NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 1865 OF 2022

(Against the Order dated 10/10/2022 in Appeal No. 215/2019 of the State Commission Uttar Pradesh)

1. CENTRAL BANK OF INDIA ....Petitioner(s)

Versus

1. ABHAY KUMAR JAIN ....Respondent(s)

BEFORE:

HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING MEMBER

FOR THE PETITIONER : FOR PETITIONER : MR.RAJESH SHARMA, ADVOCATE

FOR THE RESPONDENT : FOR RESPONDENT : MR.P.K. MISHRA, ADVOCATE

Dated : 20 May 2024

ORDER

1. This Revision Petition No.1865 of 2022 challenges the impugned order of U.P. State Consumer Disputes Redressal Commission, Lucknow ('the State Commission') dated 10.10.2022. Vide this order, the State Commission dismissed the First Appeal No. 215 of 2019 and affirmed the order of the District Consumer Disputes Redressal Forum, Varanasi ('the District Forum') dated 18.12.2018.

2. Brief facts of the case, as per the Complainant, are that the Complainant had held Locker No.82 with the Petitioner Bank. The rent of the said locker was paid per annum regularly by the Respondent/Complainant. On 28.09.2015, some thieves had stolen the ornaments of the Respondent/Complainant from the said locker. As per the Complainant, the value of the said ornaments was Rs.1,85,780/- and an FIR was lodged with Police. The Complainant filed the claim of loss of ornaments with the Petitioner Bank. However, the claim was denied by the Petitioner Bank on the ground of no negligence on its part. Being aggrieved, he filed a Complaint before the District Forum.

3. Petitioner/OP/Bank was proceeded ex-parte before the District Forum and the learned District Forum vide order dated 18.12.2018 allowed the complaint ex-parte and directed the Petitioner/Opposite Party/Bank as under:

> ***"The present complaint is accepted ex-party. The opposite party is ordered to pay Rs.1,87,780/- (Rupees One Lakh Eighty Five Thousand Seven Hundred Eighty) to the complainant within 30 (thirty days) and on this from the date of filing the complaint, 9% (Nine Percent) annual rate. They should pay compensation of Rs.10,000/- (Ten***

Thousand) on account of mental agony and harassment and Rs.2,000/- towards litigation expenses."

(Extracted from translated copy)

4. Being aggrieved by the impugned order, the Petitioner/OP filed an Appeal and the learned State Commission, vide order dated 10.10.2022 dismissed the same and affirmed the order of the District Forum with the following observations:

"This judgment and order is challenged on the grounds that the learned District Commission has not considered the legal point that the relationship between the bank and the complainant is only that of lessor and lessee, it would be appropriate to mention on this occasion that this ground is illegal. It is important to mention here that the relationship between the bank and the customer from whom the locker is hired is that of a baler and bailee and the bailee is responsible for the safekeeping of all bailed goods to the extent He can protect his belongings.

The fact that the locker was obtained by the complainant in the opposite bank has not been denied by the parties. A First Information Report has been lodged by the branch manager of the bank himself, the mention of which is present in the decision of the learned District Commission. It is nowhere mentioned in the memorandum of appeal that the locker hired by the complainant was protected by the bank to the extent that the bailee protects his own belongings. No answer has been given anywhere in the complaint letter and the offer of the manager for proper security has not been mentioned in the memorandum of appeal, nor has it been proved by the affidavit.

As per the facts of Nazir 2015(2) CPR 579 (NC), when valuables are stolen from a locker taken in a Jab Bank, then the bank itself is liable to pay the cost of the stolen goods as the bank is responsible for the customer's goods. There has been deficiency in service by not providing security. The above example is completely relevant to the present case.

After considering all the above facts and circumstances, we are of the opinion that the decision and order has been passed by the learned District Commission after duly examining and perusing all the facts and evidences, in which there is no proper ground for any interference, Accordingly, the present appeal deserves to be dismissed.

order

The present appeal is dismissed. The impugned decision and order dated 18-12-2018 passed by the learned District Commission is confirmed. In the appeal, the parties shall bear their own litigation expenses. The Stenographer is expected to

upload this decision/order on the website of the Commission as soon as possible as per rules."

(Extracted from translated copy)

5. In his arguments, the learned Counsel for Petitioner Bank reiterated the grounds in the Revision Petition and asserted that the impugned order has been passed in contravention to the settled proposition of law with respect to liability of banks regarding the theft of contents lying in the lockers of its customer and is thus contrary to law, perverse and arbitrary. It is further averred that the Complainant has utterly failed to lead any evidence before the District Forum to establish the contents of locker as alleged by him in his complaint before the District Forum. He, therefore, sought to allow the present Revision Petition and set aside the impugned orders passed by the Fora below. He has relied upon the judgment of the ***Hon'ble Supreme Court in Amitabha Dasgupta Vs. United Bank of India & Ors., Civil Appeal No.3966 of 2010, decided on 19.02.2021***.

6. The learned Counsel for the Respondent/complainant argued in favour of the impugned orders passed by the Fora below. He sought to dismiss the Revision Petition with costs. He has also relied upon the following judgments:

(i) Pune Zilla Madyawarti Sahakari Vs. Ashok Bayaji, R.P. No. decided on 21.05.2015 by the NCDRC;

(ii) Amitabha Dasgupta Vs. United Bank of India & Ors., Civil Appeal No.3966 of 2010, decided on 19.02.2021 by the Hon'ble Supreme Court.

7. I have examined the pleadings and associated documents placed on record, including the reasoned orders of the District Forum and the State Commission and rendered thoughtful consideration to the arguments advanced by the learned Counsels for both Parties.

8. The main issue that needs to be determined in the present case is whether the Complainant is entitled for compensation for deficiency in service by the OPs in securing the locker and, if so, what is the compensation payable to the Complainant.

9. With regard to the aforesaid issue, the Hon'ble Supreme Court in the case of ***Amitabha DasGupta (Supra)*** has held as under:

"12. Thus, we emphasize that irrespective of the value of the articles placed inside the locker, the bank is under a separate obligation to ensure that proper procedures are

followed while allotting and operating the lockers:

(a) This includes maintenance of a locker register and locker key register.

(b) The locker register shall be consistently updated in case of any change in allotment.

(c) The bank shall notify the original locker holder prior to any changes in the allotment of the locker, and give them reasonable opportunity to withdraw the articles deposited by them if they so wish.

(d) Banks may consider utilizing appropriate technologies, such as blockchain technology which is meant for creating digital ledger for this purpose.

(e) The custodian of the bank shall additionally maintain a record of access to the lockers, containing details of all the parties who have accessed the lockers and the date and time on which they were opened and closed.

(f) The bank employees are also obligated to check whether the lockers are properly closed on a regular basis. If the same is not done, the locker must be immediately closed and the locker holder shall be promptly intimated so that they may verify any resulting discrepancy in the contents of the locker.

(g) The concerned staff shall also check that the keys to the locker are in proper condition.

(h) In case the lockers are being operated through an electronic system, the bank shall take reasonable steps to ensure that the system is protected against hacking or any breach of security.

(i) The customers' personal data, including their biometric data, cannot be shared with third parties without their consent. The relevant rules under the Information Technology Act, 2000 will be applicable in this regard.

(j) The bank has the power to break open the locker only in accordance with the relevant laws and RBI regulations, if any. Breaking open of the locker in a manner other than that prescribed under law is an illegal act which amounts to gross deficiency of service on the part of the bank as a service provider.

(k) Due notice in writing shall be given to the locker holder at a reasonable time prior to the breaking open of the locker. Moreover, the locker shall be broken open only in the presence of authorized officials and an independent witness after giving due notice to the locker holder. The bank must prepare a detailed inventory of any articles found inside the locker, after the locker is opened, and make a separate entry in the locker register, before returning them to the locker holder. The locker holder's signature should be obtained upon the receipt of such inventory so as to avoid any dispute in the future.

(l) The bank must undertake proper verification procedures to ensure that no unauthorized party gains access to the locker. In case the locker remains inoperative for a long period of time, and the locker holder cannot be located, the banks shall transfer the contents of the locker to their nominees/legal heirs or dispose of the articles in a transparent manner, in accordance with the directions issued by the RBI in this regard.

(m) The banks shall also take necessary steps to ensure that the space in which the locker facility is located is adequately guarded at all times.

(n) A copy of the locker hiring agreement, containing the relevant terms and conditions, shall be given to the customer at the time of allotment of the locker so that they are intimated of their rights and responsibilities.

(o) The bank cannot contract out of the minimum standard of care with respect to maintaining the safety of the lockers as outlined supra.

13. In the present case, it is undisputed that the Respondent Bank inadvertently broke the Appellant's locker, without any just or reasonable cause, even though he had already cleared his pending dues. Moreover, the Appellant was not given any notice prior to such tampering with the locker. He remained in the dark for almost a year before he visited the bank for withdrawing his valuables and enquired about the status of the locker. Irrespective of the valuation of the ornaments deposited by the Appellant, he had not committed any fault so far as operation of the locker was concerned. Thus, the breaking open of the locker was in blatant disregard to the responsibilities that the bank 38 owed to the customer as a service provider. The alleged loss of goods did not result from any force majeure conditions, or acts of third parties, but from the gross negligence of the bank itself. It is case of gross deficiency in service on the part of the bank.

14. Thus, looking to the facts and circumstances of the case, we deem it appropriate to impose costs of Rs. 5,00,000/- on the Bank which should be paid to the Appellant as compensation. The amount of Rs. 5,00,000/- shall be deducted from the salary of the erring officers, if they are still in service. If the erring officers have already retired, the amount of costs should be paid by the Bank. Additionally, the Appellant shall be paid Rs.1,00,000/- as litigation expense.

15. Before concluding, we would like to make a few observations on the importance of the subject matter of the present appeal. With the advent of globalization, banking institutions have acquired a very significant role in the life of the common man. Both domestic and international economic transactions within the country have increased multiple folds. Given that we are steadily moving towards a cashless economy, people are hesitant to keep their liquid assets at home as was the case earlier.

Thus, as is evident from the rising demand for such services, lockers have become an essential service provided by every banking institution. Such services may be availed of by citizens as well as by foreign nationals. Moreover, due to rapid gains in technology, we are now transitioning from dual key-operated lockers to electronically operated lockers. In the latter system, though the customer may have partial access to the locker through passwords or ATM pin, etc., they are unlikely to possess the technological know-how to control the operation of such lockers. On the other hand, there is the possibility that miscreants may manipulate the technologies used in these systems to gain access to the lockers without the customers' knowledge or consent. Thus the customer is completely at the mercy of the bank, which is the more resourceful party, for the protection of their assets. In such a situation, the banks cannot wash off their hands and claim that they bear no liability towards their customers for the operation of the locker. The very purpose for which the customer avails of the locker hiring facility is so that they may rest assured that their assets are being properly taken care of. Such actions of the banks would not only violate the relevant provisions of the Consumer Protection Act, but also damage 40 investor confidence and harm our reputation as an emerging economy.

15.1 Thus it is necessary that the RBI lays down comprehensive directions mandating the steps to be taken by banks with respect to locker facility/safe deposit facility management. The banks should not have the liberty to impose unilateral and unfair terms on the consumers. In view of the same, we direct the RBI to issue suitable rules or regulations as aforesaid within six months from the date of this judgment. Until such Rules are issued, the principles stated in this judgment, in general and at para 12 in particular, shall remain binding upon the banks which are providing locker or safe deposit facilities. It is also left open to the RBI to issue suitable rules with respect to the responsibility owed by banks for any loss or damage to the contents of the lockers, so that the controversy on this issue is clarified as well."

10. Following the orders of the Hon'ble Supreme Court in the case of ***Amitabha DasGupta (Supra)***, the Reserve Bank of India vide Circular No.DOR.LEG.REC/40/09.07.005/2021-22 dated August 18, 2021 laid down the following directions:

*"**7.2 Liability of banks arising from events like fire, theft, burglary, dacoity, robbery, building collapse or in case of fraud committed by the employees of the bank***

It is the responsibility of banks to take all steps for the safety and security of the premises in which the safe deposit vaults are housed. It has the responsibility to ensure that incidents like fire, theft/ burglary/ robbery, dacoity, building collapse do not occur in the bank's premises due to its own shortcomings, negligence and by any act of omission/ commission. As banks cannot claim that they bear no liability towards their customers for loss of contents of the locker, in instances where loss of contents of *locker are due to incidents mentioned above or attributable 14 to fraud committed by its employee(s), the banks' liability shall be for an amount equivalent to* ***one hundred times the prevailing annual rent of the safe deposit locker****."*

11. In the present case, the Complainant has filed copy of his passbook in which the annual rent of the locker no.82 has been deducted by the Petitioner Bank itself of Rs.1103/- (towards Rent + ST) on 19.04.2010. It is undisputed that the prevailing annual Rent of the Locker was Rs.1000/- at the time of incident occurred in the year 2015. Thus, the liability of the Petitioner Bank comes to Rs.1000 X 100 = Rs.1,00,000/- arising from loss of contents of the locker No.82 of the Respondent/Complainant.

12. Based on the deliberations above, I find some merit in the present Revision Petition and, therefore, allow the same in part. The impugned orders of the Fora below be modified to the extent that the Petitioner/OP/Bank is directed to pay the amount of Rs.1,00,000/- along with simple interest @ 9% p.a. from the date of filing of the Complaint before the District Forum, till realization to the Respondent/ Complainant, within a period of one month from the date of this order. In the event of delay, the simple interest applicable shall be @ 12% p.a. for such extended period.

13. Keeping in view the facts and circumstances of the present case, the Petitioner/OP/Bank is also directed to pay Rs.50,000/- as costs of litigation to the Respondent/Complainant.

14. All pending Applications, if any, also stand disposed of accordingly.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER