

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 154 OF 2015

1. MUMBAI AGRICULTURE PRODUCE MARKET
COMMITTEE

Through its Authorized Officer Mumbai Agriculture Produce,
Administrative Building, Sector - 18 Vashi,
NAVI MUMBAI - 400 703.

.....Complainant(s)

Versus

1. DENA BANK
C-10, G Block, Bandra (E),
MUMBAI - 400 051.

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING
MEMBER**

HON'BLE BHARATKUMAR PANDYA, MEMBER

FOR THE COMPLAINANT : MS. SURUCHI AGGARWAL, SR. ADVOCATE ASSISTED BY
MR. VISHAL KALE, MR. VIRAJ KADAM, MR. GURMEET
SINGH,
ADVOCATES

FOR THE OPP. PARTY : MR. RAMESH KUMAR, MR. KARTIK BRUNDEVAN,
ADVOCATES

Dated : 23 July 2024

ORDER

PER BHARATKUMAR PANDYA, MEMBER

1. Heard Ms. Suruchi Aggarwal, Senior Advocate, for the complainant and Mr. Ramesh Kumar, Advocate, for the opposite party.

2. IA/10597/2019 and IA/6889/2022 shown in the cause list have already been disposed of vide this Commission's orders dated 13.03.2020 and 29.12.2022 respectively.

2. Complainant – Mumbai Agriculture Produce Market Committee has filed above complaint for directing the OP Bank to (i) return fixed deposit amount to Rs. 65 crores with interest; (ii) OP bank be directed to pay Rs.10 lakhs as compensation for not allowing to withdraw the fixed deposits.

3. The facts as stated in the complaint and emerging from documents, are that the Complainant i.e. Mumbai Agricultural Produce Market Committee, Mumbai established under Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 is doing pioneering work in the field of Agricultural Marketing in Mumbai. Complainant plays an important role in developing and co-ordinating agricultural marketing system in Mumbai and for that purpose it needs to expand its funds by investing unutilized funds in fixed deposits in

various banks. In the year 2014, complainant called for quotations from various banks for providing best interest rates against the fixed deposits. The Malabar Hill Branch of the OP offered higher interest rate per annum. Since OP is a nationalized bank looking at the financial security, the complainant decided to invest Rs.65 crores with it from time to time. The details of the investment of its funds with the OP bank are as under:

| S. No. | Date of deposit | FD(SDR) No. | Account No. | Amount in Rs. |
|--------------|-----------------|-------------|--------------|------------------|
| 1. | 29/01/2014 | 1807067 | 007666027842 | 50000000 |
| 2. | 29/01/2014 | 1807068 | 007666027843 | 50000000 |
| 3. | 29/01/2014 | 1807069 | 007666027844 | 50000000 |
| 4. | 12/03/2014 | 1807218 | 007666027932 | 50000000 |
| 5. | 12/03/2014 | 1807219 | 007666027933 | 70000000 |
| 6. | 03/05/2014 | 1807386 | 007666028052 | 50000000 |
| 7. | 03/05/2014 | 1807387 | 007666028053 | 50000000 |
| 8. | 03/05/2014 | 1807388 | 007666028054 | 50000000 |
| 9. | 03/05/2014 | 1807389 | 007666028055 | 50000000 |
| 10. | 03/05/2014 | 1807390 | 007666028056 | 50000000 |
| 11. | 03/05/2014 | 1807391 | 007666028057 | 50000000 |
| 12. | 03/05/2014 | 1807392 | 007666028058 | 50000000 |
| TOTAL | | | | 650000000 |

The maturity dates of the said fixed deposits of Rs.65 crores was during January-May 2015. After making deposits, the complainant was shocked to receive a letter dated 05.07.2014 from the office of the Senior Police Inspector, Economic Offence Wing, Mumbai informing the complainant about the fraud in the overdraft accounts against the fixed deposits maintained by the complainant. The fraud was committed in the Malabar Hill Branch of Dena Bank, Mumbai. It was informed to the complainant that one of the Chief Manager of Dena Bank Mr. Preetam Vidyadhar Nagarkar was booked for offence under Section 419, 420, 467, 468, 471 of the Indian Penal Code, 1860 and Section 13(2) r/w Section 13 (1)(d) of the Police Commissioner Act. Complainant was also requested to provide any documents, if they have opened any overdraft facility. Complainant after knowing about the fraud had written a letter to the Sr. Inspector of Police, EOW Unit-I Crime Branch, CID, Mumbai on 23.07.2014 and also to the investigation office of CBI on the same day. Complainant gave the details of the FDRs and also informed that they have not opened any overdraft facilities and if any account opened, the same is a fraudulent account. As per complainant, the signature of the Additional Commissioner and that of Chairman are forged in the documents in application for overdraft facility (Para 17 of amended memo of parties). Name and address of the complainant were also wrong and fake. The complainant vide their letter dated 08.07.2014 (Annexure 'C' at Page 28 of Part I) requested the OP for foreclosure of their deposits. OP vide their reply dated 12.07.2014 (Annexure 'F' at page 31 of Part I) admitted the deposits but gave an excuse that there being an outstanding in the OD account of the complainant to the tune of Rs.58.29 crores, they are unable to accept the request for premature withdrawal of FDRs. The act of the OP refusing to grant withdrawal is deficiency in service. The action of the OP Bank, in granting OD facility on the basis of security of FDs, that too immediately after the deposits, without verifying the genuineness of documents, identity of person, signature of the authorized signatories, verification of such authorized signatories, verifying the documents forged by the bearer, or the fact as to who actually entered the bank and what

is his authority, and by patent and admitted involvement of Chief Manager, Preetam Nagarkar in the entire process, make the OPs vicariously liable also. This gross negligence in providing bad services by the OP Bank is delinquent act. On refusal to return the deposits, the complainant had no other choice but to file this complaint for return of their fixed deposits. The complainant filed the present complaint on 03.03.2015.

4. OP Bank filed its written statement on 12.05.2015 (Page 211 to 239 of Part I), stating therein that complainant has not disclosed the facts and circumstances relating to investment of the said fixed deposits and have not filed any documents in that regard. As per OP Bank, complainant itself is a victim of a fraud perpetrated upon them by some unknown persons whom they themselves had authorized and empowered for dealing with the OP bank and it is not at all the case of the complainant that OP bank played any fraud on them or that they aided and abetted the commission of any such fraud. As per OP bank, the very same persons who were authorized by the complainant from the inception to invest the funds in fixed deposits, negotiated the rate of interest with the bank, collected fixed deposit receipts from the bank, etc. and had dealt with the OP bank in the matter of advancing of loans/overdraft facilities against the fixed deposit receipts and the OP bank had no reasons whatsoever to doubt their honesty and integrity, as the complainant themselves had authorized these persons to deal with the bank, submit documents, collect the fixed deposits and to deal with all such matters with the OP bank. In such circumstances, OP bank had no reasons to doubt the intentions and bona fide of those persons, who actually had committed the fraud. Hence, the loss suffered by the complainant is entirely on account of their own negligence. OP bank further contended that complainant has to first explain as to how the original fixed deposit receipts which were admittedly delivered to them by the OP bank through complainant's authorized representatives and agents, against receipts, have been delivered back to them duly discharged by the complainant as security for due repayment of loan/overdraft facilities sanctioned by the OP bank. The complainant therefore owe an explanation to the OP bank as to how they are holding the alleged original FDRs which are in fact fake and not genuine and as to how the same have come into their power and possession. Complainant wrote letter dated 08.07.2014 requesting OP bank for premature closing of the FDRs. However, complainant did not submit the original FDRs held by them and may be they knew that the same were fabricated and forged. It is further averred that OP bank has not committed any deficiency of service and is not negligent in discharge of its duties. As a matter of fact the signatures of the authorized signatories of the complainant submitted at the time of investment of funds with the bank fully match with the signatures appearing on the loan documents, but complainant is denying the said transactions of obtaining any overdraft facilities. OP bank further submits that being aggrieved they lodged a complaint with the CBI, which is investigating into the same. Hence, OP bank denied all such allegations of deficiency in service and fraud being played with the complainant. It is requested by OP bank that they be allowed to adjust the loan/overdraft availed by the complainant and OP bank is liable to refund only the balance amount to the complainant (Page 236 Para 27 of WS of OP bank). They pray that the complaint be dismissed with cost.

5. The complainant has filed Rejoinder Affidavit on 02.07.2015 and has also filed Affidavit of Evidence, affidavit of admission/denial of document. The OP has filed its Affidavits of Evidence on 02.11.2015. Court Commissioner appointed by this Commission vide order dated 08.09.2016 cross-examined the witnesses of complainant and submitted his

report on 11.11.2016. Cross examination of witnesses of the complainant was also done by counsel for the OP. Interrogatories were filed by the complainant and reply to the same were also filed by the OP. Both the parties have filed their written synopsis.

6. We have considered the arguments of the counsel for the parties and carefully examined the record. The plea that complicated issues of fact are involved, which requires trial by Civil Court is always raised by the opposite party for harassing a consumer. In fact, Consumer Protection Act, 1986 was enacted with an object to provide for better protection of the interests of the consumers. For that purpose, consumer council and other authorities have been established. Consumer markets for goods and services have undergone drastic transformation since the enactment of the Consumer Protection Act, 1986. The modern market place contains a plethora of products and services. The emergence of global supply chains rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and services and have provided new options and opportunities for the consumers. Equally, this has rendered the consumer vulnerable to new forms of unfair trade and unethical business practices. Misleading advertisements, tele-marketing, multi-level marketing, direct selling and e-commerce pose new challenges to consumer protection and will require appropriate and swift executive interventions to prevent consumer detriment. The Consumer Protection Act, 2019, has been enacted, repealing the earlier Act to meet out new challenges, in which, false and misleading advertisement and manufacture and sale of spurious and 'adulterant have been declared as an offence.

7. Section-3 of the old Act and Section 100 of the new Act provide that the provisions of the Act are in addition to and not in derogation to the provisions of any other law. A consumer can avail remedy before civil court, Arbitrator (if contract so provides) or any other tribunal/court constituted under the law. In the absence of any provision barring the jurisdiction of consumer Fora, the question as to whether remedy available under 'consumer law' is barred specifically or impliedly does not arise but doctrine of election is applicable and a consumer has right to choose the forum for redressal of its grievance. A person is a 'consumer' who buys any goods or avails service paying consideration, for his own uses and not for commercial purpose. The nature of the dispute which can be raised before consumer fora are defects in goods, deficiency in service and unfair trade practice. Banking facilities are not free of charge as the banks earn on it. Section-13(2)(b) of the old Act and Section-38 (6) of new Act requires to decide the complaint on the basis of affidavit and documentary evidence, which means that the Commission has to decide the complaint in summary manner: But at the same time, Section 13 (4) of the old Act and Section-38 (9) of the new Act, confers same powers upon the Commission, for trial of a consumer dispute, which are vested in Civil Court under Code of Civil Procedure, 1908, while trying a suit in respect of (i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath, (ii) requiring the discovery and production of any document or other material object, producible as evidence, (iii) the reception of evidence on affidavits, (iv) the requisitioning of-the report of the concerned analysis or test the appropriate laboratory or from other relevant source, (v) issuing of commission for the examination of any witness or document and (vi) any other matter which may be prescribed by Central Government. From these provisions it is clear that although under the Act, the jurisdiction of the authorities is limited to consumer dispute, but while deciding such dispute no limit, has been fixed on adjudicatory power. The authorities are conferred jurisdiction to decide the issue of "unfair

trade practice" which has been defined under Section 2 (r) of the old Act and Section 2 (47) of new Act. This definition is similar to the definition of "fraud" as given under Section 17 of Indian Contract Act, 1872. From these provisions it is clear that this Commission can hold a full trial, like a civil court or adopt summary procedure for decision of any complaint. A three Judges Bench of Supreme Court in **Dr. J.J. Merchant Vs. Shrinath Chaturvedi, (2002) 6 SCC 635**, (paragraph.7) held that the object and purpose of the Act is to render simple, inexpensive and speedy, remedy to the consumer with complaint against defective goods and deficient services, it being a benevolent piece of legislation, intended to protect a large body of consumer from exploitation. Consumer Forum is an alternate Forum, established under the Act, to discharge the function of Civil Court. The, argument that the complicated question of fact cannot be decided by the Forum, has been specifically rejected (in paragraph-12). Similar view has been taken in **Amar Jwala Paper Mills. Vs. State Bank of India, (1988) 8 SCC 387**, **CCI Chambers Coop. Hsg. Society Ltd. Development Credit Bank Ltd. (2003) 7 SCC 233**. This view has been reaffirmed by three Judges Bench of Supreme Court, in **Nizam Institute of Medical Sciences Vs. Prasanth S. Dhananka, (2009) 6 SCC 1** and **IFFCO TOKIO General Insurance Company Ltd. Vs. Pearl Beverages Ltd., (2021) 7 SCC 704**.

8. As per complainant, some of the employees of OP bank have committed fraud and the OP bank was negligent in not supervising and controlling the said employees and is vicariously liable for the act of the said persons. OP bank has committed deficiency in service by not returning the FDRs and hence complaint deserves to be allowed. Even FIR was also lodged against the officers of the OP bank and not against complainant and its officers and hence there is no negligence on the part of the complainant and its officer. The investigation in the case of fraud is complete and charge sheet is filed against the officer of the Bank. Hence OP bank is liable to refund the FDRs with all benefits. The complainant has relied on the judgment of Supreme Court in *Haryana Gramin Bank Vs. Madan Lal (2011) 15 SCC 113*, wherein it has expressly been held that petitioner bank was vicariously liable for the wrong doings of the officials/employee which resulted into monetary loss to the respondent. Complainant has also placed a judgment of this Commission in *Maharashtra Tourism Development Corporation Vs. Dena Bank in CC No. 259 of 2014*, wherein bank is held liable to refund the FDRs of the complainant corporation. As per complainant's statement in rejoinder (page 306), the original fixed deposit receipts were in possession of the complainant which were handed over to the CBI for investigation on 27.11.2014. As per complainant fraud is actually committed by the staff of OP bank. The Chief Manager of the Malabar Hill Branch of Dena Bank was suspended for his alleged role in fraud. The name of the complainant on the alleged overdraft facility form and letter head are wrong i.e. instead of "Mumbai Agricultural Produce Market Committee, Mumbai", the name is written as "Mumbai Agriculture Produce Market Committee". This goes to show the negligent approach of the OP bank and also the possibility of hand in glove of fraudster and some of the officers of OP bank. It is further contended by the complainant that in the written statement of the OP bank nowhere it is written as to when the Chairman and Secretary visited the bank for alleged overdraft facility and under what circumstances and who was the officer at that time who initiated this process and completed the alleged overdraft. Thus, there is a fraud committed by bank officials themselves and there is clear deficiency in service on their part.

9. On the other hand, OP Bank contended that on issuance of FDR in the name of the complainant, complainant issued letter dated 01.02.2014 authorizing Mr. Devendra Bhogle to collect the FDRs dated 30.01.2014 and the same were collected by him. Thereafter, loan application dated 13.02.2014 was submitted by the complainant for loan of Rs.15.30 crores against three FDRs dated 29.01.2014 along with complainant's Board Resolution dated 13.02.2014. As per OP bank, complainant came to know about the fraud from the letter dated 05.07.2014 received from Inspector of Police, CID, Mumbai Police wherein they were asked to provide documents if they had opened any OD facility with the bank. Complainant immediately called for an internal meeting but no minutes of that so-called meeting have been produced on record. The immediate reaction of a prudent investor would have been to enquire from the Bank whether any loan/OD was shown against the FDRs in the Bank's record. Whereas when complainant came to know about the fraudulent overdraft against their FDRs, instead of making any inquiry from the bank whether any loan/OD was actually showing against their investment, they made a request for withdrawal of the FDRs. OP Bank further contended that immediately after knowing about the fraud on FDRs of the complainant being played, they lodged a complaint dated 10.07.2014 with CBI, who registered an FIR dated 14.07.2014. OP Bank even provided various documents regarding loan transactions against FDRs from the stage of sanction till disbursement to the complainant vide letter dated 15.07.2014. When complainant requested for withdrawal of FDRs, OP Bank on verifying the signatures on the loan documents which were fully matching with those of authorized signatories of the complainant in the KYC documents submitted to the bank, refused the demand of the complainant for withdrawal of the FDRs. Complainant thereafter made a complaint dated 28.07.2014 to the Banking Ombudsman where again their only grievance was that signature of authorized signatories of the complainant on Loan/OD documents were not genuine and that they had not availed any such loan/OD and that OP bank was not allowing withdrawal of their FDRs. OP bank has also raised question on there being two sets of original FDRs and complainant has not bothered to enquire into this aspect. It is also contended by the OP bank that complainant and its officials were party and privy to the fraud by engaging third party agents without verifying their antecedent, who played a fraud on them and OP bank are not at all liable or responsible for any fraud played upon the complainant. Complainant, as per OP bank have not acted as persons of ordinary prudence to protect their funds. In any case, the onus of proof of complainant's stand that they were informed by Shri Pritam Nagarkar that Shri Devendra Bhogale was bank's staff fell squarely on the complainant.

10. The counsel for the opposite parties argued that the employees of the complainant and the officers of other banks committed embezzlement under a larger conspiracy, for which, the complainant itself has lodged criminal complaint with Economic Offences Wing of CID, Mumbai (Annexure 'H' at page 88 of Part I) and to the Investigating Officer of CBI, Mumbai (Annexure 'H' at page 91 of Part I). During pendency of criminal investigation, this complaint is not maintainable. This argument is not liable to be accepted. Supreme Court in **Avitel Post Studios Limited Vs. HSBC PI Holding (Mauri Lius) Limited (2021) 4 SCC 713**, held that criminal and civil proceeding can go on simultaneously on same allegations. In **Sunita Vs. Rajasthan SRTC; (2020) 13 SCC 486**, held that in civil proceedings the court is required to record findings on the basis of evidence on record and rule of adducing best evidence is not applicable.

11. Initially Dena Bank filed criminal complaint before CBI stating that Dena Bank takes bulk deposits from Government Institutions to augment its business. Internal inquiries revealed that Pritam Vidyadhar Nagarkar, Branch Manager Malabar Hill Branch was posted at the branch since 25.08.2011. Malabar Hill Branch was not having any bulk deposit. Pritam Vidyadhar Nagarkar, therefore, tried to canvass bulk business. In this connection, he came into contact with Vimal Barot who introduced himself as custodian of government departments/corporations funds and was contacted with Showman group and posted there as Senior Vice President. In order to facilitate Malabar Hill branch in mobilizing bulk deposits Vimal Barot used to give information to Pritam Vidyadhar Nagarkar about the deposits available in a particular government organization/corporate. On the basis of that information Pritam Vidyadhar Nagarkar used to obtain interest rates from the Bank's Treasury Department, Head Office and conveyed this to Vimal Barot. Vimal Barot reportedly negotiated with the organization/corporate which offered the deposits and canvassed deposits for Dena Bank. Later on Pritam Vidyadhar Nagarkar used to convey the interest rate, tenor of deposit, amount of deposit and IFSC code of the branch etc. to the concerned organization/corporate by way of email. The organization/corporate which offered the deposit used to remit the amount through RTGS, if the bank's terms are acceptable. 'Term deposit accounts' were opened at the branch. The procedure to open 'term deposit accounts' are (i) KYC of the deposit account to be obtained by the branch by obtaining necessary documents like address proof, identity proof of the concerned organization duly verified with the original and signature of the authorized persons taken in bank officials presence (ii) The original deposit receipts are to be delivered to the authorized person of the organization under acknowledgement in the presence of bank officials. It is observed that Pritam Vidyadhar Nagarkar had not followed above procedure, rather the KYC documents were invariably received through Vimal Barot and other persons in all the suspected fraud accounts. Bank TDR receipts were delivered based on the organization's suspected fabricated authority letter brought by Vimal Barot or his associates. Pritam Vidyadhar Nagarkar used to receive the loan application including original TDR Receipt duly discharged by the signatories who has signed in the documents given at the time of submission of KYC and also resolution of the organization/corporate on its letter head through Vimal Barot and associates instead of personally verifying the genuineness with the concerned organization/corporation.

12. Therefore it is proved that the branch office of the OP bank received total Rs.65 crores from the Complainant time to time for 'fixed deposit' of one year on which, 'FDRs' were issued but the branch office of the OP bank, in collusion with the fraudster opened Overdraft Account without following KYC norms, through which Rs.15.30 crores have been embezzled. There could be no reason for not following KYC norms, while sanctioning overdraft facility of such a heavy amount except the collusion of the officers of the OP bank with fraudster. Supreme Court in **Canara Bank Vs. Canara Sales Corporation, (1987) 2 SCC 666**, held mere negligence of the customer will not prevent it in successfully suing the bank for recovery of the amount.

13. The Commission has already decided various complaints against the OP Bank as also against other banks which had the similar facts of fraud and forgery played by the officers of the OP bank in league with other players, namely, P.V. Nagarkar, Devendra Bhogle, Rahul Mukesh Gohil, Vimal Barot. It has consistently been held in these decisions that even if there

is any negligence or complacency on the part of the officers of the complainant organization, when due care and caution is not exercised by the supervisory officers of the bank in preventing the fraud resulting in loss to the customer-consumer, perpetrated by its own officers, the OP bank shall be liable for such negligence of the officers and for making good the resultant loss. In CC No. 1055 OF 2016 decided on 26.06.2024, the refund of fixed deposits of Rs.27 crores, in CC No. 1294 of 2016 decided on 16.06.2024, the refund of fixed deposits of Rs.11.5 crores, in CC No. 1055 of 2016 decided on 26.06.2024, the refund of fixed deposits of Rs.27 crores, in CC No. 1185 of 2016 decided on 16.05.2024, the refund of fixed deposits of Rs.25 crores, in CC No. 759 of 2016 decided on 01.06.2023, the refund of fixed deposits of Rs.15,93,09,588/-, along with interest at 9% on the amount of deposits from the date of deposits till the date of refund in all these cases, has been awarded.

13. From the above discussions, it is absolutely clear that embezzlement of the money of the complainant in complicity with Pritam Vidyadhar Nagarkar, Chief Manager, from Dena Bank, Malabar Hill Branch is proved. OP bank itself has filed complaint against Branch Manager Pritam Nagarkar on the charge of committing embezzlement and fraud. OP bank has committed deficiency in service in not taking proper care of the fund transferred by the complainant to its branch which resulted in embezzlement and consequent loss to the complainant. The version in the written reply, in our considered opinion, is an afterthought and is not liable to be accepted. OP Bank is vicariously liable for the act of its employees and is liable to refund the entire money to the complainant as held by SC in **Canara Bank Vs. Canara Sales Corporation, (1987) 2 SCC 666** and **Pradeep Kumar Vs. Post Master General, (2022) 6 SCC 351**.

ORDER

In view of above discussions, the complaint is partly allowed. OP (Bank of Baroda) is directed to pay Rs.65 crores with interest @9% per annum from the respective date of transfer of the money to it till the date of payment to the complainant, within two months from the date of this judgment.

.....J
RAM SURAT RAM MAURYA
PRESIDING MEMBER

.....
BHARATKUMAR PANDYA
MEMBER