**(1998) 08 NCDRC CK 0020**

**In the National Consumer Disputes Redressal Commission**

SATISH MEHRA APPELLANT

Vs

Vysya Bank Ltd. RESPONDENT

**Date of Decision :** 22-08-1998

**Acts Referred:**

**Citation :** 1998 3 CPJ 265 : 1999 1 CPR 281

**Hon'ble Judges :** A.P.Chowdhri , Desh Bandhu J.

**Final Decision :** Appeal dismissed

## Judgement

1. THIS is an appeal against the order dated 5.1.1996 passed by District Forum-II by which complaint filed by the present appellant against the opposite party (now respondent) was dismissed. The complainant-appellant is aggrieved of that order. We will refer to the parties as they were arrayed in the complaint.

2. ACCORDING to the allegations in the complaint, the complainant and his wife, Mrs. Anita Mehra were the permanent residents of New York (USA) and had jointly opened Foreign Currency Non-Resident Fixed Deposit (for short FCNR) with the opposite party. The said Fixed Deposit was "not transferable". On 13.1.1993 the opposite party issued fresh FCNR No. 0756223 for 3,298/- Pound Sterling for a period of one year maturing on 12.1.1994 in renewal of the earlier FCNR in the joint names of the complainant and his wife. It was kept in the custody of Shri S.K. Khosla, father-in-law of the complainant. Shri Khosia illegally got the said FCNR account closed on the basis of forged letter on 22.3.1993 and on the same date opened a fresh deposit account in the name of the wife of the complainant. The original FCNR was illegally received by Shri Khosla from the opposite party (OP) without the authority of the complainant. That matrimonial disputes had started between the complainant and his wife in October, 1992 and the latter returned to India on 9.3.1993. The complainant came to India in order to settle the matrimonial disputes with his wife. The complainant visited the opp. party Bank on 12.8.1993 and then he came to know of the opening of the fresh deposit account in the sole name of his wife. Vide letter dated 25.8.1993, the Bank informed the complainant that the said

transaction was done upon the instructions of both the depositors. The complainant asked from the Bank for a copy of the authorisation letter but the same was not supplied to him. The complainant actually learnt the FCNR account in the joint names of his and his wife was closed on 22.3.1993 and a new FCNR was opened in the name of his wife by the Bank staff in collusion with Shri Khosla who some how managed a forged ''Reinvestment Form'' and the said transfer was made on the basis of the same. There was no mandate from the complainant to close the said FCNR account and open another FCNR in the sole name of Mrs. Anita Mehra. That the above action of the opp. party Bank is in violation of the rules and regulations of the Reserve Bank of India and banking practice in India and abroad. The grievance of the complainant is that the opp. party has handled the matter of FCNR in question negligently and carelessly. The claim of the complainant is that the opp. party is liable to make payment of the above FCNR alongwith interest totalling Rs. 3,00,000/- (i.e. Rs. 1,50,000/- equivalent to 3,298.49 plus Rs. 1,50,000/- as interest).

The opp. party filed a counter. Their case is that the FCNR was originally made in the joint names of the complainant and his wife. The deposit was payable to either or survivor. It was got renewed and it was renewed on the renewed instructions of the complainant and his wife, joint holders to FCNR deposit in the name of complainant''s wife, Mrs. Anita Mehra. The form which was submitted in the name of Mr. Anita Mehra was duly signed by the complainant and Mrs. Anita Mehra. The opp. party had to act as per mandate of the joint holders, even otherwise one of the holders of the joint FCNR deposits is entitled to take money of said FCNR deposit as the same was payable to either or survivor. The opp. party is not responsible if any forgery has been committed by the father-in-law or wife of the complainant. The Bank has acted as per the provisions of law and banking practice and as per the mandate of the joint holders of the FCNR deposit. Allegations of collusion negligence were also denied by the opposite party.

3. BOTH the parties supported their respective contention by filing affidavits before the District Forum. The opp. party also filed affidavit of Shri J. Mohanty, Senior Manager (F.Ex.) of the Bank to the effect that the original application form regarding opening of deposit vide FCNR dated 13.1.1993 was seized by the Police on 7.3.1994 vide seizure memo and the same has not been received back. The opp. party had also filed photocopy of the form bearing the heading "Application Form for Foreign Currency (Non-Resident) Account-Fixed Deposit Reinvestment Deposit Account" purporting to bear the signature of the complainant and his wife which was submitted to the Bank on 22.3.1993 alongwith FCNR dated 13.1.1993 for 3,298 with a request to issue a Fixed Deposit Receipt in the name of Mrs. Anita in non- repatriable Indian Rupee NRI FCNR. The District Forum has recorded : "The opp. party had no reason to doubt that the request was being made against the real intentions of the complainant. The complainant claims that he had not signed the form on 22.3.1993. However, the complainant does not say that the Form does not bear his signatures. If the complainant had left me

 

FCNR with his father-in-law and had also given him signed Form and the father-in-law prepared the application Form without the approval of the complainant, the opp. party cannot be blamed unless the officers of the opp. party were party to the alleged forgery. In the course of the hearing of the instant complaint, it was revealed that a criminal complaint has already been filed by the complainant and the Original Form has been seized by the police. The complainant may pursue his remedy against his father- in-law or his wife in a Civil/Criminal Court".

We have considered the above observations of the District Forum and do not find any fault with them. The main argument of the complainant is that as the original FCNR was in the joint names of his and his wife, it could not be discharged by his wife alone before maturity of the FCNR. We are unable to accept this argument. Though the deposit was in the joint names but was payable to either or survivor. Either could pre-close the deposit and give a valid discharge.

4. MOREOVER as noticed above, the complainant has already filed a criminal case about forgery against his father-in-law and wife and the police is investigating that case. If during investigation it is found that the officers of the opp. party also colluded with the named accused they can also be charge-sheeted in that case. Such allegations cannot be decided in the present time bound proceedings. In the light of the above discussions, we dismiss the present appeal. However, while dismissing this appeal, we make it clear that the complainant will be at liberty to seek his remedy by a civil suit or take appropriate proceedings for adjudication of his claims against the opp. party or Mrs. Anita Mehra and Sh. S.K. Khosla notwithstanding the dismissal of the instant complaint, with no order as to costs. Appeal dismissed.

 