

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 377 OF 2019

(Against the Order dated 29/01/2019 in Complaint No. 150/2015 of the State Commission
Rajasthan)

1. KAMLESH MEENA

S/O. SITARAM MEENA , PLOT NO 33, BANSHIPURI FIRST
JAGATPURA
JAIPUR

.....Appellant(s)

Versus

1. HONKONG AND SHANGHAI BANKING CORPORATION
LTD.

(HSBS) BRANCH 61A-, SARDAR PATEL MARG, C-SCHEME
JAIPUR
RAJASTHAN 30 2001

.....Respondent(s)

BEFORE:

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

HON'BLE MR. JUSTICE KARUNA NAND BAJPAYEE, MEMBER

For the Appellant : Mr. Praveen Kumar Jain, Advocate with
Mr. Naveen Kumar Jain, Advocate

For the Respondent : Mr. Dhruv Wahi, Advocate

Dated : 26 Aug 2022

ORDER

1. This appeal has been filed under section 19 of the Act 1986 in challenge to the Order dated 29.01.2019 of the State Commission in complaint no. 150 of 2015.
2. We have heard the learned counsel for the rival sides. We have also perused the record, including *inter alia* the complaint, the State Commission's impugned Order dated 29.01.2019 and the memorandum of appeal.
3. Briefly, the complainant (the appellant herein) had filed a complaint alleging 'deficiency in service' and 'negligence' on the part of the bank (the respondent herein) for losing and not returning the original title documents of his property. He claimed a compensation of Rs. 95 lakh for the depreciation in the value of his property as a result of the non-availability of its original title documents and Rs. 3.75 lakh for the mental agony and Rs. 1.25 lakh for the cost of litigation i.e. total Rs. 1 crore. The State Commission in its impugned Order has questioned the basis of the claimed compensation of Rs. 95 lakh for the depreciation in the value of the property. Holding that 'very high' compensation has been sought for the depreciation in value of the property as also for the mental agony it has dismissed the complaint with liberty to the complainant to approach the District Commission.

4. Section 17(1)(a)(i) of the Act 1986 provides that the State Commission “shall have jurisdiction to entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs but does not exceed rupees one crore”.

Section 11 (1) provides that the District Forum “shall have jurisdiction to entertain complaints where the value of the goods or services and compensation, if any, claimed does not exceed rupees twenty lakhs”.

5. Learned counsel for the complainant submits that going by the letter of the provision relating to pecuniary jurisdiction of the State Commission, complaints in which the value of the services and compensation claimed taken together exceeds Rs. 20 lakh but does not exceed Rs. 1 crore can be preferred before it. The complainant had taken a loan of Rs. 20 lakh. However the value of the loan is not relevant since here the cause *per se* is regarding the bank not returning the original title documents of the property. As such in respect of the present cause the value of the services would be nil. The total compensation claimed was Rs. 1 crore. Hence the complaint undoubtedly fell within the pecuniary jurisdiction of the State Commission. The State Commission vide its impugned Order is forcing the complainant to necessarily reduce the compensation claimed to Rs. 20 lakh or less even when he wants to agitate for a much higher compensation of Rs. 1 crore since in his opinion and on pragmatic realistic estimate the compensation which he is claiming is in consonance with the loss and injury which he has suffered. The submission is that though the State Commission if it allows his complaint would be within its rights to award compensation which in its own understanding it finds to be just and equitable but it cannot impellingly force the complainant to *ab initio* pray for a drastically reduced amount and to bring it within the pecuniary jurisdiction of the forum below.

6. Learned counsel for the bank submits that the complainant is praying for unreasonably and unjustifiably high compensation which is not in consonance with the loss and injury which he has suffered. The submission is that the State Commission has examined the matter in the correct perspective and has rightly relegated it for the District Commission.

7. The complainant had taken a loan of Rs. 20 lakh from the bank. The complaint however is in relation to the bank not returning the original title documents of the complainant's property which admittedly he had deposited with the bank. In such facts and circumstances it would be erroneous to mechanically adopt the value of the loan i.e. Rs. 20 lakh to be the value of the services since this is clearly not the case here. The rational and correct proposition would be to take the value of the services to be nil or inapplicable in the context in so far as the present cause is concerned. We see that the State Commission also has not assigned any value for the services. Though not expressly stated in its Order but it is implicit therein that it too has treated the value of the services to be nil.

The total compensation claimed is Rs. 1 crore i.e. Rs. 95 lakh for the depreciation in the value of the property as a result of the loss of its original title documents by the bank and Rs. 3.75 lakh for the mental agony and Rs. 1.25 lakh for the cost of litigation. As such the complaint is undoubtedly within the pecuniary jurisdiction of the State Commission.

8. The State Commission has made a critique of the amount of Rs. 95 lakh which has been claimed for the loss of the original title documents and has termed it to be ‘very high’.

9. Non-availability of its original title documents unarguably puts a property under suspicion in the eyes of the general public or prospective buyers and decisively impacts its

value detrimentally. The consequences continue in perpetuity, they continue even after the property has devolved to the heirs i.e. the value-extenuating consequences sustain indefinitely. The adverse consequences of non-availability of the original title documents do not appear to have been realistically appreciated in the right pragmatic perspective by the State Commission.

It goes without saying that after having adjudicated the case in the normal wont on its merits if in the contingency that the State Commission would have come to the findings that there was deficiency or negligence on the part of the bank it would have awarded compensation which in its own wisdom was commensurate with the loss and injury suffered. That is to say, the compensation as claimed might not have been necessarily awarded but the compensation as deemed just and equitable in its own opinion would or could have been ordered. But this by no means implies that the complainant ought to be prematurely forced to drastically reduce his claim *ab initio* many notches down. The direct consequence of the State Commission's Order is to force the complainant to ask for compensation which is necessarily Rs. 20 lakh or less i.e. which falls within the pecuniary jurisdiction of the District Commission.

10. Disapprovingly enough, we notice that there are makings of post-haste adjudication and pre-judging of the case on the part of the State Commission.

The observations in respect of the quantum of compensation as have been made in the State Commission's Order is also so likely to go to unduly influence the District Commission in the contingency that the complaint goes before it.

11. All this is to the utter detriment of the complainant and necessarily puts him to prejudice unjustly.

12. There may be cases where a complainant asks for compensation which on the very face of it is unjustifiably and unreasonably and disproportionately high or has been cobbled up to circumvent and avoid going before the forum below. There may be cases where the compensation claimed is so exaggerated and so disproportionately inflated that it does not admit of any other presumption than the one that there is a deliberate attempt on the part of the complainant to create a particular pecuniary jurisdiction by raising the amount intentionally with unreasonable extravagance. **But that does not appear to be case here.**

13. We are consciously refraining from making a deeper critique on the question of quantum of compensation as we would not want to influence the forum below since the case has as yet to be adjudicated on its merits. Suffice is to say that in the present facts and circumstances we do not find it justified or appropriate that the complainant's case before the State Commission should have been dismissed with such preliminary scrutiny which has elements of post-haste adjudication and pre-judging of the matter and which in effect forces the complainant to drastically reduce his prayer made in his own right. We are of the considered opinion that the State Commission should have duly adjudicated the present case on its merits even though it was not bound to give the compensation as claimed but to give the compensation as it may have found in its wisdom reasonable and just in the contingency of deficiency or negligence being finally established on the record. Forcing the complainant to reduce the claim of compensation to Rs.20 lakh or less when he had claimed Rs. 1 crore, concomitant with the adverse observations, appears to be somewhat less than justice.

14. We feel that it is the correct proposition of law and is also just and conscionable that in the facts and circumstances of the present case the complaint as preferred should be adjudicated by the State Commission on merit and, in case deficiency or negligence is duly

determined after the adjudication, compensation as deemed just and equitable should be awarded. The State Commission should remain uninfluenced either by the observations it has itself made in its impugned Order or by the observations which are being made herein by this Commission for the purpose of disposing of this appeal which may have bearing on the question of quantum of compensation.

15. The impugned Order of the State Commission is set-aside. The matter is remanded back to the State Commission for deciding it afresh on merit as per the law. The parties are directed to appear before the State Commission on 18.10.2022.

16. The Registry is requested to send a copy each of this Order to the parties in the appeal and to their learned counsel as well as to the State Commission immediately. The stenographer is also requested to upload this Order on the website of this Commission immediately.

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DINESH SINGH
PRESIDING MEMBER

.....J
KARUNA NAND BAJPAYEE
MEMBER