

HIGH COURT OF JAMMU & KASHMIR AND LADAKH

AT SRINAGAR

MA No. 24/2018 c/w

MA No. 04/2018

Reserved on: 26.03.2024

Pronounced on: 03.07.2024

Sheikh Imran Farooq, Age 37 years

S/o Sheikh Farooq Ahmad

R/o Opposite Sheri Kashmir Masjid,

Gojwara, Srinagar.

.....Appellant (s)

Through: Mr. Altaf Haqani, Sr Advocate with
Mr. Shakir Haqani, Advocate.

VS

- 01. The Jammu and Kashmir Bank Ltd**
Corporate headquarters,
M.A. Road, Srinagar through its Secretary.
02. The Chairman,
Jammu and Kashmir Bank Ltd
M.A. Road, Srinagar.
03. Branch Head,
Branch Unit, J&K Bank Ltd.
Air Cargo, Srinagar.

..... Respondent(s)

Through: Mr. Shafqat Nazir, Advocate.

Coram:

Hon'ble The Chief Justice.

Hon'ble Mr. Justice Mohammad Yousuf Wani, Judge.

JUDGMENT

Mohd Yousuf Wani-J

01. Impugned in the instant appeals filed under the provisions of Section 17 of Jammu and Kashmir Consumer Protection Act, 1987 (now repealed & hereinafter referred to as the "Act" for short) is the order dated 28th of February 2018 passed by the J&K Consumer Disputes Redressal Commission Srinagar (hereinafter referred to as the Commission for short) on a consumer complaint No. 133 of 2012 filed by the appellant/complainant against the Respondent-Bank/opposite parties whereby the learned Commission inter alia passed the following directions at para Nos. 20, 21 and 22 while disposing of the complaint:-

20. "It is not in dispute while assessing the amount of mental agony the complainant has undergone, is visible from the way he has been treated by the bank. It is also a fact that he has suffered a loss of business due to non-availability of funds. Even though, in his complaint he has not quantified the amount of loss that he has suffered as he has restricted his prayer only to the extent of granting Rs.60.00 lacs. Keeping in view these facts, we allow a damage of Rs.15.00 lacs (rupees fifteen lacs only) to be paid to the complainant. The amount of Rs.42,69,763/- (rupees forty two lacs sixty nine thousand seven hundred sixty three only), which has been withdrawn from his C.C. Account is required to be transferred to his account and for the period this amount remained unutilized by the complainant, no interest shall be charged by the bank from him. He shall also be found entitled to receive interest @ 12% per annum from the date of filing of the complaint. Therefore, the following directions are issued:

a) An amount of Rs.42,69,763/- (rupees forty two lacs sixty nine thousand seven hundred sixty three only) be transferred to the C.C.Account of the complainant forthwith and no interest for the period this amount, remained unutilized by the complainant, shall be charged by the bank from the complainant.

b) Compensation for tremendous mental agony and loss of business is awarded as Rs.15.00 lacs (rupees fifteen lacs only).

c) Interest @ 12% per annum from the date of filing of the complaint shall also be payable to the complainant. The opposite party-bank shall comply this order within a period of two months from the date of order.

21. Since the stand of the bank is that this amount stands transferred in the loan account of brother of the complainant namely Sheikh Irfan Farooq, bank will be at liberty to recover this amount from said Sheikh Irfan Farooq by taking appropriate legal remedies available under law.

22. Before parting with the judgment, it is a case of unique nature where with open eyes the bank officials have committed the fraud and forgery which is a case of gross deficiency of service Unmindful of the consequences. Not only this, they have harassed the complainant by initiating recovery proceedings against him being fully aware that default in the cash credit account was on account of the illegal act committed by the bank. We are surprised that the bank authorities have not taken any action against the defaulting officers even though more than five years have elapsed. The banks are the custodian of the money which belongs to the public. Therefore, affecting such sham transactions results in people losing confidence in the banking system. An appropriate direction in this behalf could have been issued for registration of a FIR for taking cognizance against the erring bank officials but we constrain ourselves from doing so and we hope that the Chairman, Jammu and Kashmir Bank will take cognizance of the matter. It is directed that the Chairman of the bank shall appoint an Inquiry Committee headed by a General Manager of the Bank, who shall identify the officials, who indulged in this sham and fraudulent transactions and proceed against them The inquiry

be initiated within a period of three months from the date copy this order is served 'on the CEO/Chairman of the bank. In case the needful is not done within the said period, we direct that a FIR be lodged by the bank against the erring bank officials who have committed this fraud. Copy of this order shall be delivered by the standing counsel of the bank to the CEO/Chairman of the Jammu and Kashmir Bank”.

02. Aggrieved by the order impugned both the parties assailed the same through separate appeals. The complainant preferred the appeal bearing MA No. 24 of 2018 when the opposite parties preferred the Cross Appeal bearing MA No. 04 of 2018.

The appellant/complainant in his appeal bearing MA No. 24/2018 has prayed for the compensation amount of Rs. 60.00 Lacs as claimed in the basic consumer complaint, when the respondent-Bank/opposite party (Appellant MA No. 04/2018) has prayed for setting aside of the impugned award.

03. The brief facts of the case relevant for disposal of the appeals in hand are that the appellant/complainant alleges to be the owner of a sole propriety business concern running under the name and style M/s Classic Enterprises Srinagar Kashmir dealing with the business of distribution of food and consumer goods (FMCG). That for conducting his business/trade, he obtained a Cash Credit facility of the limit of Rs. 68.00 lacs from the opposite party- Respondent No 3 which was secured by the hypothecation of stocks in trade as also the mortgage of his house situated at Tengbagh Khayam, Srinagar. That the stocks in trade were stored by him in a rented accommodation situated at Munawarabad opposite Azad Filling Station as also in a commercial building of his uncle at Tengbagh, Khayam Nowpora Srinagar.

That unfortunately his own house as well as the house aforementioned accommodating his stocks in trade got damaged by remaining inundated during the devastating floods of 2014 which resulted in huge loss to him. That two cheques bearing No. 33218017 and 33218018 respectively dated 14th April 2012 and 17th April 2012 drawn by

him from his aforementioned cash credit loan account for Rs. 12.00 lacs and 9.00 lacs respectively in favour of his constituent M/s Web Enterprises payee, on presentation at the opposite party-Respondent No.3 (Drawee Bank) came to be returned dis-honoured vide memos dated 4th July 2012 with an objection read as “ *Cheque number already passed*”. That astonished by the dishonour of the cheques which he had not issued earlier and were part of the cheque book issued by the opposite party-Respondent No. 3 and in his possession, he approached the opposite party-respondent No. 3 to ascertain the true facts as regards the dishonor of cheques with the aforesaid observations. That he also came to know on further enquiry, that several debit transactions as shown in the table below had come to be allowed without his authorization and consent involving a total amount of Rs., 42,69,763.

S. No.	Date	Cheque No.	Amount (Rs in Lacs)
01.	19.12.2011	----	7.50
02	19.12.2011	-----	7.00
03	27.12.2011	33218017	4.50
04	27.12.2011	33219018	6.50
05	27.12.2011	33218019	5.00
06	31.12.2011		15000
07	31.12.2011		15000
08	31.12.2011		15000
09	26.06.2012		50,000
10	26.06.2012		214763
11	29.06.2012		6.50
12	29.06.2012		2.60
		TOTAL	Rs. 42,69,763

That it was found by him that some of the unauthorized and illegal debit transactions were credited to some fake and forged consumption loan

account opened in his name by the opposite parties-respondents at their branch Unit Bhogal Delhi when the substantial portion of the unauthorized debits was credited to the loan account of his brother namely Sheikh Irfan Farooq lying with the respondent's- Branch Unit Bhogal Delhi. That as a result of the aforementioned unauthorized transactions affected by the Respondents-opposite parties, he was subjected to a huge loss in his business dealings with his customers as a result of the non-availability of the huge amount to the extent of Rs. 42,69,763/- That the respondent-Bank did not stop here but also proceeded against him under SARFAESI Act publishing his name as defaulter in the newspapers whereby his image as a businessman was lowered down in the estimation of the business committee in general and his customers in particular. That he suffered in terms of his business as is evident from the annual turn out statements/audited sales tax returns for the financial years 2011- 12, 2012-13, 2013-14, 2014-15. That he was also accused of concealment of Saving Bank Account No. 735 at Jammu and Kashmir Bank Branch unit Bhogal New Delhi by the ITO WARD-3 Clause 1, Srinagar Kashmir and made liable to tax.

The appellant/complainant approached the learned Commission with his complaint claiming the compensation amount of Rs. 60.00 lacs from the respondents on account of loss suffered by him in the business and for suffering the mental agony.

04. The stand of the respondent- Bank/opposite party before the learned State Commission has been that the transactions which were affected through the debit vouchers were done with the consent and the authority of the appellant/complainant and the money under the said transactions was credited on the authority of the appellant to other cash credit account of M/s Classic Enterprises owned by his brother namely Sheikh Irfan Farooq for whom he has stood as guarantor in respect of the said account. The respondent-Bank/opposite party stated that some amount against the debit vouchers was transferred into the personal loan account of the

appellant/complainant opened and being maintained by him at Branch Unit Bhogal New Delhi. It is, however, admitted by the respondent-Bank that the appellant/complainant has been generally regular in maintaining his cash credit account with the respondent No.3 but he failed to adhere to the terms and conditions of the sanction of his personal consumption loan availed by him at Branch Unit Bhogal New Delhi.

05. The appellant/complainant has assailed the impugned order of the learned State Commission dated 28.02.2018 on the grounds inter alia that the learned Commission has awarded him the compensation amount of only Rs. 15.00 lacs as against the compensation amount of Rs. 60.00 lacs claimed by him on account of his huge loss in the business, mental trauma and defamation. That the respondent-Bank/opposite party through the fraudulent and unauthorized debit vouchers withdraw an amount of Rs. 42,69,763/- from his Cash Credit Loan Account and transferred the same into the loan account of his brother namely Sheikh Irfan Farooq maintained by him with the Branch Unit at Bhogal New Delhi as also into a bogus and fictitious personal consumption loan account attributed to have been opened by him at the aforesaid Branch Unit Bhogal New Delhi. That the impugned award is not in conformity with the material that was made available on the file as the learned Commission has not considered the statements of his business turnover during the years 2011-12, 2012-13, 2013-14, 2014-15 showing substantial decrease and reduction of his business turnover as compared to the year 2011-12. That the respondents/opposite parties even during the pendency of the complaint before the learned State Commission published twice the notices under **SARFAESI** Act in the local press thereby adversely affecting his reputation in the business community, resulting in the substantial loss of his business. That the quantum of the compensation awarded by the State Commission to the tune of Rs. 15.00 lacs only as against the claimed amount of Rs. 60.00 lac is highly disproportionate, unreasonable, unjust and violative of the principal of natural justice.

06. The respondent-Bank/opposite party through its Cross Appeal has also assailed the impugned order for setting aside the same on the main ground that the alleged unauthorized debit vouchers were in essence issued and permitted by the appellant/complainant out of his Cash Credit account to save the account of his brother maintained by him at Branch Unit Bhogal New Delhi from being rendered “Non-Performing Asset” and also to save his own personal consumption loan account maintained with the said Branch of the respondent-Bank.

07. We have heard the learned counsel for the parties and considered their submissions.

08. Learned counsel for the appellant/complainant Mr. Altaf Haqani, Senior Advocate submitted that the amount of compensation awarded by the learned State Commission is totally inappropriate, insufficient and unreasonable in the backdrop of the facts and circumstances of the case. He submitted that it is a settled legal position that no straight jacket formula can be laid down for award of compensation in a consumer complaint on the proof of deficient services but the assessment of the compensation depends always on the facts and circumstances of each case. The respondent-Bank allowed the debit vouchers which were false, unauthorized and forged thereby violating the sentiments of trust and confidence. He submitted that during the proceeding of the complaint before the learned Commission, the questioned debit vouchers as also the admitted signatures/hand writing of the appellant/complainant were referred for expert opinion to two forensic laboratories i.e. IFS Forensic Science Department, Pune, 411403, Maharashtra India and Regional Forensic Laboratory, Mangalore 575008 and the learned State Commission has received concurrent findings/opinions to the effect that the signatures on the questioned documents and the admitted signatures have been made by different persons, thus leading to an inference of the debit vouchers being false and forged.

09. Learned Senior counsel further submitted that the respondent-Bank by allowing the huge withdrawal on the basis of the un-authorized and forged debit vouchers led to the non-availability of the funds to the tune of Rs. 4269763/- in the Cash Credit loan account of the appellant/complainant. That owing to such huge unauthorized withdrawal of the money, the appellant's business activity suffered a sudden halt and he was further lowered down in the estimation of the business community as the respondent-Bank got published two notices under the SARFAESI Act against him for his alleged default in the repayment of the loan amount. He further contended that the business of the appellant/complainant witnessed substantial decline in terms of the turnover statements with effect from the financial year 2012 – 13 onwards.

10. He further contended that since the respondent-Bank being conscious of its lapses has already complied with the directions made by the learned State Commission at para Nos. 20-a of the impugned award, as such this Court has to determine as to whether in the facts and circumstances of the case, the compensation amount of Rs. 15.00 lacs only is proper or not? He further contended that the appellant also received a claim from the Income Tax Department for an amount of Rs. 40 lacs as penalty on account of his concealment of huge transactions being attributed to him in terms of the fake Saving Bank Account that was opened by the respondent-Bank in his name. Learned Senior counsel further contended that the mental pain, trauma, anxiety and agony which the appellant/complainant is supposed to have suffered as a result of the conduct of the respondent-Bank can only be imagined and not described. He contended that the respondent-Bank was not at all authorized to allow even any genuine debit vouchers not to speak of forged ones for the purpose beyond the one for which the Cash Credit loan had been sanctioned in favour of the appellant/complainant.

11. Learned Senior counsel submitted that the respondent-Bank is helplessly covering its mis-deed, fraud and the violation of the banking

norms by contending that the amount of withdrawal against the debit vouchers was transferred into the loan account of the brother of the appellant for whom he has stood as a guarantor maintained by him under the business concern M/s Classic Enterprises and also to the personal loan account of the appellant which has no justification under law.

12. Learned Senior counsel for the appellant/complainant in support of his arguments placed reliance on the law laid down in the cases cited as ***“Charan Singh vs. Healing Touch Hospital & Ors”*** 2007, SCC 668, ***“Citizen Co-operative Bank Limited & Anr Vs. Ritesh Mithal”*** AIR 2003 J&K, 67, ***Canara Bank Vs. Canara Sales Corporation & Ors”*** 1987, 2. SCC 666 and ***“Lucknow Development Authority Vs. M.K. Gupta”*** 1991 SCC (1) 243.

13. Learned counsel for the respondents/opposite parties, Mr. Shafqat Nazir, Advocate, however, in rebuttal argued that the appellant/complainant lodged a false and baseless complaint bearing No. 113/2012 with the learned State Commission which culminated into the impugned order dated 28.02.2018. That actually the transactions affected through debit vouchers alleged to be forged and unauthorized were done with the consent and authority of the appellant/complainant and the money under the said transactions was credited in the account of M/s Classic Enterprises owned by the brother of the appellant/complainant for whom he otherwise stood as a guarantor. Learned counsel further contended that some of the amount covered by the transactions was transferred into the personal loan account of the appellant/complainant maintained at Branch Unit Bhogal New Delhi, as he had obtained a personal consumption loan of Rs. 5.00 lacs. Learned counsel further contended that during the proceeding of the enquiry held by the State Commission on the complaint No. 113/2012 of the appellant/borrower, the learned Commission twice referred some questioned documents along with admitted hand writing of the appellant/complainant firstly to Forensic Laboratory at Pune, Maharashtra and thereafter to Forensic Science Laboratory Manglore and on the basis of

the reports of the said laboratories the learned State Commission opined that the debit vouchers did not appear to have signatures of the appellant/borrower. He contended that none of the experts from the aforesaid laboratories was examined by the learned State Commission during the period of enquiry.

14. Learned counsel further submitted that State Commission directed for transfer of an amount of Rs. 4269763/- back to the Cash Credit Account of the appellant/borrower along with the reversal of the interest charged thereon and in addition to the same has saddled the respondent-Bank with the liability to pay the compensation of Rs. 15.00 lacs with interest @ 12 % thereon from the date of filing of the complaint which in the facts and circumstances of the case is un-reasonable. He further contended that there was no reason for the respondent-Bank to act on alleged forged debit vouchers and that the appellant/complainant also used to obtain the periodical statements. That the cheque books were in the custody of the appellant/borrower himself. That the appellant/complainant had stood as a guarantor to the loan account of his brother Sheikh Irfan Farooq and the appellant/complainant got the amount against the questioned debit vouchers transferred into the aforesaid account of his brother who had defaulted and whose account was likely to become “***Non Performing Asset***” in view of the guidelines of the Reserve Bank of India. That the respondent-Bank was competent to otherwise recover the amount from the appellants accounts as being a guarantor. Learned counsel for the respondent-Bank further contended that serious disputed questions of fact and law involved in the complaint before the learned State Commission could not have been adjudicated upon in a summary manner with non-examination of the hand writing experts.

15. Learned counsel for the respondent-Bank submitted that during the proceedings of the enquiry conducted on the complaint of the appellant/borrower by the learned State Commission, the Respondent-Bank filed an application for impleadment of brother of the appellant namely Sheikh

Irfan Farooq as a party in the case but the said application was never addressed by the learned Commission and that there is no whisper of the said impleadment application in the impugned award. Further contended that the appellant/complainant did not examine his brother as his witness whose testimony was of vital importance. Learned counsel contented that the bona fides of the Respondent-Bank are apparent from the fact that the amount against the debit vouchers in question was not transferred to some other person's account or in the account of the Respondent-Bank but was as admitted transferred to the account of the brother of the appellant/complainant whose loan account had turned Non-Performing Asset. The learned counsel submitted that responded-Bank did not commit any act which can be said to be tant amounting to the deficient services. Learned counsel has prayed for setting aside of the impugned judgment dated 28th of February 2018 passed by the State Commission.

16. We have gone through the record of the appeals in hand especially the impugned judgment dated 28th of February 2018.

17. In the backdrop of the perusal of the record of the appeals in hand and the consideration of the rival submissions advanced by the learned counsel for the parties, we are of the opinion that the Respondent-Bank/opposite party is guilty of rendering the deficient services as being service provider. The allegation of deficient services and breach of trust came to be agitated by the appellant/complainant when his two cheques bearing number 33218017 and 33218018 respectively dated 14th of April 2012 and 17th of April 2012 for the amount of Rs. 12.00 lacs and Rs. 9.00 lacs respectively issued/drawn by him in favour of his constituent M/s Web Enterprises came to be dishonored by the Respondent-Bank with the memos dated 4th of July 2012 with the objections read as ***“cheque number already passed”***.

18. Upon approaching the Respondent-Bank with his grievance, the appellant/borrower got astonished and shocked to know that a series of

withdrawals involving a total amount of Rs 42,69,763/- against fake debit vouchers had been allowed from his Cash Credit account without his authorization. Upon being disappointed due to the inaction of the respondent -Bank in redressing his grievances and in satisfying him, he approached the learned State Commission with his Complaint No. 113 of 2012 which upon enquiry conducted culminated into the impugned judgment. The appellant/borrower, during the proceedings conducted by the learned State Commission disowned the debit voucher as being forged and unauthorized. However, the Respondent-Bank maintained that the debit vouchers were allowed as per the authorization and knowledge of the appellant/borrower who used to obtain the periodical statements from the Bank. It has all along remained the stand of the responded-bank that the debit vouchers were allowed on the authority of the appellant/borrower and the money against the said withdrawals was transferred/credited to the loan account of his brother namely Sheikh Irfan Farooq maintained by him at the banks branch unit Bhogal New Delhi and also to the appellants personal consumption loan account maintained with the same business unit of the bank.

19. The learned Commission in the course of proceedings on the complaint referred the questioned documents received from the respondent-bank i.e. the debit vouchers along with the admitted handwriting/signatures of the appellant/complainant for expert opinion to ascertain as to whether the said documents are genuine or fake? The opinion was initially sought from Forensic Science Department, Pune Maharashtra and opinion dated 23rd of April, 2014 was received by the learned State Commission to the effect that the signatures on the questioned documents did not resemble with the admitted signatures. The learned State Commission obviously on the instance of the respondent-bank conceded to go for cross check and referred the matter with questioned and admitted signatures for second opinion to regional Forensic Science Laboratory Mangalore 575008 and the report dated 3rd of March, 2015 was received to

the corroboration of the initial expert opinion report dated 23rd of April ,2014. Thus, the learned State Commission received two concurrent findings from the two Forensic Science Laboratories (FSL) to the effect that the questioned documents i.e. the debit vouchers do not bear the signatures of the appellant/complainant.

20. The stand of the Respondent-Bank/opposite party before the State Commission as well as before the this Court has been that the bank did not transfer/credit the money against the alleged unauthorized withdrawals into the account of the bank or the account of any other person but into the personal loan account of the brother of the appellant/complainant namely Sheikh Irfan Farooq maintained by him at bank's Branch unit Bhogal New Delhi and for which loan facility he (appellant/complainant) had stood as guarantor. The portion of the amount is also admitted by the respondent bank to have been credited to the personal consumption loan account of the appellant-borrower which was being maintained by him at the aforesaid banks branch unit Bhogal Delhi which was not being performed well. Respondent-bank has mostly during the legal proceedings insisted on their aforementioned stand rather than disputing the debit vouchers as being false, forged and unauthorized. The respondent-bank in its pleadings has *inter-alia* whispered that the bank was otherwise authorized to deduct money from the cash credit loan account of the appellant/borrower as he had stood guarantor for his brother in respect of the loan facility availed by the later at branch unit Bhogal Delhi.

21. Learned counsel for the appellant/complainant Mr. Altaf Haqani, learned Senior advocate during his arguments *inter alia* contended that since the appellant/complainant had obtained a cash credit loan facility from the respondent-bank/opposite party for smooth conduct of his business and as such as per the banking norms and regulations, the withdrawals out of the said cash credit loan facility could not have been allowed for any other purpose as has been done in the instant case.

22. The appellant/complainant in his complaint before the State Commission has inter alia pleaded that he was exposed to huge loss in his business as also in terms of his reputation in the business community due to the unauthorized withdrawals made by the respondent-bank on the basis of the forged debit vouchers. Before the State Commission, he has furnished documents by way of evidence to the effect that he was appointed as Commission agent/ super stockiest of various companies which he could not continue owing to the unprecedented loss in his business due to the irresponsible conduct of the Respondent-Bank. He has also pleaded before the State Commission that he received an assessment order of ITO ward 3 (1) Srinagar Kashmir attributing concealment of Saving Bank Account bearing No. 735 at Jammu and Kashmir Bank Branch Office Bhogal New Delhi and was directed to pay tax against unaccounted cash deposits. It was further mentioned in the complaint that respondent-bank published the notice bearing photographs of the appellant/complainant in the local daily newspapers proclaiming him as a defaulter which disreputed him badly in the estimation of the public in general and business community in particular.

23. In the facts and circumstances of the case especially having regard to the stand of the respondent-Bank/opposite party, the questioned withdrawals covering an amount of Rs. 42,69,763/ appear to have been made unmindfully and against the banking norms by the respondent-Bank for transferring /crediting the amount to the loan account of the brother of the appellant/complainant which was being maintained with the respondent-Business unit at Bhogal New Delhi as the said account was not running satisfactorily and was likely to be declared as “*Non-Performing Asset*”. The appellant/complainant as revealed by the respondent-Bank had stood as a guarantor in relation to the said loan account of his brother. As per the Banking norms and instructions which obviously have been formulated to suit the interests of the banks, the concerned bank officers especially business unit heads and other officers dealing with the

advancements of loans, are being held accountable and responsible for non-satisfactory/ non-performing assets/loans.

24. It is needful to mention that the instant case appears to be of serious nature because the appellant/complainant in his complaint before the State Commission and in the memo of appeal before this Court has not accused the respondent-Bank of making mere unauthorized withdrawals but of making the same on the basis of forged debit vouchers. The disputed debit vouchers have been reported to be not signed by the appellant/complainant as per the concurrent findings of two Forensic Science Laboratories.

25. The learned State Commission in the facts and circumstances of the case had *inter alia* directed for conducting an enquiry in respect of the matter within a period of three months from the date a copy of the impugned judgement is received by the CEO/Chairman of the Respondent-Bank. It has been the stand of the Respondent-Bank during the proceedings before this Court that an enquiry was conducted but they have not brought on record the outcome of the same.

26. The appellant-complainant in the facts and circumstances of the case is supposed to have suffered a loss in his business, in terms of his reputation especially in the business community besides mental trauma and agony.

27. Now the question arises whether the impugned judgment dated 28th of February 2018 is just and proper on the touchstone of the law in the facts and circumstances of the case. As hereinbefore detailed the State Commission at (Para 20) of its judgment has granted different reliefs to the appellant-complainant

28. Learned State Commission has directed the respondent bank to transfer into the CC Account of the appellant-complainant forthwith an amount of rupees 42,69,763/ which has been withdrawn from his said account on the basis of unauthorised debit vouchers with a further direction to the respondent-bank that no interest on the said amount should be

charged for the period the same remained unutilized by the appellant-complainant for non availability in his account.

29. A compensation of Rs. 15.00 lacs (Rupees Fifteen lacs only) has also been awarded by the learned State Commission to the appellant-complainant on account of his severe mental agony and loss of business with 12% interest per annum on the same from the date of filing of the complaint. An amount of Rs. 42,69,736/- has remained unavailable to the appellant-complainant during a period of 6 to 7 years. He may have of course gained momentum in terms of his business activity had such huge amount not been un-authorisedly withdrawn. He may also have undoubtedly suffered a mental trauma on account of the episode. Admittedly the respondent bank through its compliance report filed before this court on 31st of October 2023 has submitted that an amount of Rs. 42,69,763/- has been reversed to Cash Credit Account of the appellant-complainant namely Sheikh Imran Farooq, by virtue of 12 transactions on 4th of April 2018 in compliance to the judgment impugned. It has also been submitted by the respondent-Bank that an amount of Rs. 49,61,009 + Rs. 20,33,985 has also been reversed vide transactions dated 5th of April 2018 and 25th of February 2020 on account of the interest charged on the appellant-complainant on the withdrawn amount in compliance to the orders of the learned State Commission and also of this Court dated 27th of December 2018.

30 As per the compliance report, the respondent-bank has also submitted that pursuant to the order date 27th of December 2018 of this Court and as per the statement of learned counsel for the appellant-complainant the respondent-Bank entered into reconciliation process and settled the matter with the appellant-complainant in presence of his Chartered Accountant. However, the learned counsel for the appellant-complainant during his arguments has submitted that no reconciliation could be arrived at between the parties pursuant to the order dated 27th of December 2018 of this Court which is evidenced by the fact that the

respondent-Bank has not been able to brought on record any agreement/compromise of the parties or even statement of the Chartered Accountant.

31. It has been laid down by the Hon'ble Supreme Court of India in case titled ***“Charan Singh vs. Healing Touch Hospital & Ors”*** (2000) 7 SCC 668, relied upon by the learned Senior counsel for the appellant-complainant that attempt should be made to serve the ends of justice by awarding compensation if the case is established. Quantification would depend on facts and circumstances of each case and no hard and fast rules of quantification can be laid down for universal application. That the consumer Forum should take into account all relevant factors and assess the compensation on the basis of legal principles, on moderation. The Consumer Protection Act, 1986 is a benevolent piece of legislation intended to protect a large body of consumers from exploitation.

32. In ***“Canara Bank Vs. Canara Sales Corporation & Ors”*** (1987) 2 SCC 666, also relied upon by the learned Senior counsel for the appellant/complainant, it was held by the Hon'ble Supreme Court under similar circumstances that the relationship between the customer of a bank and the bank is that of debtor and creditor. When the cheque signed by the customer is presented before a bank with whom he has an account there is a mandate on the bank to pay the amount covered by the cheque. However, if the signature on the cheque is not genuine, there is no mandate on the bank to pay. The bank, when it makes the payment on such a cheque, cannot resist the claim of the customer with the defence of negligence on his part such as leaving the cheque book carelessly so that third parties would easily get hold of it. This is because a document in cheque form, on which the customer's name as drawer is forged, is a nullity. The bank can succeed only when it establishes adoption or estoppel.

33. In another similarly situated case cited as ***“Citizen Co-operative Bank Ltd & Anr Vs. Ritesh Mittal”*** 2002 SCC online J&K 38, this Court

has upheld the judgment of the State Commission directing the bank to pay rupees 1,52,000/ to the complainant along with 6% interest. The State Commission in the said case while allowing the complaint observed that if in case of forged signatures not with connivance of depositor, the bank is held free of liability then no depositor is safe in depositing the money in the banks. Banks must take all precautions and apply high tech methods available in the market to check the commission of forgery regarding the signatures. For these reasons, therefore, we allow the complaint and direct the OP to make the payment of Rs. 1,52,000.00 to the complainant alongwith 6% interest, 6% interest only because the complainant has failed to maintain the custody of cheque book properly. This amount will be paid to him within six weeks failing which interest @ 12% will be charged from the OP.

34. Admittedly it is well settled by the decisions of the Hon'ble Supreme Court of India passed in "***Industrial Investment Bank of India Limited vs. Biswanath Jhunjhunwala (2009) 9 Supreme Court Cases 478***"; "***Ram Kishun and ors vs. State of Uttar Pradesh and ors (20012) 11 Supreme Court Cases 511***" and "***Central Bank of India vs. C.LVimla and ors (2015) 7 Supreme Court Cases 337***" that a liability of a Guarantor is co-extensive with that of principal debtor unless it is explicitly excluded by the contract and it is the prerogative of creditor alone whether he would move against principal debtor first or surety to realize loan amount.

35. Although the guarantors liability is co-extensive with that of the principal debtor yet, his personal account cannot be freezed at his back and without any prior intimation to him. For proceeding against the guarantor, a secure Creditor is supposed to proceed in accordance with the law. A creditor bank for its convenience cannot avoid the due course of law and axe down the guarantor at his back and without giving him an opportunity to compel the principal debtor to liquidate his debt, as such an approach is highly violative of the principles of natural justice.

36. Now the question arises for determination as to whether the impugned award of the State Commission is appropriate in the facts and circumstances of the case? No doubt the respondent-bank in compliance to the impugned award and the order dated 27th of December 2018 passed by this Court reversed the amount of Rs 42,69,763 along with the interest charged thereon but the same alone does not repair the loss of the appellant-complainant. The said reversal is on account of undoing of the wrong.

However the huge business loss and the acute mental trauma believed to have been suffered by the appellant/complainant necessarily warranted the award of compensation.

37. As hereinbefore mentioned, the instant case does not present simple incident of unauthorized withdrawals but of allowing the same on the basis of alleged forged documents i.e., cheques and debit vouchers.

38. In the facts and circumstances of the case, the connivance between the brother of the appellant/complainant namely Sheikh Irfan Farooq and the respondent bank/opposite party, cannot be ruled out. It is reiterated that there is no mandate to honour a fake and forged cheque or debit voucher and it is the obligation of the bank to verify the signature of the drawer of the cheque/debit voucher. The respondent bank during the proceedings before the State Commission as well as before this Court has mainly stressed on the fact that appellant/complainant had stood guarantor for his brother and as such, the bank was otherwise within its rights to transfer the money from his account for crediting the same to the account of his brother which was proceeding towards NPA.

39. The appellant/complainant in his complaint before the learned State Commission has claimed only an amount of Rs Sixty Lacs as compensation on account of his business loss due to the non-availability of funds in his account and also on account of mental trauma. Considering the reversal of the amount of Rupees 42,69,763/- into the account of the appellant/complainant, along with the interest charged thereon, the compensation of the amount of Rupees 15.00 lacs (Fifteen lacs) awarded

by the learned State Commission, appears to be just and reasonable in the facts and circumstances of the case. The interest levied on the compensation amount @ 12 % per annum from the date of the filing of the complaint also appears to be reasonable. The award impugned to the extent of the liberty of the respondent-bank/opposite party, to recover the amount of Rs. 42,69,763/- ordered to be reversed to the account of the appellant/complainant, which has been so reversed during the proceedings of these appeals, also appears to be just and reasonable.

40. The respondent-bank however needs to apprise the appellant/complainant about the outcome of the inquiry, reported to have been conducted in compliance to the impugned award. We have hereinbefore observed that the negligence of the respondent-bank is discernible in the facts and circumstances of the case, tantamounting to the, **“Deficiency in Service”**.

41. Without prejudice to our opinion regarding deficiency of the services on the part of the Respondent-bank on the basis of their action in violation of Principles of Natural Justice and approved banking norms, coupled with their negligence, the serious allegation of the forgery and fraud cannot be imputed, notwithstanding the concurrent opinion of two Forensic Science Laboratories. A similar opinion has been given by the learned National Consumer Disputes Redressal Commission New Delhi almost under similarly situated facts in *M/S Singhal Swaroop Inspat Ltd verses United Commercial Bank* (o.p. No. 41 of 1992 decided on 04.09.1992).

42. It is needless to mention that present Appeal(s) came to be filed in the year 2018, under the J & K Consumer Protection Act, 1987, before the repeal of the said legislation and the applications of the Central Act in the UT of J & K, pursuant to the enactment of the J & K Reorganization Act, 2019, as such, these were heard as per the repealed Act of 1987, in view of the Clause 13 of the J & K Reorganization (Removal of Difficulties) order 2019, read with the relevant provisions of the General Clauses Act.

43. For the foregoing discussion we *dismiss* both the appeals.

(Mohammad Yousuf Wani)
Judge

(N. Kotiswar Singh)
Chief Justice

Srinagar
03 / 07/2024
Tfs/ayaz

- i) Whether Judgment is reportable ? Yes
- ii) Whether judgment is speaking ? Yes

