

SUNIL KUMAR MAITY

v.

STATE BANK OF INDIA AND ANR.

(Civil Appeal 432 of 2022)

JANUARY 21, 2022

**[SANJIV KHANNA AND BELA M. TRIVEDI, JJ.]**

*Consumer Protection Act, 1986 – s.21(b) – Revisional jurisdiction of National Consumer Commission – Ambit and scope – Consumer complaint against bank by a customer (appellant) alleging blunder in credit of cheque amount – The amount was credited to account of second respondent, another customer with a similar name who was having account in the same bank branch – Complaint allowed by Consumer Forum – Order partly upheld by State Consumer Commission – Revision application filed by respondent-bank against order of State Consumer Commission allowed by National Consumer Commission – Propriety – Held: On facts, not proper – Revisional jurisdiction of the National Consumer Commission u/s.21(b) is extremely limited – It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity – In the instant case, the National Commission itself had exceeded its revisional jurisdiction by calling for the report from the respondent-bank and solely relying upon such report, came to the conclusion that the two fora below had erred in not undertaking the requisite in-depth appraisal of the case that was required – Though a party can produce additional evidence at the appellate stage, the same has to be within the four corners of law, that is as contemplated in order-41, R.27, CPC – Apart from the fact that there is a vast difference between exercise of appellate jurisdiction and revisional jurisdiction, no such application was filed by the respondent-bank before the National Commission – Under the circumstances, calling for the report by the National Commission on its own from the officer of the bank was absolutely unwarranted – Impugned order of National Commission accordingly set aside.*

SUNIL KUMAR MAITY v. STATE BANK OF INDIA AND ANR.

*Consumer Protection Act, 1986 – Complaint before forum under the Act – Entertainability – Held: The anvil on which entertainability of a complaint by a forum under the Act is to be determined, is whether the questions, though complicated they may be, are capable of being determined by summary enquiry – Requirement of leading detailed evidence cannot be a ground to shut the doors of any forum created under the Consumer Protection Act.*

*Code of Civil Procedure, 1908 – Order XLI, r.27 – Evidence – Production of additional evidence – Requirements for – Held: Though a party can produce additional evidence at the appellate stage, the same has to be within the four corners of law, that is as contemplated in Order XLI, r.27 – The party has to establish that notwithstanding the exercise of due diligence, such evidence was not within its knowledge or could not even after due diligence, be produced by it at the time when the decree appealed against was passed.*

*Limitation Act, 1963 – s.5 – Inapplicability – When – On facts, held: The National Consumer Commission grossly erred in observing in the impugned order that the appellant-complainant would be at liberty to seek remedy in the competent Civil Court and that if he chooses to bring an action in a Civil Court, he is free to file an application u/s.5 of the Limitation Act, 1963, recording the statement of Counsel for the respondent-bank that it will not press the issue of limitation if action is brought by the complainant in a Civil Court – Such an observation/order passed by the National Commission is in utter ignorance of the provisions of the Limitation Act, in as much as s.5 of the Limitation Act does not apply to the institution of civil suit in the Civil Court.*

**Allowing the appeal, the Court**

**HELD:1.** Pending the revision application filed by respondent-SBI, the National Commission had called for a report on the whole matter from the SBI. Accordingly, a report dated 19<sup>th</sup> March, 2019 was filed by the Regional Manager of the SBI. Relying upon the said report, the National Commission allowed the revision application filed by the bank, by observing *inter-alia* that though revisional jurisdiction of the Commission under

- A section 21(b) of the Consumer Protection Act, 1986 has a defined purview and ambit, it does allow interference if grave misappreciation of evidence or superficial appraisal of a case is discernible on the part of the two fora below. This court is at a loss to understand as to how the National Commission could have sought for a report at the revisional stage, that too from an officer of the party which already had an opportunity to submit all the documents necessary for the purpose of defending itself before the Consumer Forum, and as to how such a report in the form of an additional evidence produced at the revisional stage could be relied upon, in respect of which the two fora below had no opportunity to deal with. [Para 8][266-C-F]

2. The revisional jurisdiction of the National Commission under Section 21(b) of the Consumer Protection Act, 1986 is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity. In the instant case, the National Commission itself had exceeded its revisional jurisdiction by calling for the report from the respondent-bank and solely relying upon such report, had come to the conclusion that the two fora below had erred in not undertaking the requisite in-depth appraisal of the case that was required. In the opinion of the Court, both the State Commission as well as the Consumer Forum had elaborately appreciated the documents on record and passed the reasoned orders. The report that tries to absolve the respondent-bank of its liability is based on surmises and conjectures as it abstrusely and without evidence holds that the bank has every reason to believe that wrong account number was intentionally inserted by the appellant himself for reasons best known to the appellant or on account of negligence by the appellant by not keeping the passbook in his safe and proper custody. The suppositions are contradictory as well as incredulous and fanciful. The appellant did not know the second respondent and would not have known

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his account number unless given to him by a bank officer. There was no way that the appellant would have known that the second respondent, had an account in the same branch. No sane person would deposit cash or cheque meant to be deposited in his account in an account number belonging to another person with similar name. On the other hand, the bank should have been extra cautious given the fact that accounts of the appellant, and the second respondent, were with the same bank branch. What is rather surprising is that the National Commission for setting aside the findings and conclusion recorded by the District and State Forum, simply reproduced the report by one of the officers of the party in litigation with the appellant. The National Commission has not adverted and delved into the sound reasoning given by the State Commission. [Para 9][266-F-H; 267-A-E]

3. Though a party can produce additional evidence at the appellate stage, the same has to be within the four corners of law, that is as contemplated in order-41, R.27. The party has to establish that notwithstanding the exercise of due diligence, such evidence was not within its knowledge or could not even after due diligence, be produced by it at the time when the decree appealed against was passed. Apart from the fact that there is a vast difference between the exercise of appellate jurisdiction and the revisional jurisdiction, no such application was filed by the respondent-bank before the National Commission. Under the circumstances, calling for the report by the National Commission on its own from the officer of the bank was absolutely unwarranted. [Para 10][267-E-G]

4. Further, requirement of leading detailed evidence could not be a ground to shut the doors of any forum created under the Act like the Consumer Protection Act. The anvil on which entertainability of a complaint by a forum under the Act is to be determined, is whether the questions, though complicated they may be, are capable of being determined by summary enquiry. [Para 11][267-G-H; 268-A-B]

*CCI Chambers Coop. Hsg. Society Ltd. v. Development Credit Bank Ltd.* (2003) 7 SCC 233 : [2003] 3 Suppl. SCR 139 – relied on.

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- A        **5. The National Commission grossly erred in observing in the impugned order that the appellant-complainant would be at liberty to seek remedy in the competent Civil Court and that if he chooses to bring an action in a Civil Court, he is free to file an application under Section 5 of the Limitation Act, 1963, recording the statement of Counsel for the SBI that it will not press the**
- B        **issue of limitation if action is brought by the complainant in a Civil Court. Such an observation/order passed by the National Commission is in utter ignorance of the provisions of the Limitation Act, in as much as Section 5 of the Limitation Act does not apply to the institution of civil suit in the Civil Court. Be that**
- C        **as it may, the impugned order passed by the National Commission solely relying upon the suo-moto report called for from the respondent-bank during the pendency of the revision application, being highly erroneous, is set aside. [Para 12][268-B-D]**

**Case Law Reference**

- D        **[2003] 3 Suppl. SCR 139        relied on        Para 11**
- CIVIL APPELLATE JURISDICTION: Civil Appeal No. 432 of 2022.
- From the Judgment and Order dated 14.06.2019 of the National
- E        Consumer Disputes Redressal Commission at New Delhi in Revision Petition No.483 of 2018.
- Anand Shankar Jha, Arpit Gupta, Ms. Meenakshi Devgan, G. Bhardwaj, Shubham Tripathi, Advs. for the Appellant.
- F        Jitendra Kumar, Adv. for the Respondents.
- The Judgment of the Court was delivered by
- BELA M. TRIVEDI, J.**
- 1.Leave granted.
- G        2. The National Consumer Disputes Redressal Commission (hereinafter referred to as “the National Commission”) on 07<sup>th</sup> June 2019 had passed the following order in the Revision Petition No. 483 of 2018 filed by the respondent-SBI.

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*“The revision petition is allowed. The complaint is dismissed, with liberty to the complainant to approach a competent civil court as per the law.*

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*It goes without saying that, if the complainant chooses to bring action in a civil court, he is free to file an application under section 5 of the Limitation Act, 1963, and, in such contingency, the chronological facts and proceedings in the consumer protection fora would be material and relevant towards making such application.*

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*Learned counsel for the revisionist State Bank of India submits that it will not press the issue of limitation if action is brought by the complainant in a civil court.*

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*Reasoned judgment to follow.”*

3. The National Commission passed impugned judgement on 14<sup>th</sup> June, 2019, allowing the said Revision Petition. Being aggrieved by the said judgement and order, the appellant (original complainant) has filed the present appeal.

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4. The short facts giving rise to the present appeal are that the appellant-complainant had filed the consumer case being no. 08 of 2014 before the Consumer Disputes Redressal Forum, Purba Medinipur (hereinafter referred to as “the Consumer Forum”) alleging *inter-alia* that the appellant i.e., Sunil Kr. Maity had a saving account number 01190010167 with the respondent-bank since January, 2000. On 24.02.2010, the said account number was changed to number 10140478732. On 15.09.2012, the appellant went to deposit a sum of Rs. 500/- in the said account, when a staff of respondent-bank informed him that the account number had again been changed and wrote account number being 32432609504 on his passbook. The said amount was deposited in the said account number. Thereafter, on 16.01.2013, appellant deposited a cheque being no. 670013 for Rs. 3,00,000/- drawn on SBI of the said Branch issued by one Prabir Pradhan having an SBI account number 030608507950. When the appellant went to update his passbook on 11.12.2013, he noticed that his passbook showed the balance of Rs. 59/- only, though he had not made any transaction between 16.01.2013 to 11.12.2013. On the enquiry having been made, the respondent-bank informed the appellant that there was another customer by the name Sunil Maity (the respondent no. 2 herein) whose account number was

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A 32432609504 and the said account number was wrongly given to the appellant whose name was Sunil Kr Maity on 15.09.2012. The said Sunil Maity (respondent no. 2) on 25.01.2013 and 28.01.2013 had withdrawn the sum of Rs. 1,00,000/- and Rs. 2,00,000/- respectively from the said account number. The appellant-complainant therefore wrote letters to the respondent-bank but in vain. He thereafter filed the complaint before the Consumer Forum against the respondent-SBI and the said Sunil Maity.

B 5. Both the respondents had entered their appearance and filed their respective replies to the complaint filed by the appellant-complainant. The Consumer Forum after appreciating all the documents filed by the appellant as well as by the respondents in the light of their pleadings, allowed the complaint vide the order dated 14.05.2014.

C 6. Being aggrieved by the said order, the respondent-bank had preferred the First Appeal being No. 784 of 2014 before the State Consumer Disputes Redressal Commission, West Bengal(hereinafter referred to as State Commission), which by the order dated 25 October, 2017 partly allowed the appeal. The State Commission while confirming the rest of the order passed by the Consumer Forum, modified it to the extent that the order for fine @ Rs. 100/- per diem was struck off. The State Commission after a closer scrutiny of the documents on record, observed in the said order as under:

E *“On closer scrutiny of the documents on record, following facts emerge.*

F *First, we find that there was complete parity in the signature being put on the deposit slip pertaining to the disputed cheque for an amount of Rs. 3,00,000/- vis-à-vis specimen signature of the Respondent No. 1 contained in the official record of the bank.*

G *Secondly, documents on record show that the Respondent No. 1 signs in English; whereas, ‘Sunil Maity’, account-holder of saving account no. 32432609504 signs in Bengali. Significant here to note that while depositing the cheque for Rs. 3,00,000/-, the depositor signed in English and the name of the depositor was mentioned as ‘Sunil Kr. Maity’.*

H *Thirdly, it seems that the Respondent No. 1 voluntarily disclosed the source wherefrom did he get the said cheque. On the other hand, the Respondent No. 2, stated to be a*

*salaried person, has not uttered any word in this regard. Since, Rs. 3.00.000/- is quite a considerable sum, reluctance of the Respondent No. 2 to disclose the source wherefrom did he receive the said cheque, if at all received, does raise eyebrows.*

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*Fourthly, it is only natural that one would write his name properly while filling up the deposit slip. There is no reason to believe that 'Sunil Maity' (Respondent No. 1) would write his name in the deposit slip as 'Sunil Kumar Maity'.*

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*Fifthly, since banks quite meticulously check the name, account no., amount, date etc. before/while crediting proceeds of cheques/demand drafts etc., it was but natural that while the disputed cheque was issued in the name of 'Sunil Kr. Maity', the Respondent No. 2 would impress upon the issuer of the said cheque to correctly write his name as 'Sunil Maity' by issuing another cheque. The amount being quite substantial, the Respondent No. 2 could hardly afford such leaving anything to chances.*

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*Sixthly, there is nothing to show that Respondent No. 2 can write his name in English. Therefore, questions survives, how he signed the deposit slip while depositing the cheque in English.*

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*Seventhly, it appears from the WV submitted by the appellant that when the Respondent No. 1 lodged complaint with it, the Appellant, on several occasions, asked the Respondent No. 2 to meet its Branch Manager. However, on one pretext or the other, the Respondent No. 2 avoided meeting him. An honest person never fight shy of proving his bona fide.*

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*Lastly, the Respondent No. 2 has not placed on record any counter part of deposit slip to show that the said amount were indeed deposited by him.*

*All these emerging facts induce us to hold that the disputed cheque indeed belonged to the Respondent No. 1.*

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*Given that it is virtually impossible for one to know the account number of another person, and more so, as passbook is stated to be updated by Group 'D' staff of the bank, it would be*

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A        *myopic not to believe that the goof up created at the end of the Appellant itself. Besides this, since the Appellant made a great blunder while crediting the amount of the cheque to the account of Respondent No. 2, we feel, the Appellant must own up due responsibility in this regard.”*

B        7. The respondent-bank being aggrieved by the said order had preferred the Revision Petition before the National Commission under Section 21 (b) of the Consumer Protection Act (hereinafter referred to as “the said Act”). The National Commission allowed the said revision application vide the impugned order as stated hereinabove.

C        8. It is pertinent to note that pending the revision application, the National Commission had called for a report on the whole matter from the SBI. Accordingly, a report dated 19<sup>th</sup> March, 2019 was filed by the Regional Manager of the SBI. Relying upon the said report, the National Commission allowed the revision application filed by the bank, by observing *inter-alia* that though revisional jurisdiction of the Commission under section 21(b) of the Act, 1986 has a defined purview and ambit, it does allow interference if grave misappreciation of evidence or superficial appraisal of a case is discernible on the part of the two fora below. This court is at a loss to understand as to how the National Commission could have sought for a report at the revisional stage, that too from an officer of the party which already had an opportunity to submit all the documents necessary for the purpose of defending itself before the Consumer Forum, and as to how such a report in the form of an additional evidence produced at the revisional stage could be relied upon, in respect of which the two fora below had no opportunity to deal with.

F        9. It is needless to say that the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity. In the instant case, the National Commission itself had exceeded its revisional jurisdiction by calling for the report from the respondent-bank and solely relying upon such report, had come to the conclusion that the two fora below had erred in not undertaking the requisite in-depth appraisal of the case that was required. In the opinion of the Court, both the State

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Commission as well as the Consumer Forum had elaborately appreciated the documents on record and passed the reasoned orders. The report that tries to absolve the respondent-bank of its liability is based on surmises and conjectures as it abstrusely and without evidence holds that the bank has every reason to believe that wrong account number was intentionally inserted by the appellant himself for reasons best known to the appellant or on account of negligence by the appellant by not keeping the passbook in his safe and proper custody. The suppositions are contradictory as well as incredulous and fanciful. The appellant did not know the second respondent and would not have known his account number unless given to him by a bank officer. There was no way that the appellant would have known that the second respondent, namely Sunil Maity had an account in the same branch. No sane person would deposit cash or cheque meant to be deposited in his account in an account number belonging to another person with similar name. On the other hand, the bank should have been extra cautious given the fact that accounts of the appellant, Sunil Kumar Maity, and the second respondent, Sunil Maity, were with the same bank branch. What is rather surprising is that the National Commission for setting aside the findings and conclusion recorded by the District and State Forum, simply reproduced the report by one of the officers of the party in litigation with the appellant. The National Commission has not adverted and delved into the sound reasoning given by the State Commission as quoted above.

10. Though a party can produce additional evidence at the appellate stage, the same has to be within the four corners of law, that is as contemplated in order-41, R.27. The party has to establish that notwithstanding the exercise of due diligence, such evidence was not within its knowledge or could not even after due diligence, be produced by it at the time when the decree appealed against was passed. Apart from the fact that there is a vast difference between the exercise of appellate jurisdiction and the revisional jurisdiction, no such application was filed by the respondent-bank before the National Commission. Under the circumstances, calling for the report by the National Commission on its own from the officer of the bank was absolutely unwarranted.

11. Further, it is also well settled legal position<sup>1</sup> that requirement of leading detailed evidence could not be a ground to shut the doors of any

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<sup>1</sup> CCI Chambers Coop. Hsg. Society Ltd. vs. Development Credit Bank Ltd. (2003) 7 SCC 233

- A forum created under the Act like the Consumer Protection Act. The anvil on which entertainability of a complaint by a forum under the Act is to be determined, is whether the questions, though complicated they may be, are capable of being determined by summary enquiry.

12. The National Commission therefore has grossly erred in observing in the impugned order that the appellant-complainant would be at liberty to seek remedy in the competent Civil Court and that if he chooses to bring an action in a Civil Court, he is free to file an application under Section 5 of the Limitation Act, 1963, recording the statement of Ld. Counsel for the SBI that it will not press the issue of limitation if action is brought by the complainant in a Civil Court. Such an observation/ order passed by the National Commission is in utter ignorance of the provisions of the Limitation Act, in as much as Section 5 of the Limitation Act does not apply to the institution of civil suit in the Civil Court. Be that as it may, the impugned order passed by the National Commission solely relying upon the suo-moto report called for from the respondent-bank during the pendency of the revision application, being highly erroneous, deserves to be set aside and is accordingly set aside. The order passed by the State Commission is restored. The appeal stands allowed accordingly.

Devika Gujral

Appeal allowed.