



## CONSUMER PROTECTION ACT': BANKING AS SERVICE

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### ABSTRACT

In the Protection of the consumers is an issue of paramount consideration in the modern economic world order. With globalization having permeated into all strata of the society the face of consumerism too has undergone a substantial change. However, it has been noted time and again that although consumer is portrayed as the cornerstone of a successful economy, there have been off repeated incidents of exploitation of the consumers, leading to a constant urge of a panacea. 9 April, 1985 is a red letter day in the history of consumer protection movement as the United Nations General Assembly adopted general guidelines on Consumer Protection (General Assembly resolution 39/248). The Constitution of India, Article 38 directs the State to secure a social order for the protection and welfare of the citizens. Article 39(b) enjoins upon the state the duty to ensure that ownership and control of the resources are distributed with the objective of attaining common good. Many Acts like the Industries Development and Regulation Act 1951 was legislated with an objective to protect and regulate the development of the Industries as well as the interests of the consumers. The Monopolies and Restrictive Trade Practices Act, 1969 was enacted with the objective to ensure that the operation of an economic system did not result in the concentration of economic power, detrimental to the common interests. However, the year 1986 will always be considered to be the Magna Carta of consumer movement in India as the Consumer Protection Act, 1986 (hereinafter the Act) was brought into force. The Act was to provide "for better protection of the interests of the consumers and to make provisions for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matter connected therewith". An important aspect of the Act is the fact that by defining consumer wide enough so as to include any person who buys goods for consideration or hires services but excludes those who obtain goods for resale or any commercial purpose; it acts in furtherance of its objective to protect the layman consumer who is otherwise helpless. In the landmark case of Luck now Development Authority v. M.K Gupta, the Hon'ble Supreme Court, speaking through Sahai J., noted that "The Consumer Protection Act, 1986 meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory. The importance of the Consumer Protection Act, 1986 lies in promoting the welfare of the society by enabling the consumer to participate directly in the market economy. The enactment in the unbelievable yet harsh realities appears to be a silver lining which may in due course of time succeed in checking the rot." Thus it can be undoubtedly stated that this benevolent social legislation aims at a speedy disposal of various consumer disputes by creating an efficient framework.

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### INTRODUCTION

In order to examine the concept of consumer let us begin with the definition under the Consumer Protection Act, 1986. According to section 2(1) (d) "consumer" means any person:

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- Buys any good 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 user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the

approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

- Hires or avails of any services for 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 purpose.

**Explanation:** For the purpose of this clause, “commercial purpose” does not include use by a consumer of goods bought and used by him and services availed by him exclusively for the purpose of earning his livelihood, by means of self-employment.

In *Virendra Prasad vs. Reserve Bank of India*<sup>1</sup>, It was held that in taking the impugned action with respect to the petitioner's non-resident foreign currency account, RBI was not functioning as a and first banker of the petitioner and there was no contract of service between the petitioner and the first respondent. In a case where the appellate- Bank had undertaken to perform the services as a Lead Bank by providing facilities in connection with financing, the respondents approached the appellant Bank for hiring its services for a consideration in nature of interest. The appellant-Bank had agreed to provide the services to the respondents by way of financial assistance. Therefore, the respondents were held to be that customers within the meaning of the Act, having hired the services of the Bank in connection with financing, for a consideration.<sup>2</sup> In another important case<sup>3</sup> the facts were that the clearance proceeds of 19 cheques were not credited, nor intimation given for a long time by the bank. The complaint got the clearance known from payee Banks and then filed a complaint. It was employee of the complainant who was involves in the affair and matter was under investigation by C.B.I. It was held the complainant stands the definition of the consumer, and is liable to be compensated by the bank, with interest and damage.

## BANKS

Banking<sup>4</sup> is the business dealing with money and created transactions. The number of branches of commercial banks has gone up since 1994 and the activities of the banks have spread to the country side. The definition of banking in Section 5(1) (b) of The Banking Regulation Act, 1949 makes it clear that (a) accepting of deposits and, (b) lending or investing them are the essential functions of a banking company. A business will not be called a banking business if the purpose of accepting deposits is not to lend or invest. The explanation to Section 5(c) makes it clear that any company, which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the

purpose of financing its business as such shall not be deemed to transact the business of banking. The phrase ‘deposit of money from the public’ implies that a banker accepts deposits from anyone who offers his/her money for such purpose. The bank deposits, which are payable on demand, can be withdrawn by customer through cheque, draft or other like withdrawal forms. Section 49(a) provides that only banks are allowed to accept deposits withdraw able by cheque. However, savings banks schemes of the government for this purpose are exempted from this rule.

## The concept of service

According to section 2(1)(o) of the Consumer Protection Act, 1986 “service” means service of any description which is made available to potential users and include the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding and lodging or both, housing construction, entertainment, amusement or surveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service. The definition under section 2(1) (o) is fairly wide and has three parts. The main part is followed by an inclusive part and ends with exclusionary one. It applies to any service made available to potential users. The word ‘any’ and ‘potential’ are significant. Both are wide amplitude. The word ‘any’ dictionary means ‘one or same or all’. It was held by the Orissa State Commission that Orissa State Financial Corporation Ltd., a body corporate, was rendering a service by providing financial assistance. Within the broad meaning of the consumer and service, such service was for hire. This co-operation was constituted with the object of rendering financial assistance to deserving applicants. It was held that in such circumstances the beneficial provisions under the Act give wide power to the Consumer For a to examine the deficiencies and give appropriate directions, if satisfied that on account of deficiency in service, a consumer has legitimate grievance.<sup>5</sup> Similarly, it has also been held that financing of a car is a service and similarly when the banks allow a customer to open Saving Bank Account, it is too a service. Banks are not providing any free service but the service is always for a consideration. The persons who are carrying on the business of banking utilize the amount deposited by the customers and earn high profits. Out of this pay a part of the money by way of interest of the depositors. Thus, the business of banking includes an element of consideration<sup>6</sup>. There are a number of other cases to which a reference can be made. A cheque book facility given by the bank is a service. A cheque book can be obtained by a depositor in consideration of his funds at the disposal of the bank and is not given to him free of charge or without consideration<sup>7</sup>.

## Applicability of the act

“Consumer”, according to section 2(1) (d) of the Act, includes a person who hires or avails of any service for a consideration. Thus, a customer of a bank who has a bank account with the bank or a person who purchases a bank draft, hires locker facility or obtains bank guarantee from a bank are all

<sup>1</sup> (1986-95) Consumer 256 (NS).

<sup>2</sup> State Bank of Hyderabad vs. Bairi Lingam, 1991 (1) CPR 148.

<sup>3</sup> Indian Cine Agencies vs. UCO Bank, 1998(3) Bank LJ 339 Del.

<sup>4</sup> It can be traced back beyon 2500 B.C. but modern banking originated in medieval periods. It started taking its name from banca which means the money lending.

<sup>5</sup> Ravindra Kumar Das vs. M.D. Orissa State Financial Corporation Ltd., 1991(1) CPR 392 at 393-394.

<sup>6</sup> Amrit Lal vs. Instant Growth Funds Pvt. Ltd. 1992(2) CPR 35.

<sup>7</sup> Bank of India vs. Mukesh Kumar Shukla, 1993, (1) CPJ 41 at 43 (MP SCDRC)

“consumers” and can prefer complaints under the Act for “deficiency in service” on the part of the bank or for “restrictive trade practice” or “unfair trade practice” adopted by the bank. In *Vimal Chandra Grover vs. Bank of India*,<sup>8</sup> it was argued before the Supreme Court on behalf of the bank that the appellant, who took overdraft facility from the bank by pledging shares, is not a consumer within the meaning of the Consumer Protection Act. The Supreme Court repelled the arguments of the bank and held that bank is rendering service by providing overdraft facilities to a consumer, which is not without consideration. Bank is charging interest and other charges as well in providing the service. Provision for overdraft facility is certainly a part of the banking and falls within the meaning of “service” as provided in section 2(1)(o) of the Act. In *Punjab and Sind Bank vs. Manpreet Singh*,<sup>9</sup> it was held by the Punjab State Commission that a savings bank account holder is a consumer under the Act. It was observed that difference in the lending and borrowing rates is the consideration for rendering service by the bank. It was also observed that even if the bank does not charge for providing cheque facility to the account holder, it cannot be said that the same is given without consideration. Actually, the cheque book facility is obtained by the depositor in consideration of his putting funds at the disposal of the bank. In *Shobhatai Daulatrao Talekar vs. Maharashtra Rajya Shahakari Krishi & Gramin Development Bank*,<sup>10</sup> the issue before the Maharashtra State Commission was the justifiability of the order of the District forum holding that the Forum had no jurisdiction to entertain the dispute since the complainant was a member of the defendant bank which was registered under the Maharashtra Cooperative Societies Act, 1961 and that being so, the jurisdiction would lay before the co-operative court and not before the consumer court.

The State Commission did not agree with this view. It held that the nature of service hired by the complainant pertains to the banking business which is permissible by the bank to undertake under the provisions of the Reserve Bank of India Act and the Banking Regulation Act, 1949 and as such, would be squarely amenable to the jurisdiction of a consumer form as per the definition of “service” under section 2(1) (o) of the Act. The State Commission further held that the jurisdiction of the consumer form is also not ousted in view of the provisions of section 3 of the Act, which provides an additional remedy over and above those available in the other statutes to the parties.

### The Gamut of Customer-Banker relation

The first question that needs to be answered before one ventures to discuss the application of the Consumer Protection Act to Banking is the one pertaining to the nature of banker-customer relationship. In English Law there are two theories. The old view emphasizes on “Time Factor” and according to Sir. John Paget “to constitute a customer there must be some recognizable course or habit of dealing in the nature of regular banking business. It is difficult to reconcile the idea of a single transaction with that of customer.” Therefore, the two things necessary for a customer-banker relationship are: some recognizable course or habit of dealing between him and the bank, and that the transactions should be in the nature of

regular banking business. It was held in *Mathews vs. Williams, Brown & Co.*<sup>11</sup>, that in order to constitute a person as customer of a bank, he should have some sort of an account with the bank, but that the initial transaction in opening an account did not set up the relation of a banker and customer, and that there had to be some measure of continuity and custom.

While deciding whether a person is a customer or not, it must be considered that unless the bank has received a suitable reference, the banking contract may not be completed and the banking contract is in fact subject to an implied condition subsequent, that the reference given proves satisfactorily to the banker. There can be thus a Potential Customer where the bank agrees that the customer shall have the right to operate the account and pay in cheques as soon as the enquires on references have resulted in satisfactory answer<sup>12</sup>. The moment a customer opens an account with a bank, the relationship of a banker and customer is established. The bank not only undertakes to collect the cheque deposited in the account but also makes the payment on behalf of the customer, whenever mandated by the customer. In the case of *Velji Lakhamsey & Co. vs. Dr. Banarji*,<sup>13</sup> the Bombay High Court held that the relation between the banker and customer is that of a debtor and creditor and any amount due by the banker to the customer in that relationship cannot be claimed by the customer from the bank as a preferential creditor if the bank is wound up. But a customer may give certain specific direction to the bank and constitute the bank as his agent. If the bank acts as an agent and not as a debtor, then the agency brings about a fiduciary relationship which continues until the agency is terminated. However, on certain occasions this relationship is reversed and becomes creditor and debtor relationship. It happens when the bank grants overdraft facilities to the customer or grants loans. In such cases, it is not money of the customer in the hands of the banker, but the money of the bank in the hands of the customer but even in this case a customer does not cease to be customer. In *Importers and Company Ltd. Vs. Westminster Bank Ltd.*<sup>14</sup>, it was held that a bank can itself be the customer of another bank.

In *The Officials Assignees, Madras H.C. vs. Natesam Pillai*<sup>15</sup> the court held that, (a) when a person dealing with a bank, with an intention to create a relation of creditor and debtor between him and the bank, it is so presumed, but the presumption may be rebutted by proof of special instructions to retain the same, pending further instructions, a trust is created and the presumption with ordinarily arises by the reason of payment of money to the bank rebutted. The court further held that, (b) the money delivered by the respondent remained in trust with the bank and was not held by it as a deposit subject to any scheme for the settlement of the liabilities of the bank, sanctioned by the High Court under the Companies Act, 1956. Another kind of service rendered by the banks is to collect his customer’s cheques and other credit instruments. Where in the course of business incidental to banking, a banker undertakes to perform such services as buying and selling securities on his behalf, collecting cheques, dividends, bills or promissory notes on his behalf and acting as a trustee, attorney, executor,

<sup>11</sup> 10 TLR (1894) 386

<sup>12</sup> Stony Station Supplies Commentary vs. Midland Bank Ltd. (1962) 2 Lloyd’s List Report 373.

<sup>13</sup> (1955)25 Comp Cas 395

<sup>14</sup> (1927) 2 KB 297

<sup>8</sup> AIR 2000 SC 2181

<sup>9</sup> 1994 (3) CP 532

<sup>10</sup> 2004 (2) CPJ 349

correspondent or a representative of a customer. In performance of all these functions the banker acts as an agent of the customer. In *Travancore National & Quilon Bank Limited*<sup>16</sup> case the applicant paid to the bank on 20<sup>th</sup> June, 1938, the day on which the bank suspended payment, a certain sum to be remitted by the telegraphic transfer to the Great Indian Trading Co. at Bombay. The applicant had a current account with the bank but the bank did not credit the said sum in his account. His Lordship observed:

*“On the facts of this case, it seems to me that the money was held apart by the bank as the property of the applicant. I am so inclined to the view that the money was received by the bank in the capacity of a mere agent. The applicant’s claim, was therefore, allowed with costs.”*

In addition to debtor- creditor relationship, trusteeship relationship and principal- agent relationship, there are other relationships between a banker and a customer that may be called the bailment relationship where the bank acts as an advisor. There may also be lessor and a lessee relationship between the parties. Coming to the question of bailment, this relationship usually arises when a customer of the bank avails himself of the ‘Safe Custody’ facility offered by the bank. This relationship is termed as bailment, i.e., the delivery of person’s property by one part (known as bailor) to another (known as bailee) on the condition, express or implied, that the property shall be returned to the bailor or shall be delivered to him as soon as, the purpose for which the bailment as created is over. Bailment is a relationship *sui generis* and unless it is sought to increase or diminish the burdens imposed upon the bailee by the very act of bailment, it is not necessary to incorporate it into the law of contract and to prove a consideration.<sup>17</sup> In *Devender Kumar Lal Chand Ji vs. Gulab Singh Mekha Singh*<sup>18</sup> it was held that money paid into a bank to be credited in the current account of the person making the payment does not constitute a case of bailment. In the absence of specific provisions on the subject, when monies are held by the bank in one account and the payer in respect of these monies owes the money on another account, the banker lien gives the bank a charge on all the money of the payer in its hands so that they may be transferred to whatever account the bank chooses to set off or liquidate the debt.

As per the ruling in *Union Bank of India vs. K.V. Venugopalan*<sup>19</sup>, the following points are to be noted:

- Money lodged with the banks as fixed deposits *Stricto Jure* is a loan to the bank.
- Bank cannot press into service the doctrine of bankers and lien.
- There will not be bailment if the thing delivered is not to be specifically returned or accounted for. Money, when once put into the fixed deposit, cease to be the property of the customer and constituted debt of the banker to the customer is a proposition well established.
- Action of the Bank in keeping lien was high handed legally and unilaterally.

There may be another type of relationship between the parties which may be called the Advisory Relationship. A reference

can be made to a number of English cases on the subject. We can refer to *Banbury vs. Bank of Montreal*<sup>20</sup>. The court said that “the limits of banker’s business cannot be laid down as a matter of law. The nature of such business is a question of fact on which the juries are entitled to have regard to their own knowledge of business and to the evidence in the particular case, and it is from this point of view that the present case must be considered. It cannot be treated as if it were a matter of pure law.”

Travelling from Banbury’s case in the year 1918 to the case styled as *Wood vs. Martins Bank Ltd.*<sup>21</sup> there was a great change. It was held by Salmon, J. that the branch manager, while not fraudulent, had been grossly negligent; and after consideration the bank’s advertisements and booklets, respected their defense that advice on investment was outside the scope of their business

### **Banks held liable for deficiency in service**

In a large number of cases, banks have been pulled up for deficiency in service and compensation has been awarded to complainants by the Consumer Courts. Some of the important Cases are analyzed hereunder:

#### **a) Wrongful dishonour of Bank Draft**

*SBI vs. N. Raveendran Nair*,<sup>22</sup> the issue before the National Commission was that the bank refused to encase the demand draft on the ground that the signature of one of the two officials of the bank was missing. The State Commission held that the dishonor of the draft was due to the fault of the bank, and therefore, there was deficiency in service by the bank. A compensation of Rs. 19,500/- was awarded by the Commission for the inconvenience and mental agony caused. The National Commission dismissed the appeal of the bank against the judgment of the State Commission.

#### **b) Non-credit of cheque collected**

*In Sovintorg (India) Ltd. vs. SBI*<sup>23</sup>, the issue before the Supreme Court was that the proceeds of the cheque deposited with the bank for collection were not credited to the account of the complainant though the same were collected by the bank. The State Commission awarded only interest of 12 per cent for withholding of the customer’s money against the complainant’s claim of 24 per cent interest and payment of compensation. The National Commission, on appeal by the complainant, confirmed the order of the State Commission. On further appeal before the Supreme Court by the complainant, the Apex Court partly allowed the appeal by directing the payment of interest at the rate of 15 per cent but refused the claim of payment of compensation on the ground that the allegation of negligence was not proved.

#### **c) Non-issuance of proper receipt:**

Where the bank did not adjust the loan repaid in its books nor was issue proper receipt to the complainant, the award of compensation by the District Forum for deficiency in service

<sup>16</sup> Air 1940 Mad 139.

<sup>17</sup> Pollock and Weight: The possession in the Common Law, page 163 quoted in *State of Gujarat vs. Memon Mohammad*, AIR 1967 SC 1885.

<sup>18</sup> AIR 1946 Nag.

<sup>19</sup> (1991) BC 602.

<sup>20</sup> (1918) AC 626

<sup>21</sup> (1959) 1 QB 55

<sup>22</sup> 1992 (2) CPR 400

<sup>23</sup> 1999 (2) CPJ 4 (SC)

confirmed by the Chhattisgarh State Commission in *Jila Sahakari Kendriya Bank vs. Sarda Ram Nayak*<sup>24</sup>.

#### d) Payment of lower rate of interest

In *Abha Bhanthia vs. SBI*<sup>25</sup>, the complainant had made an F.D. with the bank, which carried interest at the rate of 11.25 per cent as per the receipt issued. On maturity, bank paid lower interest @ 10.5 per cent. It was stated by the bank that the said rate of interest was the prevailing rate as per the directives of the RBI. The District Forum held that there was no deficiency in service by the bank as it followed the RBI directive. On appeal by the complainant, the State Commission held that the bank was obliged and under liability to pay interest as agreed by it and any omission or inadvertence on the part of the bank employees would not adversely affect the rights of the appellant depositor.

#### e) Default by bank's agent

In *UCO Bank vs. Surendra Kumar Bara*<sup>26</sup>, the issue before the Orissa State Commission was that the complainant had opened an account with the bank under a scheme called *Laghu Bachat Yojana*. An agent of the bank used to collect the deposits from the complainant periodically and make entries in the passbook issued by the bank under his initial. The agent of the bank misappropriated a part of the money. The Commission directed the bank to refund the amount misappropriated by its agent along with interest and also to pay compensation for mental agony, harassment and cost of litigation.

#### f) Interest not paid on excess amount deposited in violation of PPF rules:

In a rather interesting case in *SBI vs. P.S. Krishnan*<sup>27</sup>, the Tamil Nadu State Commission was asked to adjudicate upon a case where the complainant had deposited a sum of Rs. 8, 50,000/- in his PPF a/c during the F.Y. 1995-96. After a lapse of time, the bank informed the complainant that interest on the PPF a/c would be given on a total sum of Rs. 60,000/- only. The bank returned Rs. 7, 90,000/- to the depositor without any interest. It was contended on behalf of the bank that the deposits in the PPF account are credited to the government account and do not form part of the bank's deposits. As per the rules of the PPF account, the maximum limit of deposit is Rs. 60,000/-. The bank is bound by the rules and is not liable for the alleged deficiencies in service. It was held by the Commission that the brochure issued by the Directorate of small savings clearly stated that the deposits up to Rs. 50,000/- will qualify for deduction of income tax under section 88 of the I.T. Act and the interest on the balance held in the PPF account is absolutely free from tax. The act of the bank in retaining a huge sum of Rs. 7, 90,000/- for nearly a year and returning it without interest is definitely an unjustified act. The Commission also held that the banks entrusted with the public money are in the position of a bailee and they have to function with caution and care that is expected of a bailee. Even if the complainant was ignorant of the rules, the bank authorities ought to have been more vigilant when such a huge deposit was received by them. The Commission went to the extent of

saying that the banking authorities had gone against the professional ethics in denying the interest, which the complainant was legitimately entitled to. The Commission also held that to retain one's money and deny that person the right of interest on that amount would definitely amount to "unfair trade practice" and fall within the purview of the Consumer protection Act even otherwise.

#### Nature of the Consumer Protection Act and Providing of Banking Facilities

So far as the nature of the Consumer Protection Act is concerned, it is a part of the administrative law of the land and is expected to help the consumers where, no other relief may be available.

In all the cases, the bank is to find out the credit-worthiness of the applicant and whether the project to be financed is technically feasible and economically viable. The bank is also to examine if the applicant has a requisite managerial capability to manage the production unit.<sup>28</sup>

However, there are certain reliefs which cannot be granted by the Consumer Forum under sections 2(1), 14(1) (c) & 14(1)(d) of the Act. Certain matters are outside the functioning of the Consumer Act<sup>29</sup>:

- Acts of omissions and commissions done by the bank.
- Responsibility of the bank to rehabilitate the sick unit.
- Losses suffered by a person due to wrong sanction of the loan.
- Wrong judgment made.
- Rate of interest on the excessive side.
- Readjustments.

Similarly, there are other cases where complaints before the Consumer Forum are not maintainable. These cases may be enumerated as under:

- Bank was not providing accommodation to provide nursing facilities<sup>30</sup>.
- Bank was not rendering financial aid for poultry farms<sup>31</sup>.
- Failure to provide financial assistance for nursery and rehabilitating sick unit<sup>32</sup>.

So far as the decision of the complaints by the Banking Ombudsman is concerned, there is no legal sanction for such a decision. It is only recommendatory in nature and thus cannot be a bar for approaching the authorities under the Consumer Protection Act for relief.<sup>33</sup> It is the banker's discretion to grant

<sup>28</sup> *Asha Sharma vs. Union of India and Ors.* I (1992) CPJ 244 (NCDRC New Delhi). Also see: *A.R.Narayanan vs. The Manager, UCO Bank*, I (1992) CPJ 286.

<sup>29</sup> I (1991) CPJ 196 (Raj SCPRC Jaipur). Also refer to the judgements in *Society of UP Consumers for Education, Actions vs. Bank of Baroda*, Lucknow Original Petition No.13 of 1989 and *M/s Jayal Iron and Steel vs. SBI and ors.* (Original Petition No.2 of 1989)

<sup>30</sup> *M.L.Joseph vs. State Bank of India, Trichur* 1991 (1) CPR 342: II (1992) CPJ 446 (NCDRC).

<sup>31</sup> *Society of UP Consumers for Education, Actions vs. Bank of Baroda*, Lucknow Original Petition No.13 of 1989 (NC)

<sup>32</sup> *M/s Jayal Iron and Steel vs. SBI and ors.* Original Petition No.2 of 1989 with misc. petition no 23 of 1989 (NC).

<sup>33</sup> *K.K.Sharma vs. Kulwant Singh* 1997 ISJ (Bank) SC 446.

<sup>24</sup> 2004 (2) CPJ 534

<sup>25</sup> 2004 (2) CPJ 138

<sup>26</sup> 2004 (3) CPJ 472

<sup>27</sup> 2004 (2) CPJ 579

working capital. A bank can withhold such facilities if the performance of loaned is not satisfactory. It is banker's decision whether rehabilitation finance is to be provided or not. There is no deficiency in service.<sup>34</sup>

A complaint petition on behalf of a defunct firm is not maintainable. In this case the bank had withdrawn cash credit facility in 1983; complaint was filed in 1992 and was, thus, time barred. Moreover, the firm was not in existence. A civil suit was also pending against the firm and the matter was *sub-juice*.<sup>35</sup> A claim for compensation against a banking company cannot be sustained under the Act if the failure to render service was occasioned by reasons wholly beyond the control of the bank and was not attributable to any negligence on the part of the bank.<sup>36</sup> Similarly, it was held that no enquiry with regard to fraud alleged by the complainants can be made under the Act.<sup>37</sup> The Commission cannot overlook the fact that the financial viability of the banks would be seriously affected and the whole credit system would collapse if it is not ensured that the amounts advanced will be recovered in overwhelming majority of the cases and defaults are kept to the minimum. It will be for the bank to decide the risks it should undertake, balancing its interests with the need for promotion of agriculture.<sup>38</sup> With regard to the allegations of the complainant that adequate amounts as required were not advanced at the right time, the commission cannot sit in judgment upon the decision taken by the bank as this power of discretion of the bank.<sup>39</sup> The grant of relief of rendition of accounts in relation to transactions with the Bank is not within the scope of the provisions of the Consumer Protection Act and the averments in the petition do not make out any deficiency in the service rendered by the Bank. The rendition of accounts by the Bank and the recovery of amounts that may be found due as a result of settlement of accounts are reliefs that can be obtained only by recourse to a suit in the Civil Court. *M/s. House of Dubary Vs. New Bank of India and others*.<sup>40</sup>

The bank is liable for deficiency in service for inordinate delays in providing banking services and the customer of the bank is entitled to claim compensation for the loss and the injury suffered by him due to the inordinate delay in the payment of the amount of deposit certificate on its premature encashment. *P.N.Prasad vs. Union Bank of India*.<sup>41</sup> The banker is supposed to safeguard the interest of the depositors when his amount is entrusted to the custody of the Bank and the Bank is liable to return the amount with interest. In the absence of any directions from the customer, no banker can unilaterally and arbitrarily transfer the money of a depositor from his account and deposit in the account of another customer. This amounts to deficiency in service by the bank. *Dilip Madhukar Kambli Vs. Nilesh Vasant Borkar and Ors*.<sup>42</sup> The Commission ruled that adopting discriminatory practice in sanctioning loan without basis by the cooperative society or Bank amounts to

deficiency in service & such practice is liable to be stopped. *Madras Prov. Consumer Association Vs. The Registrar Coop. Societies, Madras & Others (Madras)*.<sup>43</sup>

They (Banks) must be ever vigilant and solicitous about the interests of their customers departure from such standard can cause inconvenience not only to stray individuals but widespread economic disaster. The Banks should therefore be enjoined to maintain their services efficient and above reproach. In view of the above it was held that where the bank caused unexplained delay in the mail transfer of money it amounts to deficiency in service for which bank is bound to compensate. *N.Sahadevan vs. Manager, Syndicate Bank*.<sup>44</sup> Due to the wrongful dishonour of the demand draft the complainant was stranded at a very far off place from his home and it resulted in loss, mental agony and hardship to him. The primary duty of a Bank is to safeguard and protect the interest of their customer. It was held that if there has been a lapse or an omission committed by the officials of the Bank and if some inconvenience were caused to a customer due to the omission, negligence or default of the Bank, it amounts to a defective service according to the Consumer Protection Act. *N.Raveendran Vs. Branch Manager, State Bank of India*.<sup>45</sup>

It is a common knowledge that when an account holder draws a cheque in favour of the bank itself, it is undoubtedly for the purpose of utilizing that amount by the bank for any of the specified directions of the customer and not for paying to an unknown 3<sup>rd</sup> party, merely because the word 'bearer' is not struck off in the cheque. Therefore a cheque directing the drawer (i.e.) the bank to pay itself cannot be equated with an ordinary cheque payable to self or bearer where the bank can pay to the bearer. Hence the bank has clearly shown utter negligence in paying a huge amount of Rs.20, 000/- to an unknown outsider and thus caused loss to the account holder. There is clearly lack of good faith on the part of bank. In the circumstances, the customer is entitled to the loss and costs of this complaint. *Mrs. S.S.Shirwaikar, Margao vs. State Bank of India, Margao*.<sup>46</sup> It was alleged by the complainant that misappropriation by its employee from the complainant's account maintained with the bank was made possible due to the negligence and deficiency in service of the officials of the bank. It was held that the bank passbook is not a reliable piece of evidence to establish the fact of short deposit especially when it was in the custody of the employee who was convicted of forgery and fraud in the case. The short deposit has to be established on the basis of the amounts indicated in the depositor's counterfoils of the pay-in-slips. *Corporation Bank & Anr. Vs. M/s Filmalaya Pvt. Ltd*.<sup>47</sup> The complainant had already overdrawn the cash credit limit given by the opposite party bank and was in default in the repayment of his dues. He was also not clearing the dues which he owed to some other bank. It was held that the refusal by the opposite party bank to permit the complainant to further draw in his account was justified and there was no deficiency of service. *A.R.Narayan vs. State Bank of Hyderabad*.<sup>48</sup> The complaint against the respondent bank was improper maintenance of the complainant's account and transfer of some amount from Fixed Capital Loan account to Working Capital Loan account. The

<sup>34</sup> Kraft Paper Mills (P) Ltd. Vs. N.B. India and Ors. OP No. 23 of 1992 (1-9-1992)

<sup>35</sup> N.J. Industries vs. SBI and Ors. II (1993) CPJ 182 at 182.

<sup>36</sup> The Federel Bank, Bistupur, Jamshedpur vs. Bijon Mishra, Managing Trustee, Consumer Guidance Society of Jamshedpur, 1991 (10CPR 80 at 84)

<sup>37</sup> Saurabh Synthetics (P) Ltd. Vs. Branch Manager, Oriental Bank of Commerce, III 1992 CPJ 867 at 871 (Raj SCDRC)

<sup>38</sup> Ram Kirpal Bhargava vs. Union Bank of India, 1991 (1) CPR 447 449-450.

<sup>39</sup> Jagannath Meher vs. The Branch Manager, SBI, 1993 (2) CPR 95-96 (NCDRC)

<sup>40</sup> 1991(1) CPR 216 (NC)

<sup>41</sup> 1991(1) CPR 198 (SCDRC- AP, Hyderabad)

<sup>42</sup> 1991(1) CPR 571(SCDRC- New Bombay, Maharashtra).

<sup>43</sup> 1991(2) CPR 447 (SCDRC- Madras)

<sup>44</sup> 1991(2) CPR 617 (SCDRC- Kerala)

<sup>45</sup> 1991(2) CPR 473 (SCDRC-Kerala)

<sup>46</sup> 1991(1) CPR 513 (SCRDC- Goa)

<sup>47</sup> 1992(1) CPR 445 (NC)

<sup>48</sup> 1992(1) CPR 534 (NC)

statement of the bank that the transfer of the amount from one account to the other was as per the instructions of the complainant himself was accepted by the Commission. It was held that the transfer, though irregular, was to the benefit of the complainant and enabled him to reduce to an extent his exceeding the drawing power limit. The complaint was dismissed as vexatious and malicious. *M/s Classic Electronics vs. Punjab National Bank & Anr.*<sup>49</sup> - The complainant filed the complaint praying that the opposite party bank be directed to issue a No Dues Certificate and also claimed compensation. There was nothing on record to show that the complainant had hired the services of the opposite party for consideration for the purpose of issuing a no dues certificate. Hence, it was held that the complainant is not a consumer as defined under Section 2(1) (d) of the Act. As the Redressal Forum can grant only those reliefs enumerated under Section 14(1) of the Act, it was held that the direction which the complainant has sought against the opposite party cannot be granted to the complainant. *Pawan Kumar Birla Vs. Branch Manager, State Bank of Bikaner & Jaipur* -<sup>50</sup> The service of appellant, an MD Collector of the bank, was terminated and his security deposit was not refunded by the bank. It was held that since the bank had hired the services of the appellant by paying commission and not hired the services for consideration, the appellant will not be a consumer of the bank. Also, it was held that for determining the amount due to the appellant accounts will have to be taken and that can be done by a Civil Court and not by the Consumer Forum, *Parashuram S. Veerannavar Vs. Branch Manager, Union Bank of India* -<sup>51</sup>

Where the bank permitted withdrawal of a huge amount from the account of the complainant on the basis of a duplicate pass book and cheque book, it was held that complainant is a consumer and permission for withdrawal from his account by another is deficiency in service. *Premananda Nanda Vs. State Bank of India & Anr.*-<sup>52</sup> Under the terms of loan, the borrower-hypothecator- (i.e., the complainant) is bound to insure the hypothecated assets against fire and against any other risks and endorse the policy in favour of the bank. Insuring the assets in favour of the bank is not in any way part of the service contemplated or to be rendered by the bank. Taking out an insurance policy by the bank on behalf of the complainant at his request is a gratuitous service, performed by the gratuitous act. In the circumstances, it was held that no complaint would lie against the bank. *K.R. Krishnankutty Vs. South Indian Bank Ltd. & 2 Ors.*- *K.R. Krishnankutty Vs. South Indian Bank Ltd. & 2 Ors.*- *SCRDC – Ker*) Where the complainant settled all his dues with the bank freely and voluntarily and sent a letter to the bank stating that " all transaction between us are fully and finally settled and there are no claims in whatsoever nature against you" it was held that the complainant's claim against the bank that certain amount has been collected in excess and hence repayable to him with interest, is an abuse of the process of Consumer Protection Act. *SMW Consumer Protection Council & Anr. Vs. The Branch Manager, State Bank of India* -<sup>53</sup>. The bank had given a guarantee ensuring due payment of a Hundi/promissory note and undertaken to indemnify the complainant in case of default by the drawer of the pro-note. It was held that the act of furnishing guarantee by banks amounts to 'service' as defined under Section 2 (1) (o) of the Act.

Therefore, if a bank furnishes guarantee but fails to make the payment in accordance with the terms of the guarantee, the effected person can file a complaint against the bank under the provisions of the Act. Since the complaint has been filed on the basis of the guarantee issued by the bank in favour of the complainant, the drawer of the promissory note is not a necessary party to the complaint. *M/s Chavan Rishi International Ltd. Vs. State Bank of Bikaner & Jaipur* -<sup>54</sup>

The complainant's employer had sent some amount to him towards his traveling expenses, but the same was not received in his account with Catholic Syrian Bank, Ernakulam. The employer's banker in Middle East had sent telex payment order to the first opposite party (SBI Overseas Branch, Bombay) in favour of the complainant's aforesaid account who in turn vide telegraphic transfer remitted the funds to second opposite party (SBT, Ayiroor Branch) for credit to complainant's account. However, the said telegraphic transfer was not received by the second opposite party. It was held that not only the persons who hires any service but also the persons who are the beneficiaries of such service other than actual hirers would come within the clutches of the term 'consumer'. However, in the present case, the complainant's employer had not hired the services of the opposite parties but had hired the services of their bank in Middle East for sending the money. Therefore, it was held that the complainant was not a beneficiary of the service rendered by the opposite parties and hence not a consumer as defined under the Act. Complaint was dismissed. *PP.Devassy Vs. State Bank of India & 2 Ors.* -<sup>54</sup>.

The opposite party bank refused to accept the deposit of motor vehicle tax by the complainant on the ground that the District Transport Authority has not opened an account with them, it was held that refusal of the bank is understandable. In any event, since the complainant did not have any account with the opposite party bank. It was held that he is not a consumer under the Act as neither any goods were purchased nor any services were hired by him for consideration from the opposite party. In the circumstances, the complaint was held not maintainable. *Nawal Kishore Sharma Vs. The Accountant State Bank of India* -<sup>55</sup> The issue in the case was whether the Ajara Urban Co-op. Bank being a large commercial organization and the purchase of Xerox Machine for its commercial activity as a bank could maintain a complaint under the Consumer Protection Act in respect of the Xerox Machine. The commission held that when a Xerox machine has been purchased by a bank for its office use and the complaint is not regarding services attached to it but rather that machine was faulty and defective then complaint does not fall within the purview of the Consumer Protection Act as machine purchased being for commercial purposes. *IDC Electronics Ltd. Vs. Ajara Urban Co-operative Bank Ltd & Ors.*<sup>56</sup> A revision petition was filed by the Bank of Maharashtra against the order of District Forum directing it to renew FDR of the respondent, to treat the amount of Rs.20,040/- withdrawn by the Respondent as having been paid under Cash Credit Facility, that Rs.42,042 with interest due under Cash Credit Scheme be paid to the complainant and Rs.900 be paid as expenses for hearing, Rs.1000/- for mental pain and Rs.2000/- for mental torture. The bank's appeal was dismissed by the State Commission against which the revision was filed before the National

<sup>49</sup> 1992(2) CPR 128 (NC)

<sup>50</sup> 1992 (1) CPR 15 (SCRDC – Raj)

<sup>51</sup> 1992 (1) CPR 329 (SCRDC – Kar)

<sup>52</sup> 1992(2) CPR 199 ( SCRDC – Orissa)

<sup>53</sup> 1992(2) CPR 253 (SCRDC – Mad)

<sup>54</sup> 1992(2) CPR 603 (SCRDC – Ker)

<sup>55</sup> 1992(2) CPR 645 ( SCRDC – Bihar).

<sup>56</sup> 1993(1) CPR ( 1) 225 (NC)

Commission. The National Commission on examination of facts held that it was open to the bank not to renew the cash credit facility after one year and to adjust the amount in FDR towards amounts recoverable. It therefore held that the act of the bank does not amount to deficiency in service as the action is strictly in accordance with the terms of the arrangement.

**Branch Manager, Bank of Maharashtra Vs. Monohar Sitaram Nanadanwar**<sup>57</sup>

The company engaged in the business of manufacturing and leasing and selling computers entered into an agreement with the Second Respondent Firm for supply of a computer system. The payment was to be made on a quarterly rental basis for a period of 60 months and the same was censured by issuance of a bank guarantee in favour of the company. When the complainant company invoked the bank guarantee, the Bank did not make the payment. The complainant company alleged deficiency in service on the part of the Bank. It was held that the complainant Co. is a consumer as regards the Bank and the act of the Bank constituted deficiency in service. *Bank of India Vs. HCL Ltd. anr.*<sup>58</sup> Bank account was opened in the name of a partnership firm with instructions to the bank that the account would be operated by two partners which would necessarily include signature of complainant. An arbitration award was passed in the meanwhile allowing remaining three partners to operate the account. The bank after obtaining legal opinion allowed the operation of the account in terms of the supplementary award. When objections were raised to the operation of account in terms of the arbitration award, the bank obtained another advice from its senior lawyer and it stopped further operation of the account. In view of the facts involved, the commission held that it cannot be said that the Bank's action was not bonafide and the bank cannot be said to have acted negligently. *M/s.Seth Mohan Lal Hiralal Vs. Punjab National Bank & Ors*<sup>59</sup>

Where an amount of Rs.1,85,000/- lying deposited in 3 FDs were being claimed by the complainant in the capacity of beneficiary under registered will executed by the depositor, the bank directed the beneficiaries to establish the authenticity of will before a competent court of law and to secure a succession certificate in order to make payment. The commission held that the bank commits no deficiency in service in asking the complainant to produce succession certificate for disbursement of amount of depositor who died leaving a will. *B.G. Krishna Iyengar Vs. Manager, Vijaya Bank*<sup>60</sup> The complaint was filed for increasing in service charges levied by banks for collection of cheques, issue of demand draft, processing of loans etc. It was held that the complaint about increase in charges levied by banks for its services doesn't fall within the provisions of Consumer Protection Act, 1986. (Complaint dismissed.) *Sindhi Chamber of Commerce Vs. Reserve Bank of India & others*,<sup>61</sup>

**Jurisdiction of the Consumer fora in Banking Matters**

So far as jurisdiction is concerned, Chapter III of the Act provides for the Consumer Dispute Redressal Agencies and their jurisdiction. Section 11 deals with the jurisdiction of the District Forum; section 17 with the jurisdiction of the State

Commission and section 21 deals with the jurisdiction of the National Commission. Section 13, 18 and 22 deal with the procedure to be followed by the District Forum, State Commission and National Commission. The Supreme Court<sup>62</sup> has held that the provisions of the Act have to be construed in favour of the consumer to achieve the purpose of enactment, as the legislation is for the benefit of the consumers. The primary duty of the court, while construing the provisions of such an Act, is to adopt a constructive approach without doing violence to the language of the provisions or the objective of the enactment. It has been held that a writ is not maintainable before the High Court relating to the matters which can be decided by the Consumer Forum and a writ petition cannot challenge the jurisdiction of the forum to entertain applications about the loan being granted to the customer by the bank.<sup>63</sup> The State Commission grossly erred in making the Central Bank of India jointly and severally liable with the Bank of Rajasthan Ltd for the deficiency in service in respect of the four demand drafts<sup>64</sup>. When the Consumer Protection Forum has got the power to decide a complaint *ex-parte* under Rules 8(8) and 8(9), it implies that it has got power to set aside an *ex-parte* order. It is also a settled law that when there is error in exercise of jurisdiction, the court can always step in under Article 227 of the Constitution. It is a well known rule of statutory construction that the Forum should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions for the purpose of rendering justice between the parties<sup>65</sup>. In a case, The Maharashtra SCDRC held that the interim order passed by the Consumer Forum has to be just and proper with regard to full facts and circumstances of the case and should also be in consonance with the principles of natural justice. The order should also be free from any jurisdictional error.<sup>66</sup>

In a case of lost traveler's cheques, where the cheques were purchased in Delhi and were lost in Delhi, the National Commission held that the District Forum at Kolkata could not assume jurisdiction simply because the concerned bank had a branch in the city. For the forum to have jurisdiction some part of the cause of action should have arisen within the territory to which its jurisdiction extends<sup>67</sup>. In a case where the credit card was being used throughout the country it was held that the complaint could be filed at any place where he was detained the facility<sup>68</sup>. In case where the District Forum passed prohibitory orders preventing the bank from recovering the loaned amount, the State Commission held that such order could not be sustained because it was a statutory as well as contractual right of the bank to proceed for recovery of amount loaned by it. The State Commission wondered as to how the District Forum accepted the plea and passed a prohibitory order<sup>69</sup>. In a case MPSCRDC held that directions issued by the RBI under section 35A of the Banking Regulation Act, 1949, cannot be allowed to be flouted by the bank by an order of a

<sup>62</sup> Lucknow Development Authority vs. M.K.Gupta, AIR 1994 SC 787

<sup>63</sup> ANZ Grindlays Bank vs. President, District Consumer Disputes Redressal Forum, 1996 (2) BLJ Vol. 29 and 24

<sup>64</sup> Central Bank of India vs. M/s Narain Steel Traders, 1997 (2) Bank LJ 381 Vol. 32.

<sup>65</sup> Indian Bank (Manager) vs. DCDRF Madras, 1986 ISJ (Banking) 655 Mad.

<sup>66</sup> M.S.Rane vs. Swadeshi Marketing & Retail Trading Pvt. Ltd. vs. Shri Namdeo Babasaheb Jadhav, 2004 (2) CPR 118.

<sup>67</sup> American Express Bank Ltd, Travel Related Services vs. Rajesh Gupta, 2000 (1) CPR 22 (NC)

<sup>68</sup> Muzaffar Jan Buch vs. City Bank, 2005 (1) CPR 542.

<sup>69</sup> Saraswat Co-operative Bank Ltd. vs. Smt. Premlata Parashuram Bavkar, 2004 (2) CPR 232

<sup>57</sup> (1993(2) CPR 109) (NC)

<sup>58</sup> 1993(3) CPR 31 (NC)

<sup>59</sup> 1993(3) CPR 209 (NC)

<sup>60</sup> 1994 (3) CPR 547 (SCDRC- Karnataka)

<sup>61</sup> CPR(1) 756 (SCDRC - Tamil Nadu)



Consumer Forum. The Commission held that the view held by the Forum that RBI directions, though binding on the banking companies was no binding on the Consumer Forums, is misconceived and wrong<sup>70</sup>. In certain cases, it has been held that Consumer Protection Act does not apply to banks. Some of such specific instances are enumerated below

#### a) Reserve Bank of India

**In Virendra Prashad vs. reserve Bank of India**<sup>71</sup>, a complaint was filed before the National Commission stating that the complainant was eligible for certain advantages in his foreign currency/ rupee bank accounts but these facilities were denied by his bankers on the instructions from the RBI. The National Commission held that there was no contract of service between the complainant and the RBI and the RBI was merely discharging its statutory function. Therefore, it was outside the purview of the Consumer Protection Act. However, in T.A. Abraham vs. RBI<sup>72</sup>, RBI also came within the purview of the Consumer Protection Act. The issue before the Kerala State Commission was that the complainant had applied for a loan under the Housing Facility Scheme of the RBI, of which he was the employee. He claimed that he suffered loss and inconvenience due to delay in sanctioning of loan, which amounted to deficiency of service and for which he was entitled to compensation. The District Forum held that the complaint was not maintainable, but the State Commission before whom appeal was preferred by the complainant, held that availing a loan from an institution like RBI could be treated as "service" within the meaning of section 2(1)(o) of the Act as the opposite party's character as a banking institution cannot be in dispute. Further, as per the definition of "consumer" in section 2(1)(d)(ii), it is not necessary that actual consideration should pass to the opposite party simultaneously with the availing of service. The said definition envisages the consideration as the one, which is promised also. The State Commission observed that when a person applied for loan and get the loan on sanctioning the same, the amount would carry interest. The same should be treated as consideration.

#### b) Aspirant to a post

The issue before the National Commission in IDBI vs. Krishnendu Ghosh<sup>73</sup>, was that the complainant applied for the post of Deputy Manager (legal) along with a D.D. of Rs. 50/- as examination fee. The interview letter was received by him on the same day on which interview was to be held. The bank rejected the request for rescheduling. A complaint was filed claiming compensation for injury and mental shock. The National Commission held that payment of Rs. 50/- as examination fee was not consideration for hiring or availing of the services of the bank. Therefore, the complainant was not "consumer".

#### c) Employer-employees dispute:

In D. Yeshodharan vs. Canara Bank<sup>74</sup>, a complaint was lodged for denial of service benefits to an employee of the bank. National Commission held that the Consumer Court is not the

correct forum for settling employer employee dispute as an employee is not a consumer.

#### d) Tenant-Landlord dispute

In UCO Bank vs. R. Chimanlal & Co.<sup>75</sup>, a dispute with the bank-landlord was sought to be settled under the Consumer Protection Act which was turned down by the Commission.

Where the appellant filed an appeal against an ex-parte decree passed against them on the ground that no service of summons was affected by the District Forum, it was held that the question whether service of summons was effected or not is a question of fact to be determined by the Forum which passed the decree after recording evidence. The appeal is not the proper remedy in such cases and it is incumbent upon the appellant to file an application before the District Forum to set aside the ex-parte decree. *Citi Bank vs. Raman Sharma & Anr.*<sup>76</sup>

The question whether a complainant is a consumer of the bank has to be determined first before granting any relief and the facts of the case where the second complainant merely handed over documents of title to the bank with a view to stand as surety for the 1st complainant, and has not availed / hired any service of the bank, he was held not to be a consumer of the bank. The order of the State Commission directing the bank to pay compensation for retaining the documents was set aside and the order of the District Forum dismissing the complaint was restored. *Bank of India v. Vidarbha Conductors Pvt., Ltd., & Anr.*<sup>77</sup>

Complaint filed for deficiency in service on the part of the bank in as much as the bank did not return the title deeds deposited with the bank for creating equitable mortgage. Bank claimed lien under section 171 of Contract Act, 1872 in respect of another loan transaction where complainants were guarantors and a suit has been filed by bank for recovery. The State Commission held that the transaction in question is a borrowing transaction and hence complainant cannot be considered as a consumer within the meaning of the Act. Order of DF allowing the complaint was set aside. The NC did not find any error of jurisdiction or illegality in passing of the said Order by the State Commission and dismissed the Revision petition. *M/s. Shankar Tube Wells v. The Branch Manager, SBI*<sup>78</sup> It was observed that the case of the complainants was that the account payee vouchers in their names were encashed at different branches of the appellant bank and other banks by fictitious persons fraudulently and not that they hired the services of the bank. In such circumstances, and in the light of the definition of 'consumer' under Section 2(1)(d), it was held that there was no privity of contract between the complainants and the bank concerned and as such the complaint was not maintainable. *The Gauhati Co-op Urban Bank Ltd., & Anr., v. Santosh Kumar Tiwari & Ors.*<sup>79</sup> Where the complainant alleged that the bank received the lorry receipt sent by the complainant for collection of the proceeds from the consignee and that it was ascertained that an unintended 3rd party took delivery of the goods with false endorsements and as such, there was deficiency on the part of the bank, it was held by the State Commission that privity of contract was not established

<sup>70</sup> Mitra Mandal Sah. Bank vs. Jugal Kishor Goyal, 2004 (3) CPR 15.

<sup>71</sup> 1991 (1) CPJ 336 (NC)

<sup>72</sup> 2001 (3) CPJ 293

<sup>73</sup> 1996 (2) CPR 155

<sup>74</sup> 1994 (3) CPJ 63

<sup>75</sup> 1994 (1) CPR 526

<sup>76</sup> 1992(2) CPR 59 (SCRDC – Del)

<sup>77</sup> 1997 (1) CPR 93 (NC)

<sup>78</sup> 1997 (2) CPR 3 (NC)

<sup>79</sup> 1997 (2) CPR 111 (NC)

between the complainant and the bank nor could the complainant prove that the bank has received those lorry receipts on the face of the denial by the bank. In such circumstances held that there was no deficiency of service on the part of the bank and the order of the District Forum was set aside and the complaint was dismissed. *State Bank of Bikaner and Jaipur v. Shri Velammal Textiles & Ors.*<sup>80</sup>

Where the DF dismissed the complaint alleging deficiency of service on the part of the company in not repaying the deposits, on the preliminary issue that the allegations therein did not constitute deficiency of service as understood under the Act, the State Commission set aside the order and remanded the matter to the DF for disposing of the matter on merits on the ground that after the decision of the Supreme Court in the cases of Lucknow Development Authority v. M.K. Gupta (reported in (1994) 1 SCC 243) and Consumer Unity & Trust Society v. Chairman and Managing Director, Bank of Baroda, Calcutta (reported in (1995) 2 SCC 150), the test was not if a person against whom complaint is made is a statutory body or private body but whether the nature of the duty and function performed by it is 'service' or even 'facility' and as such, payment of interest on over-drafts, interest on lending rate etc., may be covered in the expression 'service'. *M/s. Una Grahak Suraksha Samiti v. M/s. Janapriya Finance & Industrial Investment (I) Ltd. & Anr.*<sup>81</sup> Where the bank did not agree to sanction a loan to the complainant, he could not be stated to be a consumer vis-à-vis the bank. *Manager, UCO Bank v. Suvas Chandra Mohanty & Ors.*<sup>82</sup>

The complainant had deposited certain amount with the Bombay office of the bank. The bank refused payment on the ground that the sum had already been credited to the complainant's account in Bombay Mercantile Co-operative Bank Ltd. The complainant preferred a complaint before the District Forum, Patiala as the bank was having a branch in that place. The bank contented that the District Forum, Patiala could not have jurisdiction in the matter as no cause of action had accrued within the jurisdiction of the said Forum. It was held that if the case falls under any of the clauses under section 11 (2) of the Consumer Protection Act, the District Forum of particular place will have jurisdiction to entertain the complaint. The clauses are not overlapping but are independent. In case of matter covered by either clause (a) or (b), the cause of action or part thereof would be irrelevant consideration for determining the question of jurisdiction of Forum to entertain the complaint likewise if the cause of action or part thereof has accrued at a particular place, it would be immaterial whether the opposite party was having head office or branch office at that place or not. *Vijaya Bank and Anr v. K.V. Singh*<sup>83</sup>

The complainant was aggrieved by the refusal by the bank to sanction a second loan to him on his failure to execute a fresh mortgage. The complainant contented that he had repaid the first loan and the mortgage executed in the first transaction was continuing in nature and as such, there is not necessity for a fresh mortgage. The District Forum disposed of the matter in complainant's favour awarding compensation to him. It was held by the State Commission that in law there is no such thing as a continuing mortgage and when the complainant asked for

a fresh loan he must execute a fresh mortgage. The argument of the bank that it is not bound to grant loan also appears to have merit. It was also observed that since the appellants bank has been registered under the Co-operative Societies Act and the complainant being one of its members, this matter shall be agitated before the Registrar under section 90 of that Act. *Secretary, Mayuram Co-operative Urban Bank Ltd. & Anr v. John Nicholson*<sup>84</sup>

The complainant's case was that he sent a Hundi by registered post to the bank at Etawah but the registered envelope was refused to be accepted by the bank. The complaint was filed by Mathura from where the registered post was sent. The complaint was dismissed on the ground that no cause of action arose at Mathura. It was held that the cause of action arose at the place where the bank was situated, i.e., Etawah and not at the place from which the registered post was sent. *Girish Chand Agrawal v. Etawah Khetriye Gramin Bank 1998*<sup>85</sup> The complainant's application for setting aside an ex parte order was dismissed by the District Forum holding that Order 9 Rule 13 of the Civil Procedure Code had no application to the proceedings of Tribunals under the Consumer Protection Act. It was observed that there is no illegality or material irregularity in the order of District Forum as the revision petitioner had received notice and the justification for non-appearance before the District Forum was that the notice was misplaced. *Lakshmi Priya Township Promoters Pvt. Ltd v. V. Prasanth*<sup>86</sup>

#### Civil Court versus Consumer for A

Consumer Fora are often faced with the question of jurisdiction. They have to decide every now and then if they have jurisdiction to entertain a particular case or whether it is a matter to be decided by the Civil Courts. Thus it is many a time a case of overlapping jurisdiction, since all the matters cannot be decided by the Consumer Fora; especially in cases where numerous witnesses need to be examined, voluminous documents and records are to be scrutinized and complex questions of law and facts are need to be adjudicated upon. Certain matters are ready sub juice and on this account it is not feasible to have an alternative adjudication of a dispute which may create more problems than it would solve. It is open to the Commission to examine and decide whether a complaint has a fit case for availing the additional remedy under the Consumer Protection Act or he should seek redress from a Civil Court. In a case under sections 2 and 14 of the Consumer Protection Act, 1986 which relate to deficiency in service on account of encashment of cheques by collusion or negligence of the bank and involved misappropriation of huge amounts, it was held that it was open to the Commission to examine and decide whether a complaint has a fit case for availing of the additional remedy under the Consumer Protection Act or he should seek redress from a civil court<sup>87</sup>. A reference can be made to another case before the National Commission where the complaint involved intricate and highly disputed questions of fact which required a lengthy and full scale trial, examination of numerous witnesses and scrutiny of voluminous documents. Moreover, a suit filed by the bank for the recovery of its dues was pending in a civil court and the complaint had not filed a

<sup>80</sup> 1997 (3) CPR 564 (SCDRC-TN)

<sup>81</sup> 1996 (3) CPR 282 (SCDRC-HP)

<sup>82</sup> 1996 (2) CPR 57 (SCDRC-Orissa)

<sup>83</sup> 1998 (2) CPR 249 (SCDRC - Punjab)

<sup>84</sup> 1998 (1) CPR 95 (SCDRC - Tamil Nadu)

<sup>85</sup> 1998 (1) CPR 314 (SCDRC - Uttar Pradesh)

<sup>86</sup> 1999 (1) CPR 102 (SCDRC - Andhra Pradesh)

<sup>87</sup> Corporation Bank vs. Filmalya Pvt. Ltd., (1986-95) Consumer 1172 (NS)

written statement in that suit at the time of filing and it was not known if he had since filed it or not<sup>88</sup>. In this case it was held that sub-sections (2) and (3) of section 13 of the Act show beyond doubt that the statute does not contemplate issues of fact invoking taking of elaborate oral evidence and adducing of voluminous documentary evidence and sometimes scrutiny and assessment of such evidence. The Commission, therefore, declined to exercise jurisdiction and referred the complaint to ordinary remedy by way of a suit in a competent court having jurisdiction of filing counter claims in the suit filed by the bank. It is, however, not correct that every case of complaint against the bank necessarily has to be referred to the civil court for adjudication. In fact, it is the responsibility of the Consumer Fora to entertain *bona fide* complaints of deficiency in service by the banks and financial institutions, keeping, however, in view the limitations of the Consumer Fora, whether it would be possible for the Fora to render justice in such complaints or it would be expedient to leave the parties to seek redressal in the civil courts, while also keeping in view the questions of facts and law and the time frame within which the Fora have to dispose of the complaints. It was never the intention that the Consumer Fora should refuse to entertain complaints and forebear adjudication on the plea that oral evidence has to be taken and examined<sup>89</sup>.

In *Bharti Knitting Co. vs. DHL Worldwide*<sup>90</sup> the Supreme Court said, "Each case depends upon its own facts. In appropriate case where there is an acute dispute of facts necessarily a Tribunal has to refer the parties to original civil suit established under CPC or appropriate State law to have the claim dealt with between the parties". The National Commission following the above case held in a case that since the documents to be perused and evidence to be considered was too much for the Consumer Forum, as it has to decide matter in summary jurisdiction, therefore, civil suit was the appropriate remedy and not a complaint under the Consumer Protection Act<sup>91</sup>.

## Conclusion

Today, in the height of malpractices rendered in various sectors seeks to accentuate the challenge of safeguarding the interests of the empowered consumer. An analysis of various judgments of cases of alleged consumer protection brings into light the fact that not only have banks been held responsible for a deficiency of services on various grounds but also the complainants have been awarded with a high compensation on the grounds of mental agony and the harassment so faced. With an unprecedented growth in the service sector as a whole and the banking sector particularly, the role of redressed mechanisms have increased by manifolds. In the landmark judgment of *Luck now Development Authority v. M. K. Gupta*<sup>92</sup> the Court also observed that public authorities acting in violation of the constitutional or statutory provisions oppressively are equally accountable for their behavior before the authorities which have been created under statutes like the Act. Moreover, the concept of providing compensation should

be construed as widely as possible because the Act is a consumer friendly legislation and a constructive approach towards the same is helpful in realizing the objectives set forth by the Act. Drawing from international experience, it can also be suggested that the example set forth by the United Kingdom where a voluntary banking code states that the banks must proactively contact the customers, who, they believe may have problems on the basis of the information held by them, be followed. Thus, the new comprehensive code seeks to highlight a commitment that the banks will lend responsibly and also help any customer, who can be seen as a prospective victim of financial difficulties. This mechanism surely accentuates the concept of consumer protection in the banking sector. The code also seeks to prohibit a closure of the customer's account, current or savings, merely because a complaint has been lodged by them.

Analysis of the various judgments of the Consumer Courts reveals that they have not only been awarding the value of the goods or services for the defect and deficiency in service but also the compensation for the mental agony and harassment. In a battle against the injustice, a consumer is a small fry against the monolith bank. But the justice seems to have prevailed under the aegis of the Consumer Protection Act. The message seems to have rightly been taken by the Courts below from the landmark judgment rendered by the Supreme Court in *Luck now Development Authority vs. M.K. Gupta* [1994 (1) CPR 569] where the Apex Court has remarked — "Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are account accountable for their behaviour before authorities created under the statute like the commission or the courts entrusted with responsibility of maintaining the rule of law. Each hierarchy in the Act is empowered to entertain a complaint by the consumer for value of the goods or services and compensation.

The word "compensation" is again of very wide connotation. It has not been defined in the Act. According to the Dictionary it means, 'Compensating or being compensated; thing given as recompense; In legal sense it may constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury or loss. Therefore, when the Commission has been vest with the jurisdiction to award value of goods or services and compensation it has to be construed widely enabling the Commission to determine compensation for any loss or damage suffered by a consumer, which in law is otherwise included in wide meaning of compensation. The provision in our opinion enables a consumer to claim and empowers the Commission to redress any injustice done to him. Any other construction would defeat the very purpose of the Act. The Commission or Forum in the Act is thus entitled to award not only value of the goods or services but also to compensate a consumer for injustice suffered by him". The need of the hour is thus a separate legislation to take care of the varieties of problems faced by the consumers in this regard and remedying them. It will provide more teeth to the area of consumer jurisprudence, safeguarding their interests. There is also a dire need of enlightening the consumers, particularly in the rural areas, about the rights and possible remedies they have against a bank in the cases of deficiency of services provided by them.

<sup>88</sup> *Chaman Lal Grover vs. Area General Manager, New Bank of India*, 1993 (3) CPR 558: III (1993) CPJ 290 (NCDRC)

<sup>89</sup> *A.N.Sharma vs. Divisional Manager, Syndicate Bank*, 1992 (1) CPR 442 at 444

<sup>90</sup> 1996 (4) SCC 704

<sup>91</sup> *Franco Footwear Factory vs. State Bank of Patiala*, 2001 (3) CPR 110 (NC)

<sup>92</sup> AIR 1994 SC 787.

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