

Appeal No.  
26 of 2017

Oriental Bank of Commerce  
Vs.  
Dev Caterers

18.09.2023

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND, DEHRADUN

Date of Admission : 23.02.2017  
Date of Final Hearing: 21.08.2023  
Date of Pronouncement: 18.09.2023

**First Appeal No. 26 / 2017**

Oriental Bank of Commerce  
Rajpur Road, Dehradun  
Through its Branch Manager  
Sh. Vikas Dabral S/o Sh. Subhash Chand Dabral  
(Through: Sh. S.M. Joshi, Advocate)  
.....Appellant

VERSUS

Dev Caterers  
151, Balbir Road, Dehradun  
Through its Proprietor Sh. Shashikant Bose  
(Through: Ms. Anupama Gautam, Advocate)  
.....Respondent

**Coram:**

**Ms. Kumkum Rani,  
Mr. B.S. Manral,**

**Judicial Member II  
Member**

**ORDER**

**(Per: Ms. Kumkum Rani, Judicial Member II):**

This appeal under Section 15 of The Consumer Protection Act, 1986 has been directed against the judgment and order dated 17.01.2017 passed by the learned District Consumer Disputes Redressal Forum, Dehradun (hereinafter to be referred as the District Commission) in consumer complaint No. 329 of 2012 styled as Dev Caterers Vs. Oriental Bank of Commerce, wherein and whereby the complaint was allowed.

2. The facts giving rise to the present appeal are as such that the complainant – Dev Caterers is the proprietorship concern and Sh. Shashi Kant Bose is its sole proprietor. The complainant was having a current account with the Oriental Bank of Commerce, Rajpur Road, Dehradun, which was operated by Sh. Shashi Kant Bose, the proprietor of Dev Caterers. The opposite party – Bank had issued cheque book to the complainant on his request and its leaf number from 656001 to 656050, which is in possession of the complainant. The complainant has issued the cheques to his suppliers for the period from 13.08.2012 to 24.08.2012 which were dishonoured by the Bank, then on dated 24.08.2012, the suppliers informed the complainant about the dishonour of the cheques by the Bank. On dated 24.08.2012, the complainant asked the Bank to supply the statement of account which was issued for the period from 01.08.2012 to 24.08.2012. A perusal of the statement of account has shown that a sum of Rs. 3,96,500/- has illegally withdrawn from his account on different dates from 13.08.2012 to 21.08.2012. On seeing this fact, the complainant was surprised and issued a letter on dated 25.08.2012 to the opposite party Bank stating therein that he came to know that a sum of Rs. 3,96,500/- has been illegally withdrawn from his account on different dates from 13.08.2012 to 21.08.2012, but the said withdrawal was not done by the complainant and a request was also made to the Bank that the matter be investigated and the complainant be informed as to whom this illegal and unauthorised withdrawal was made from his account, a copy thereof has also been sent to the Bank – opposite party. The complainant was supplied a photocopy of the application dated 13.08.2012 by the Bank issued by some Sh. Sandeep Air for issuance of cheque book and the said application did not bear the seal of the Dev Caterers and the stamp is forged and fake. It also does not bear the signature of the complainant. The request was for issuing a cheque book whereas the Bank issued two cheque books containing leaf Nos. 624226 to 624250 and 624251 to 624275. While

issuing the cheque book, the Bank did not bother to verify the signatures of the complainant and without receipt of requisition form duly signed by the complainant, the account holder, issued two cheque books in favour of an unauthorised person having no concern with the account of the complainant. It shows the negligence on the part of the bank in regard to their duties. The complainant has also lodged an FIR with the police on dated 29.08.2012 regarding the unauthorised and illegal withdrawal of amount from his account. On the said FIR, the police has registered the case under Section 420 of the Indian Penal Code against unknown person. In the complaint, it is also averred that the Bank did not care to either verify the signatures of the complainant on the said cheques or to verify from the complainant as to why he is withdrawing different amount on the same date by using different cheques. Thus, the above illegal act on the part of the opposite party, has caused a lot of mental pain and agony to the complainant and the opposite party has committed deficiency in service on its part, therefore, no other option was left with the complainant except to move complaint before the District Commission for redressal of his grievance.

3. The opposite party – Bank has admitted that the complainant has the sole proprietor of the M/s Dev Caterers and having its current account of the Bank of opposite party. It is averred that on the request of the complainant, the two cheque books were issued on the plain paper application and the complainant had full knowledge of withdrawal of the said amount; all the cheques were duly signed from the complainant from which the said amount was withdrawn. The cheques were not cleared by the Rajpur Road Branch, but many of them were cleared by other branch of the bank prima-facie tallying the signature of the complainant as available in the bank records. The bearer of the said application was the employee of M/s Dev Caterers and the Bank in ordinary course of business has issued the two cheque books. It is also pleaded in the written statement

that two cheque books were issued on the instruction of the complainant to his employee on his application which bears his signature as in the account opening form and in the usual course of business the Bank with due care issued the cheque books to the employee of the complainant. There was no deliberate intention of the Bank in issuing the cheque books as well as in making the payment of the cheques. The complainant is making false allegation on the Bank, the complaint is totally false and liable to be dismissed with cost.

4. The District Commission after taking into consideration the material available on record passed the impugned judgment and order on dated 17.01.2017 wherein it is held as under:-

“उपरोक्तानुसार, परिवादी द्वारा योजित यह परिवाद विपक्षी बैंक के विरुद्ध स्वीकार किया जाता है। विपक्षी बैंक को आदेशित किया जाता है कि वह परिवादी को अंकन तीन लाख छियानब्बे हजार पांच सौ रूपये की धनराशि को धन निकालने की तिथि से वसूली तक 7% वार्षिक ब्याज सहित अदा करे, साथ ही वाद व्यय स्वरूप अंकन दस हजार रूपये भी परिवादी, विपक्षी से पाने का पात्र है। धनराशि की अदायगी 30 दिन के अन्दर सुनिश्चित की जाए।”

5. On having been aggrieved by the impugned judgment and order, the present appeal has been preferred by the opposite party - Bank as appellant. Learned counsel for the appellant has contended that the impugned judgment passed by the District Commission is illegal, against the facts and merits of the case, the impugned judgment was passed without due application of mind and is perverse and is liable to be dismissed. It is further contended that the complainant has opened a current account which is always commercial in nature and commercial transactions take place

from the said current accounts. Hence, the complainant does not come within the word 'Consumer' and the complaint is liable to be dismissed. It is also averred that the complainant is not an expert who is not qualified to give report on such matter in dispute, whereas the appellant has submitted a hand writing analysis report dated 18.09.2013 prepared by Sh. Abhishek Vashishtha, having a degree of PG Diploma in Criminology, Police Administration and Forensic Science from Dr. Hari Singh Gour University, Sagar Madhya Pradesh has also practical experience from Finger Print Bureau, UP (CID), Lucknow as also from other offices and as per the above expert report, the signature on the referred cheques unquestionably have been written and match with the specimen signatures of the complainant. The learned counsel District Commission has also failed to appreciate that the matter in dispute is of criminal in nature, therefore, matter involves voluminous evidence and cross examination of witnesses which is beyond the purview of Consumer Protection Act. It is further narrated in the appeal, the District Commission has failed to appreciate that the criminal proceedings are already underway and the District Commission could not exercise the jurisdiction which is not vested in it. The District Commission has failed to appreciate that the cheque books were issued on the request of the respondent and the said requisitioned papers bear the signatures of the respondent. Otherwise, also alerts of debit and credit are conveyed to the account holder by SMS as per usual practice adopted by the appellant Bank. In the present matter, the respondent has failed to keep the cheques with his instruction and he cannot blame the appellant for his own latches. Therefore, there is no deficiency in service on the part of the appellant Bank and such position has completely been ignored by the District Commission. Therefore, the complaint is liable to be dismissed and the appeal should be allowed.

6. We have heard learned counsel for the parties and perused the material available before us.

7. It is an admitted fact that M/s Dev Caterers – respondent has proprietorship firm and the respondent is a sole-proprietor of the said firm. It is also not disputed that a current account bearing No. 06491131000832 was opened by the sole-proprietor Sh. Shashi Kant Bose.

8. We have perused the record of the District Commission, wherein the requisitioned paper (paper No. 15Ka/10 of the District Commission's record) is available which bears signature of the complainant.

9. In the said request letter (paper No. 15ka/10 of the District Commission's record), the complainant has requested to issue a cheque book, it means demand was to issue only a single cheque book and the complainant has not made any request to issue two cheque books. Therefore, it was obligatory on the part of the Bank to issue one cheque book, not to issue two cheque books to the employee of the complainant. Thus, on such account, there was some deficiency on the part of the appellant Bank, while issuing two cheque books to the employee of the complainant. The appellant has not proved the factum in the District Commission below that Sh. Sandeep Air was the employee of the complainant by producing the relevant evidence in regard to the payment of his salary by the complainant's firm. Thus, it is not proved that Sh. Sandeep Air was the employee of the complainant.

10. The complainant has filed an expert report of Sh. Ajay Mohan Paliwal (paper No. 95 of the District Commission's record) according to it the disputed signature does not tally with the specimen signature of the complainant. Whereas the Bank has also submitted / filed the expert report

of Sh. Abhishek Vashisth, Handwriting Expert (paper No. 106 of the District Commission's record), according to it, the disputed signature matched with the specimen signature of the complainant. Thus, there are two expert reports and the expert report filed by the complainant supports the complainant's version whereas the expert report filed by the appellant Bank supports the version of the Bank.

11. The learned counsel for the appellant has contended that the complainant is not the consumer and the Bank is not a service provider because there was a commercial transaction and the current account of the complainant was being used for commercial purpose.

12. We have perused the complaint of the complainant whereas nothing is mentioned by the complainant that M/s Dev Caterers Partnership Firm is being run exclusively for the purpose of earning the livelihood for self and is family members.

13. It is admitted from the pleadings and the evidence of the record of both the parties that all the transactions of the current account of the complainant were for commercial purposes.

14. As per the explanation mentioned in Section 2d of the Consumer Protection Act, 1986, it is provided that the transaction for commercial purpose does not come within the purview of the Consumer Protection Act, 1986. The above provision is reproduced as under:-

“Explanation.— For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes

of earning his livelihood by means of self-employment”

15. Thus, we are of the view that the account of the Partnership Firm was being used for commercial purposes and Consumer Protection Act does not apply in the cases where transaction is made for commercial purpose.

16. Apart from it, it is to mention that as per the complaint of the complainant, the (para No. 15) complainant has made an FIR to the Police and on the said FIR, the Police has registered a case under Section 420 of Indian Penal Code against unknown person and as per the complaint, investigation is underway.

17. Learned counsel for the appellant has contended that the matter in dispute is of criminal in nature requiring thorough Police investigation. Therefore, the case is beyond the jurisdiction of the Consumer Protection Act, 1986.

18. We are also of the view that when the complainant has already filed a complaint in the Police Station and the matter in dispute is of criminal in nature, which involves voluminous evidence and cross examination of the witnesses, hence we are of the view that on such basis the complaint is beyond the purview of the Consumer Protection Act, 1986.

19. We are of view that without cogent and reliable evidence and finding of the investigating official that the employee of the Bank is involved in such illegal transaction, the Bank could not be held guilty.

20. Accordingly, we are of the view that the District Commission has passed the impugned judgment without merits and against the mandate



provisions of law and the impugned judgment is perverse. The District Commission has committed illegality and irregularity while passing the impugned judgment. Hence, the impugned judgment is liable to be set aside and the appeal deserves to be allowed.

21. Accordingly, the appeal is allowed. Impugned judgment and order dated 17.01.2017 is set aside and the complaint case shall stand as dismissed. No order as to costs of the appeal.

22. Statutory amount deposited by the appellant, be released in favour of the appellant.

23. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 /2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties. The copy of this judgment alongwith original record of the District Commission be sent to the District Commission concerned for record and necessary information.

24. File be consigned to record room along with a copy of this Order.

**(Ms. Kumkum Rani)**  
**Judicial Member II**

**(Mr. B.S. Manral)**  
**Member**

Pronounced on: 18.09.2023