(2014) 04 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

Yasmin Ismail Kiranawala APPELLANT

Vs

Pune District Central Co -Op. Bank Ltd. RESPONDENT

Date of Decision : 16-04-2014

Acts Referred:

Citation : 2014 0 NCDRC 417 : 2014 2 CPJ 552

Hon'ble Judges : VINAY KUMAR J.

Final Decision : Appeal dismissed

Judgement

1. THE facts, as seen from the record, are that the complainant had rented a safe locker from OP/DCC Bank, Pune on 28.5.2005. On 9.8.2008 when the complainant opened the locker it was found that all the gold ornaments kept therein were missing. The matter was immediately taken up with the bank officials. FTR was also lodged with the local police on 23.9.2008. Allegedly, some ornaments were not mentioned in the report to the police due to the complainants being in shock and partly due to inability to trace their bills. On a legal notice, from the complainants, the bank did not accept its liability and hence a consumer complaint was filed before the Maharashtra State Consumer Disputes Redressal Commission. The case of the complainants was that the same locker (No. 1261) had earlier been broken open prior to its allotment to the complainants. Allegedly, the bank did not follow the laid down procedure for breaking open and subsequent re -operationalisation of the locker. According to the complaint, the same old key was issued to the complainants. Per contra, the case of the OP/bank was that the locker was allotted to Ibrahim Hayder Ali Kiranawala with his son (complainant No. 2) as joint holder and operator of the locker. Later his daughter -in -law (complainant No. 1) was appointed as their power of attorney holder with authority to operate the account and the locker on behalf of the father and the son. As per the pleadings of the bank: In the present matter, as per the record of the Opponent Bank, the Complainant No. 1 has operated the locker as on 18.8.2007 and 9.8.2008. This fact clearly shows that lastly the said locker was opened as on 9.8.2008 and prior to that as on 18.8.2007. On both days the said locker was operated by the agent Smt. Yasmin

Kiranawala. But on the last occasion, after opening the locker, she tried to show that, she has kept a number of golden ornaments in the locker and it is lost or theft. In this respect, it is submitted that, Bank''s security system is very strong. There is no any mark of break opening the said locker by anybody. Locker was opened after operating the common key and key with the Complainant. Therefore, it is never possible to open the lock of the locker without the key of the customer. It is also pertinent to note that, while depositing any items in the safe deposit locker or withdrawing any items from the locker by the agent or account holder, only the agent of the customer or customer himself shall be allowed to present in the locker room. It is also pertinent to note that while operation of locker of any locker holder is going on, the other customer or locker holder should not allow entering in the locker room. Therefore, the Bank officer or any person of the Bank cannot have any knowledge of what documents are kept in the locker. Therefore, the Opponent Bank cannot have any knowledge whether really the alleged documents were kept in the locker or not. Therefore, the bank officers cannot be held responsible for any item deposited in the locker or its withdrawal.

2. THE State Commission dismissed the complaint holding that the complainants had failed to establish any deficiency in service on the part of the bank. We have carefully considered the records and heard learned Counsel for the two sides. A perusal of the impugned order shows that when the locker was opened on 9.8.2008 by complainant No. 1 there was no evidence of any attempt to break it open by anybody. Nor was the locker found in an open condition. Strangely, the complaint itself is filed by Complainant No. 2, on behalf of all three and not by Complainant No. 1. Even the affidavit evidence in support of the consumer complaint, is filed by Complainant No. 3 before the State Commission and not by Complainant No. 1, who alone had visited the bank and operated the locker on 9.8.2008.

3. FURTHER , from the complaint, it is noticed that the locker was taken on hire on 28.5.2005 and operated on several occasions, the last being on 9.8.2008. Allegedly, loss of ornaments was reported to Pune Police "immediately". However, it also states the FIR was lodged on 23.9.2008 i.e. a month and half after the loss of ornaments was allegedly noticed. There is no explanation of this crucial time gap between the two.

4. THE main ground urged in the complaint is that the same locker, before being hired to the complainants, had been broken open by the bank. Thereafter the prescribed procedure required of the bank was to change the lock and key before allotting it to another customer. This was allegedly not done. The same old key of locker No. 1261 was given to the complainant. This is a matter directly considered by the State Commission. As per evidence before the State Commission, the locker was got opened by the bank/OP on 30.10.2001. Thereafter, the lock was replaced together with a new key. This key was supplied to the complainant No. 3 when he hired the locker on 28.5.2005. But, neither the

memorandum of appeal nor the Counsel for the appellant have pointed to any evidence in support of their claim of old key being supplied, which was submitted before but either ignored or misconstrued by the State Commission. The revision petition also seeks to make an allegation that as per the information of the complainant the prescribed procedure for breaking open of the locker had not been followed. Once again neither the memorandum of appeal nor the appellant Counsel have explained how acts and events of 2001, pertaining to transactions of the respondent/bank with another customer, become a matter of deficiency of service to the appellants/complainants, who came into the picture nearly four years later, in 2005. We, therefore, fully endorse the view taken by the State Commission that there was no nexus between the incident of 2001 and what allegedly had happened in 2008. We also endorse the view of the State Commission that the complainants have failed to establish that there was any deficiency of service on the part of the respondent/bank. In the result, the appeal is held to be without any merit and is dismissed for the same reason.