

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 3840 OF 2012

(Against the Order dated 05/07/2012 in Appeal No. 1734/2010 of the State Commission Rajasthan)

1. PUNJAB NATIONAL BANK

Through Its Branch Manager, Mr,G.K Chaurasia Khoje Gate Road

Bundi

Rajasthan

.....Petitioner(s)

Versus

1. RAM GOPAL & ANR.

S/o Sh Dwarka Lal Prop M/s Ram Gopal Radhey Shyam Nai

Dham Mandi

Bundi

Rajasthan

2. Sh Gopu Chaudhary @ Banwari, S/o Sh Radha Krishan

Niraya

Hoshangabad

M.P

.....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

For the Petitioner : Mr Ghanisht, Proxy Counsel with
Authority Letter

For the Respondent : For Respondent no.1 Mr S N Bohra, Advocate
For Respondent no.2 Ex parte

Dated : 04 Jan 2023

ORDER

PER MR SUBHASH CHANDRA

1. This revision petition filed under section 21 (b) of the Consumer Protection Act, 1986 (in short, the 'Act') assails the order of the State Consumer Dispute Redressal Commission, Rajasthan, Jaipur (in short, 'State Commission') in Appeal No. 1734 of 2010 dated 05.07.2012 emerging from order in consumer complaint no. 239 of 2007 of the District Consumer Disputes Redressal Commission, Bundi, Rajasthan (in short, 'District Forum') dated 14.07.2010.

2. The brief facts of the case as stated by the petitioner are that respondent no. 1 is the proprietor of M/s Ram Gopal Radhey Shyam who had a bank account no. 4089002100000079 with the petitioner with a multi-city cheque facility. The respondent no. 1 intimated the petitioner on 20.12.2005 that four unsigned cheques (nos. 657687, 657688, 657689 and 657690) were stolen from his cheque book by respondent no. 2 on 12.12.2005 for which an FIR No. 542/05 was lodged with the Police Station, Kotwali, Bundi. The petitioner issued instructions not to honour any of these cheques on 20.12.2005. However, cheque no 657687 for Rs.9,00,000/- had already been presented at a branch of the petitioner Bank in Bhopal and encashed on 15.12.2005. Based upon police enquiry in FIR 542/05 filed by the respondent no.1, Rs.6,91,000/- was recovered from the premises of respondent no. 2 who was a close associate of respondent no.1 and was visiting him on the day of the theft of

the cheques. Respondent no. 1 filed a consumer complaint before the District Forum against the petitioner alleging deficiency in service in permitting the encashment of the cheque based on a forged signature and seeking refund of Rs.2,09,000/-. After hearing both parties, the District Forum dismissed the complaint holding that while a criminal case involving forgery was not tenable before it, there was no ground to establish deficiency in service by the petitioner/opposite party as the responsibility of safeguarding the cheques was that of the respondent no. 1/complainant. The District Forum held that there was no deficiency in service in the encashing of the cheque presented before it and therefore dismissed the complaint. Respondent approached the State Commission in appeal against this order which allowed the same and held that:

Generally, at the time of making such big payment through bearer cheque Bank acts very carefully, but in present matter the payment making bank ought to have acted most carefully while making payment and further the check was of a firm of Bundi station and it was presented at Bhopal for payment, so it was natural for the Bank to be suspicious at the time of making payment whether a firm can issue bearer check for such a big amount or not and Bank ought to have sought information immediately. It was a big amount of Rs 9,00,000/-, so it was not possible to make payment without PAN number and in this way the Bank was not reasonably vigilant and careful while making payment. The Bank did not suspect the bearer cheque of such big amount when it is proved in police investigation and in FSLI report that the payment was withdrawn by forged documents and the police has recovered around Rs 7,00,000/-. In this matter we believe that if the Bank would have been a little careful in making payment of such big amount by bearer cheque, this incident would not have occurred. In this way, deficiency in service on the part of Bank is proved. The conclusion of learned district forum that complainant has failed to prove the deficiency in service of the bank is not justified. Appeal is acceptable.

Accordingly this appeal is accepted. Order of learned District Forum is set aside. The complainant is entitled to recover the balance amount of cheque payment, which the police could not recover, from the respondent Bank. The payment of this amount shall be made by respondent Bank to the appellant within one month from the date of order. The complainant shall be entitled to recover Rs 20,000/- for mental torture and litigation expense from the Bank. This order is to be complied with in one month else the entire amount shall be recoverable with interest at 9% per annum.

This order has been impugned before us.

3. On behalf of the respondent no.1 it has been contended that the petitioner is liable for deficiency in service in having encashed a cheque without verifying the signature. It is also argued that the cheque was wrongly allowed to be encashed as proved by the recovery of Rs 6,91,000/- from the house of respondent no. 2 as a consequence of police investigations following filing of FIR No. 542/05. It has been alleged that the Bank ought to have verified the signature more carefully before allowing the cheque to be encashed.

4. I have heard the learned counsels for the petitioner and respondent no. 1 and perused the material on record carefully. Respondent no.2 continued to remain unrepresented.

5. It is not disputed that the theft of the cheques occurred on 12.12.2005. It is also not in dispute that the intimation of the theft/loss of the cheques was intimated to the Bank by the respondent no.1 on 20.12.2005. The responsibility of keeping cheques in safe custody is that of respondent no. 1. Therefore, the responsibility for the theft/loss of the cheques has to be acknowledged by the respondent no. 1 to be its own. However, it is seeking to be compensated on the ground that the Bank did not verify with respondent no. 1 before encashing the cheque presented before it and claiming deficiency in services by the Bank. The impugned order of the State Commission has held that the Bank to be liable for deficiency in service since it did not exercise due diligence in processing a bearer cheque for a large amount of Rs 9,00,000/- presented at a branch outside the city where the account was held. It has held that necessary verification of PAN card details was also not done before encashing the cheque.

6. The petitioner has placed reliance on **Rosali vs Syndicate Bank** 2018 (1) CTC 441, wherein it was held that:

“.....Therefore, the conduct of the respondent Bank estops her from questioning the bank for honoring the cheques of the plaintiff. Even if it is not signed by her, but due to lookalike signatures, the bank cannot be held responsible.....”

Reliance is also placed on ***Prempreet Textiles Industries Ltd., vs Bank of Baroda and Ors.*** – III (2006) CPK 218 (NC), wherein this Commission held as under:

“.....It was the duty of the above Director to have ensured that the cheque book was kept under the locked key at a safe place. In this backdrop, there was hardly any occasion for the respondent Bank to be doubted the genuineness of the signatures on the cheque in question if any embezzlement was made by the employee of company the respondent Bank cannot be held responsible for it.”

Petitioner has also placed reliance on the orders of the Hon’ble High Court of Kerala in ***Kerala State Cooperative Bank Ltd., vs State Bank of India*** – Manu/KE/0286/2017 as well as order of the Hon’ble High Court of Kolkata in ***Pranenda Mohan Das vs Central Bank of India*** – AIR 1978 CAL 55 in support of his case wherein it was similarly held.

7. The respondent, on the other hand, contended that the petitioner was responsible for exercising due diligence in encashing the cheque.

8. I find myself unable to be persuaded by the reasons of the State Commission in the impugned order. Firstly, the responsibility of the security of the cheques issued by the Bank is that of the respondent no. 1. He cannot absolve himself and try and shift any consequential loss to the petitioner on ground of deficiency in service. Secondly, there is no requirement of verification of PAN details before encashing a cheque in a Bank. The State Commission has clearly erred in holding that the Bank did not comply with this ‘requirement’. Thirdly, the ground that as the cheque was an out-station cheque, the bank should have verified the same from the respondent no. 1 does not carry any conviction since the objective of a multi-city account is to enable encashing of cheques from such an account at par, without charges. Lastly, the fact that there was a recovery of Rs.6,91,000/- from respondent no. 2 by the police does not make the petitioner liable for repaying the balance Rs.2,09,000/- to the respondent. The respondent would need to pursue other legal remedies, if any, for the same. The petition is therefore liable to succeed.

9. In the light of the above, I find merit in the revision petition. The petition is accordingly allowed and the impugned order of the State Commission is set aside.

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**SUBHASH CHANDRA
PRESIDING MEMBER**