

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION: NORTH-EAST

GOVT. OF NCT OF DELHI

D.C. OFFICE COMPLEX, BUNKAR VIHAR, NAND NAGRI, DELHI-93

RBT/Complaint Case No.267/22

In the matter of:

Sarfraz Ali,
S/o Mahfooz Ali,
R/o C-1/30A, Lawrance Road,
Delhi- 110035

Complainant

Versus

1. The Branch Manager
Punjab National Bank
Ashok Vihar Phase I
Delhi- 110052

2. The Branch Manager
Punjab National Bank
Azad Market Branch
Delhi 110006

Opposite Parties

DATE OF INSTITUTION: 20.12.2018

JUDGMENT RESERVED ON: 04.07.2023

DATE OF ORDER : 16.08.2023**CORAM:**

Surinder Kumar Sharma, President

Anil Kumar Bamba, Member

Adarsh Nain, Member

ORDER**Adarsh Nain, Member**

The Complainant has filed the present complaint under Section 12 of the Consumer Protection Act, 1986.

Case of the Complainant

1. The case of the Complainant as revealed from the record is that the Complainant had an account in the bank of Opposite Party No. 2 bearing account no. 0155000100341600. On 24.10.2018, when the Complainant went to the branch of Opposite Party No. 1 for depositing of Rs. 40,000/- , the official of Opposite Party No. 1 asked him to deposit the cash through machine which was installed in the branch of Opposite Party No. 1. Thereafter, the Complainant deposited Rs. 40,000/- in machine and Complainant did not receive any slip. After that the Complainant immediately approached the official of Opposite Party No. 1 and wrote a letter. But official of Opposite Party said that the money would be deposited in the Complainant's account within 24 hours. Next day, Complainant approached the Opposite Party No. 1 but they refused to help. The official of Opposite Party No. 1 also said that approx. Rs. 38,000/- is excess in machine. Then the Complainant approached the police station on 31.10.2018 but police lodged an FIR on 20.11.2018. Complainant also wrote a letter to Reserve Bank of India on 01.11.2018. Complainant visited the police station several time and enquired about the status of investigation conducted by the police officer regarding the transaction. Official of Delhi Police assured that the clarification in the regard would be given within one week. Complainant visited the office of Opposite Party No. 1 and requested to return the amount of Rs. 40,000/- but every time the Complainant was falsely assured by the official of Opposite Party. Hence, there is deficiency on the part of Opposite Parties. Complainant has prayed to direct the Opposite Party to refund the Rs. 40,000/- with interest, Rs. 1,00,000/- on account of mental harassment and also direct to pay the litigation expenses.

Case of the Opposite Parties

2. Opposite Parties contested the case and filed its common written statement. The Opposite Parties took the preliminary objection that the Complainant was himself negligent in operating the cash deposit machine and he was never told by any bank staff to deposit the cash in Cash deposit machine as alleged. It is also submitted that as per the CCTV footage and call log, it is clear case of some miscreants forcing and making Complainant believe that the cash has been accepted by the machine and late pocketing the same. While replying on merits, it is admitted by the Opposite Parties that the complainant visited the branch on 24.10.2018 and also the Complainant approached their staff and wrote a letter, however it is denied that their staff assured him that the amount would be deposited in 24 hours. It is further admitted that Police approached the branch office of Opposite Party No. 1 and Opposite Party No. 1 provided the CCTV footage and call log to the police. It has been submitted that the police showed their helplessness to trace

out the miscreants. It is also contended that a letter dated 12.11.2018 was written on their behalf to the police in response to the complaint of the Complainant wherein they provided details of the machine information log and observations on CCTV footage which showed that few miscreants manipulated the machine and pocketed the amount in question. In view of above, there has not been any deficiency on their part as alleged.

Rejoinder to the written statement of Opposite Parties

3. The Complainant filed rejoinder to the written statement of Opposite Parties wherein the Complainant has denied the pleas raised by the Opposite Parties and has reiterated the assertions made in the complaint.

Evidence of the Complainant

4. The Complainant in support of his case filed his affidavit wherein he has supported the assertions made in the complaint.

Evidence of the Opposite Parties

5. To support its case Opposite Parties has filed common affidavit of Shri Parmeshwar Dass, Chief Manager, wherein, he has supported the case of the Opposite Parties as mentioned in the written statement.

Arguments & Conclusion

6. We have heard the Complainant and Ld. Counsel for the Opposite Parties. We have also perused the file and written arguments filed by the Complainant and Opposite Parties.
7. The case of the Complainant is that the Complainant deposited Rs. 40,000/- in the Cash depositing machine and when the Complainant did not receive any slip, he immediately approached the official of Opposite Party No. 1 and wrote a letter in that regard. The Complainant was assured that the said amount will be deposited in his account within 24 hours but he did not receive any amount. The Complainant also lodged FIR to this effect. It is alleged that the Opposite Parties falsely assured him and failed to return the said amount. Hence, there is deficiency on the part of Opposite Parties.
8. On the other hand, the Opposite Parties alleged that the Complainant was himself negligent in operating the cash deposit machine and he was never told by any bank staff to deposit the cash in Cash deposit machine. The contention of the Opposite Parties is that as per the CCTV footage and call log, it is clear case of some miscreants forcing and making Complainant believe that the cash has been accepted by the machine and late pocketing the same. In view of above, there has not been any deficiency on their part as alleged.
9. The perusal of pleadings shows that it is not disputed that the Complainant visited the Opposite Party No. 1 branch to deposit the cash. It is also admitted by the Opposite Parties that the complainant approached their staff on that day and also wrote a letter complaining that he did not receive any message or receipt. Opposite Parties have submitted that as per the CCTV footage and call log, it is clear case of some miscreants forcing and making Complainant believe that the cash has been accepted by the machine and late pocketing the same while on the other hand, their contention is that the Complainant was negligent in operating the Cash deposit machine. The said contention is liable to be rejected out rightly in view of above submission. The perusal of the material on record shows that the Complainant approached the Opposite Party No. 1 on 24.10.2018 immediately after the transaction in question and also wrote a letter expressing his concerns and kept on pursuing his matter with them. However, there is no evidence on record showing that the Opposite Party bank responded to the Complainant or took any action to resolve the matter such as holding investigation or enquiry. It is admitted by the Opposite Party that when they were approached by the police, they provided CCTV footage and machine information log of the day of incidence. It is the case of the Opposite Party that as per the CCTV footage and call log, it is clear case of some miscreants forcing and making complainant believe that the cash has been accepted by the machine and later pocketing the same. It is also submitted by the Opposite Party that they wrote a letter dated 12.11.2018 to the police containing their observations based on CCTV footage and machine log that it is a case of miscreants.

10. The conduct of Opposite Party clearly shows that they failed to take any concrete action to resolve the complaint as they neither conducted any internal investigation into the matter nor have they reported the matter to the police. Not only this, they wrote a letter to the Police after a gap of 20 days that the CCTV footage and machine log showed that the depositor Complainant had been defrauded.
11. **In REVISION PETITION NO. 1668 OF 2018 titled Rishab Kumar Sogani vs State Bank Of India** decided on 1 November, 2019, Hon'ble NCDRC has held as follows;
12. *For all the aforementioned reasons, we are of the considered view that the Bank has committed a breach in its duty of care in ensuring the safety of the money taken by the Complainant, who has lost it within the Bank premises and therefore we hold that any security lapse within the Bank premises amounts to definition of service”*
12. In the present matter, since the incident occurred in the premises of Opposite Party bank, we are of the view that the bank owed a duty of care to the Complainant which was ensuring the safety of his money and liable for any security lapse within the Bank premises.
13. In view of above discussion and cited case law, we are of the considered view that the Opposite Parties have committed deficiency of services towards the Complainant by committing breach of ‘duty of care’ towards the Complainant who was their customer.
14. Thus, we allow the present complaint and direct the Opposite Parties to pay to the Complainant Rs.40,000/- (Rs. Forty thousand only), along with interest @ 6% p.a. from the date of incident i.e. 24.10.2018 till its recovery. The Opposite Parties are further directed to pay Rs. 30,000/- towards compensation and the litigation cost along with interest @ 6% p.a. from the date of this order till its recovery.
15. Order announced on 16.08.2023.

Copy of this order be given to the parties free of cost

File be consigned to Record Room.

(Anil Kumar Bamba)
(Member)

(Adarsh Nain)
(Member)

(Surinder Kumar Sharma)
(President)