

STATE BANK OF INDIA V. JATINDER PAL SINGH

1. STATE BANK OF INDIA
LINK ROAD, BRANCH, THROUGH ITS BRANCH
MANAGER,
LUDHIANA
PUNJAB

.....Petitioner(s)

Versus

1. JATINDER PAL SINGH
R/O B-1-278, GURU NANAKPURA, CIVIL LINES,
LUDHIANA
PUNJAB

.....Respondent(s)

Case No:REVISION PETITION NO. 1177 OF 2014

Date of Judgement: 03 Jan 2023

Judges:

HON'BLE MR. C. VISWANATH, PRESIDING MEMBER
HON'BLE MR. SUBHASH CHANDRA, MEMBER

For the Petitioner : Mr Ritesh Khare, Advocate
For the Respondent : Mr Madhurendra Kumar, Advocate

Facts

Complainant was sanctioned Rs. 2 lakh credit limit by OP bank against equitable mortgage of his property – 100 sq. yards land in Ludhiana. OP bank took original sale deed of the mortgaged property from complainant. After loan settlement under OTS in 2009 and clearing all dues, complainant requested return of original sale deed. OP replied sale deed was not traceable and will return it soon. Despite repeated requests

by complainant, OP delayed returning sale deed on various pretexts. Complainant later learnt OP had lost his original sale deed. Complainant's sale/transfer of property was stuck due to non-availability of original sale deed. Complainant filed consumer complaint seeking return of sale deed, Rs 1 lakh compensation for harassment and litigation cost.

Court's Opinions

Claim not barred by limitation as account settled in Nov 2009 and last payment made in March 2010, while complaint filed in 2013 within 3 year limit period under Section 24A of CP Act. Loss/non-return of complainant's property document by bank amounts to deficiency in service under CP Act. Without original title deed, property value gets detrimentally impacted especially in eyes of prospective buyers. Even if certified copies of land records made available, complainant will not get true market value of property if sold without original sale deed. There will always be suspicion regarding misuse of title deeds by unscrupulous persons in absence of original. Erosion in property value without title deeds would be substantial, beyond compensation amount awarded by District Forum. Bank failed to take reasonable care to preserve valuable property document handed over to it in trust, causing grave prejudice to complainant.

Arguments by Parties

Petitioner:

Complaint barred by limitation as filed beyond 3 years of last transaction in March 2010. No deficiency in service as title deed misplacement was not deliberate and bank made efforts to trace it. Complainant can still sell property using available records and bank certificate. State Commission rightfully did not direct return of title deed or departmental inquiry as beyond its jurisdiction under Section 14. Compensation of Rs. 25,000 excessive.

Respondent:

Seeking return of title deed, Rs 1 lakh compensation for

harassment and litigation expenses. Bank deficient in service by losing original title deed thereby impacting value and marketability of property

Sections

Section 21(b) – Revision against State Commission order. Section 24A – Limitation period of 2 years under CP Act

Cited Cases

Kamlesh Meena v. HongKong and Shanghai Banking Corporation Ltd on misplacement of property's title deed amounting to deficiency in service. State Bank of India v. Amitesh Mazumdar on impact of non-availability of original title deed on property's market value

Referred Laws

Consumer Protection Act 1986, including Section 21(b) governing revision petitions and Section 24A related to limitation period

In conclusion, the National Commission concurred with the District Forum and State Commission that the bank was deficient in service for losing the complainant's valuable original property document, causing him harassment and impacting the property's value. The revision petition was therefore dismissed.

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Court

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Full Text of Judgment:

1. The present Revision Petition, under Section 21 (b) of the Consumer Protection Act, 1986 (for short "the Act") has been filed by the Petitioner against the order of the State Consumer Disputes Redressal Commission, Chandigarh (for short "the State Commission") in First Appeal No.1076/2013 dated 24.10.2013.

2. Briefly put, facts of the case are that the

Complainant/Petitioner, proprietor of M/s Sherry Knitwears was sanctioned advance Credit Limit of Rs. 2,00,000/- by the Petitioner/ Opposite Party Bank at Link Road Branch, Ludhiana, vide CC A/c No. 1014712823, against security by way of equitable mortgage on the property of the Respondent, namely land measuring 100 Sq. Yds. situated at Khasra No. 2258/1837/858, Khata No. 2237/2679 situated at Guru Nanak Pura, Civil Lines, Ludhiana. Opposite Party also took the original sale deed of the said property from the Complainant. The Complainant requested for return of his above said original sale deed, after clearing all the dues to the Opposite Party, to which the Opposite Party replied that the same is not traceable and they will return the same within few days. Despite repeated visits made by the Complainant, the Opposite Party delayed the matter on one pretext or the other. The Complainant later came to know that the original sale deed of the property of the Complainant had been lost by the Opposite Party. The Complainant also sent applications regarding tracing of sale deed and to return the same, but the Opposite Party failed to do so, due to which the Complainant is unable to sell his property. Aggrieved by the deficiency in service, the Complainant filed the Consumer Complaint before the District Commission with following prayer:

"It is, therefore, prayed that kindly instruct the Opposite party to return the original sale deed of the complainant alongwith compensation to the tune of Rs. 1,00,000/- for the financial as well as mental harassment which the complainant has to face due to irresponsible attitude of the O.P.'s and also the cost of litigation alongwith cost of counsel."

3. The Complaint was contested by the Opposite Party/Petitioner by filing Written Statement. The Bank took preliminary objection that the present Complaint is barred by Limitation. The account of the Complainant was settled in the year November, 2009. The last payment was made by the Complainant in the month of March, 2010. Thus, limitation to file the present Complainant expired on 31.03.2012 and as

such, the Complaint was liable to be dismissed. The Opposite Party, further, stated that the Complaint was not maintainable against the answering Opposite Party as there was no deficiency in service on their part. The Complainant availed a loan facility as Cash Credit Limit under the name and style of M/s Sherry Knitwear from the Opposite Party in the year 1977. Later on, the account became irregular and Opposite Party filed a recovery suit against the

Complainant in a competent Court at Ludhiana. The Parties settled the above loan account under OTS (One Time settlement) scheme of the Opposite Party in 2009. Further, it was submitted that as per the Bank's Policy, the NPA account was transferred to SARC (now called as SARB), Civil Lines, Ludhiana. The account was settled by SARC through the concerned authority. During the shifting of the file from one department to another i.e. from Opposite Party Bank branch to SARC, the sale deed of the property mortgaged with the bank was misplaced. The Opposite Party tried hard to trace the documents in question but despite the best efforts the same was not traceable. This fact was brought to the knowledge of the Complainant. The Opposite Party tried to obtain certified copy of title deed, but the SubRegistrar (East), Ludhiana returned the same with the report that

the captioned record was damaged due to rain water. The Opposite Party Bank was trying to trace the same, but could not lay its hands on it as yet. When the same is traced they shall return the same to the Complainant.

4. After hearing the Learned Counsel for the Parties and perusing the record, the District Forum, vide order dated 22.08.2013, allowed the Complaint with the following observation:

"10. Sequel to the above discussion, we hereby allow the complaint of the complainant and as a result, direct the OP to handover the original sale deed qua his property i.e. measuring 100 Sq.yards, comprised in Khasra No. 2258/1837/858, Khata No. 2237/2679 situated at Guru Nanak Pura, Civil Lines, Ludhiana, to the complainant and further, Op is directed to

pay Rs. 25,000/- (Twenty Five Thousand only) as compensation on account of mental pain, agony and harassment suffered by the complainant and Rs. 2000/- (Two thousand only) as litigation costs to the complainant. Op is further directed to hold departmental Enquiry against the erring officials who were entrusted with the custody of the sale deed of the complainant and after the report of the Enquiry Officer, to proceed against the erring officials in accordance with law. Order be complied within 30 days from the date of receipt of copy of this order. Copy of this order be sent to the parties free of cost and thereafter, file be consigned to the record room."

5. Aggrieved by the order of the District Forum, the Petitioner/ Opposite Parties filed First Appeal No. 1076/2013 before the State Commission. The State Commission, vide impugned order dated 24.10.2013, dismissed the appeal in limine.

6. Not satisfied with the order of the State Commission, Opposite Party No/Petitioner has filed the instant Revision Petition with the following prayers:-

"It is therefore most respectfully prayed that this apex consumer disputes redressal commission may be graciously pleased to call for the records of this case and make such orders as it may deem appropriate to pass in the interest of justice, keeping in view of the facts and circumstances of the case."

7. Heard the Learned Counsel for both the Parties. Learned Counsel for the Petitioner/ Opposite Party submitted that that the misplacement of the title deed by the Petitioner Bank is not "deficiency" in "service" as contemplated under the Consumer Protection Act, 1986. It was submitted that there was no evidence proving lack of good faith or proven circumstance of any negligence or carelessness on the part of the Petitioner. The Petitioner did not indulge in any 'unfair trade practice' as held by the learned District Forum, because

the title deed was not deliberately withheld by the Petitioner Bank. It was stated that there was no actual loss to the Respondent. The Respondent can nevertheless sell the property in question on the basis of Xerox copy of the 'title deed', which is available on record; Certified copies of the 'Khasra' and 'Khatauni' of the land; and Certificate from the Petitioner Bank that the original title deed was with the bank and had been misplaced by it. The Petitioner Bank was also ready and willing to give an 'undertaking' that it will duly return the title deed in question to the Respondent if and when it is found by it. It was averred that the State Commission refrained and did not deliberately direct the Petitioner Bank to return the title deed in question to the Respondent. The State Commission also did not direct the Petitioner Bank for holding 'Departmental Enquiry against the erring officials who were entrusted with the custody of the sale deed of the Respondent', as such directions by the District Forum were beyond its jurisdiction, being not covered under section 14 of the Act. However, notwithstanding the above, the Petitioner Bank has already initiated an enquiry in this regard and the investigation entrusted to Mr. Avinash Taneja, Chief Manager, Ludhiana Branch is in progress. The Petitioner Bank submitted that Rs. 25,000/-, apart from costs of Rs. 2,000/- awarded to the Respondent as compensation, granted as "punitive damages" was arbitrary and excessive. It was submitted that the District Forum exercised jurisdiction not vested in it by law and illegally, with any material irregularity and the State Commission too failed to exercise jurisdiction so vested in it.

7. As far as question of maintainability is concerned, the matter has already been adjudicated on merit in the District Commission, hence the jurisdiction with respect to the subject matter cannot be objected to at this stage.

8. The Respondent had taken credit from the Petitioner on 21.05.1997 for Rs. 2,00,000/- against security by way of equitable mortgage of the Respondent's property, namely, land measuring 100 Sq. yards. However, in 2010, after the account

was settled under OTS Scheme. The Petitioner failed to return the original title deed of the mortgaged property to the respondent as the same was misplaced. It was observed by a Division Bench of this Commission in Kamlesh Meena v. HongKong and Shanghai Banking Corporation Ltd., F.A. No. 377 of 2019, decided on 26.08.2022 that:

“9. Non-availability of its original title documents unarguably puts a property under suspicion in the eyes of the general public or prospective buyers and decisively impacts its value detrimentally. The consequences continue in perpetuity, they continue even after the property has devolved to the heirs i.e. the value-extenuating consequences sustain indefinitely. The adverse consequences of non-availability of the original title documents do not appear to have been realistically appreciated in the right pragmatic perspective by the State Commission.”

9. It was also opined by this Commission in the case of State Bank of India v. Amitesh Mazumdar, 2020 SCC OnLine NCDRC 263 that:

“6. In my opinion, even if all the steps suggested by the learned counsel for the petitioner are taken by the petitioner bank, that would not result in the complainant realizing the true market value of the immovable property in question, if he decides to sell the same in the market. No one in the market will agree to purchase an immovable property on payment of its prevailing market value, if he knows that the original Title Deed of the property will not be delivered to him by the seller. There will always be an apprehension of the misuse of the Title Deeds of the immovable property by an unscrupulous person, by depositing the same with a bonafide lender, since an Equitable Mortgage can be created by deposit of the Title Deeds. The erosion in the value of the property if it is to be sold without the Title Deeds, would be substantial and in fact even the compensation awarded by the District Forum and maintained by the State Commission may not be sufficient to make up such erosion in the market value of the property.

Moreover, if the complainant decides to take a loan by deposit of the Title Deeds of the property against the property, he will not be able to get a ready lender in the market unless the Title Deeds of the property are deposited. In fact, even a bank may be unwilling to give a loan against an immovable property unless the Title Deeds of the property are deposited with it."

There is no doubt that the Petitioner was responsible for the loss of the Sale Deed. The Petitioner being entrusted with the document relating to the Property of the Respondent was required to preserve the same. The Petitioner is clearly deficient in its services by not taking reasonable steps to preserve the valuable original document of its customer causing serious prejudice.

10. In view of the aforesaid discussion, we hereby concur with the view taken by the Fora below. The Revision Petition is accordingly dismissed with no order as to cost.