

Date of Filing: 28.07.2022

Date of Order: 30.08.2023

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION – I, HYDERABAD

P r e s e n t

HON'BLE MRS. B. UMA VENKATA SUBBA LAKSHMI, PRESIDENT
HON'BLE MRS. C. LAKSHMI PRASANNA, MEMBER

On this the Wednesday, the 30th day of August, 2023

C.C.No. 505/2022

Between:-

Smt. Usha Rani Jaishwal,
W/o Sri. Nain Prakash Jaiswal,
Aged about 65 years, Occ: Household,
R/o: H.No. 3-3-819, Qutbiguda,
Hyderabad – 500029.

....Complainant

AND

Andhra Bank, now Union Bank of India,
(on account of amalgamation
From 01.04.2020 onwards)
Sultan Bazar, Koti Branch, Hyderabad
Rep. by its Branch Manager.

....Opposite Party

Counsel for the Complainant : M/s KRR Associates
Counsel for the Opposite party : M/s Gopi Rajesh & Associates

O R D E R

(By HON'BLE MRS. B. UMA VENKATA SUBBA LAKSHMI, PRESIDENT on
behalf of the bench)

1. The present complaint is filed under Section 35 of the Consumer Protection Act, 2019, alleging deficiency of service and unfair trade practice on the part of opposite party, with a prayer which reads as under:

“To direct the opposite party-

- (i) To return the original title deed bearing document No. 2685/1998 along with other link documents, in original, which were deposited at the time of obtaining educational loan.

OR IN THE ALTERNATE

- (ii) to furnish the complainant an indemnity bond, undertaking to indemnify the complainant any loss or damage if she suffers due to the misuse of the lost document/untraced document, and also furnish FIR copy from the jurisdictional police station and to effect paper publication, further furnish a duplicate copy of the title deed, with a stamp paper purchased in the name of the opposite party by following such due procedure;
- (iii) to pay an amount of Rs. 10,00,000/- (Rupees Ten Lakhs Only) towards the mental agony to the complainant;
- (iv) to pay an amount of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) towards compensation for the loss/misplace of original documents;
- (v) to pay an amount of Rs. 1,00,000/- (Rupees One Lakh Only) towards the legal expenses and costs of litigation;
- (vi) to pay interest @24% p.a. on the above stated amounts from 2011 when the loan amount was repaid, till date of realization;
- (vii) to award costs of the complaint and to pass such other order or orders as may be deemed fit and proper in the interest of justice and
- (viii) to pass such other orders as the Hon'ble Commission deems fit and proper in the circumstances of the case.

2. Brief facts as averred in the complaint and necessary for adjudication are that the complainant is the owner, possessor and title holder of the property bearing Municipal No. 5-1-651/SF1, situated at Troop Bazar, Hyderabad. The said property was purchased by the complainant vide registered sale deed bearing document No. 2685/1998, dated 10.09.1998. It is further averred that the complainant, account holder of the erstwhile Andhra Bank (now Union Bank of India, after amalgamation), Sultan Bazar main branch, approached the opposite party for obtaining educational loan for her son. It is stated that the bank, after due satisfaction as to the eligibility and other criterion of the student, sanctioned the

educational loan of Rs. 4,00,000/- (Rupees Four Lakhs Only), vide loan account No. 020530031001458. It is further stated that the complainant, on the insistence of the opposite party, deposited the original title deed of the said property as security for release of the loan amount. Although the sanctioned loan amount was Rs. 4,00,000/- (Rupees Four Lakhs Only), the complainant utilized the loan amount of Rs. 2,00,000/- (Rupees Two Lakhs Only). After repaying the entire educational loan amount along with interest and incidental charges to the tune of Rs. 5,98,198/- (Rupees Five Lakhs Ninety-Eight Thousand One Hundred and Ninety-Eight Only), the complainant requested the officials of the opposite party to return the original sale deed bearing document No. 2685/1998 that was kept as security with the bank. It is contended that, as and when the complainant and her husband visited the opposite party bank seeking return of the original title deeds, the standard reply given by them was that they were searching for the document and they would return after tracing the same. After amalgamation of Andhra Bank to Union Bank of India, the complainant had been requesting the officials of Union Bank of India for return of the original title deed of the subject property. It is further contended that the opposite party, in their reply dated 29.12.2021 to the legal notice dated 23.09.2021 issued by the complainant through her counsel, informed the complainant that the documents could not be traced. It is submitted that, due to non-availability of the original sale deed, the complainant, who intended to sell the property for her personal and other needs, was not able to get Rs. 25,00,000/- (Rupees Twenty-Five Lakhs Only) though the property was valued about Rs. 50,00,000/- (Rupees Fifty Lakhs Only). It is further submitted that, because of the negligence on the part of the opposite party bank officials, the complainant and her family were put to severe hardship and mental agony. The pain and mental agony of the complainant is indescribable and unexplainable. Hence, alleging negligence and deficiency in service by the opposite party, the complainant filed the present complaint with a prayer to grant the reliefs as stated above.

- 3.** While denying the averments/allegations/claims made in the complaint unless expressly admitted in the written version, it is contended by the opposite party that the complaint is not maintainable either in law or on facts and is liable to be dismissed

in limine. It is further contended that the complainant has suppressed material facts with an intention to harass the opposite party and the complaint is liable to be dismissed with exemplary costs. It is denied that the complainant, who was holding savings bank account with the Andhra Bank (now Union Bank), on the insistence of the bank, had deposited the original title deed as security for availing educational loan for her son. It is averred that, once the loan account was closed, the bank would clear all the formalities and return the documents immediately or within 2 or 3 days. It is further averred that the complainant had not placed any documentary proof to show that the complainant and her husband had been approaching the opposite party for return of the original sale deed. It is stated that the complainant, after a lapse of 11 years, approached the opposite party for the said document. It is further stated that the bank may have returned the original document and the complainant may have misplaced it with ill intention. It is submitted that, when the complainant approached the present bank, the opposite party, not aware of the complete facts, had replied that they would trace out the document and the complainant was attempting to take undue advantage of the situation. It is further submitted that the bank would not store the closed accounts' related documents for more than five years. Hence, denying the allegations of negligence and deficiency in service by the opposite party, they prayed the Commission to dismiss the complaint with exemplary costs in the interest of justice and equity.

4. During the course of enquiry, the complainant (PW-1) filed evidence affidavit and got marked the documents at Ex.A1 to Ex.A7. Mr. Rajesh, Asst. General Manager (RW-1) filed evidence affidavit on behalf of opposite party. Thereafter, both parties filed written arguments. After hearing the learned counsel of both sides, the matter was reserved for orders on 09.08.2023.
5. Based on the facts and material brought on record and written / oral arguments of both parties, the following points have emerged for consideration:
 - (a) Whether the complainant could establish negligence and deficiency of service on the part of opposite party?
 - (b) Whether the complainant is entitled for the reliefs prayed in the complaint? If so, to what extent?

6. Point 'a':

- 6.1.** It is evident from Ex.A2 that the complainant held an account with A/c No. 020510027000365 with Andhra Bank. It is further evident from the reply dated 29.12.2021 (Ex.A4) of the opposite party to the legal notice dated 23.09.2021 (Ex.A3) issued through the counsel of the complainant that the original title deeds pertaining to the subject property of the complainant were deposited with the opposite party as security for the loan amount availed by her. It is also evident from the reply (Ex.A4) that the complainant had settled the loan amount with interest, but the documents were not handed over to the complainant as the same were not traced by the bank. It is clear from the certificate of encumbrance that the subject property is in the name of the complainant (claimant). It is further clear from the paper publication notice / public notice dated 03.09.2022 (Ex.A7) given by the opposite party in the News Paper 'Eenadu' that the original title deed documents that were in the custody of the bank were lost from the custody of the opposite party. Therefore, through public notice, it was warned that the public should not deal with the subject property and its title deeds. It is also stated in the public notice that, if anybody found the subject title deeds, the same should be forwarded to the branch manager of the Union Bank.
- 6.2.** It is the case of the complainant that she deposited the original title deed (sale deed of the subject property) with the opposite party as security for availing educational loan for her son. It is also the case of the complainant that the opposite party, despite her repeated requests, did not return the title deeds.
- 6.3.** It is the version of the opposite party that the bank would return the documents immediately, or within 2 or 3 days. It is also the version of the opposite party that the complainant had not placed any documentary or other proof that they had been approaching the opposite party for return of the original sale deed, hence, barred by limitation as the complainant had approached the bank after a lapse of 11 years.

6.4. The issue is whether the complaint is barred by limitation, looking to the facts and circumstances of the case.

6.5. It is to be noted that the law of limitation is founded on public policy. The legislature has not prescribed limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. In a catena of judgments, the Hon'ble Apex Court has reiterated the principle that rules of limitation are not meant to destroy the rights of parties, but are meant to see that the parties do not resort to any dilatory tactics.

6.6. The relevant portion of the public notice given by the opposite party is reproduced as under:

“ఇందుమూలముగా సాధారణ ప్రజానికానికి తెలియజేయునది ఏమనగా వీరు వినియోగించుకున్న రుణము తిరిగిచెల్లింపుకొరకు సెక్యూరిటీగా మిస్ ఉపారాణి జైస్వాల్ చే మా బ్రాంచ్ వద్ద డిపాజిట్ చేయబడిన ఇచ్చట మరింత స్పష్టముగా తెలుపబడిన ఆస్తికి సంబంధించిన ఎస్.ఆర్.ఓ, హైదరాబాద్ వద్ద నమోదైన నెం.2685/1998 తేది 10.08.1998 గల ఒరిజినల్ సేల్ డీడ్ డాక్యుమెంట్ మా కస్టడీ నుండి పోయినది/కనబడుటలేదు. సదరు ఆస్తి మరియు సదరు ట్రాటిల్ డీడ్స్ తో వ్యవహరించరాదని సాధారణ ప్రజానీకానికి హెచ్చరించడమైనది”.

6.7. In the case at hand, a valuable right has accrued in favour of the complainant as a result of the failure of the opposite party in returning the original title deeds. Therefore, it will be unreasonable to take away that right on the mere asking of the opposite party, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in providing proper services, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law.

6.8. Typically, banks keep the original property documents as security for the loans and retain possession of them until the loans are fully repaid.

- 6.9.** In the present case, in view of Ex.A4& Ex.A7, even after lapse of 11 years, the opposite party failed to return the documents. Thus, the cause of action continues till the original property documents are returned to the complainant as she has already paid the loan amount along with interest. Therefore, the objection of the opposite party with regard to limitation has no substance and the same is rejected.
- 6.10.** In the case at hand, the opposite party (in the public notice and reply to legal notice) has admitted that the original title deed document bearing No. 2685/1998, which is in the custody of the bank, is not traceable and the opposite party cannot be permitted now to say that the complainant may have taken back the deposited title deeds. Moreover, the documents at Ex.A4&Ex.A7 contradict the version of the opposite party. Therefore, from the documentary evidence, we come to the conclusion that there is deficiency of service on the part of the opposite party. Hence point 'a' is answered in favour of the complainant.

7. Point 'b':

- 7.1.** In the present case, it is proved that the opposite party had not returned the original title deeds, even after closure of the loan as the original sale deed (registered document No. 2685/1998, dated 10.08.1998) deposited by the complainant as security for availing the loan was lost by the opposite party (Ex.A5, public notice). Also, the position of the Union Bank cannot be appreciated as no documentary evidence is submitted by them to prove that they have conducted an internal enquiry after coming to know about non-returning of original title deeds of the complainant. Except bald statement that the original title deeds may have returned, there is no documentary evidence to prove that the original title deeds of the complainant are returned after repayment of the entire loan amount. Therefore, non-returning of original title deed depicts deficiency of service on the part of opposite party.
- 7.2.** With regard to the averments made by the complainant in para 10 of the complaint, it is pertinent to mention here that if the complainant decides to sell the property in the market, no one in the market will agree to purchase an immovable

property on payment of its prevailing market value, if he / she knows that the original title deed of the property will not be delivered to the buyer by the seller. There will always be an apprehension of the misuse of the title deeds of the immovable property by an unscrupulous person, by depositing the same with a bonafide lender, since an equitable mortgage can be created by deposit of the title deeds. Even a bank may be unwilling to give loan against the immovable property unless the title deeds of the property are deposited. The erosion in the value of the property, if it is to be sold without the title deeds, would be substantial, hence the complainant is entitled for adequate compensation.

7.3. In view of the above discussion and findings, the complaint is allowed in part and the opposite party is directed to

- (i)** return the original title deed bearing document No. 2685/1998 along with other link documents, in original, which were deposited at the time of obtaining educational loan (if they fail to return the original title deed within 30 days from the date of this order)

IN THE ALTERNATIVE

furnish the complainant an indemnity bond, undertaking to indemnify the complainant any loss or damage if she suffers due to the misuse of the lost document/untraced document and also furnish FIR copy from the jurisdictional police station and to effect paper publication, further furnish a duplicate copy of the title deed, with a stamp paper purchased in the name of the opposite party by following such due procedure (the expenses for the requisite procedure shall be borne by the opposite party);

- (ii)** pay an amount of Rs. 1,00,000/- (Rupees One Lakhs Only) towards compensation;
- (iii)** pay an amount of Rs. 25,000/- (Rupees Twenty-Five Thousand Only) towards costs.

Time for compliance: 45 days from the date of receipt of the order.
In case of non-compliance, the amount mentioned in Sr. No. (ii) shall attract an interest @6% p.a. from the date of the order till its actual payment.

Dictated to steno, transcribed and typed by him, pronounced by us on this the 30th day of August, 2023.

MEMBER

PRESIDENT

APPENDIX OF EVIDENCE

WITNESS EXAMINED FOR THE COMPLAINANT:

(PW1) Smt. Usha Rani Jaishwal, W/o Sri. Nain Prakash Jaiswal.

WITNESS EXAMINED FOR THE OPPOSITE PARTY

(DW1) A. Rajesh S/o Sri Sundra Rao, Occ: Assistant General Manager.

EXHIBITS FILED ON BEHALF OF THE COMPLAINANT:

- Ex.A1 Copy of Sale deed vide document No. 2685/1998 dated 10.08.1998.
- Ex.A2 Copy of Andhra Bank passbook bearing A/c No. 020510027000365.
- Ex.A3 Copy of Legal notice dated 23.09.2021.
- Ex.A4 Copy of reply notice dated 29.12.2021.
- Ex.A5 Copy of Aadhar Card of the complainant.
- Ex.A6 Copy of encumbrance certificate dated 11.01.2010.
- Ex.A7 Copy of paper publication.

EXHIBITS FILED ON BEHALF OF THE OPPOSITE PARTY

Nil.

MEMBER

PRESIDENT

PSK
READ BY:-
COMPARED BY :-