

**Distt Consumer Disputes Redressal Commission
Ladowali Road, District Administrative Complex,
2nd Floor, Room No - 217
JALANDHAR
(PUNJAB)**

**Complaint Case No. CC/113/2020
(Date of Filing : 11 Feb 2020)**

1. Bhanu Kaushal

Bhanu Kaushal aged 40 years W/o Kuljit Pal, R/o 126,
Dashmesh Avenue, Cantt Road, Jalandhar City.

Jalandhar

Punjab

.....Complainant(s)

Versus

1. Yes Bank Ltd

Yes Bank Ltd, Ground Floor, Satnam Complex, BMC Chowk,
Jalandhar through its Branch Manager.

Jalandhar

Punjab

.....Opp.Party(s)

BEFORE:

**Harveen Bhardwaj PRESIDENT
Jaswant Singh Dhillon MEMBER**

PRESENT:

Smt. Shelly Shukla, Adv. Counsel for the Complainant.for the Complainant

Sh. V. K. Gupta, Adv. Counsel for OP.for the Opp. Party

Dated : 14 Nov 2023

**Final Order / Judgement
BEFORE THE DISTRICT CONSUMER DISPUTES
REDRESSAL COMMISSION, JALANDHAR.**

Complaint No.113 of 2020

Date of Instt. 11.02.2020

Date of Decision: 14.11.2023

Bhanu Kaushal aged 40 years W/o Kuljit Pal, resident of 126, Dashmesh Avenue, Cantt. Road,
Jalandhar City.

.....Complainant

Versus

Yes Bank Ltd., Ground Floor, Satnam Complex, BMC Chowk, Jalandhar, through its Branch
Manager.

..... Opposite Party.

Complaint Under the Consumer Protection Act.

Before: Dr. Harveen Bhardwaj (President)

Sh. Jaswant Singh Dhillon (Member)

Present: Smt. Shelly Shukla, Adv. Counsel for the Complainant.

Sh. V. K. Gupta, Adv. Counsel for OP.

Order

Dr. Harveen Bhardwaj (President)

1. The instant complaint has been filed by the complainant, wherein it is alleged that Smt. Asha Tiwari, mother of the complainant was maintaining a fixed deposit of Rs.2,00,000/- deposited on 30th July 2015 for a period upto 10th May 2017 bearing account No.007141100016950 under Reinvestment Senior Citizen Scheme. The fixed deposit has been renewed by the OP on its due date i.e. 10th May 2017 upto 20th February 2019 for a sum of Rs.2,30,554.67 with due interest on Rs.2,00,000/-. Initially Sh. K.B. Rai has been registered as nominee in the records of OP for the amount of deposits. Subsequently the name of nominee has been changed by the depositor in the presence of the authorized officer of OP. Accordingly the name of first nominee i.e. K.B. Rai has been cancelled and the name of claimant/complainant as nominee has been registered and accepted by the OP as per request of the depositor Smt. Asha Tiwari. Accordingly, the name of the complainant has been accepted as nominee as no objection has been observed or communicated by the OP at the time of registration of fresh nomination of complainant. The complainant being legal heir of Smt. Asha Tiwari and duly registered nominee and being beneficiary under the Scheme, is, thus consumer of the OP and very well falls within the definition of 'Consumer' as per provisions of the Act. During the subsisting period of fixed deposit, depositor mother of complainant (nominee) fell ill and was admitted to Global Hospital, 10, Link Road, Jalandhar for treatment. The entire medical expenses for treatment of the depositor have been incurred by the complainant. The depositor could not recover from illness inspite of continued and best medical treatment provided by the complainant. The depositor expired on 9th January 2019. The complainant being account of nomination duly beneficiary on registered and accepted by the Bank, submitted application as per prescribed proforma of the OP on 24th January, 2019 along with copy of Death Certificate for settlement of the claim of fixed deposit along with accrued interest thereon. The complainant has been continuously approaching the OP personally, but the OP has not considered the request of the complainant as per nomination duly registered in favour of the complainant. The complainant sent a reminder by letter dated 21.02.2019 to this context. The OP vide their letter dated 25.02.2019 advised the complainant that the amount of deposit will be released as per orders of the Court. The complainant sent a notice dated 5th March 2019 through Advocate for settling the claim amount as per statutory provisions of Nomination Act. The OP vide their letter dated 14.03.2019 has again advised that the claim of deposit will be released as per orders of the Court. Refusal by the OP not to settle the claim amount of deposit in favour of nominee is a contravention of statutory provisions of Nomination Act and deficiency in service on the part of OP. The complainant has suffered huge financial loss, great mental tension, agony and frustration due to non-payment genuine claim of the complainant by the OP and as such, necessity arose to file the present

complaint with the prayer that the complaint of the complainant may be accepted and OP be directed to pay a sum of Rs.2,30,554.67 with upto date interest to the complainant being the duly registered nominee. Further, OP be directed to pay a compensation of Rs.50,000/- for causing mental tension and harassment to the complainant and Rs.25,000/- as litigation expenses and to pay the interest @ 12% per annum on the aforesaid amount.

2. Notice of the complaint was given to the OP, who filed written reply and contested the complaint by taking preliminary objections that the present complaint filed by the complainant is not maintainable under any provisions of law against the answering OP and is liable to be dismissed with heavy cost. It is further averred that the present complaint is bad for mis-joinder and non-joinder of parties. Sh. Kulbhushan Rai is essential and necessary party in present complaint, but the complainant for the reason best known to her has not impleaded Sh. Kulbhushan Rai as party in the present complaint. Hence, the present complaint is liable to be dismissed. It is further averred that there is no deficiency, negligence or unfair trade practice on the part of answering OP which brings present complaint adjudicable by this Forum. It is submitted that Smt. Asha Tiwari was having a saving account bearing number 007193700002923 and FDR bearing number 007141100016950 with the answering OP and in said account and FDR, earlier Sh. Kulbhushan Rai @ K.B Rai husband of Smt. Asha Tiwari was named as nominee, however later on nomination was changed and name of complainant was added as nominee. At the time of change in nomination, request was made on behalf of the Smt. Asha Tiwari that some official of the Bank should visit the account holder for the change of nomination as Smt. Asha Tiwari is not feeling well and is unable to visit the branch and sign the document. Accordingly staff member visited the account holder and the nomination facility was changed. After the death of Smt. Asha Tiwari claim for the release of proceeds in the account of Smt. Asha Tiwari was made by the complainant and she has filed the claim form with the answering OP along with death certificate of Smt. Asha Tiwari. After filing of claim by complainant and before the settlement of claim Sh. Kulbhushan Rai @ K. B. Rai husband of deceased visited the Branch and filed the objection with the branch and has requested the Bank to stop further transactions in said account and release of payment in favour of complainant. It is submitted that he further requested the bank to release the payment/proceeds in the account in his favour claiming himself to be legal heir of the deceased. Since objection is filed with the Bank regarding processing of claim in favour of complainant by other legal heirs of deceased Bank left with no other option but to request the complainant to provide the Court orders for the release of payment in favour of complainant. It is submitted that information to this effect was given to the complainant vide letter dated 25.02.2019 which was written in response to letter dated 24.01.2019, and vide letter dated 12.03.2019 which was written in response to letter dated 20.02.2019. Hence, from the facts mentioned above it is clear that that there is no deficiency negligence or unfair trade practice on the part of answering OP. It is further averred that the present complaint is guilty of suppression of material facts from this Forum and from answering OP while filing the present complaint before this Forum and while filing claim with answering OP. It is submitted that complainant has not disclosed the factum of filing objection by Sh. Kulbhushan Rai @ K.B Rai in the complaint filed before this Forum and similarly she has not disclosed complete information qua all living legal heirs of deceased which is evident from the claim forum filed with the Bank. It is submitted that in the claim form she has stated that she is only living legal heir of deceased where as husband of the deceased Sh. Kulbhushan Rai @ K. B. Rai is still alive and has filed the objection against the release of amount in favour of complainant. It is important to mention here that during his visit the branch Sh. Kulbhushan Rai @ K. B. Rai has also claimed that his wife was under depression and was not in her senses and change in nomination is made by thumb impression as such is not valid. It is submitted that in view of contradictory claims filed by legal heirs of deceased, and in view of facts mentioned

above Bank has decided to seek Court orders for the release of payment. It is further averred that as per settled law and Reserve Bank of India guidelines, a nominee has the right to collect the amount of the deceased on behalf of all the legal heirs but he not sole beneficiary of the estate of the deceased, rather he collect the amount being the trustee of all the legal heirs. It is submitted that nomination in the Bank or account does not by-pass or supersede the law of succession. It is submitted that in case before the settlement of claim in favour of nominee any objection is filed by the other legal heirs of deceased for the release of payment in favour of nominee, bank or other financial institutions are justified in claiming court order in favour of nominee.

Accordingly bank being custodian of assets of deceased in order to avoid further complications and to ensure assets of deceased goes to the lawful beneficiaries has requested the complainant to provide Court orders for the release of amount in her favour, but she in place of providing the same to the bank has filled the present complaint before this Forum. It is further averred that no cause of action has ever accrued to complainant to file the complaint against answering opposite party, and the present complaint is filed just in order to harass the answering OP. On merits, it is admitted that the account No.007141100016950 under Reinvestment Senior Citizen Scheme was in the name of Smt. Asha Tiwari, the mother of the complainant and it is also admitted that the mother of the complainant was maintaining a fixed deposit of Rs.2,00,000/- which was renewed on 10.05.2017 upto 20.02.2019 for a sum of Rs.2,30,554.67 with due interest. It is also admitted that later on the nomination was changed and the name of the complainant was added as a nominee and when the name of the nominee was changed, the staff member of the OP visited the account holder at the request of the account holder Smt. Asha Tiwari as she was unable to visit the branch. It is also admitted that the application was moved by the complainant for change in nomination and after the death of Smt. Asha Tiwari, the claim for the release of proceeds was also made by the complainant, but the other allegations as made in the complaint are categorically denied and lastly submitted that the complaint of the complainant is without merits, the same may be dismissed.

3. Rejoinder to the written statement filed by the complainant, whereby reasserted the entire facts as narrated in the complaint and denied the allegations raised in the written statement.

4. The parties have led evidence in support of their respective versions by way of affidavits and documents.

5. We have heard the learned counsel for the parties, carefully gone through the complaint, written version of the parties and evidence and documents brought on the record by the parties.

6. It is admitted and proved that the account No.007141100016950 under the Reinvestment Senior Citizen Scheme was in the name of Smt. Asha Tiwari, the mother of the complainant. It is also admitted that she was maintaining a fixed deposit of Rs.2,00,000/-, which was renewed on 10.05.2017 upto 20.02.2019 for a sum of Rs.2,30,554.67 with due interest. It is proved that Smt. Asha Tiwari died and her death certificate has been proved as Ex.C-4. The FDRs and receipts have been proved as Ex.C-1 and Ex.C-2. It is also not disputed that Sh. K. B. Rai, the husband of the deceased Asha Tiwari, was registered as a nominee in the record of OP for the fixed deposit, but later on she changed the name of the nominee in the presence of the authorized representative of OP. The OP has admitted in their written statement that later on nomination was changed and the name of the complainant was added as a nominee. Certified copies of the statement of account of the deceased and the FDR has been proved by the OP also as Ex.OP-1 and Ex.OP-2. The OP has proved the account opening forms Ex.OP-3 and Ex.OP-4.

It has been admitted by the OP that when the name of the nominee was changed, the staff member of the OP visited the account holder at the request of the account holder Smt. Asha Tiwari as she was unable to visit the branch. Nomination was changed in the presence of the staff member of the OP. Ex.C-3 is the certificate of the doctor, in which he has expressed his satisfaction that Smt. Asha Tiwari was unable to sign her document and she may be allowed to use her thumb impression for official purposes. It is also admitted that the application was moved by the complainant for change in nomination and after the death of Smt. Asha Tiwari, the claim for the release of proceeds was also made by the complainant, but the same was kept hold on by the OPs as the father of the complainant namely Sh. K. B. Rai raised objection to release the proceeds to him being the LRs of deceased Asha Tiwari. All the material facts have been admitted by the OP. The complainant has given the statement today in the Court that she has come to know from the relatives that her father namely Sh. K. B. Rai has died and in the Court she has submitted that one of his brother, who was living with his father and his whereabouts are not known. It has been held by the Hon'ble High Court of Calcutta, in a case titled as "*Communist Party of India (Marxist) Vs. United Bank of India and Ors.*" that Section 45-ZA of the Banking Regulation Act provides for Nomination for payment of depositors money and reads as under:-

(1) Where a deposit is held by a banking company to the credit of one or more persons, the depositor or, as the case may be, all the depositors together may nominate in the prescribed manner, one person to whom in the event of the death of the sole depositor or the death of all the depositors, the amount of deposit may be returned by the banking company.

(2) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such deposit, where a nomination made in the prescribed manner purports to confer on any person the right to receive the amount of deposit from the banking company, the nominee shall, on the death of the sole depositor or, as the case may be, on the death of all the depositors, become entitled to all the rights of the sole depositor or, as the case may be, of the depositors, in relation to such deposit to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(3) ***

(4) Payment by a banking company in accordance with the provisions of this section shall constitute a full discharge to the banking company of its liability in respect of the deposit:

Provided that nothing contained in this sub-section shall effect the right or claim which any person may have against the person to whom any payment is made under this section.

As per Rule 2 of the Banking Companies (Nomination) Rules, 1985 that Nomination in respect of deposits.-(1) The nomination to be made by the depositor, or, as the case may be, all the depositors together in respect of a deposit held by a banking company to the credit of one or more individual shall be in Form DA 1.

(2) The said nomination may be made only in respect of a deposit which is held in the individual capacity of the depositor and not in any representative capacity as the holder of an office or otherwise.

(3) ***

(4) ***

(5) The cancellation of the said nomination to be made by the depositor or, as the case may be, all the depositors together, shall be in Form DA 2.

(6) A variation of the said nomination to be made by the depositor or, as the case may be, all the depositors together, shall be in Form DA 3.

(7) The said nomination shall be made in favour of only one individual. (8) (a) A nomination, cancellation of nomination or variation of nomination may be made as aforesaid at any time during which the deposit is held by a banking company to the credit of the depositor or depositors, as the case may be.

7. It has been observed by the Hon'ble Calcutta High court that the nomination is made under Section 45-ZA of the Banking Regulation Act and Rule 2(1) of the Banking Companies (Nomination) Rules, 1985 and in the event of the death of the depositor, the banking company would be under an obligation to return the amount of deposit to such person i.e. the nominee.

8. In the present case, it is proved that the complainant has been registered as a nominee in the account of the deceased Smt. Asha Tiwari. As per the provisions of the Banking Regulation Act, the amount is to be returned to the nominee and that cannot be held in bank just for unlimited period. The right of the nominee cannot be taken away. The rights of any other claimant can be protected by directing the complainant to furnish indemnity bond in the sum of Rs.4,00,000/-, with one surety in the like amount, indemnifying the claim of any other claimant/OP in future, if any, within two months. The OPs are directed to release the amount to the complainant being the legal heir, beneficiary and nominee of the deceased Asha Tiwari on furnishing her indemnity bond. Further, OP is directed to pay compensation of Rs.5000/- to the complainant for causing mental tension and harassment to the complainant and Rs.3000/- as litigation expenses. The compliance of the order be made within 45 days from receipt of copy of this order. This complaint could not be decided within stipulated time frame due to rush of work.

9. Copies of the order be supplied to the parties free of cost, as per Rules. File be indexed and consigned to the record room.

Dated

Jaswant Singh Dhillon

Dr. Harveen Bhardwaj

14.11.2023

Member

President

[Harveen Bhardwaj]

PRESIDENT

**[Jaswant Singh Dhillon]
MEMBER**