IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution : 23.03.2011
Date of Reserving the order : 11.03.2025
Date of Decision : 09.10.2025

FIRST APPEAL NO.- 106/2011

IN THE MATTER OF

Smt. Chayya Sharma

W/o Sh. Subhash Mukhiya

R/o A-81, Gali No. 7,

Prem Nager, Karawal Nager, Delhi-94

(Mr. Sudhir Kr. Singh, Advocate)
......Appellant

VERSUS

1. **Branch Manager**

   State Bank of India

   At: Karawal Nager, Delhi-94

(Ms. Jaya Tomar, Advocate)
.....Respondent No. 1

2. **Branch Manager**

   HDFC Bank Ltd. Auto Loan Department

   At: S-4, Green Park Extn.,

   Near Uphar Cinema, New Delhi-110016

(Ms. Vasundhara Arora, Advocate)
.....Respondent No. 2

CORAM:
HON'BLE MS. BIMLA KUMARI, PRESIDING MEMBER

Present: Mr. Devesh, counsel for the Appellant
None for the Respondent No. 1
None for the Respondent No. 2

PER: HON'BLE MS. BIMLA KUMARI, PRESIDING MEMBER

ORDER

1. By this judgment, I shall dispose of the appeal filed by the Appellant, Chayya Sharma against the impugned order dated 21.01.2011 passed by Ld. Consumer Disputes Redressal Forum North East, Nand Nagri, Delhi in Complaint Case No. 154/2010 titled as Chayya Sharma Vs. SBI & Ors.

2. Brief facts of the case as per the complaint are that the Complainant *(Appellant herein)* was having Saving A/c no. 10226283374 with SBI Bank, Karawal Nager Branch, Delhi i.e. the Opposite Party No. 1 *(Respondent No. 1 herein).* The Complainant took a car loan of Rs.2,60,000/- from the Opposite Party No. 2 *(Respondent No. 2 herein)* vide loan A/c no. 13104309. The Complainant was to repay the loan in 48 installments of Rs.7,054/- each. The ECS mandate no. 10226283374 was issued by Opposite Party No. 1 to the Opposite Party No. 2, so that monthly installments of Rs.7,054/- could be automatically deducted through ECS from the

Saving Account of the Complainant by Opposite Party No. 2. The eleven cheques of the Complainant were bounced and amount of Rs.4,400/- was deducted @ Rs.400 per bounced cheque, out of 11 cheques, three cheques were dishonoured due to insufficient funds and eight cheques were bounced on the ground that account was not valid. As per statement of account, there was sufficient amount in her account.

3. It was the further case of Complainant that she immediately approached the Opposite Party No. 1 to make queries, but the officials of Opposite Party No. 1 did not give any plausible reply and alleged that as to why she was not depositing the amount in the account in time and they have to write something in response. Thereafter, she obtained the statement of account from Opposite Party No. 1 and found that there was always sufficient amount in her account for deduction of EMIs.

4. Hence, the Complainant filed the complaint before Ld District Forum for directions to the Opposite Party No. 1 to issue the correct statement of account where no cheque has been shown as bounced one. Further, the Opposite Party No. 2 be also directed to refund a sum of Rs.4,400/- collected towards cheque bouncing. The Opposite Parties be further directed to pay a sum of

Rs.10,00,000/- towards mental agony and harassment suffered by her.

5. The Opposite Party No. 1 filed the written statement before Ld District Forum, wherein it was submitted that the complaint is false and frivolous and had been filed to create undue pressure upon the Opposite Party No. 1. The Complainant is not a 'Consumer' as defined under the Consumer Protection Act. There is no privity of contract between the Complainant and Opposite Party No. 1. There is no deficiency in service on the part of Opposite Party No. 1 and the complaint deserves to be dismissed. The Opposite Party No. 1 is the destination bank and the Opposite Party No. 2 was sponsored bank. The Complainant was user and a simple standard format, approval by RBI, was filled in by the user and sent to the sponsored bank, which sent the floppy to RBI for electronic clearing. The sponsored bank is responsible to give mandate to RBI and destination bank. The sponsored bank had given mandate number as 283374, which was incorrect and therefore, ECS could not be processed on eight times as no account was found. Further, out of three, one ECS was returned due to insufficient funds at material time and rest of two were returned inadvertently with mistake and

incorrect remarks. But, the two ECS ought to have been returned for the reason that ECS mandate was incorrect.

6. However, the Opposite Party No. 2 did not file the written statement despite several opportunities and was proceeded ex-parte by Ld District Forum vide order dated 21.09.2010.

7. The Complaint and Opposite Party No. 1 filed their evidence by way of affidavits before the Ld District Forum.

8. After hearing Ld counsel for the parties, Ld District Forum passed the following order: -

> *"Undeniably complainant is having an account bearing No. 10226283374 with SBI Bank Karawal Nagar Branch. Complainant obtained car loan from OP II HDFC Bank of Rs. 2,60,000/- vide loan account No. 13111104309. The complainant wanted to pay the loan through ECS, accordingly complainant filled the format approved by RBI was sent to sponsored bank after authentication from destination bank. Thereafter sponsored bank send floppy to RBI for electronic clearing. The mandate number as 283374 was incorrect due to which eleven cheques were sent back unpaid. As per the guidelines issued by RBI Department of Payment and Settlement systems Nov. 2007:–*
>
> *In cases of disputes, the decision of the President of the respective Clearing House would be final. In case the*

dispute could not be settled by the Clearing House, the same may be referred to Department of Payment and Settlement Systems, Central Office, RBI whose decision in the matter would be binding on all concerned."

9. It is the case of Appellant that the impugned order is arbitrary and against the material and facts available on record and is not sustainable in the eyes of law. The impugned order was passed by the Ld District Forum in mechanical manner and without proper application of judicial mind and as such is liable to be set aside. The impugned order is a non-speaking order and does not dwell upon the merits of case. The impugned order suffers from material irregularity as the Ld District Forum failed to understand the malafide intention of Respondent No. 1 & 2, who were taking advantage of their own mistake and were negligent in service. Further, Respondent No. 1 admitted its mistake in the affidavit filed before the Ld District Forum. It was the duty of the Respondent No. 2 to send correct ECS mandate for clearing after verifying the signature from the Respondent No. 1. Ld District Forum failed to appreciate that if the account no. mentioned in the ECS mandate was wrong then how it was possible that three cheques were bounced due to insufficient funds and on eight occasions cheques were bounced due to invalid account no., but on some occasions,

the cheques were honoured on same account no. There were always sufficient amount more than Rs.7,054/- in the account of Appellant maintained by Respondent No. 1. Due to the mistake and casual approach of the officials of Respondent No. 1 & 2, the cheques were dishonoured/bounced and such mistakes constituted deficiency in service as contemplated under the Consumer Protection Act. The Appellant has prayed that the impugned order dated 21.01.2011 passed by Ld District Forum be set aside and a sum of Rs.10,00,000/- be awarded towards compensation for mental agony and harassment along with litigation costs of Rs.21,000/-.

10. The Respondent No. 1 has filed reply to the appeal, wherein it is submitted that the impugned order is a reasoned order and does not warrant interference by this Commission. There was no privity of contract between the Appellant and Respondent No. 1. ECS mandate was to be issued by Respondent No. 2 to Respondent No. 1, which was only the destination bank and was to execute only correct mandate, issued by the sponsored bank.

11. It is further submitted by Respondent No. 1 that a simple standard format approved by RBI is filled up by the user and sent to the sponsored bank for authentication from the destination bank. The sponsored bank sends the floppy to RBI for

electronic clearing. The sponsored bank had given incorrect mandate no. and therefore, the ECS could not be processed on eight occasions due to which the account was not found. Out of three, one ECS was returned due to insufficient funds at the relevant time and rest of the two ECS were returned inadvertently with mistake and incorrect remarks. But, those two ECS have to have been returned for the reason that ECS mandate was incorrect and account could not be processed. There were no lapses on the part of Respondent No. 1.

12. The Respondent No. 2 has also filed reply to the appeal, wherein it is submitted that the appeal filed by the Appellant is frivolous, vexatious, devoid of merits and abuse of the process of law. The Appellant in order to wriggle out of the contractual ability has leveled false allegations against the Respondent No. 2 by suppressing material and correct facts. The Appellant has approached this Commission with unclean hands by submitting distorted and inchoate facts with malafide intention of misleading the Commission. There is no deficiency in service on the part of Respondent No. 2 and the appeal is liable to be dismissed in limine with exemplary cost. The appeal is not maintainable in view of the Arbitration clause in the loan agreement.

13. It is further submitted that Respondent No. 2 had disbursed a sum of Rs.2,50,180/- to the Appellant. In terms of loan agreement and for the payment of EMIs, the Appellant submitted the Electronic Clearing Service (Debit Clearing) Mandate Form on 03.05.2008 (ECS Mandate Form) along with necessary details such as destination bank, Account Holder name, Account no., Digit Code number of the bank and branch. The ECS mandate form was forwarded to Respondent No. 1 under the covering letter dated 21.10.2008, which was duly delivered to the Respondent No. 1. The Respondent No. 1 duly acted on the said ECS Mandate Form and cleared few EMIs of the Appellant through ECS, on fixed dates, presented by Respondent No. 1. The only issue raised by Respondent No. 1 is that the Respondent No. 2 has provided the wrong Mandate Number and therefore, the ECS towards EMIs were not cleared. The said ground taken by the Respondent No. 1 is totally false and incorrect for the following reasons:

"a. except the 11 disputed EMIs other EMI's through the ECS were cleared and honoured by the Respondent No. 1 on the same ECS mandate form and Mandate number provided;

b. the reason for not honouring the ECS towards the 11 disputed EMIs, were not on the ground of the wrong mandate number provided but for the various other reasons, which are (i) insufficient funds; (ii) no account *found due to incorrect Mandate number and (iii) incorrect remarks; as admitted in the reply filed by the Respondent No. 1."*

14. It is further submitted that Respondent No. 2 duly submitted and presented the ECS with correct details, but Respondent No. 1/destination bank inconsistently returned the ECS instruction with different technical reasons. That was purely the Respondent No. 1/destination bank's fault for not honouring the correct ECS mandate submitted by Respondent No. 2. The Respondent No. 1 should be stopped from blowing hot and cold in the same breath as it cannot have contrary stand for not honouring 11 disputed EMIs and clearing the other EMIs, through the ECS on the same ECS Mandate Form and Mandate number provided by the Respondent No. 2. The Respondent No. 1 should be put to strict proof as to how initially it acted on the ECS mandate and subsequently did not clear the ECS on various grounds. Thus, the appeal is without any cause of action against the Respondent No. 2. The Respondent No. 2 is not guilty of deficiency in service as alleged by the Appellant.

15. The appeal was dismissed in default on 27.10.2016 by Ld Predecessor, as the Appellant was not serious in pursuing the appeal.

16. Thereafter, the Appellant filed the Revision Petition No. 3520/2016 before the Hon'ble National Commission against the order dated 27.10.2016. Vide order dated 12.04.2019, the Hon'ble National Commission allowed the Revision Petition and remanded back the matter to this Commission with direction to decide the case on merits.

17. The Appellant has filed the written arguments.

18. The Respondent No. 1 & 2 have also filed the written arguments.

19. I have gone through the material available on record.

20. **The only question for consideration is whether there is any illegality or material irregularity in the order passed by ld. District Forum.**

21. In the present case, it is clear from the record that the Appellant was having a saving A/c no. 10226283374 with the Respondent No. 1. Further, she took a car loan from the Respondent No. 2 vide loan A/c no. 13104309 and entered into a LoanAagreement dated 15.04.2008 vide Loan Application Form **Annexure-A colly Page 23 to 36 of reply filed by Respondent No.**

2. The Appellant issued three post-dated cheques bearing no. 752565, 752566 & 752569 for a sum of Rs.21,162/- each drawn on Respondent No. 1 **Annexure-B Page 37 of reply filed by Respondent No. 2**. Further, at the time of execution of Loan Agreement, the Appellant had submitted the Mandate Form and authorized Respondent No. 1 to debit her account for making payment to HDFC Bank Ltd. through ECS and furnished the Account no. '283374' A**nnexure-C Page 38 of the reply filed by Respondent No. 2**. Further, the original ECS Mandate Form was forwarded to Respondent No. 1 by Respondent No. 2 under the covering letter dated 21.05.2008, which was duly delivered to Respondent No. 1.

22. **A perusal of this ECS Mandate Form shows that the Appellant had authorized Respondent No. 1 to debit her account for making payment to Respondent No. 2 through ECS and also requested the Respondent No. 1 to attach a photocopy of the cheque or a blank cancelled cheque for verifying the accuracy of MICR code.**

23. It is worth noting that while issuing ECS Mandate Form **Annexure-C Page 38 of reply filed by Respondent No. 2** to the Respondent No. 1, the Appellant had also made the following declaration:

> *" I hereby declare that the particulars given above are correct and complete. If the transaction is delayed or not effected at all for reasons of incomplete of incorrect information. I would not hold the user institution responsible. I have read the option invitation letter and agree to discharge the responsibility expected of me as a participant under the scheme."*

24. **It is significant to note that the Respondent No. 1 duly acted on the said ECS Mandate Form submitted by the Appellant and cleared few EMIs through ECS, as is clear from statement of loan A/c no. 13104309 Annexure-F colly Page 43 to 50 of reply filed by Respondent No. 2. Thus, the plea taken by the Respondent No. 1 that the Respondent No. 2 provided the wrong Mandate number and therefore, the ECS towards 11 EMIs were not cleared/honoured does not seems to be plausible because on the same ECS Mandate Form the remaining EMIs pertaining to the loan were cleared by Respondent No. 1.**

25. **It is further significant to note that the Respondent No. 1 did not place on record even a single document along with the written statement before the Ld District Forum to substantiate the allegations levelled by Respondent No. 1 against the Respondent No. 2. Further, no**

material was also brought on record by Respondent No. 1 before the Ld District Forum to prove that as to what point of time the Appellant was not having sufficient amount in her account due to which one of the EMIs could not be honoured on account of insufficient funds as stated by Respondent No. 1.

26. Further, I find no force in the contention of Respondent No. 1 that the Respondent No. 2 provided wrong mandate no. due to which the account of Appellant was not found/traceable. It is worth noting that when the account of Appellant was not found/traceable on furnishing the alleged wrong Mandate number by Respondent No. 2, how did it come to the notice of Respondent No. 1 that the Appellant was not having sufficient amount in her account. It is worth noting that when the Respondent No. 1 had cleared some of the EMIs of Appellant, through the same ECS Mandate, furnished by Respondent No. 2, I do not find any merits in the contention of Respondent No. 1 that wrong Mandate number was given by Respondent No. 2 to Respondent No. 1.

27. Thus, after going through the material on record, I am of the considered view that there was deficiency in service on the part of Respondent No. 1, in not honouring the EMIs of

Appellant, through ECS, on the ECS Mandate Form furnished by Respondent No. 2.

28. In view of the above discussions, I am of the considered view that the impugned order passed by Ld District Forum suffers from illegality.

29. Accordingly, the impugned order is hereby set-aside.

30. It is worth noting that the Appellant has availed the facility of loan on 15.04.2008 from Respondent No. 2 and filed the complaint before the Ld District Forum in 2010 on account of deficiency in service on the part of Respondents. Since then, she is facing the agony of litigation.

31. **In these circumstances, a sum of Rs.1,50,000/- is awarded in favour of Appellant for suffering mental agony and harassment.**

32. **Further, a sum of Rs.20,000/- is also awarded in favour of Appellant towards litigation costs.**

33. **It is directed that the Respondent No. 1 will pay the awarded amount to the Appellant within a period of three months from the date of receipt of this judgment, failing**

which the awarded amount shall carry interest @ 7% p.a. from the date of judgment till realization of amount.

34. Accordingly, the appeal filed by the Appellant is allowed.

35. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.

36. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986. The judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.

37. File be consigned to record room along with copy of this judgment.

38. Trial court record, if any, be sent back alongwith copy of this judgment.

(BIMLA KUMARI)
PRESIDING MEMBER

Pronounced on 09.10.2025