**(2016) 07 NCDRC CK 0009**

**In the National Consumer Disputes Redressal Commission**

**Case No :** 166 of 2016

LATHIKA C. SAROJA GANGA NEDUNGOLAM P.O., — APPELLANT

Vs

BRANCH MANAGER, MUTHOOT FINANCE (P) LTD. & 2 ORS. — RESPONDENT

**Date of Decision :** 04-07-2016

**Acts Referred:**

<a href=3999>Consumer Protection Act, 1986</a>, <a href=3999-24A>Section 24A</a> - Limitatioln period

**Citation :** 2016 3 CPR 155

**Hon'ble Judges :** V.K. Jain, Anup K Thakur

**Advocate :** Lakshmi N. Kaimal

# Judgement

1. The petitioner / complainant pledged gold ornaments weighting 52 grams with the respondent Muthoot Finance Pvt. Ltd., on 22.09.2003, while taking a loan of Rs.21,000/-. According to the petitioner / complainant, when she approached the concerned branch of the respondent in April, 2004, to redeem the ornaments by paying the loan amount with interest, they refused, saying that the ornaments had, by mistake been transferred to their head office. Thereafter, the petitioner / complainant left Nedungolam, where she was at that time living and settled in Ernakulam. On 23.5.2011, she again approached the respondent for redeeming the gold ornaments pledged by her but the said ornaments were not returned to her. Being aggrieved, she approached the concerned District Forum with a complaint.

2. The complaint was resisted by the respondent which took a preliminary objection that it was barred by limitation. On merits it was alleged that the petitioner / complainant had not turned up after pledging the gold ornaments.

3. The District Forum vide its order dated 10.02.2014 dismissed the complaint. Being aggrieved the petitioner / complainant approached the concerned State Commission by way of an appeal. The said appeal also having been dismissed, she is before this Commission by way of this revision petition.

4. The first question which arises for our consideration in this petition is as to

whether the complaint was barred by limitation or not. Section 24A of the Consumer Protection Act, to the extent it is relevant, provides that the District Forum shall not admit a complaint, unless it is filed within two years from the date on which the cause of action has arisen. The contention of the learned counsel for the respondent was that since this is complainant?s own case that she approached the respondent for the first time in April, 2004 for closing the loan and the gold ornaments were not returned to her, the cause of action accrued to her on that date. However, in our view, in a case of this nature, where the goods are held in trust for the depositor, the owner of the gold ornaments has a recurrent / continuing cause of action against the pledgee, till either the gold ornaments are returned to her or the pledgee refuses to return the said ornaments. The respondent, as per the case set out in the complaint, never refused to return the ornaments and when the complainant approached the concerned branch, she was told that by mistake her ornaments had been sent to the head office. She was also assured that the mistake would soon be rectified and she would get back her jewellery. It was only in the reply dated 09.6.2011 that the respondent claimed that as per the terms of the agreement, it was at liberty to realize the loan amount by disposing off the ornaments pledged as a security for the loan. In fact, even in the aforesaid reply dated 09.6.2011, the respondent did not claim that the said ornaments had actually been disposed of by it. If the period of limitation is computed from 09.6.2011 when the said reply was sent by the respondent, the complaint, having been filed in the same year, was within limitation.

5. Though, in the event of failure of the petitioner/complainant to pay the loan along with interest, the respondent could have sold the jewellery after giving a notice to her, there is no evidence of any such notice having actually been given to her. As noted earlier, this is not the case of the respondent that the gold jewellery pledged by the complainant / petitioner was sold by it any point of time. Being a pledgee the respondent is duty-bound to either return the jewellery pledged by the complainant against payment of the principal amount with interest or to produce the proof of having sold the same, in case the jewellery stands sold on account of non-payment of the loan taken by the complainant. At the time of hearing, we specifically asked the learned counsel for the respondents to either furnish the proof of having sold the gold ornaments of the complainant or in case the same were not sold, tell us where the said ornaments are. The learned counsel however expressed his inability to do so, citing the intervening time lag as the reason. However, we are not satisfied with the stand taken by the respondent. If the ornaments were sold, there has to be proof of sending notice to the complainant, as well as proof of the actual sale. Since no such record is available with the respondent, it must necessarily tell us, where the jewellery of the complainant is. That having not been done, the respondent must necessarily pay the current value of the gold ornaments which was stated to be Rs.1,14,400/- to the petitioner / complainant, after adjusting the principal amount lent to the complainant, along with the agreed interest.

6. For the reasons stated hereinabove, the impugned orders are set aside and the respondent is directed to adjust the principal amount lent to the complainant at the agreed rate, till the date of filing of the complaint, from the gold value of Rs.1,14,400/- and pay the balance amount to the complainant / petitioner within four weeks from today, along with interest on that balance amount @ 9% per annum, from the date of filing of the complaint, till the said amount is paid. The revision petition stands disposed of.

 