 1 and liabilities as per clause 7 have been considered. This argument is patently based upon a contractual agreement which binds both parties. The contention that the complaint should rightly be directed against opposite party 1 since there was a clear delineation of liabilities cannot be faulted with.

13. This contention is valid, and it cannot be argued, as opposite party 1 would do, that the complainant is not impacted financially since the property is in his possession.

The legal title of the complainant does stand compromised on account of the loss of the original documents by opposite party 1.

Seeking compensation on the ground of deficiency in service is, therefore, a legitimate claim. The claim of compensation from opposite party 1 is also legitimate since the papers were in his custody under the terms of the loan provided by opposite party 1/bank. The contention that the order of the Ombudsman does not prevent his filing of the complaint is also valid since the order itself provides him liberty to do so.

14. As regards the compensation sought by the complainant is concerned, it is manifest that the property was mortgaged for a sum of Rs.1,95,25,825/- on 22.04.2016 to opposite party 1. Even if some appreciation of value is considered, it would not be of the order of Rs.5,00,00,000/- given the short duration of time between the mortgage date and the filing of the complaint. This claim is, therefore, evidently inflated. The damages of Rs.2,50,00,000/- claimed by the opposite party 1 from opposite party 2 appears to be more realistic. However, the issue is not of fixing a value to a piece of real estate which the complainant is in possession of. Rather, it is one of compensation for the deficiency in service and of indemnifying the complaint against any future loss. The compensation paid by the opposite party 1 in terms of the order of the Banking Ombudsman is required to be factored in while deciding the same.

15. In view of the fact that the safe custody of the original title

documents to the property were the liability of opposite party 1 and that opposite party 2's liabilities are limited in view of clauses 1 and 7 of the agreement between the opposite parties, the complaint squarely lies against opposite party 1. The liability of the opposite party 1 is manifest in the loss of the documents. It cannot seek to shift the liability to its agent, the opposite party 2. The deficiency in service has also been held as established by the Banking Ombudsman. In view of the facts and circumstances of the case, the complaint has merit and is liable to succeed against opposite party 1 for the reasons set out in the preceding paragraphs.

16. Accordingly, the complaint is partly allowed and opposite party no.1 is directed to:(i) obtain, at its cost, all the reconstructed and duly certified copies of the documents handed over by the complainant as security at the time of registration of the sale deed on 22.04.2016 for the housing loan sanctioned by opposite party 1 in respect of the property situated at site no. 474 B, Ideal Homes Cooperative Building Society Ltd., Sector B, Ideal Homes Township, Kenchenahalli, Rajarajeshwari Nagar, Bangalore and hand over true and certified copies thereof to the complainant; (ii) issue an indemnity bond in favour of the complainant regarding these documents; (iii) pay Rs.25,00,000/- to the complainant towards compensation after factoring in the compensation awarded by the Banking Ombudsman; (iv) Pay the complainant Rs.50,000/- as litigation cost; and (v) Comply with this order within 8 weeks failing which the opposite party shall be liable to pay interest at 12% per annum till realization.

19. However, the issue pertaining to limitation also needs to be taken into consideration. The complaint was filed in the year 2008 which is almost 20 years after the first cause of action arose namely the knowledge of title deeds being lost in 1988 itself. It is correct that the complainant did pursue the matter for long and kept on writing letters but the fact remains that the complainant made requests up to 2001/2002. There is a long gap of almost five years and then the complainant seeks a reply under the Right to Information Act in 2007 which seems to have been made the basis of deficiency continuing for instituting the complaint.

20. There is one intervening factor as noticed above, namely that the complainant agreed to continue with the financial transactions with the bank on production of certified copies. This arrangement was consciously brought about between the parties as the complainant wanted to continue to avail the financial aid of the bank voluntarily. Thus, there was an acquiescence by the complainant to accept the facilities of equitable mortgage, extension of loan and other financial facilities on the terms as requested and then accepted by the bank.

21. The complainant instead of questioning the loss of title deeds promptly, therefore, seems to be a bit lacking. Learned counsel for the bank has relied on the order passed by this Commission in the case of Sahil Garg Vs. Chief Manager, Bank of Baroda & Ors. in R.P. No.2870 of 2018 decided on 02.04.2019 urging that the delay has to be examined and it has been held therein that if the complainant fails to act with reasonable diligence by filing the complaint within a period of two years as provided under 24 A of the Act, upon the cause of action having arisen, the moving of applications subsequently would not extend the period of limitation. Learned counsel for the opposite party, therefore, has vehemently urged that the complaint itself was not liable to be entertained having been presented at a belated stage.

22. Reliance has also been placed on the judgment of Surjeet Singh Sahni Vs. State of U.P.& Ors., wherein the Apex Court held that moving of applications and representations cannot extend the period of limitation. It is urged that there was no fresh cause of action in 2007 in the present case and it was only the information with regard to the past transactions. The aforesaid contention has a semblance of legal force but since the complaint was entertained and decided on merits after rejecting the issue of limitation, holding that it was a continuing cause of action, the same need not be interfered with in this appeal.

23. Coming to the more vital point involved and that has been urged by the learned counsel for the opposite party; the title deeds were deposited for the extension of a loan facility. The transaction, therefore, was for a commercial purpose as the loan was to be utilized

for Tobacco Company to foster its business. The loan was to be utilized and was utilized for running a business which is a commercial venture. The services of the bank were availed of for such a loan and the title deeds were deposited to create an equitable mortgage. It is thus evident that the custody of the title deeds was with the bank for a collateral security. The documents were, therefore, held in trust by the bank for rendering loan facilities. The services rendered by the bank were availed of by the complainant, who was admittedly a consumer. But at the same time, if the said transaction was purely for a commercial purpose, then in that view of the matter the transactions cannot be said to be exclusively to have been entered into for any self-employment of an individual. It was for the running of a company that was to yield profit. This transaction, if breached by the bank, would be, therefore, a breach of contract. The question is as to whether such breach will give rise to a cause of action for the complainant to maintain a consumer complaint. For this, the judgments which have been referred to by the learned counsel for the complainant clearly hold that a loan on title deeds is clearly a deficiency in service. A service of banking facilities is covered under Section 2 (1) (o) of the 1986 Act. A consumer is one who hires or avails of services but does not include a person who avails of any facility for commercial purpose. Clause 2 (d) (ii) along with explanation indicates that the services which are availed of for commercial purpose are excluded unless it can be shown as for livelihood by means of self-employment. The present is a case where the title deeds which were deposited were for earning profits in a business and fostering the same. This issue has been dealt with very lately by the Apex Court in the case of

Shrikant G. Mantri Vs. Punjab National Bank (2022) 5 SCC 42 where the overdraft facility availed by the stock-broker to enhance his business was taken by pledging additional shares in order to regularize the overdraft account. The Apex Court after analysing the issue came to the conclusion that the enactment was to protect the consumers from exploitation. Paragraph 31 to 37 is extracted herein under:

31. It could thus be seen that by the 1993 Amendment Act, in so far as services are concerned, wherever the word "hires" was used, the same was substituted by the words "hires or avails of". By the said 1993

Amendment Act, insofar as Section 2(1)(d)(i) is concerned, an Explanation was provided to the effect that 'commercial purpose' does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood by means of self-employment. It could thus be seen that though the original Act of 1986 excluded a person from the ambit of definition of the term 'consumer' whenever such purchases were made for commercial purpose; by the Explanation, which is an exception to an exception, even if a person made purchases for 'commercial purpose', he was included in the definition of the term 'consumer', if such a person bought and used such goods exclusively for earning his livelihood by means of self-employment. The legislative intent is clear, that though the purchases for commercial purposes are out of the ambit of the definition of the term 'consumer' in the said Act, if a person buys and uses such goods exclusively for earning his livelihood by way of self-employment; he would still be entitled to protection under the said Act.

32. The legislature further noticed several bottle necks and shortcomings in the implementation of various provisions of the said Act and with a view to achieve quicker disposal of consumer complaints, and to make the said Act more effective by removing various lacunae, the legislature amended the said Act by the Consumer Protection (Amendment) Act, 2002 (hereinafter referred to as "the 2002 Amendment Act"). One of the objects for bringing out the 2002 Amendment Act was "exclusion of services availed for commercial purposes from the purview of the consumer disputes redressal agencies". It could thus be seen that the legislature noticed the mischief, that though Section 2(1)(d)(i) of the said Act kept out of its purview the goods purchased for commercial purpose, the said restriction was not found in Section 2(1)(d)(ii) of the said Act.

33. As such, in order to bring Section 2(1)(d)(ii) at par with Section 2(1)(d)(i), the following amendment was effected to in clause (d): "2.

(1) (c) in clause (d),

i) in sub clause (ii), the following words shall be inserted at the end, namely: "

but does not include a person who avails of such services for any commercial purpose";

ii) for the Explanation, the following Explanation shall be substituted, namely:‘

Explanation.—For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment’;”

34. It could thus be seen that by the 2002 Amendment Act, the legislature clearly provided that a person, who avails of such services for any commercial purpose would be beyond the ambit of definition of the term ‘consumer’. The Explanation, which is an exception to an exception, which earlier excluded a person from the term ‘commercial purpose’, if goods were purchased by such a person for the purposes of earning his livelihood by means of self-employment, was substituted and the Explanation was made applicable to both clauses (i) and (ii).

35. It can thus clearly be seen that by the 2002 Amendment Act, though the legislature provided that whenever a person avails of services for commercial purposes, he would not be a consumer; it further clarified that the ‘commercial purpose’ does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment

36. It is thus clear that by the 2002 Amendment Act, the legislature has done two things. Firstly, it has kept the commercial transactions, in so far as the services are concerned, beyond the ambit of the term ‘consumer’ and brought it in parity with Section 2(1)(d)(i) , wherein a person, who bought such goods for resale or for any commercial purpose, was already out of the ambit of the term ‘consumer’. The second thing that the legislature did was that even if a person availed of the commercial services, if the services availed by him were exclusively for the purposes of earning his livelihood by means of self-employment, he would still be a ‘consumer’ for the purposes of the said Act.

37. Thus, a person who availed of services for commercial purpose exclusively for the purposes of earning his livelihood by means of self-employment was kept out of the term ‘commercial purpose’ and brought into the ambit of ‘consumer’, by bringing him on par with similarly circumstanced person, who bought and used goods exclusively

for the purposes of earning his livelihood by means of self-employment. It could thus be seen that the legislature's intent is clear. If a person buys goods for commercial purpose or avails services for commercial purpose, though ordinarily, he would have been out of the ambit of the term 'consumer', by virtue of Explanation, which is now common to both

Sections 2(1)(d)(i) and 2(1)(d)(ii), he would still come within the ambit of the term 'consumer', if purchase of such goods or availing of such services was exclusively for the purposes of earning his livelihood by means of self-employment which finally in paragraph 54 after discussing previous judgments held as follows:

54. In the present matter, it is not in dispute that the appellant was already engaged in the profession of stockbroker, much before he availed of service of the overdraft facility from the respondent Bank. It is also not in dispute that he was also acting as a stockbroker for the respondent Bank. It is also not in dispute that the appellant took the overdraft facility and also sought enhancement of the same from time to time in furtherance of his business as a stockbroker and for the purpose of enhancing the profits therein.

24. In the present case the activity for which the service had been availed of was clearly to run the business of Tobacco which was continuing in the family of the complainant for generations. The admitted purpose for which the loan had been taken was, therefore, clearly linked with commercial activity and was not exclusively for generating livelihood by means of self-employment by the complainant. Consequently, when the complaint was lodged in the year 2008, with the amendments brought under the 1986 Act the transactions with the bank by the complainant were essentially for a commercial purpose. Thus even if the bank was deficient in having lost the title deeds, the same was not during the course of an activity which could be labelled as a consumer activity for the purpose of construing the complainant to be earning livelihood by self-employment. The business was, therefore, being run for commercial purpose and thus the arguments of the learned counsel for the bank on this count deserves to be accepted.

25. However, this is a hard case where the loss of title deeds and its

acceptance by the bank remains undisputed. The appellant, therefore, could have claimed compensation and also a declaration from the appropriate court with regard to the status of the title of the property for future transactions in the absence of original deeds. Learned counsel for the complainant submits that if observations are made with regard to the status of the certified copies of the deeds to be legal documents for financial transactions, the same would allow the complainant to negotiate the property which in the present state of affairs, cannot be negotiated as the presence of the original title deeds is a necessity for the negotiation of the property in any form including financial transactions with other banks.

26. The said contention on behalf of the complainant cannot be accepted for the reason that this Forum may not have the jurisdiction to issue such a declaration.

27. The State Commission while proceeding to partly allow the complaint has, therefore, overlooked the aforesaid aspects while entertaining the complaint and as such the conclusion recorded by it cannot be sustained. The appeal filed by the Bank being no. 960 of 2015 is, therefore, partly allowed and the impugned order of the State Commission dated 23.07.2015 on that count is set aside.

28. The appeal filed by the complainant being appeal no. 871 of 2015 is accordingly dismissed. The dismissal of this appeal will not prejudice the claim of the complainant to seek such remedy as may be available for the loss of the title deeds before any other competent forum in accordance with the law. Since the bank has accepted the transactions on the strength of the certified copies of the properties, the said certified copies of the documents shall be returned by the bank to the complainant in the event they are not wanted for the purpose of any equitable mortgage concerning the subject matter. The Bank shall also issue a certificate that the loss of the title deeds will not discredit the reputation of the status of title of the complainant in respect of the mortgaged property or act to their disadvantage in respect of any transaction whatsoever. The certified copies of the lost original deeds, if not required for any other purpose and still with the Bank, shall be released free from any

encumbrances of the Bank within amonth.

29. The appeals stand accordingly disposed off.