

**2022 LiveLaw (SC) 696**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**DR. DHANANJAYA Y. CHANDRACHUD; J., A.S. BOPANNA; J.**

August 08, 2022

Civil Appeal Nos 5204-5205 of 2022 (Arising out of SLP(C) Nos 29765-29766 of 2019)

**Arun Bhatiya versus HDFC Bank & Ors.**

**Consumer Protection Act, 1986; Section 2(1)(d)(ii) - Consumer complaint alleging premature encashment of Joint Fixed Deposit by bank in contravention of the terms and conditions is maintainable - A person who avails of any service from a bank will fall under the purview of the definition of a 'consumer' under the 1986 Act. As a consequence, it would be open to such a consumer to seek recourse to the remedies provided under the 1986 Act. (Para 19)**

(Arising out of impugned final judgment and order dated 25-07-2019 in RA No. 221/2019 and 07-05-2019 in FA No. 2262/2018 passed by the National Consumer Disputes Redressal Commission, New Delhi)

*For Petitioner(s) Mr. Kushagra Pandey, Adv. Ms. Ankita Gupta, Adv. Mr. M. Shaz Khan, Adv. Mr. Harsh Kedia, Adv. Mr. Talha Abdul Rahman, AOR*

*For Respondent(s) Mr. Arvind Nayar, Sr. Adv. Mr. Devmani Bansal, Adv. Mr. Vikas Kumar, AOR Mr. Manish Paliwal, Adv. Mr. Manoj Rajpoot, Adv.*

**JUDGMENT**

**Dr Dhananjaya Y Chandrachud, J**

1 Leave granted.

2 The appeals arise from two orders of the National Consumer Disputes Redressal Commission<sup>1</sup>, namely, (i) an order dated 7 May 2019 by which the NCDRC dismissed the appeal as withdrawn with liberty to approach the appropriate forum on the request of the counsel for the appellant; and (ii) an order dated 25 July 2019 of the NCDRC dismissing the application for review.

3 The appellant instituted a consumer complaint before the State Consumer Disputes Redressal Commission<sup>2</sup> at Lucknow. The case of the appellant was that he and his father, the fourth respondent, opened a joint Fixed Deposit<sup>3</sup> account on 7 January 2016, at the Agra Branch of the first respondent<sup>4</sup>. The FD was in the amount of INR 75 lakhs for a period of 145 days, interest being payable at the rate of 7.5% per annum. The amount of the FD on maturity was INR 77 lakhs. According to the appellant, on 31 May 2016, the appellant and his father jointly gave written instructions to the respondent bank to renew the joint FD for ten days, while retaining the joint mode of operation.

4 On 1 June 2016, appellant's father travelled to Surat to stay with his other son, the appellant's elder brother. The appellant alleges that on 2 June 2016, his father submitted a letter to the Manager of the respondent bank at its Adajan Branch, Surat requesting encashment of the entire FD amount of INR 77 lakhs to his (the father's) individual savings account at Agra. On 3 June 2016, the appellant wrote to the respondent bank

<sup>1</sup> "NCDRC"

<sup>2</sup> "SCDRC"

<sup>3</sup> "FD"

<sup>4</sup> "Respondent bank"

with instructions to not transfer the FD amount to any individual bank account. However, contrary to the instructions, the proceeds of the FD were credited to the account of the appellant's father. On 4 June 2016, the appellant received an email from the respondent bank stating that they had credited INR 77 lakhs to the appellant's account. However, the appellant alleges that no such amount was credited to his account.

5 The appellant moved a consumer complaint on the allegation that there was a deficiency of service by the respondent bank. The SCDRC, by its judgment dated 24 October 2018, declined to entertain the complaint on the ground that the dispute essentially was between the appellant and his father and did not fulfill the description of a consumer dispute. During the course of its judgment, the SCDRC held that from the statement made by both the parties, it was evident that the amount had been deposited jointly in the name of the appellant and his father for a period of 145 days, the maturity date being 31 May 2016. While the case of the appellant was that upon the maturity of the FD, both the appellant and his father had jointly issued a direction to the bank for renewing it for a period of ten days, the bank claimed that the FD amount was credited to the account of appellant's father on the request made by the appellant's father on 31 May 2016. The SCDRC noted the submission of the appellant that since the FD amount was deposited in the joint name of the appellant and his father, it could not be credited solely into the account of the father. The SCDRC was of the view that the dispute was primarily between the appellant and his father on the issue of the FD amount deposited, and therefore only a civil court was competent to deal with such a dispute. Having recorded the rival submissions, the SCDRC relegated the appellant to the remedy of a civil suit before the competent forum.

6 The appellant instituted an appeal against the decision of the SCDRC under section 19 of the Consumer Protection Act, 1986<sup>5</sup> (as it was then in operation). The appeal which was filed before the NCDRC was disposed of on 7 May 2019, in terms of the following order:

"After some arguments, counsel for the appellant, upon instructions, seeks to withdraw the present appeal, with liberty to approach the appropriate Forum.

Accordingly, this appeal is dismissed as withdrawn with liberty to the appellant to approach the appropriate Forum."

7 The appellant then filed a review application along with an affidavit stating that he was present before the NCDRC and had not furnished any instructions to the counsel to withdraw the appeal. The appellant also alleged that the previous counsel had only provided a truncated copy of the FD document without the reverse, which contained the terms and conditions of the FD. The application for review has been rejected on 25 July 2019. The observations of the NCDRC are extracted below:

"It is not at all the case that the impugned order under review had been passed because the FD produced was in a truncated form or any such fact. The order under review is crystal clear in that it had only allowed the counsel for the appellant to withdraw the present appeal with liberty to approach the appropriate forum. It is also clear from the order that this was done after some arguments in respect of the appeal had been heard.

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<sup>5</sup> "1986 Act"

It is as well to mention that earlier, it had been noted in the Commission's order dated 8.1.2019 that there was an issue of maintainability of this complaint, as it appeared to be fatherson dispute and was therefore not in the nature of consumer complaint for the Consumer Fora.

In view of the above, I see no reason to review the order dated 7.5.2019. This review Application No. 221 of 2019 alongwith I.A. No. 11513 of 2019 are accordingly dismissed."

**8** We have heard Mr Kushagra Pandey, counsel appearing on behalf of the appellant and Mr Arvind Nayar, senior counsel appearing on behalf of the respondents nos. 1 to 3.

**9** Having set out the rival cases in the manner in which the consumer complaint was considered by the SCDRC, it becomes apparent that the appellant's complaint is that there is a deficiency of service on the part of the respondent bank. Essentially, the case of the appellant is that:

- (i) The FD was in the joint names of the appellant and his father;
- (ii) Upon the FD maturing for payment, a request was jointly made at the Agra Branch of the respondent bank for renewing it for ten days; and
- (iii) The Bank was not justified in law in entertaining the unilateral request of his father for crediting the proceeds to his account.

On this basis, it has been submitted that there is a clear deficiency of service on the part of the respondent bank.

**10** Counsel appearing on behalf of the appellant has adverted to a communication which was addressed by the appellant to the respondent bank, which was received by the bank at 9.35 am on 3 June 2016. By his communication, the appellant stated that since the FD representing the amount of INR 77 lakhs was to be renewed in terms of the request which was submitted on 31 May 2016, the respondent bank ought not to act on contrary instructions since the amount belonged jointly to the appellant and his father. Through the said communication, the appellant also instructed the bank to not transfer the FD amount to any singleperson account. However, it has been submitted that, on 4 June 2016, the bank addressed an email to the appellant, in response to the communication dated 3 June 2016 of the appellant, stating that the amount of INR 77 lakhs had been credited on 4 June 2016 to the account of the appellant. The appellant submits that the statement that the amount was credited to his account was palpably incorrect since the money was credited in the account of his father contrary to the instructions which were jointly issued on 31 May 2016.

**11** In a counter filed on behalf of respondents 1 to 3, it was averred that the joint FD in the name of the appellant and his father of INR 75 lakhs was redeemed on 31 May 2016 and an amount of INR 77 lakhs was credited on 31 May 2016 in the account of appellant's father. It was averred that thereafter the appellant approached the respondent bank with a request signed by his father for creating another FD of INR 77 lakhs. Further, the appellant allegedly informed the respondent bank that his father could not have visited the bank personally due to old age and ill-health. Based on the representation made by appellant, the respondent bank put the FD request in process and debited INR 77 lakhs from the account of appellant's father. Upon becoming aware of this, appellant's father approached respondent bank with instructions to not book the FD request and credit the said amount in his account for his personal use. Respondent 1 to 3 allege that the appellant misrepresented the age and health of his father to booked the second FD.

Therefore, the respondent bank credited back INR 77 lakhs in the account of appellant's father.

**12** Respondents 1 to 3 seek to controvert the correctness of the claim of the appellant. However, at this stage, the narrow issue before the Court is as to whether the consumer complaint was correctly disposed of by the SCDRC without going into the merits of the claim of a deficiency of service on the ground that the appropriate remedy of the appellant would lie before the civil court.

**13** The main contention of the appellant is that the premature encashment of the FD by respondent bank is in contravention of the terms and conditions of the joint FD and would amount to a deficiency of service under Section 2(1)(g) of the 1986 Act. At this point, it is pertinent to enumerate the relevant terms and conditions relating to the joint FD:

"In the case of premature encashment, all signatories to the deposit must sign the encashment instruction."

**14** The present case arises under the 1986 Act, which was enacted to protect the welfare and interest of consumers. It will be helpful to look at the specific provisions of law relied upon by the appellant. The relevant provision, namely, section 2(1)(d)(ii) of the 1986, reads as under:

"(d) "consumer" means any person who, -

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purposes.

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** Section 2(1)(g) of the Consumer Protection Act, 1986 defines 'deficiency' as:

"(g) "deficiency" means any fault, imperfection, shortcoming, or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;"

**16** A two-judge bench of this Court consisting of Justice D K Jain and Justice H L Dattu (as the Chief Justice was then) in **Maharashtra State Financial Corporation v. Sanjay Shankarsa Mamarde**<sup>6</sup> observed that the scope of 'deficiency' as defined under clause 2(1)(g) of the 1986 Act is wide and is to be determined on the basis of the facts and circumstances of a particular case. The court observed:

**20.** It is manifest from the language employed in the clause that its scope is also very wide but no single test as decisive in the determination of the extent of fault, imperfection, nature and manner of performance, etc. required to be maintained can be laid down. It must depend on the facts of the particular case, having regard to the nature of the "service" to be provided."

17 The expression 'service' has been defined in Section 2(1)(o) of the 1986 Act as follows:

(o) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

18 A bench of this Court in **Vodafone Idea Cellular Limited v. Ajay Kumar Agarwal**<sup>7</sup> (of which one of us, Dr Justice DY Chandrachud, was part) explained that service of every description will fall within the ambit of the definition of 'services' under section 2(1)(o) of the 1986 Act. The relevant extract reads as follows:

"12. The definition of the expression "service" is couched in wide terms. The width of statutory language emerges from the manner in which the definition is cast. Parliament has used the expression "service of any description which is made available to potential users". The definition employs the "means and includes formula". The means part of the definition incorporates service of "any" description. The inclusive part incorporates services by way of illustration, such as facilities in connection with banking, finance, insurance, transport, processing, supply of electrical and other energy, board or lodging and housing construction. The inclusive part is prefaced by the clarification that the services which are specified are not exhaustive. This is apparent from the expression "but not limited to". The last part of the definition excludes (i) the rendering of any service free of charge; and (ii) services under a contract of personal service. Parliament has confined the exclusion only to two specified categories. The initial part of the definition however makes it abundantly clear that the expression "service" is defined to mean service of any description. In other words, a service of every description would fall within the ambit of the statutory provision."

19 The respondent bank does not dispute that the appellant, along with his father, opened a joint FD with the bank. A person who avails of any service from a bank will fall under the purview of the definition of a 'consumer' under the 1986 Act. As a consequence, it would be open to such a consumer to seek recourse to the remedies provided under the 1986 Act.

20 There was a manifest error on the part of the SCDRC in declining to entertain the consumer complaint on merits. Whether the appellant is able to establish his case is a matter which has to be decided within the parameters of law as it emerges from the provisions of the 1986 Act. The essence of the complaint of the appellant is that there was a deficiency on the part of the respondent bank in proceeding to credit the proceeds of a joint FD exclusively to the account of his father. The SCDRC ought to have determined whether the complaint related to deficiency of service as defined under the 1986 Act. The SCDRC had no justification to relegate the appellant to pursue his claim before a civil court. The appellant did not, in the proceedings before the SCDRC, raise any claim against his father. Therefore, the SCDRC was wrong deducing that there was dispute between appellant and his father. Assuming that there was a dispute between the appellant and his father, that was not the subject matter of the consumer complaint. The complaint that there was a deficiency of service was against the bank.

21 The appellant instituted an application for review before the NCDRC categorically stating on affidavit that he had not furnished instructions to his counsel to apply for withdrawal of the appeal. In this view of the matter, the NCDRC ought to have entertained

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<sup>7</sup> (2022) 6 SCC 496.

the review and should have set down the appeal for hearing. The NCDRC having failed to do so, we pass the following order:

- (i) The orders of the NCDRC dated 7 May 2019 and 25 July 2019 are set aside. First Appeal No 2262 of 2018 is restored to the file of the NCDRC; and
- (ii) Since the consumer complaint was instituted before the SCDRC in 2016, the entirety of the dispute shall be resolved on merits by the NCDRC.
- (iii) All the rights and contentions of the parties, including the defence of the appellant on merits, are kept open;
- (iv) The appellant would be at liberty to file an additional affidavit setting out any further defence it has, within a period of four weeks;
- (v) The NCDRC shall dispose of the appeal within a period of four months of the date on which a certified copy is placed on the record.
- (vi) Save and except for holding that the consumer complaint is maintainable, no observation has been made by this Court on the merits of the rival contentions.

**22** The appeals are allowed in the above terms.

**23** Pending application, if any, stands disposed of.

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