

## Consumer Cases on Banking

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## **Executive Summary**

The Disputes Redressal Agencies (District Forums, State Commissions and National Commission ) under the Consumer Protection Act,1986 adjudicate upon the complaints of consumers relating to defaults in products and deficiency in service. 'Service' as defined in the Act includes the provision of facilities in connection with banking.

2. The decisions of the State Commissions, the National Commission, and the Supreme Court (as the final authority), on different aspects of banking and other services offered by banks have been reported in various law journals. A short compilation of the decisions from 1995 to 2005 has been made with a view to giving a brief account of the principles laid down in these cases. Each case is given separately along with the citation for enabling access to the full text of the case, whenever necessary.

3. The principles laid down by the various decisions of the Consumer Commissions and the Supreme Court and included in the compilation can be summarized as under:

### **(i) Failure /Delay in repaying deposits**

Withholding of the amount due on a fixed deposit after its maturity, amounts to deficiency in service. Delayed payment of term deposits on maturity also amounts to deficiency in service. The principle applies to cases of inordinate delay in payment of proceeds of premature encashment of deposits as well.

### **(ii) Payment and Collection of Cheques/Drafts**

Wrongful dishonour of cheques due to the negligence or mistake on the part of the bank has been held to amount deficiency in service. Dishonour of DDs due to the lapse or omission on the part of the officials of the bank like non-affixation of signatures, failure to mention code number etc. have also been held to be amounting to deficiency in service.

### **(iii) Loans and Advances**

#### **Refusal to grant loans**

Matters concerning the eligibility of parties to any credit assistance, viability of the project and continuation of the credit facilities or the operation of the account by any party, are within the discretion of the financial institution/bank depending upon various factors like financial discipline and past history of borrower and his ability to pay the loan , if such discretion is exercised *bonafide*. Even though the bank has the right to refuse or grant loan, causing undue delay in releasing the installments of the sanctioned loan might be held to amount to deficiency in service.

#### **Interest**

Charging interest at a rate higher than the rate stipulated in the loan agreement would also amount to deficiency in service. Interest cannot be claimed in a consumer case under section 34 of the Code of Civil Procedure as these provisions are not applicable .However, based on the underlying principles of justice, equity and good conscience, the Forums and Commissions can grant appropriate interest in each case. Although banks cannot give interest exceeding that prescribed

by the Reserve Bank, they have a duty to inform the depositor about this, the failure of which, would amount to deficiency in service.

#### **(iv) Security for loans**

##### **Non-return of documents**

Banks are liable for deficiency in service in cases where they fail to return the security documents even after repayment of the whole loan.

##### **Insurance of security**

Banks are not bound to insure the security taken for a loan unless the loan agreement provides for insurance and as such, failure to insure does not amount to deficiency in service. Further, merely because the owner of a vehicle has given the cheque for insurance premium to the bank along with monthly installment of loan taken for purchase of the vehicle, liability arising out of an accident to third parties cannot be shifted to the bank.

#### **(v) Lien**

Banks have a right to exercise lien under section 171 of the Indian Contract Act against the dues from constituents/customers. However, the banks cannot exercise lien over the personal account of a customer on the ground that money was due to the bank in another account where he acts in a different capacity, if there is no agreement to that effect.

#### **(vi) Bank Guarantee**

The failure of a bank to honour bank guarantee is a deficiency in service. However, in cases where a demand was made not in accordance with the conditions of the guarantee and therefore, the guarantee was not honoured, it would not amount to deficiency in service.

#### **(vii) Locker**

A bank is liable for loss of articles kept in the locker with the bank. The bank cannot contract out of its responsibilities in relation to a locker by describing the agreement as that between a landlord and a tenant. When locker was found emptied and contents lost, the banks have been held liable for deficiency in service. However, in some such cases, the disputes were left open to be decided by the Civil Court after taking detailed evidence.

#### **(viii) Security in bank's premises**

A bank is responsible for deficiency in service for lack of security in its premises and loss caused to customers accordingly. This is on the ground that ensuring the safety of the money to be deposited and/or withdrawn inside the bank premises is implicitly a part of the service rendered by a bank to a customer.

#### **(ix) Consumer Forum- Jurisdiction and Procedure**

A consumer complaint may not be entertained by the Consumer Forums when the matter is sub-judice before a competent Civil Court.

A person who acts as surety for another and does not hire/avail service from the bank, is not a consumer of the bank and therefore, his complaint may not be entertained .

**(x) Voluminous Evidence- Complicated Questions of Law and Fact**

In cases involving complex questions of facts and interpretation of laws and rights and obligations of parties under various Statutes, the complainants have to seek redressal of their grievances before Civil Courts not the Consumer Forum. Similar is the case when elaborate evidence is required to be taken.

**(xi) Limitation**

A bank may exercise lien under section 171 of Contract Act even where the debt is barred by limitation.

A consumer can initiate proceeding against a banker for non-release of securities even after the expiry of the period of limitation. This is based on the principle that the banker holds any goods as security from a customer as trustee and the security is not intended to be transferred to him, nor can he acquire any title to it, except on the basis of legal proceedings.

**(xii) Other Banking Services**

Operation of Account

The stoppage of operation of account of a partnership firm on account of an arbitration award and the subsequent legal opinions obtained by the bank would not amount to deficiency in service.

Closing of account

Closing of account without the instructions of the account holder would amount to deficiency in service.

Refusal of Cheque book

The refusal to provide cheque book facility to a customer on the ground of not maintaining the minimum balance in his account may not amount to deficiency in service.

Service charges

An increase in charges levied by a bank for its services does not fall within the provisions of the Consumer Protection Act. A bank may levy charges for issuance of MICR cheques, so long as it is not against the directives of the Reserve Bank. This cannot be termed 'unilateral' and taking the consent of each customer does not arise.

Rendering of account

A demand for rendering of accounts of transactions with a bank is not within the scope of the provisions of the Consumer Protection Act.

Succession Certificate

It has been held that there is no deficiency in service on the part of a bank in insisting that the children of a deceased account holder should produce a succession certificate before releasing the amount to them in accordance with the Succession Act and the Reserve Bank guidelines.

Insistence on denomination of notes

A customer cannot as of right insist for a particular denomination of notes, as the notes provided by the bank are legal tender and therefore, no deficiency in service in failing to comply with the demand.

Forgery of Power of Attorney

Once a registered power of attorney is produced before the bank, the bank does not have to make any further verification of signature. As the bank is not expected to verify signature, it cannot be held responsible for negligence in verification of signature. The failure in respect of an act which does not form part of the service cannot be considered as a deficiency in service.

#### Compliance of RBI directions

It has been held that the Consumer Forum may not direct the banks to make payment to a depositor contrary to the directions issued by RBI under section 35A of the Banking Regulation Act or allow the directions issued by RBI to be flouted.

#### Vicarious Liability

A bank is bound by the act of negligence of its staff during the course of employment. Thus where the bank cashier fails to account for the money deposited with him at the counter, the bank would be liable.

#### Rude behaviour

A bank may be held liable for deficiency in service owing to rude behavior of its officials and be ordered to pay compensation for the mental agony and discomfort caused.

#### Notice before auction

A notice to pay or face auction without making any earlier demand for repayment of loan and without giving date of auction was held to constitute deficiency in service.

#### Non-return of dishonoured cheque

The failure to return a dishonoured cheque has been held to be deficiency in service where the complainant was unable to take action against the drawer without the instrument.

#### Strike

A bank may not be liable to pay compensation for suspension of business due to illegal strike by the employees and when no loss is caused due to the negligence of the bank. However, in a case when the strike by award staff was not such as to paralyse work and when the officers and other employees were willing to work and still the salary accounts were not credited, it was held that the bank was liable for deficiency in service.

### **Bank Guarantee :**

A complaint was filed alleging deficiency in service in not paying the amount of bank guarantee on demand. The defense plea was that the demand was not in accordance with terms of guarantee. It was held that where bank guarantee provided conditions for its invocation then Bank would not be deficient in service in not making payment under the bank guarantee if conditions were found not fulfilled. ***M.P.Minerals Ltd Vs. Bank of India & ors - 2003 (1) CPR 96 (NC)***

The bank was alleged to have failed to issue bank guarantee despite sufficient security and the complainant suffered financial loss. It was held that the non-issuance of bank guarantee despite security deposit with the bank would amount to deficiency in service and the complainant would be entitled to interest on that security amount. ***M/s.Anand Lubricating & Pneumatic Systems Ltd. Vs. State Bank of India - 2003 (2) CPR 53***

### **Banking Service**

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 1991(1) CPR 216 (NC).***

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 1991(1) CPR 198 (SCDRC- AP, Hyderabad).***

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 Kamblu Vs. Nilesh Vasant Borkar and Ors 1991(1) CPR 571(SCDRC- New Bombay, Maharashtra).***

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) 1991(2) CPR 447 (SCDRC- Madras).***

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 1991(2) CPR 617 (SCDRC- Kerala).***

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 1991(2) CPR 473 (SCDRC-Kerala)***

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 1991(1) CPR 513 (SCRDC- Goa).***

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 depositors counterfoils of the pay-in-slips. ***Corporation Bank & Anr. Vs. M/s Filmalaya Pvt. Ltd -1992(1) CPR 445 ( NC).***

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 – 1992(1) CPR 534 (NC).***

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 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. -1992(2) CPR 128 (NC).***

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 – 1992 (1) CPR 15 (SCRDC – Raj)**

The services 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 – 1992 (1) CPR 329 (SCRDC – Kar)**

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.- 1992(2) CPR 199 ( SCRDC – Orissa).**

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 -1992(2) CPR 253 (SCRDC – Mad) .**

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 - 1992(2) CPR 567 ( SCRDC – Delhi)***

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. - 1992(2) CPR 603 (SCRDC – Ker) .***

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 - 1992(2) CPR 645 ( SCRDC – Bihar).***

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. 1993(1) CPR ( I) 225 (NC)***

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 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 (1993(2) CPR 109) (NC)**

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 ensured 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. 1993(3) CPR 31 (NC)**

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 1993(3) CPR 209 (NC)**

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 1994 (3) CPR 547) (SCDRC- Karnataka)**

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, CPR(1) 756 (SCDRC - Tamil Nadu)**

The complainant filed the a against the opposite party/appellant under section 2(1)g, 14,19of consumer protection Act for deficiency in banking service .It was held that the bank advanced loans to the complaints who are agriculturist and who wanted to install lift irrigation system. They layout of the scheme was prepared by Mr.Autade,a Engineer(not a employee of the Bank) which was approved by the Bank. The Bank cannot be held responsible as the scheme was prepared by the

Consulting. Appeal allowed. **Maharashtra State Co-Operative Agricultural and Rural Development Bank Ltd. Vs. National Forum of Consumers Education & others, CPR 1995(3) 24( NC)**

The complainant applied for conversion of loan in Indian rupees and hedging /forward booking against exchange Rate fluctuations. He filed the captioned complaint under section 2(g) and 14 (1)(d) for deficiency in service for delaying two years by (RIICO) in arranging forward foreign exchange rate fluctuation. It was held that hedging was one of the devices to be adopted in the loan transaction as per the policy of the IDBI and the Central Government, and it was obligatory on the part of the opposite parties to secure hedging of the complainant's loan as early as possible. Further, it was held that RIILCO is liable to compensate complainant by a sum of Rs.50,07,609/- avoidable increase in principal amount on account of depreciation of Rupee with interest at the same rate which it is charging the borrower till the date of the payment of the compensation of Rs.50.07 lakhs. Complaint allowed. **M/s. Global Granimarmo Ltd. Vs.Rajsthan State Industrial Development and Investment and Investment Corporation Ltd.& another (RIICO) CPR1995(1) 432(NC)**

The complaint was filed under Section 2 & 14 of Consumer Protection Act. It was the case of the complaint/respondent that the Bank withdrew the amount in an account without instructions of the account holder and closed the account. It was held that the Bank cannot close an account and remit the amount in credit of somebody else even if, unauthorized or wrongly opened, as it is not at all function of the bank to find out as to whom the money in that account actually belong or from which source the same is collected. Appeal filed by bank dismissed. **Chief Manager, Punjab & Sind Bank & Anr. Vs. Punjab & Sind Staff Organisation, CPR(3) 1995 309 (SCDRC - Punjab)**

The complaint was filed under Sections 12 & 17 of Consumer Protection Act for deficiency in banking service. The complainant Association opened an S.B. Account in opposite bank. A dispute arose regarding operation of the account and civil proceedings pending. The opposite bank had informed complainant association that they would not permit operation of account without production of specific order of the Civil Court. It was held that act of Branch Manager permitting operation of account and allowing withdrawal of Rs.2 lakhs within 36 days is negligence and deficiency in service. Complaint allowed with cost. **Bangalore Water Supply and Sewage Board Employees' Association Vs. The Manager, Syndicate Bank,CPR(3) 108 (SCDRC - Karnataka)**

The question whether the bank acted in contravention of the special instructions issued by the partners of a partnership firm by honouring cheques signed by one of the partners only and that too after dissolution of the firm, was answered in the negative, on the evidence produced in the case wherefrom it was found that the partnership had authorized that "partners at serial No. 1 or 3 shall operate the bank account with his signature" meaning thereby that signature of either of the said partners is sufficient and that the bank received a copy of the dissolution deed subsequent to the date upto which the account was operated. As such, it was held that there was no deficiency in service on the part of the bank. **Branch Manager, Osmanabad Dist Central Co-op Bank Ltd., and Anr., v. Ramachandra Desharath Mane & Ors. 1996 (1) CPR 1(NC)**

The Order passed by the State Commission allowing the complaint on the ground that the bank had debited the account of the complainant with interest amounts due to the bank without following the principles of natural justice, was set aside by the NC, for the reason that the guidelines governing such interest rate levy etc., do not contemplate issuance of a Show Cause Notice to the complainant. The matter was remitted to the State Commission to pass a proper order after hearing the parties and considering all the documents produced by the parties. ***Syndicate Bank & Ors., v. M/s. Bharat Appliances Corporation & Ors. 1996 (2) CPR 212 (NC)***

The question whether a beneficiary under a Bank guarantee could be termed as a consumer of the bank was answered in the affirmative and accordingly, by not making payment within one month of invocation of the bank guarantee, the bank was held liable for deficiency in service and was also directed to make good the shortfall in the amounts required to be paid under the bank guarantee. ***Union Bank of India & Anr., v. M/s. Seppo Rally OY & Anr. 1996 (2) CPR 221 (NC)***

Where the salary cheques were not cleared by the Service branch of the bank due to disturbances in the Ahmedabad City (Force majeure), the same was held not amounting to deficiency of service on the part of the bank. ***Madhubhai R. Patel & Ors., v. SBI & Anr. (pertains to November salary) 1996 (3) CPR 51 (NC)***

Where the complaint sought for exemplary compensation on the ground that the complainants suffered mental agony etc., due to issuance of fake currency by the bank, the State Commission gave a nominal compensation, the same is in order in the facts of case when malafide intention and deliberate act of gross negligence on the part of the bank is not established. ***H.R. Davesh & Ors., v. PNB 1996 (3) CPR 191 (NC)***

Non-honouring of bank guarantee was held to be deficiency of service on the ground that honouring of the bank guarantee was a contract unqualified / independent of the underlying contract between the complainant and the contractor in whose favour the bank guarantee has been issued. The decisions of the Supreme Court in M/s. Tarapur and Company Madras case (AIR 1971 SC 891) and Larsen and Toubro Ltd., v. MSEB (AIR 1996 SC 334) were followed. The bank was directed to honour the bank guarantee issued in favour of the complainant (State), however it limited it only to the first bank guarantee which was an unconditional guarantee and the complainant was held not entitled to invoke the second bank guarantee given towards loss/damage caused or likely to be caused in the absence of the complainant invoking the same on the existence of such grounds. ***State of U.P. through Executive Engineer v. Corporation Bank & Anr. 1997 (1) CPR 118 (NC)***

Where the bank acted contrary to the terms of agreement entered into between the bank and the complainant and released the goods in favour of a third party without realizing all the amounts from that party, the bank was held liable for deficiency in service. However the complainant was restrained from recovering the amount the bank if the recovery is already made from that third party. ***The Manager, State Bank of India v. M/s. Chemist Products & Anr. 1997 (1) CPR 156 (NC)***

Where the cheque book facility was refused to the Appellant - customer (Complainant before the District Forum) on the ground that the minimum balance in his account was not maintained at Rs. 250/- as required by the rules of the bank, it was held that there was no deficiency in service on the part of the bank in such refusal. **Harindra Nath Singh v. Central Bank of India 1996 (1) CPR 384 (SCDRC-Bihar)**

The transfer of amount from the account of the complainant - appellant firm by SBI to the account of another concern owned by the brother of a partner in the complainant firm, allegedly on the basis of a telephonic call by the said partner, was held to be deficiency in service on the part of SBI. The order of the District Forum dismissing the complaint filed by the complainant - appellant firm was set aside and directions were issued to SBI to restore the entry in favour of the complainant firm and the complainant firm, in the absence of any evidence to show dishonour of cheques issued by the firm, was awarded a token compensation of Rs. 1000/-. **M/s. Vijay Laxmi General Store, through partner v. SBI 1996 (1) CPR 410 (SCDRC-Rajasthan)**

Where the complainant was not provided with the withdrawal slip for the reason that she did not bring her pass-book, the same was held not to be a deficiency of service on the part of the bank when the rules required that a withdrawal slip is to be issued to a customer only on production of the pass-book. The order passed by the District Forum allowing the complaint, was set aside and the complaint was dismissed. **Corporation Bank v. Smt Nirmala Baliga 1996 (1) CPR 450 (SCDRC-Thiruvananthapuram)**

There is no deficiency in service on the part of the bank if it refuses to release the amount lying in the account of its customer who has since expired, to his children in the absence of a succession certificate entitling such child / children to the estate of the deceased; the same being in accordance with the provisions of Section 214 of the Succession Act and guidelines issued by the Reserve Bank of India. The order of District Forum allowing the complaint, was set aside **Dhenkanal Gramya Bank v. Pradipta Kumar Nanda 1996 (1) CPR 479 (SCDRC-Orissa)**

The issue whether a customer going to a bank for having the cheque encashed can insist on the payment of the amount of the cheque in the currency not of the denomination of Rs. 100/- as a matter of right or he will have to accept the amount of cheque in Rs. 50/- rupee currency notes as offered by the Cashier, was answered in favour of the bank on the ground that the complainant had neither any legal right nor justification to refuse the payment of the cheque in Rs. 50/- denominations, the same being legal tender. There being no deficiency in service, the appeal against the order passed by the District Forum dismissing the complaint, was dismissed. **Prestige Bakelite Moulders v. The Oriental Bank of Commerce. 1996 (1) CPR 567 (SCDRC-Haryana)**

Where the bank credited the remittances in NRE Account instead of FCNR account although the correspondence addressed by the complainant clearly indicated the intention of the complainant that the amounts should be credited to the FCNR account, it was held that the bank is liable for deficiency in service, and order of the District Forum to that extent was

confirmed. As regards the compensation awarded by the District forum, the matter was remitted back to it for considering the said issue afresh. ***The SBI v. Smt. Rosy Arakal Raphael & Anr. 1996 (2) CPR 97 (SCDRC-Kerala)***

The appeal filed against the order of the district forum directing the bank to pay interest for the period for which there is a delay in crediting the account of complainant was dismissed for the reason that the bank was clearly in error in sending the payment proceeds to the Srinagar Branch of Jammu & Kashmir Bank Ltd., instead of the Chandigarh branch of the Jammu & Kashmir Bank Ltd. ***The Manager, State Bank of Patiala v. Samrat Forgings Ltd., & Anr. 1996 (2) CPR 361 (SCDRC-UT of Chandigarh)***

There is no deficiency of service in closing down the account unilaterally by the bank if the account is not being operated as per the Rules and when the complainant has been intimated of the intention of the bank to close down the account. ***V.P George v. Chairman, The Federal Bank Ltd., & Anr. 1996 (2) CPR 393 (SCDRC-Kerala)***

Where the bank failed to act on the instruction of the complainant to debit his savings account to the extent of the loan installment falling due every month and subsequently charged interest on one such installment which was not debited by it, more so when the savings bank account had sufficient funds, the bank was held liable for deficiency in service. ***The Catholic Syrian Bank Ltd., v. Thomas 1996 (3) CPR 305 (SCDRC-Kerala)***

The bank was held liable for deficiency in rendering service to the complainant by not allowing the complainant to withdraw money from his savings account, even though the balance standing in the name of the complainant was sufficient, on the ground that the withdrawal slip was not accompanied by the pass book as was required by the bank rules. ***Abhay Singh v. Co-operative Bank, Lucknow 1996 (3) CPR 408 (SCDRC-UP)***

Where the bank did not pay the amount to the complainant under the bank guarantee, the bank was held liable for deficiency of service and although during the course of the proceedings the bank paid the amount covered under the bank guarantee the State Commission awarded interest at the rate of 15% from the date on which the bank guarantee was invoked till the date of payment on the ground that the bank has been deficient in providing service. ***The Tamil Nadu State Construction Corpn. Ltd., v. The Tamil Nadu Mercantile Bank Ltd. 1997 (1) CPR 1 (SCDRC-TN)***

The bank is deficient in providing service in not forwarding copies of the invoice to the complainant to enable him to make payments to M/s. Philips India Ltd., for the goods purchased by the complainant from M/s. Philips India Ltd. The complainant was held to be consumer being the beneficiary of M/s. Philips India Ltd., and all the payments along with commission of the bank was to be paid by the complainant as per the deferred payment under the authority of M/s. Philips India Ltd. The State Commission drew support from the cases of Taraben N. Doshi and others v. M/s. Madhan & Co., and another (1994 (3) CPR 295 (Madras SC)), Lakshminarayana v. Divisional Electrical Engineer and another ((1991) CPJ 303 (AP SC)) and M/s. Mohindra Gas Enterprises v. Jagdish Poswal and others (I(1993) CPJ 199 (NC)). ***State Bank of India v. Chandra Nath Sah 1997 (1) CPR 78 (SCDRC-UP)***

The complainant addressed a letter to the bank stating that the cheque-book containing certain unused signed cheque leaves was misplaced and that the bank should stop payment on the said cheques presented thereafter and that the complainants intend to withdraw the amounts using withdrawal slips only. Subsequently, the complainant received two notices under section 138 of the Negotiable Instruments Act, 1881 on the grounds that cheques issued by the complainant have been returned with the endorsements "insufficient funds" and "refer to drawer". It was held that there was no deficiency on the part of the bank as the said endorsements related to the true state of affairs of the complainant's account.

***M/s. Vijay India Construction v. State Bank of Hyderabad 1997 (2) CPR 229 (SCDRC-TN)***

Where the bank refused to pay interest on the FCNR account maintained by the complainant for the period for which it was so maintained on the ground that it was prematurely withdrawn and that premature withdrawal of the amount would not entitle the complainant to any interest, the State Commission held that, in the absence of any evidence to show that the complainant was informed of the said condition at the time of opening the FCNRA, the bank is liable to pay interest and the action on the part of the bank in not paying interest in such circumstances amounted to deficiency in rendering service to the complainant. ***T.P. Vijayan v. The Branch Manager, The British Bank of the Middle East 1997 (3) CPR 252 (SCDRC-Kerala)***

Where the records showed that the bank made mistakes, on more than one occasion, in crediting / debiting the account(s) of the complainant company and corrected the same after considerable lapse of time, the bank was held liable for deficiency of service in as much as such frequency of mistakes within a span of an year or so, affected the confidence in the banking system. ***Assam Import Agency Ltd., v. Chief Manager, UCO Bank & Anr 1997 (3) CPR 314 (SCDRC-Rajasthan)***

The appeal was directed against the order of the State Commission, Maharashtra whereby the claim of the complainant was allowed with interest and costs. The appellant had provided a continuing bank guarantee facility to the complainant after taking a deposit of Rs.50,000/- as security. The bank guarantee covered various transactions between the complainant and the beneficiary, upto a limit of Rs.1.5 lakhs. The bank paid the guarantee amount to the beneficiary when the same was invoked and filed a suit for getting the balance amount due from the complainant after adjusting the fixed deposit amount. The State Commission proceeded on the ground that the guarantee was for a period of one year, whereas the record did not indicate any such restriction. Moreover, the term of the fixed deposit was five years. It was observed by the National Commission that in the suit filed by the appellant against the complainant-Respondent which was still pending for disposal all questions of the relationship between the parties that the guarantor and its customer could be gone into and if so advised the complainant-Respondent could have even raised a counter claim. IN the light of the peculiar facts and circumstances of the case, the order of the State Commission was set aside. ***Branch Manager, Bank of Maharashtra v. Deepali Enterprises 1998 (3) CPR 1 (NC)***

The complainant's father-in-law had pledged gold ornaments with the bank for a loan and the loan was discharged by the complainant after the death of the father-in-law. Bank insisted on succession certificate for returning the ornaments. It was held that it cannot be said that there is any deficiency of service on the part of the bank in insisting on production of succession certificate by the complainants, as under Muslim Law, it cannot be said that they are only the legal heirs. **Shaik Rahim & Others v. Manager, State Bank of India & Another 1998 (3) CPR 237 (SCDRC - Andhra Pradesh)**

Instead of sending the amount to National Commercial Bank, Riyadh as instructed by the complainant what was done by the appellant bank was to send money through the Arab National Bank which committed negligence in transferring the amount to the National Commercial Bank, Riyadh, who were only acting as an agent of the appellant bank and in the circumstances it cannot be said that there is no deficiency of service on the part of the appellant. In the circumstances, the State Commission did not find any error in the order of the District Forum directing the appellant bank to pay interest at the rate of 18 % and also to pay costs of Rs.1000/-. **Senior Branch Manager, Bank of Baroda v. Feroz Khan 1998 (3) CPR 538 (SCDRC - Kerala)**

The complaint pertains to a loan taken on the basis of a forged power of attorney deed. It was observed that once a registered power of attorney deed is produced before the bank, the bank does not have to make any further verification. It has to act upon the power of attorney deed unless there is prima facie defect. If fraud is seriously suspected it may even have to alert the police. Otherwise the bank is not expected to sit on judgment over a deed which was properly registered. For the reason that in this case the bank has stated that they have verified the signature which it was not expected to do, the bank cannot be held responsible of negligence, if ultimately there was some defect in the document. Failure in the act which does not form part of the service, by no stretch of imagination be considered as a deficiency in service. Any way since the third opposite party presented herself before the bank on those occasions on behalf of the complainant, when she applied for loan with a power of attorney deed which was prima facie good, the bank has committed no deficiency in service in allowing the loan. **E. P. Saraswathi v. The Branch Manager, Indian Overseas Bank & Anr 1998 (1) CPR 642 (SCDRC - Pondicherry)**

Certain gold ornaments sold by the opposite party bank in auction were purchased by the complainant. The complainant became suspicious about the genuineness of the ornaments and the same were reauctioned when the complainant failed to take delivery. The bank had no right to prevent the complainant from availing reasonable opportunity for examining the ornaments before the sale was completed, since nothing in the conditions set forth in the notice of auction took away the right of bidder to reasonable inspection of the gold ornaments. It was held that by making the second auction and appropriating the sale proceeds thereof, the bank has sold another persons property without his consent. The bank was held guilty of negligence in not dealing with the transaction in accordance with the law and it was held liable to pay compensation for the loss sustained by the complainant on account of the retention of the money and for mental agony. **Jugal Kishore Dhandhanian v. The Federal Bank Ltd. & Anr 1998 (1) CPR 417 (SCDRC - West Bengal)**



The complainant has alleged that the bank has debited certain amount without any authority or permission. The District Forum had dismissed the complaint and hence this appeal. It was found that the facts stated by the bank in its written statement were not proved by filing any evidence before the District Forum and that the District Forum failed to consider the evidence which was filed by the complainant-appellant which should have been done before coming to any conclusion. The order of District Forum was set aside and the case was sent back to the District Forum for reconsideration. ***Vijay Singh v. Allahabad Bank 1998 (1) CPR 8 (SCDRC - Uttar Pradesh)***

The complainant availed a loan from the bank for purchase of chicks and executed a hypothecations agreement. The Bank deducted money from the account of the complainant and paid premium towards insurance of chicks. When the chicks died, the insurer denied payment on the ground that the proposal was incomplete and hence the complainant sought a direction to the opposite parties to pay compensation. It was observed that having debited the amount and undertaken to insure it would not be open to the bank to say that there is no deficiency as the obligation is primarily on the borrower to take insurance policy. Further, the agreement provided that the bank has got a right to take the insurance if the borrower fails to do so. In this case the bank has undertaken that responsibility by debiting the premium amount from the account of the complainant. ***Bank of India v. Sathyaseelan & Ors 1998 (1) CPR 513 (SCDRC - Kerala)***

The bank paid the guarantee fee to DICGC for the advances made to the complainant and debited the amount from the account of the complainant on the basis of an agreement to that effect. The circular issued by DICGC showed that the burden of fee at the rate of 1.5 % was to be absorbed by the bank in case the rate of interest charged exceeded 16%. The State Commission had decided the case in favour of the complainant and ordered for refund of the guarantee fee. It was held that the bank's contention that the average rate of interest charged by it was between 10.78% and 13.99% and by adding 1.5% towards fee it would not cross the 16% could not be rejected straight away and the matter need to be looked into afresh. The order of the State Commission was set aside. ***Bank of India, Bombay & Ors v. Dharampal Kansal, Ludhiana and Ors. 1998 (2) CPR 29 (NC)***

The complaint was filed for a direction to the bank to allow the complainant to operate the account without insisting for any fresh introduction, as the earlier introducer had withdrawn his introduction. The District Forum disposed of the complaint in favour of the complainant. However, no compensation or costs were awarded and hence the complainant has filed this appeal for award of compensation. Since the bank failed to appear even after repeated notices were issued, it was proceeded ex parte. After recording a finding with respect to the actual loss suffered by the appellant an order was passed granting Rs. 500/- towards compensation and costs. ***Federation of the Punjab State Consumers' Organisations (Regd.) v. The Patiala Central Co-operative Bank Ltd. & Anr 1998 (2) CPR 1 (SCDRC - Punjab)***

The complainant had availed a loan from the bank for purchasing a boat and the boat was insured with the second opposite party (insurance company). When the boat was destroyed in rioting the insurance company refused to pay the claim on the ground that riots were not covered by the policy. The District Forum held that the bank had an obligation to cover all the risks and directed to pay Rs.25,000/- with interest to the complainant and hence this appeal. It was observed that apart from a vague statement in the complaint that the bank gave assurance that all risks including the risk of riot are covered by the policy, no evidence was produced in support. It was held that the order of the District Forum cannot be sustained. ***The Manager, State Bank of Travancore v. Vincent & Anr. 1998 (1) CPR 32 (SCDRC - Kerala)***

When the complainant sought transfer of his account to another place, he was made to sign on different papers including withdrawal slip. An amount of Rs.40,000/- was withdrawn from the account. The District Forum dismissed the complaint on the ground that allegations of fraud levelled cannot be gone into in summary proceedings and hence this appeal. It was observed that the complaint can be disposed of if finding was recorded that Bank was deficient in rendering service and the complainant was put to loss due to the negligence of the bank. The order of District Forum was set aside and compensation was awarded. ***Sanjay Chopra v. Manager, Punjab National Bank & Ors. 1998 (1) CPR 358 (SCDRC - Punjab)***

A total of six transfers were made from the complainant's account without her knowledge and hence this complaint. The bank's contention that three transactions were made on the basis of authority letter signed by the complainant, the signatures of which were confirmed by the handwriting expert. The complainant did not offer herself for cross examination on the facts stated in the affidavit, though the bank wanted her to. However, it was found that the other three withdrawals were without any authorisation and therefore the bank was liable to credit those amounts with interest and damages were also awarded for mental sufferings. ***Geetha Nayar Menon & Anr. v. State Bank of India & Anr. 1998 (1) CPR 325 (SCDRC - Karnataka)***

The complainant was not allowed to withdraw money from her savings bank account on the ground that there was some enquiry. The marriage of the complainant's daughter was postponed due to lack of funds. The District Forum decided the case in favour of the complainant and hence this appeal. The State commission observed that there was gross negligence and the deficiency in service on the basis of evidence on record and thus the District Forum's order was confirmed. ***Manager, Andhra Bank & Anr. v. Smt. Suram Tirupathamma 1998 (1) CPR 396 (SCDRC - Andhra Pradesh)***

The complainant had alleged that certain amounts were withdrawn from his account by way of withdrawal slip with forged signature. Relying on the position of law stated by National Commission in Laxmi Vilas Bank Ltd and Another v. P. R. Krishnan & Another I (1995) C.P.J. 43 (NC) it was held that the award of compensation of Rs.5000/- with interest of 15% by the District Forum is without jurisdiction and the same was quashed. The uncharitable remarks made by the District Forum as against the Manager to be expunged and the direction for enquiry to be deleted. ***Branch Manager, State Bank of India v. Nakul Chandra Bharali 1999 (1) CPR 204 (SCDRC- Assam)***

The complainant was aggrieved by the release of the amount of the bank guarantee amount to the beneficiary. The complainant's contention was that the bank should have verified/satisfied whether any loss was suffered by the beneficiary. It was held that the payment made by a bank under a bank guarantee which was payable on demand cannot be a case of deficiency of service even on allegations that the bank ought to have verified whether any loss or damage was suffered by beneficiary or not. The appropriate remedy for the complainant would be to initiate appropriate proceedings in the Court of competent jurisdiction for alleged illegal encashment of bank guarantee. ***Packwell Printers v. Union Bank of India 1999 (3) CPR 401 (SCDRC - Madhya Pradesh)***

The appellant had taken a car loan from the bank and also obtained a policy of insurance in respect of the car. The cheques for insurance were also handed over to the bank for passing on the cheque to the insurance company for the subsequent years insurance. The car met with an accident and a third party claim for a huge amount was made. It was found the insurance was not taken. It was observed that under section 146 of the Motor Vehicles Act, 1988 there is an obligation on the part of the owner of the vehicle to take out an insurance policy. Merely because owner of the Vehicle passed cheque for insurance premium on to the bank along with monthly instalment of loan obtained to purchase vehicle, liability arising out of accident to third party cannot be visited with the bank. It was observed that the appellant also had certain duties to discharge in the matter of obtaining insurance policy and cannot merely put the blame on the first respondent and he would be liable to compensate the third party victims. ***Pradeep Kumar Jain v. Citi Bank & Another 1999 (3) CPR 60 (SC)***

The complainant's son remitted an amount on 5.04.1997 from abroad to be credited to his NRI account with appellant bank. The remittance was not confirmed till 22.04. 1997. Appellant bank pleaded that non- confirmation was due to failure of computers. The issue is whether this delay on the part of the bank amounted to deficiency in service. The Commission in appeal observed that bank officials could have verified vouchers and cheques received by post or confirmation and could have given correct reply within a reasonable time. It was held that failure of the bank to confirm remittance received from outside country within a reasonable period amounts to deficiency in service. ***The AGM, State Bank of India, Pondicherry & Ors V/s N.Ganesan- 2000(3) CPR 423 SCDRC (Pond)***

The appellant was having open cash credit facility from 1994 with respondent bank and had issued two cheques of which one was encashed and the other was dishonored. Respondent bank averred that appellant had overdrawn account. It was held that when there was credit in favour of the complainant, dishonour of the cheque issued by the complainant could not be said to be bonafide. Respondent bank was held guilty of deficiency of service and appellant was held entitled for compensation. ***Vettivel Pillai V/s Senior Manager Canara Bank- 2000(2) CPR 261 SCDRC (Ker)***

The Respondent, who is an exporter under discounting agreement entrusted documents relating to export and bills of exchange with appellant bank to negotiate the same through a foreign bank. Respondent's allegation is that the bank had failed to collect money in foreign currency indicated in documents but instead collected in local currency, hence there was deficiency in service on the part of the appellant bank and hence a claim for damages was made. In appeal, the Commission held that there was no deficiency of service on the part of the bank as the appellant bank, acting for an on behalf of the respondent, had negotiated the documents as provided under agreement. However the conversion of local currency in U.S. \$ became difficult on account of policy of Sudan Government. It was observed that all that was required to be done under terms of the agreement and under contract had been done by the two banks. **Corporation Bank & Anr V/s Navin J. Shah -2000(2) CPR 13 (SC)**

Dividend warrants were issued by respondent No.1 and were sought to be encashed by respondent No.2, Banker at Panaji. The appellant filed a complaint before the District Forum as the warrants were returned unpaid with the remarks 'No advice' despite a letter dispatched to them by Industrial Financial Branch of SBI, Chandigarh. Respondent No.2 took the defense that they cannot honour dividend warrants unless they received intimation from local Head Office at Mumbai. The State Commission however held that refusal to clear the dividend warrant was deficiency in service as question of respondent No.2 having no authority to honour the warrants could not arise in view of the letter from Industrial Financial Branch of SBI, Chandigarh. Respondent No. 2 and Respondent No. 1 were held to be jointly liable. **Anthony C. Vaz V/s M/s Himachal Futuristic Communication Ltd & Anr -2000(2) CPR 83 SCDRC (Goa)**

The Bank charging, unilaterally without prior information or consent of the Bank Customer, for providing their services by supply of MICR Cheque. Consumer Forum and State Commission held it as deficiency of service but National Commission held that it was related to pricing and not in jurisdiction of the Consumer Fora to decide. The Supreme Court held that the charges by bank for issuance of MICR cheques is not against the directives of the Reserve Bank of India. The question of it being unilateral or with the consent of each customer do not arise. **Brijesh Kumar & A.R.Lakshmanan Vs. Canara Bank & anr - 2003 (1) CPR 296 (SC)**

The complainant withdrew overdraft facility sanctioned to him by the bank only after availing facility to the extent of Rs.1,20,000/-. The facility was availed by the complainant for business purpose. It was held that where complaint alleging banking service deficiency was found connected with commercial purpose, the consumer complaint would not be maintainable. **India Export Corporation & ors Vs. Chairman-cum-MD, Syndicate Bank & ors - 2003 (3) CPR 106 (NC)**

Cash was snatched from the hands of the complainant/appellant at the gate of the respondent bank. The appellant alleges that the absence of security on the gate and the non-provision of steps like siren/alarm system etc. amounts to deficiency in service on the part of the respondent bank. The State Commission held that the non-provision of security on the gate of the bank on the date of occurrence viz. snatching of cash in bank premises cannot be held to be amounting to deficiency in

service hired by complainant. **Col. D.S.Sachar Vs. Zonal Manager, Punjab & Sind Bank, Chandigarh & anr- 2003 (3) CPR 203 SCDRC (Chandigarh)**

The complainant had deposited amount for issue of pay order in favour of a particular firm. However, the said pay order was cancelled by the bank and was issued in favour of another party. It was held that when the bank has acted in good faith in cancellation of bank pay order and issuance of fresh pay order in favour of another party on the request made by Manager of the complainant firm, there would be no deficiency in service **Ratanchand Morarkar Vs. Bank of Maharashtra - 2004 (1) CPR 66 (NC)**

The complainants have purchased a tractor after taking loan from the respondent bank. The respondent bank did not remit the premium amount to the insurance company with which the complainants have insured their tractor as a result of which the loss suffered when the tractor met with an accident could not be recovered from the Insurance company. The issue for consideration is whether non-payment of premium amount by the bank amounted to deficiency in service. It was held that when hire purchase agreement between the bank and buyer of vehicle with the help of bank loan did not contain a condition creating obligation on the part of the bank to remit premium for insurance policy, complainant buyer of vehicle could not hold bank guilty of deficiency in service. **Manohar Singh Chouhan & Ors Vs. Central Bank of India- 2004 (1) CPR 285 SCDRC(MP)**

The issue for consideration is whether the appellant, a banking company can be directed to make payment to the depositor contrary to the directions issued by the Reserve Bank of India under section 35A of the Banking Regulation Act, 1949. It was held that the directions issued by the Reserve Bank of India under Section 35A of the Banking Regulation Act cannot be allowed to be flouted by the bank by order of Consumer Fora. **Mitra Mandal Sahakari Bank Vs. Jugal Kishore Goyal- 2004 (3) CPR 15 SCDRC (MP)**

A complaint was filed before the District Forum alleging deficiency in service on the part of the respondent-bank in withdrawal of amount from joint account (one of the account holders expired) through ATM. District Forum held that withdrawals done after the notice of demise is given is deficiency in service but withdrawal before notice & after death of one of the account holders was due to negligence of the complainant himself. The Commission affirming the decision of the Forum held that for any withdrawal of amount through ATM Card after death of account holder till notice about the death is given to the bank will not amount to deficiency in service on the part of the bank. **Smt.Mitali Saha & anr Vs. ANZ Grindlays Bank- 2004 (1) CPR 128 SCDRC (WB)**

The issue for consideration is whether there is deficiency in service by the bank in levying increased ledger folio charges and increase in minimum balance limit and deducting the same from the respondent without giving him notice. It was held that the increase in minimum balance amount in current account and increase in ledger folio charges brought in operation by bank pursuant to the Reserve Bank of India directions and general policy could not be held deficiency in service on the

ground that individual notice was not given to the consumer. **Branch Manager, State Bank of India Vs. S.K.Lekhi- 2004 (1) CPR 430 SCDRC (Chattisgarh)**

The issue is whether there is any deficiency in service on the part of the respondent bank in deducting certain charges from the appellant without giving notice to the appellant. It was held that where the bank recovered bank guarantee fee/charge in a cash credit account as per stipulation in cash credit agreement even without issuing notice to account holder customer, bank could not be guilty of deficiency in service. **M/s.Gurudev Rice Mill Vs. Central Bank of India- 2004 (2) CPR 182 SCDRC (Chattisgarh)**

### Cheques

The complainant had deposited a cheque with the opposite party bank for collection and to credit the proceeds to its account. The bank after collecting the cheque did not credit the amount to complainant's account on the ground that the amount has been held as margin money for a bank guarantee issued on behalf of the complainant. It was held that bank guarantee could have been issued by the bank only after margin money had been deposited by the complainant, and in the present case the bank guarantee was issued much before the cheque was received by the bank. Further, even after the expiry of bank guarantee, the amount was wrongfully retained as margin money. Therefore, it was held that bank is liable to credit the proceeds of cheque to complainant with interest and also pay exemplary damages. **M/s Sovintorg (India) Pvt. Ltd. Vs. State Bank of India - 1992(1) CPR 833 (NC).**

When cheques given by the complainant to the bank for collection were lost due to negligence of the employees of the bank it was held that such account holder cannot be made to suffer. It was held that a person holding a savings bank a/c with a bank would fall within the definition of consumer under the Consumer Protection Act and the difference in the interest paid to the account holder and the interest earned by the bank by lending his amount is the consideration for the service of the bank. **Branch Manager, Canara Bank Vs. K.R. Hanumatha Rao - 1992(1) CPR 401 (SCRDC – Kar)**

The complainant had current accounts with opposite party bank at their Kumbakonam and Bombay branches. The complainant had drawn a self cheque on its account with Bombay branch and had given to Kumbakonam branch for collection. Though there were sufficient funds, the said cheque was not honoured by the second opposite party (Bombay branch) on the ground that the third opposite party had represented that the said amount was deposited by them in the account of the complainant by oversight and therefore the matter was referred by them to their Central Office. In the meantime, the third opposite party obtained an interim injunction from the Court. It was held that the conduct of second opposite party in withholding clearance of the cheques issued by the complainant when there were sufficient funds in its accounts is in contemptuous violation of the express provision of Section 45ZB of the Banking Regulation Act, 1949. No banking institution should poke its nose into other man's affair. It is not the business of a bank holding a customer's money in the customer's account to enter into or adjudicate upon the claims of a third party. Even if a person had deposited his ill-gotten wealth in a bank, the bank must honour its commitments to the depositor and clear his cheques unless the bank itself has a claim against the depositor or unless there is an interdiction under the authority of law. The default of the second opposite party to clear the cheque for about 17 days (till third party obtained an order of injunction) is a clear case of

deficiency of service and negligence. ***M/s Sakthivadivelu & Sons Vs. Bank of India & Ors.- 1992(2) CPR 288 (SCRDC – Mad)***

When cheques sent by a bank for collection was lost in transit, it was held that bank cannot be held liable for the loss of cheques since it is not lost on account of the negligence of the bank and as per the rules of collection of instruments the bank is not liable for any delay/loss of the instrument. Further, the complainant while requesting the bank to collect the cheque had expressly stated that the collection will be at the complainant's risk and responsibility. Hence there is no deficiency of service on the part of the bank. ***Mrs. Meera. S. Bhat Vs. The Manager, Syndicate Bank 1992(2) CPR 484 (SCRDC-Ker).***

The bank wrongly dishonoured a cheque issued by the complainant. Even though the bank had admitted its mistake it failed to contact the complainant after the cheque was dishonoured. The cheque was payable to GSFC, a financial institution. The Commission held that the complainant has to be awarded damages for such indifference and awarded Rs.500/- towards compensation with interest on 18% on the amount of cheque from the date of cheque till it was again credited in his account. ***Vasudevhai Valjibhai Patel Vs. Manager, Bank of Baroda 1993(2) CPR 422 (SCDRC-Gujarat)***

A Cheque being dishonoured by Punjab & Sind Bank despite sufficient funds in the account of the customer on the ground that dealing official being an old man misread the figures of amount outstanding in the account is a deficiency in service. The District Forum had awarded Rs.5000/- as compensation and Rs.1000/- as costs and the State Commission concurred with the observation of the District Forum. ***Punjab & Sind Bank Vs. Manpreet Singh Sood 1994(2) CPR 627 (SCDRC, Punjab)***

In this case, a cheque for Rs.10,000/- bearing forged signature of complainant was cleared by bank without proper verification of the signature of the complainant. The Bank took the defence that the complainant was negligent in not keeping his cheque book under lock and key and therefore the bank should not be held liable. The District Forum placed reliance on the observations of National Commission in Sarda Ben and Others Vs. Gujarat Gas Supplier and held that the act of the bank constituted deficiency of service within the meaning of Consumer Protection Act. The State Commission concurred with the views of District Forum and relying on the observations of Allahabad High Court (AIR 1938 Allahabad 374) dismissed the appeal of the bank with costs. ***D Sundarson, Senior Manager, Canara Bank & Anr. Vs. R K Singhal 1994(3) CPR 41 (SCDRC- Delhi)***

The complainant/appellant deposited a cheque for crediting it in her account but the bank lost it. The complainant filed the captioned complaint against the bank for deficiency of service. It was held that complainant is entitled to get interest at prevailing rate of 5% from date of deposit of cheque till receipt of the amount. ***Dr.Smt.Vidya Jain Vrs.Manager, PNB, CPR 1995(1) 158 (SCDRC - Madhya Pradesh).***

A complaint was filed for deficiency in banking service for dishonouring of cheque by bank despite sufficient amount in the account. It was held that dishonouring cheque despite sufficient funds due to negligence is a deficiency in service on part of opposite party bank. ***Ishwar Prakash Chopra Vs. State Bank of India, CPR 1995(1) 429 (SCDRC - Maharashtra)***

Where the bank honoured a cheque issued by the complainant, subsequent to the written instruction issued by the complainant not to honour the subject cheque, which fact was not in dispute, the bank was held liable for deficiency in service. ***Harjivandas Valjibhai Patel v. The Manager, Dena Bank, Saraspur Branch 1996 (3) CPR 342 (SCDRC-Gujarat)***

Where the cheque issued by the complainant was not honoured for want of funds as the draft deposited by the complainant was not cleared in time, the bank was held not to be deficient in rendering service when from the facts it was evident that the draft could not be cleared due to intervening holiday and that subsequently the cheque was honoured and the proceeds were realized in time for the purpose for which the cheque was issued. On the other hand the State Commission imposed costs on the complainant for making frivolous demands to bring the complaint within the jurisdiction of the State Commission. ***Mrs. Savita Sukhdev Sawhney v. The Manager, SBI, Punjab University & Ors. 1996 (3) CPR 120 (SCDRC-UT of Chandigarh)***

Where the branch name of the bank was not stamped on the cheque leaves of the cheque book issued to the complainant and consequently the application of the complainant for issue of debentures of a company was rejected, it was held that the bank could not be held liable for deficiency of service in as much as it is the duty of the complainant to see whether all the details of the cheque are written, before issue of the cheque. ***Ishwar S. Rudalal v. The Chief Manager, Planning, Dena Bank and others 1997 (1) CPR 188 (SCDRC-Gujarat)***

Where there was a delay in crediting the account of the complainant with the proceeds of the cheque deposited by the complainant, after having received the telegram confirming clearance of the cheque, the bank was held liable for deficiency of service and also directed the bank to fix responsibility of its own employee(s). ***M/s. Technical Production Corporation v. SBI 1997 (2) CPR 246 (SCDRC-UT of Chandigarh)***

Where the cheque presented by complainant was forwarded for collection and the bank received the intimation of dishonour of cheque, but the cheque itself was lost in transit, it was held that there was no deficiency in service on the part of the bank in not returning the dishonoured cheque nor in not making payment of an amount equivalent to the cheque amount to the complainant. ***UCO Bank, Mangalore v. Shri Manoj Shetty 1997 (1) CPR 593 (SCDRC-Karnataka)***

The complainant alleged deficiency of service on the part of the bank as the bank did not honour the cheques of the complainant on the ground that the over draft limit having been exceeded the cheques could not be honoured. Further, as directed by the complainant, the bank did not close the accounts of the complainant by adjusting the amounts due on the fixed deposits receipts held by the bank as collateral security, for the reason that the complainant did not give a valid



discharge of the FDRs. The NC held there is no deficiency of service on the part of the bank in the said facts and circumstances and set aside the order of the State Commission and dismissed the complaint. ***M/s. Supreme Builders v. The Veer Seva Urban Co-op. Bank Ltd. 1997 (2) CPR 282 (NC)***

Where the District Forum held that the bank has been deficient in rendering service to its customer by allowing withdrawal of a sum of Rs.25,000/- from the account of the complainant without the complainant actually withdrawing the said amount on the said date, allegedly on a forged cheque, the State Commission confirmed the same on the ground that the bank failed to recognize the apparent dissimilarity between the signature on the cheque and the specimen signature, and dismissed the appeal. ***H.P. State Co-op Bank Ltd., v. Smt. Nisha Raj 1997 (3) CPR 410 (SCDRC-HP)***

The cheque presented by the complainant for collection was discounted by the respondent bank. However, the cheque was lost in transit and the complainant was duly advised by the bank to get a duplicate cheque issued. Since the complainant failed to do anything in the matter, the bank debited the amount from the account of the complainant. It was held that there is no deficiency in service and the bank will not be responsible. ***M. Soundarapandian (Deceased) & Ors v. The Manager, The Nedungadi Bank Ltd & Anr 1998 (1) CPR 346 (SCDRC - Tamil Nadu)***

It was held that dishonour of cheque of a customer on the ground of insufficiency of funds when the customer had sufficient balance will obviously amount to 'faulty' and 'imperfect' manner of performance of service. This default is certainly covered in the definition of 'deficiency' in service under section 2 (1) (g) of the Consumer Protection Act. On the quantum of damages, it was found that there was a clear nexus between the default of the respondent bank and the denial of allotment of debentures to complainant and the bank is liable to compensate the loss. ***Ram Kanwar v. Punjab National Bank 1998 (1) CPR 646 (SCDRC - Delhi)***

The complainant had sent a crossed cheque the under registered post to payee. However, the payee did not receive the same and on an enquiry with the bank it was found that the crossing on the cheque was cancelled under the signatures of the drawer and it was made an open cheque and was paid as a bearer cheque. The District Forum had decided the case in favour of the complainant and hence this appeal. It was observed that the District Forum was not justified in comparing the two sets of signatures appearing on the cheque in question and coming to a conclusion that they did not tally with each other on an examination by the naked eye. It has been repeatedly laid-down by the highest Court that the Court should avoid comparing disputed signatures with the admitted signatures and leave such an examination to the experts. The occasions for the Court to apply the naked eye test are rare and only when the Court has been assisted by experts in the matter of comparison of disputed writing with the admitted one. After considering the submissions made by the parties it was held that the bank had made the payment of the cheque according to its apparent tenor in due course and after satisfying itself that the crossing has been cancelled and there was a direction to pay the amount in cash. ***United Bank of India v. R. P. Chhabra 1998 (1) CPR 588 (SCDRC - Delhi)***

A cheque issued by the complainant was dishonoured on the ground of insufficiency of funds. On an enquiry it was found that the bank had made payments on two cheques earlier which were forged. The District Forum dismissed the complaint stating that the allegation of forgery cannot be decided in the consumer forum, the proceedings of its being time bound and it is matter that has to be decided by the Civil Court. The State Commission remanded the matter back to the District Forum stating that if the forgery is apparent on the face of the records and still the bank has honoured the cheques forged then it will amount to deficiency in service and if forgery is not so apparent and the cheques were honoured, then it will not amount to deficiency in service. This point was left to be decided by the District Forum. ***Prathibha Bulla v. State Bank of India 1998 (1) CPR 645 (SCDRC - Tamil Nadu)***

Complainant deposited a cheque for collection on 4.4.1992 and requested for hand clearance. The amount was not paid immediately and the payment was received on 21.4.1992 and hence the complaint. It was observed that to give and not to give the hand clearance of a cheque or a particular cheque is the discretion of the Branch Manager of the bank inasmuch as the Branch Manager has a risk in such a matter and he may exercise his discretion in appropriate case. It was found that there was no inordinate delay in making the payment. As such, no fault can be found with the Branch Manager. ***State Bank of India v. M/s Vanijya Vikash 1999 (1) CPR 22 (SCDRC - Assam)***

The complainant was aggrieved since the cheques presented for collection were lost. However, it was not clear whether the cheques were lost at Chandigarh where they were presented or at Amritsar where the respondent no.2 (who was the agent of the complainant) was maintaining his account. The bank on which the cheques were drawn was not made a party. It was observed it may be required to examine the records of the banks involved and secondary evidence may also be required. In view of the multifarious issues, it was held that the complainant should approach the appropriate Court. ***Director, Punjab State Lotteries v. State Bank of India & Another 1999 (1) CPR 537 (SCDRC - U.T., Chandigarh)***

A cheque deposited with the bank for collection was dishonoured, but the bank failed to return it on the plea that it was lost in transit. It was held that due to the deficiency of service on the part of the bank, the complainant has suffered mental agony and harassment, as neither the money has not been credited to the account of the complainant nor has the cheque which is alleged to be dishonoured has been returned to the complainant and such the complainant is clearly entitled for compensation. ***Smt. Harmohinder Kaur v. State Bank of Patiala 1999(2) CPR 553 (SCDRC - Himachal Pradesh)***

The complaint was with respect to two cheques deposited by him for collection which was drawn on the same branch of a bank and against which credited entry was made in complainant's account. However, the credit was scored of the next day pursuant to a "payment stopped" instruction letter received on that day. Consequently, a cheque issued by the complainant

on that account was returned not honoured for insufficiency of funds. The evidence indicated that the entries were not made inadvertently and the procedure required to be followed for reversal of entries were not followed. The bank was deficient and negligent in its conduct and the complainant was held entitled to the amount which was credited along with interest at the rate of 18 % and Rs.10,000/- for harassment. ***Makhan Lal Vinod Kumar v. Allahabad Bank & Another 1999 (2) CPR 74 (SCDRC - Punjab)***

The cheque deposited was admittedly misplaced at the end of the sponsor bank of the appellant bank. The appellant bank's contention that the commission in a number of cases rejected claims from complainant's in the case of loss of cheques, was not accepted by the State Commission (relying on the Dictionary meanings of the words "misplace" and "loss") on the ground that the present complaint relates to "misplacement" of cheque and not "loss" of cheque. It was held that once appellant bank had discretion to send the cheque for collection to the sponsor bank, non-joinder of sponsor of sponsor bank did not affect the complainant's right to proceed against the appellant bank. The District Forum's order allowing the complainant's claim was upheld. ***The Branch Manager, South Malabar Gramin Bank v. C. I. Rasheed 1999 (3) CPR 450 (SCDRC - Kerala)***

The complainant was aggrieved by the delay of 11 months in crediting the cheque amount to her account. The complainant has filed the present appeal for enhancing the amount of compensation awarded by the District Forum. It was held that delay of eleven months in crediting amount of cheque to account of drawee of cheque is deficiency on part of the bank and the relief granted by the District Forum was found to be on the lower side. ***Smt. Santosh Kumari v. Bank of Rajasthan 1999(3) CPR 269 (SCDRC - Union Territory of Chandigarh)***

A cheque presented for collection on 5.6.1995 was returned unpaid to the complainant on 17.6.1995 on the ground that it was sent to the wrong branch. The six month validity period of the cheque expired on 11.6.1995. It was held that though the bank was deficient in rendering service to the complainant by keeping the cheque till its expiry, complainant could not be said to have suffered loss to the extent of the amount of the cheque. The complainant was given interest on the amount of cheque at the rate of 18% per annum during the period between the deposit of the cheque and its return. ***Oriental Bank of Commerce & Another v. Bruno Knitwears 1999 (3) CPR 26 (SCDRC - Punjab)***

The issue for consideration was whether there is deficiency in service on the part of the bank in rejecting the claim, of the complainant/respondent, for refund of lost travelers cheque. In revision the Commission held that when claim for refund of lost travelers' cheque is rejected by the bank after holding detailed enquiry and proper investigation, it did not constitute deficiency in service. ***American Express Bank Ltd., Travel Related Services & Anr. V/s Rajesh Gupta & Ors) -2000(1) CPR 22 (NC)***

The appellant, a credit card holder, had filed a complaint before the District Forum as he was refused encashment of credit card cheques by different branch banks of the respondent. The bank took the defense that the complainant had never visited the alleged branches and thence there could be no occasion to refuse encashment of the cheques on the basis of which the District Forum dismissed the complaint. The issue for consideration is whether this refusal for encashment amounted to deficiency in service on the part of the bank. The State Commission, upholding the appeal, held that, as there was material on the file supporting the complainant/appellant's claim that banks had refused to encash his cheques, there was deficiency in service on the part of the bank. **Anil Kumar Chopra V/s State Bank of India- 2000(3) CPR 593 SCDRC (Del)**

The complainant whose cheque was handed over for collection, was returned un-encashed as a result of which the cheques issued by the complainant to different customers was dishonoured. Subsequently the cheques were encashed. The complainant filed a complaint before the District Forum alleging negligence and was awarded token compensation. In appeal the Commission held that there was deficiency in service on the part of the bank and on account of the negligent act of the bank, the complainant was put to harassment for which he had to be compensated and that the token compensation was not excessive. **Punjab and Sind Bank, through its Zonal Manager V/s M/s BHS Money Corporation-2000 (3) CPR 558 SCDRC (Chandigarh)**

The bank issued cheque book to imposter and there was withdrawal of large amounts on those cheques from the account of the complainant. District Forum allowed the complaint directing the bank to repay the amount with interest. The State Commission allowed the appeal and set aside the order passed by the District Forum. The National Commission held that the bank couldn't escape responsibility in comparing signatures. The issuance of cheque book by bank without comparing signature with that of the account holder and then clearing cheque to imposter amounts to deficiency in service. **Abdul Razak & Anr Vs. The South Indian Bank Ltd - 2003 (1) CPR 145 (NC)**

The complainant issued cheque for Rs.3 lakhs for conversion of amount into fixed deposit. The bank did not convert cheque amount into fixed deposit as they had received intimation from CBI under section 102 Cr.P.C. requiring stopping the operation of account. It was held that the bank could not be held responsible for deficiency in service when it failed to convert cheque amount into fixed deposit where account on which cheque was drawn had been seized by CBI by issuing notice to bank under Section 102 of the Criminal Procedure Code. **The Memon Co-op Bank Ltd Vs. Anwar D. Ahmedabadi & Ors - 2003 (1) CPR 279 (NC)**

The issue for consideration is whether there has been deficiency in service on the part of the appellant-bank in having received a cheque of the complainant uncleared and unencashed by the paying bank as early as on 9.04.2002 but informing the complainant/respondent only on 20.06.2002. It was held that late return of dishonored cheque is a deficiency in banking service. But its compensation equal to the amount of the cheque is disproportionate of loss caused by negligence. **Union of India & ors Vs. Suman Kanwar & ors- 2004 (3) CPR 719 SCDRC (Raj)**

A complaint was filed by an account holder of the Andhra bank alleging withdrawal of amount by forgery. The District Forum allowed the complaint and gave their finding that the complainant was negligent since he had lost the pass book and therefore 50% of the amount of loss was awarded. An appeal was filed by the complainant and the State Commission confirmed the view taken by the District Forum. The National Commission held that payment on forged cheque by a bank would amount to deficiency of service and that the customer cannot be held liable for contributory negligence by not keeping the pass book in safe custody. **Venkanna Vs. Andhra Bank - 2005 (2) CPR 75 (NC)**

A complaint was filed by one of the account holders of the Jai Lakshmi Co-op Bank alleging that an amount of Rs.95, 000/- has been withdrawn from his account on the basis of a forged cheque. The said cheque was not from the cheque book issued to the account holder. It was held that the Jai Lakshmi Co-op Bank was guilty of deficiency of service under the Consumer Protection Act, 1986 in allowing withdrawal of amount on a forged cheque, which was not issued by the bank to the complainant. **Jai Lakshmi Co-op Bank Ltd Vs. L.C.Dhingra - 2005 (1) CPR 131**

A complaint was filed by an account holder from whose savings account an amount of Rs.18, 000/- was allegedly withdrawn by an unauthorized person through a loose cheque leaf issued by the bank. The officials of the bank took the plea that the amount was allowed to be withdrawn on the bona fide belief that the person withdrawing the money was a real account holder. It was held that bank permitting withdrawal from savings account to unauthorized person on loose leaf of cheque without presentation of pass book would be guilty of deficiency of service. **Dena Bank Vs. Dina Ram - 2005 (2) CPR 123**

A bearer cheque was issued to the complainant on the Vindhyavasini Gramin Bank. The bank, without any justifiable reason, refused to honour the cheque and the cheque remained uncashed, which caused enormous harm to the reputation of the complainant. It was held that third party bearer cheque returned without any reason in writing by the bank amounts to deficiency in service on the part of the bank. **Vindhyavasini Gramin Bank Vs. Ganesh Vastralaya - 2005 (2) CPR 47**

### **Consumer Forum – Procedure**

Where the appellant filed an appeal against an ex-parte decree passed against them on the ground that no service of summons was effected 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. -1992(2) CPR 59 (SCRDC – Del) .**

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. 1997 (1) CPR 93 (NC)***

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 1997 (2) CPR 3 (NC)***

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. 1997 (2) CPR 111 (NC)***

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 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. 1997 (3) CPR 564 (SCDRC-TN)***

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. 1996 (3) CPR 282 (SCDRC-HP)***

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. 1996 (2) CPR 57 (SCDRC-Orissa)***

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 1998 (2) CPR 249 (SCDRC - Punjab)***

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 appellant 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 1998 (1) CPR 95 (SCDRC - Tamil Nadu)***

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 at 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 (1) CPR 314 (SCDRC - Uttar Pradesh)***

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 1999 (1) CPR 102 (SCDRC - Andhra Pradesh)***

### **Demand Drafts**

In this case, the compensation awarded by the District Forum against the Bank for issuing an unsigned Demand Draft was reduced by the State Commission. It was held by the National Commission that the appellate authority is competent to re-determine what would be the proper quantum of compensation to be awarded in a particular case but such exercise has to be undertaken on a careful appraisal of the evidence on record and all the relevant facts and circumstances having a bearing on the quantification of the loss etc. Any arbitrary exercise of power by a judicial or quasi judicial authority would be an improper exercise of jurisdiction vested in such authority by law. Therefore, it was held that interference by the appellate authority with the quantification of compensation in the present case was without proper application of mind and cannot be regarded as proper or regular exercise of its jurisdiction. **Malati Bhat Vs. State Bank of India -1992(2) CPR 122 (NC).**

Where the demand draft issued by one bank (SBT,Venganoor) payable at appellant bank was not honoured by the appellant bank on the ground that specimen signature number of second official's signature is not present, it was held that it amounts to deficiency of service especially when similar drafts were earlier honoured by the appellant bank. It was also held that Reserve Bank guidelines regarding two signature discipline does not lay down anything about the validity of the demand draft and demand draft does not become invalid if those guidelines about two signature discipline were not strictly followed. The banks have been permitted to issue demand drafts under one signature in exceptional circumstances. Also the guidelines did not lay down anything about mentioning specimen signature number of the person/persons signing the DD. **State Bank of India, Surat Vs. N. Raveendran Nair -1992(2) CPR 400 (NC).**

The draft purchased by the complainant from the opposite party bank was dishonoured, when presented for collection by the Institute in whose favour the draft was taken, on the ground that signature of the teller was not there. It was held that it is not the function of the consumer to know whether the draft is to be signed by one person or two persons,. When the draft was issued to the consumer it was also the duty of the clerk at the counter to verify the same, note it in the register and take the signature when delivered to the customer. Further, the draft was in favour of an educational institution and it cannot be said to be counterfeit. The bank can always make payment of the draft as it was only an internal mistake and not a statutory mistake. Therefore, it was held that there was carelessness and utter negligence on the part of the bank and hence bank was liable for deficiency in service. **Bhupendrakumar Nanalal Rajguru Vs. The State Bank of India - 1992(2) CPR 324 (SCRDC – Guj) .**

The complaint was filed against the opposite party for non-issuance of the duplicate Demand Drafts for about 4 months amounts to negligence and deficiency in banking service. It was held that the O.Ps have unreasonably delayed the issuance of Demand Draft by imposing unreasonable conditions and by asking the changing of documentations time and again only with a view to protract and delay the issuance of the duplicate Drafts. The Bank also most unreasonably insisted on the Complainant depositing 25% of the amount of the Drafts as margin money in the form of a fixed deposit whose term extended about six months beyond the period of validity of the drafts An amount of Rs.50,000/-amounts was ordered to be paid by the opposite parties to the complainant as compensation. **Soya Udyog Ltd. Vs. State Bank of India,CPR 1995(I) 336 (NC)**



The complaint was filed under section 2 and 14 of Consumer Protection Act for refusing to encash demand draft on the ground that there was no proper identification of complainant. It was held that refusal was an act of vindictiveness as only 10 days before complainant closed his account with bank. The state commission declined relief holding complainant himself created circumstances for the situation. Petitioner's conduct in dealing with bank with which he did not have good relation cannot be at par with deficiency in service on part of bank. Petitioner is entitled to get nominal compensation of Rs.500/-.

**S.Sankaran Vs. Senior Manager, Canara Bank, CPR1995 (1) 229 (SCDRC - New Delhi)**

Where in the case of encashment of a foreign draft, the complainant - payee was not an account holder with the bank and where she could not satisfactorily prove that she intended to open an account with the bank, the order of the District forum allowing the complaint and awarding compensation was liable to be set aside.

**Branch Manager, Syndicate Bank v. A.R. Aysha 1996 (2) CPR 12 (SCDRC-Kerala)**

The bank issued a demand draft to the complainant but failed to mention the code number and name of the issuing branch which resulted in the son the complainant not being able to encash the draft for some time. The District Forum found that the bank was deficient in rendering service to the complainant but did not award compensation on the ground that the complainant failed to prove his compensation claim and the fact that the demand draft was encashed at a later stage was also taken into consideration. The State Commission modified the order of the District Forum to the extent of awarding compensation to the complainant on the basis of the decision of the National Commission in Ashok Kumar Singh v. M/s. Gujarat Cycles Ltd., & Anr., (1992 (2) CPR 447) wherein the National commission observe that where it is manifest that real inconvenience has been caused to the complainant by reason of those goods being defective in material respects, it is the duty of the forum to determine what would be the reasonable compensation.

**P.C. Janardhan v. The Manager, Indian Bank & Ors. 1997 (3) CPR 427 (SCDRC-Kerala)**

Where one of the two banks involved in the matter was negligent in issuing a bank draft without showing the issuing bank code number and branch and the other bank delayed the presentation of the draft beyond the date of closure of rights issue of a company for which the draft was purchased, the order passed by the State Commission holding both the banks liable for deficiency in rendering service to the complainant, and apportioning the negligence between the two banks was held to be valid.

**SBI v. Dr. Kalika Charan Dube 1996 (2) CPR 110 (NC)**

Where in the case of loss of demand draft the necessary formalities as required by the rules of the bank are not complied with, the bank cannot stated to be deficient in service in not issuing a duplicate draft or canceling the draft and making cash payment to the purchaser (Complainant). The order of District forum was set aside and the complaint was dismissed.

**Bank of Baroda & Anr v. Devi Das 1996 (1) CPR 1 (SCDRC-Rajasthan)**

The complaint was filed for non-credit of the amount in the draft deposited for collection with the appellant bank. The bank, relying on the widely cast terms of the contract, took a contention that draft was forwarded at the risk and responsibility of the complainant. It was held that the bank cannot shell its responsibility and there was deficiency of service and negligence

on the part of the appellant bank. ***The Senior Manager, Canara Bank v. A. Rajesh Kumar 1998 (3) CPR 489 (SCDRC - Kerala)***

The bank had refused to pay the amount covered by demand drafts issued to the complainant and reported lost to the bank on the next day and hence the complaint alleging deficiency in service. District Forum had found that the drafts were endorsed in favour of a travel agent, who was in the position of a holder in due course of instruments and therefore the purchaser is not entitled to issue instruction of stop payment and the issuing bank thereafter pay back the amount to the purchaser only with the consent of the payee. The reasoning given by the District Forum was confirmed and it was held that the bank could not be found fault with for not paying the amount covered by the demand drafts. ***T. M. Hussain v. The Manager, State Bank of Travancore 1999 (1) CPR 268 (SCDRC - Kerala)***

The complaint was with respect to certain credit entries reversed by the bank. The complainant had availed a cash credit hypothecation facility and the payment of goods sold used to be sent to the bank for credit to the cash credit account. Eight drafts were forwarded to the bank for credit by the complainant, out of which goods were already delivered in respect of five transactions. The bank informed the complainant to stop delivery of the goods in respect of the eight transactions, as the drafts were found to be forged. In the other three cases the goods were withheld. The bank requested the complainant to refund the amounts credited with respect to the five drafts, and on the refusal of the complainant, his account was debited and the complainant's account went into debit balance. It was observed that as soon as the complainant was informed of the forged drafts, he stopped delivery of the goods and so he is not at fault. Bank drafts once received by the bank and proceeds thereof credited in the account of the customer, the customer is entitled to conduct the business of the goods hypothecated through the bank as per terms of the mutual agreement. The action of the bank in debiting the amount resulted in deficiency of service. ***Praful Jain v. State Bank of India 1999 (3) CPR 19 (SCDRC - Uttar Pradesh)***

A demand draft for Rs 50,000/- was drawn on the appellant bank but was refused to be accepted by the appellant on the ground that the draft could not be encashed on account of embargo put by Reserve Bank of India by way of a circular issued. The issue is whether non-payment by the appellant bank amounted to deficiency of service. The Commission held that in issuing the draft against the circular there was deficiency of service on the part of the bank. ***Branch Manager, State Bank of India & Anr V/s M/s Oriental Rice Mills-2000(1) CPR 518 SCDRC (WB)***

A bank draft was received by bank branch , 2<sup>nd</sup> Opposite Party in Nov 1992 but complainant was not informed about it till 1994. The draft was renewed and encashed on 5.10.1994. The appellant filed a complaint before the District Forum alleging deficiency in banking service and claiming loss of interest and damages. In appeal it was observed by the commission that the appellant had got his NRI account transferred from 2<sup>nd</sup> opposite party bank branch in 1987 to another branch of the bank and had never contacted 2<sup>nd</sup> opposite party branch about the draft. It was held that as far as banks are concerned, each branch is treated as a separate entity and that 2<sup>nd</sup> opposite party could not have feed back in respect of closed account after 5 years when draft was received and hence there is no deficiency in service on the part of the bank. ***A.J. Yuvaraj V/s DGM, Syndicate Bank & Anr - 2000(1) CPR 62 SCDRC (AP)***

The issue for consideration was whether a delay of 3 years in crediting the proceeds of a demand draft in the savings account of the complainant/respondent amounted to deficiency in service on the part of the bank. The Commission held it to be a case of deficiency in service of the bank. ***Punjab National Bank V/s Dr. Satyendra Kumar Tiwari - 2000(1) CPR 96 SCDRC (UP)-***

A Bank draft was not encashed by drawee bank, as it did not contain signatures of authorized official as well as S.S.No. It was held that incomplete or defective draft issued by bank would constitute deficiency in service. ***Bhagwan Shankar Pd. Singh Vs. Swatantra Kumar Suman -2005 (1) CPR 136***

### **Employer-Employee relationship:**

A complaint was filed against the State Bank of India when the complainant who is holding a savings bank account in the bank, came to know that his pass book was missing from his room and applied for a duplicate pass book. On receipt of the same, he noticed that Rs.800/- had been withdrawn from his account, which was due to the negligence of the concerned official who did not take it seriously because of the paltry amount involved. Held that if the bank official was not careful and vigilant in verifying signatures of account holder with signatures presented while withdrawing amount and some unauthorized person withdrew the money, it would amount to deficiency in service on the part of the bank. **State Bank of India Vs. Amar Kumar Prem - 2005 (2) CPR 261**

The bank refused to pay the maturity amount of deposit to the complainant on plea that the amount collected by the bank agent was misappropriated by him and criminal case was registered. It was held that where the money collected by the bank agent towards a deposit was misappropriated, the bank cannot deny its liability to pay the amount on a plea that criminal case had been registered against the agent. In terms of contract, bank was equally liable for omissions and commissions of its agents. **R.K.Agarwal Vs. Manager, United Commercial Bank - 2003 (2) CPR 184**

The agent appointed by the bank for collection of deposits deposited only Rs.7,500/- out of Rs.36,500/- in the account of the complainant, thereby committing fraud. It was held that where agent of the bank having collected money from account holder did not deposit it in the bank and committed fraud, the bank will be responsible for misconduct of its agent to pay amount to the account holder. **Branch Manager, Central Bank of India Vs. Bagwan Vishnoo Mahadeshwar - 2004 (2) CPR 185**

### **Fixed Deposit**

The complaint was filed for deficiency in banking service for withholding of amount even after date of maturity of a term deposit. It was held that withholding of amount even after date of maturity is deficiency in service and the complainant was entitled to get the maturity amount with interest at 15% from date of its maturity till payment. **Sumangal Rao & another Vs. Vijaya Bank, CPR(1) 163 (SCDRC - Karnataka)**

It was held on the facts and circumstances of the case that the bank committed deficiency in service in transferring the fixed deposit amount of the complainant for the recovery of the decretal amount against her husband, and appeal was allowed, setting aside the order passed by the District Forum dismissing the complaint. **Mrs. Shahana v. SBI 1996 (1) CPR 662 (SCDRC-Karnataka)**

Where the complainant alleged that she deposited foreign currency in the Foreign Currency Non Resident Account (FCNRA) and produced a certificate of investment which was titled FCNRA, and the bank submitted that the account was in fact a Non Resident (External) Rupee Account (NRERA), which carried an interest rate higher than that of FCNRA but was repayable in rupee, the State Commission referred to the terms and conditions mentioned in the Certificate of Investment as a whole and observed that the maturity amount was calculated on the lines of a NRERA, it was held that the complainant

was entitled to the maturity amount on the lines of a NRERA and not as FCNRA. ***Mrs. Sushma Dhain v. PNB & Anr. 1997 (3) CPR 528 (SCDRC-HP)***

The bank refused to pay the maturity proceeds on the fixed deposit to the widow of the deposit holder, by exercising its right to lien, on the ground that the fixed deposit holder stood as guarantor for a loan taken by another person and that the said person has not repaid the loan and that a decree has been passed against the said borrower as well as the fixed deposit holder however providing that the bank would exhaust its remedies as against borrower in the first instance and then proceed against the guarantor.. The DF as well as the State Commission directed the bank to make payments to the complainant for the reason that in view of the said decree and by not taking adequate steps to realize the decree amount from the borrower, the bank had waived its right of lien over the fixed deposit proceeds of the guarantor. The NC set aside the said orders for the reason that records reveal that bank has taken adequate steps to execute the decree against the borrower in the first instance and thereafter exercised its right of lien over the fixed deposits of the guarantor and also the bank could not be stated to have waived its right to have a lien over the fixed deposit as the decree was passed by the Court and the bank was not a consenting party to the decree. ***The Senior Manager, Indian Overseas Bank & Anr., v. Smt. M.K. Thankam 1997 (2) CPR 280 (NC)***

The question whether bank has been deficient in not allowing premature encashment of a fixed deposit was answered in the affirmative and objections raised by the bank that the fixed deposit being a contractual arrangement, it has to be acted upon only as per the terms of the contract was rejected, in the facts and circumstances of the case, where the relevant rules framed by the Reserve Bank of India permitted premature withdrawal of the fixed deposit and the fixed deposit holder was in dire need of the amount for her treatment of cancer. Complaint filed by the legatees of the fixed deposit holder was allowed negating the contentions of the bank that the legatees were not authorized to proceed against the bank on behalf of the deceased fixed deposit holder, on the ground that the complainants were legatees under probated will. ***Ronen Mukherjee v. Branch Manager, Standard Chartered Bank 1997 (1) CPR 619 (SCDRC-WB)*** *(Similar Orders were passed in Purnima Mukherjee & Anr., v. Branch Manager (Sales & Service) reported in 1996 (3) CPR 389 (WB))*

The bank had wrongly paid the complainant's fixed deposit to some other person. The complaint was dismissed by the District Forum. It was held that if the bank without verifying the genuineness of the person claiming the amount of the FDR had paid the same, in other words refusal to make payment to the original and genuine person, deficiency in rendering service is writ large. The bank was directed to pay the FDR amount and compensation by way of interest of 18 % per annum. ***Malkiat Singh Bansal and Another v. Punjab National Bank and another 1998 (3) CPR 348 (SCDRC - Punjab)***

The bank paid the complainant fixed deposits to someone else. While the proceedings before the District Forum was going on the bank paid the amount involved in the FDR along with the agreed rate of interest. The District Forum finding no deficiency in service dismissed the complaint. The complainant had filed the appeal for getting compensation. It was observed that the complainant has to be compensated for non-availability of the amount of the fixed deposit and the

complainant having accepted the amount of FDR could not be said to have given up claim for compensation. It was held that the bank is liable to pay compensation for deficiency in not making available the amount of FDR to account holder even in absence of evidence about actual loss suffered. **Malkiat Singh & Anr v. Punjab National Bank and Anr 1998 (2) CPR 416 (SCDRC -Punjab)**

A complaint was filed by the complainant alleging that the opposite party bank did not release the Bank Fixed deposit amount on maturity. The Bank took the plea that the of the complainant's son had taken loan and complainant stood guarantor and guarantee clause authorized bank to invoke lien on complainant's deposits. State Commission dismissed the complaint, observing that the complainant had suppressed all these material facts in the complaint and approached the Commission with false pretences. **B.Prasada Rao V/s Branch Manager, Bank of Baroda - 2000(2) CPR 451 SCDRC (AP)**

The complainant had reinvested the deposit on maturity of fixed deposits. But the bank did not issue FDRs on some or the other pretexts. It was held that if the bank fails to pay the amount of deposit with accrued interest on the date of maturity it will tantamount to deficiency in service. **V.Ramasamy Vs. The Deputy Registrar of Co-operative Societies & Ors - 2003 (2) CPR 18**

The bank refused to repay to the complainants amounts of fixed deposit on its maturity. It was held that the non-payment of fixed deposit on maturity gives rise to consumer dispute and amounts to deficiency in service. **Sanjay Kumar Ahuja & ors Vs. Shanta Rani & Ors - 2003 (2) CPR 8 (NC)**

The issue for consideration is whether there is deficiency in service on the part of the appellant bank by delaying the release of an FDR which was submitted as security for the bank guarantee, even after the cancellation of the bank guarantee. It was held that there was deficiency of service on the part of the bank and the bank was held liable to pay interest, compensation and cost in the delay caused in release of FDR even though the bank guarantee stood cancelled. **Allahabad Bank Vs. Chandigarh Construction Co Pvt. Ltd- 2004 (1) CPR 161 SCDRC (Chandigarh)**

The non payment of entire fixed deposit by the bank with interest even after lapse of time on account of alleged excess payments made to the complainant in earlier occasions would amount to deficiency in service on the part of the bank. The relationship of banker and customer depends upon good faith and trust. **T. Appu Vs. The Egmore Benefit Society Ltd- 2004 (1) CPR 542**

The issue for consideration is whether the respondent-bank has committed deficiency in service by refusing to accept and honour an FDR on the ground that it was issued by an unauthorized employee of the bank on stolen blank FDR's and that the amount had not been deposited by the complainants with the bank in the regular course of business. It was held that the non-payment on an alleged forged FDR by one of the employees of the bank out of the regular course of banking

business is not deficiency in bank service. **Mohammed Salim & anr Vs. State Bank of India- Reported in 2004 (3) CPR 120 SCDRC (Chattisgarh)**

The issue for consideration is whether there is deficiency in service on the part of the bank in refusing to pay the FDR amount on maturity when it was shown that a sum of Rs 35,000/- was deposited in two installments with the bank under the FDR Scheme and the receipts were also obtained. The bank took the plea that with the connivance of the then employee of the bank, the complainant got the fraudulent FDR prepared and that the bank was not under any obligation to make payment of the money so deposited. It was held that the bank is vicariously liable for fraud of its employee in which customer is not a party to it. **Allahabad Bank Vs. Shiv Swaroop Srivastava- 2004 (3) CPR 652SCDRC (UP)**

A fixed deposit jointly owned with an 'either or survivor' clause cannot be pledged by one of the account holders with the Bank so that the amount becomes payable to such third party, without the consent of the joint account holder. The bank was liable for deficiency of service for non payment of the fixed deposit and adjusting the amount against a pledge without the authority, knowledge or concurrence of the other account holder. **Anumati Vs. Punjab National bank - 2005 (1) CPR 48 (SC)**

The Karamsad Urban Co-operative Bank was under the directives of the Reserve Bank of India under Section 35A of the Banking Regulation Act, 1949. The bank was not making the fixed deposit amount of the complainant in view of the said directives of the Reserve Bank of India. The Gujarat State Commission was of the opinion that the directive of the Reserve Bank will have effect upon the execution of the order passed by the Lower Forum. The co-operative bank would have to answer its liability with regard to the fixed deposits to the depositors. It was held that non-payment of amount of fixed deposit by bank will be deficiency in service and any directions issued by the Reserve Bank of India under Section 35A of the Banking Regulation Act, 1949 will have its effect only in execution of order. **Karamsad Urban Co-operative Bank Ltd & anr Vs. Chandrakant Dahyabhai Patel & anr - 2005 (2) CPR 323**

## **Shares**

The complainant's case in the lower forum was that he had given a power of attorney in favour of the State Bank of India for transferring share on his behalf and that in pursuance of the said power it had acted malafide causing loss to the complainant and creating a bad debt against the complainant. The District Forum dismissed the complaint on the ground that the service of selling the shares to others hired by the complainant was not a banking service and that it was a service under personal contract. The State Commission held that if selling of shares or purchasing the same out of account maintained by customer is undertaken by bank then it is service and complaint about deficiency in such service is maintainable. Appeal allowed. **T.K.Goswami Vs. State Bank of India, CPR1995(1)No.559 (SCDRC - West Bengal)**

The bank is not liable for deficiency in service if the bank draft and application form for purchase of equity shares reached the bank on or before the prescribed date and the money in question was returned to the complainants. Appeal against the order of the district forum dismissing the complaint, was dismissed. **R.C. Gupta & Anr., v. The Manager, SBI & Ors. 1996 (2) CPR 41 (SCDRC-UT of Chandigarh)**

While holding that there has been deficiency of service on the part of the bank in not remitting the amount forwarded by the complainant for purchase of share under a rights issue, thereby depriving the complainant the benefit of those shares, the State Commission also upheld the District Forum's order in respect of the compensation awarded on the basis of prevailing market value of the shares on the relevant date on the ground that the fundamental principle for determining the quantum of compensation which naturally flows from the consequence of the deficiency in service on the part of the bank is that as far as possible the injured party should be placed in as good a situation as if there has been no deficiency in the service and the complainant would have succeeded in obtaining the shares from the Company. **Samanya Sahayak Prabandhak, SBI & Anr., v. Abdul Moin 1997 (2) CPR 205 (SCDRC-UP)**

The appeal has been filed against the compensation granted by District Forum to the complainant for loss suffered by the complainant due to loss of pledged security (shares) by the bank. The District Forum held and the State Commission confirmed that there was deficiency of service on the part of the bank. The only issue consideration is as to what compensation, if any, is the complainant entitled to from the bank. For deficiency in banking service for not taking proper care of pledged shares of the customer, the complainant is entitled to receive from the bank for the loss suffered by him the amount equivalent to the loss suffered by him due to difference in prices of lost shares i.e. NAV on date of loss and NAV when duplicate were provided. **Central Bank of India & anr Vs. Mary Rajan- 2004 (3) CPR 410 SCDRC (MP)**

### **Interest**

The complainant had deposited certain amount in the bank, but it was not credited to her account. On enquiry, it was found that one bank employee had misappropriated that amount. The bank submitted that the father of its employee had deposited that amount with the bank, but not in complainants savings bank account and he had requested to return the amount. Therefore, it was not possible for the bank to credit this amount in the account of the complainant, as prayed. It was held that the decision of the District Forum that the bank was vicariously liable is not sustainable, without specific averment in the pleading. The matter was remanded with direction that the said amount be deposited in special account with interest, so that ultimately if complainant succeeds, she can get the interest. **Manager, State Bank of Saurashtra Vs. Kum. Ramilaben Amrutlal Soni –1992 (1) CPR 316 (SCRDC – Guj)**

The complainant had pledged FDR as security deposit for the purpose of some contract work with a third party. It was, however, agreed that interest would be payable to the complainant. The respondent bank after giving credit of the accrued interest of some years to the S.B. account of the complainant, without informing him and without his consent, debited the said amount from the account. It was held that the bank having paid the interest in accordance with the instructions and the money having been merged with the other account of the complainant in the bank, the bank had no authority to debit that



amount from the account of the complainant and this is clearly deficiency of service to the depositor. **Patel Kantilal Kevaldas Gavada Vs. Manager, Dena Bank & Anr. –1992 (1) CPR 544 (SCRDC – Guj)**

The complaint was filed against the opposite party bank for charging interest arbitrarily capriciously, capitalizing interest at quarterly .The Complainant alleged that the opposite part bank charged excess interest on bill purchase credit; interest is charged upto date of intimation of realization. The complainant alleged that the opposite party bank charged excessive interest, which was in violation of directives issued by Reserve Bank of India. The complaint was dismissed without prejudice to rights of Complainant to seek redress in a suit. **Omega Packing Pvt.Ltd. Vs. Central Bank of India & Others, CPR 1995(I) 247(NC)**

The complaint was filed under section 2(1) and 14 for deficiency in service for charging of interest at higher rate contrary to stipulation of loan the opposite party bank. It was held that the charging of the interest by a bank contrary to the stipulation of loan is deficiency in banking service and the Complainant was entitled to get Rs.5 lakhs as compensation. Complaint allowed. **Narayan Rao Mahadeo Manjrekar Vs.Sangli Bank Ltd.& another, CPR1995 (1) 582 (SCDRC - Maharashtra)**

The complaint was filed under section 17 read with 12 of the Consumer Protection Act,1986 for claiming of refund of excess amount interest collected by Bank of Tamil Nadu which got merged with opposite party. It was held that the claim is based upon the mistake in the calculation of interest and it was the clear case of the complainant that this mistake was found out only on 25.02.1991 on which date notice was by the complainant to the opposite party bank .The liabilities, duties and obligation of the transferor bank namely the Bank of Tamilnadu shall be and shall become the liabilities, duties and obligations of the transferee bank namely the Indian Overseas Bank .The opposite party Indian overseas Bank is therefore bound to refund the excess amount collected from the complainant by the erstwhile Bank of Taminadu and the failure of opposite party to refund the amount, amounts to deficiency in service. **Apex Roller Flour Mills (P) Ltd. Vs. Indian Overseas Bank another, CPR1995 (1) 468 (SCDRC - Tamil Nadu)**

The respondent/complainant availed of loan from opposite party @19% interest. The respondent/complainant alleged that appellat bank collected excess amount at the time of closing of loan. The complainant was filed for refund of excess amount. It was held that section 21(A) of the Banking Regulation Act provides that the rate of interest charged by by the banking companies shall not be subjected to scrutiny by courts. Opposite party directed to examine whether rate of interest levied from complainant is in accordance with direction given by Reserve Bank of India from time to time and statement showing details of interest levied from time to time be given to complaint Appeal allowed. **The Branch Manager, State Bank of Travancore Vs.P.A.Sebastian CPR(3) 525 (SCDRC - Kerala)**

The bank had accepted fixed deposit from the complaint promising to provide a rate of interest of 12 %. However, when the amount was paid a reduced interest rate of 11 % was given stating that the bank had promised the higher rate of interest in ignorance of the Reserve Bank direction concerning interest rates fixing the interest applicable at 10.5 % with a discretionary 1 %. It was observed that the conditions in FDR specified that the rate of interest will be governed by the Reserve Bank directives issued from time to time and the complainant was also aware of the said condition. It was held that

the bank could be faulted for reducing the rate of interest to the extent of interest prescribed by Reserve Bank and applicable at the time of acceptance of the deposit. However, it was held that since the maximum interest allowed by the Reserve Bank was 11.5 %, the complainant may also be paid at the same rate, instead of 11%. ***Kokan Mercantile Co-operative Bank Ltd v. Abdul Sattar Ahmed Bondre 1998 (2) CPR 3 (NC)***

The complainants have made fixed deposits with the bank at an interest rate of 12.5% and it was agreed that, if the money is not withdrawn, it would be reinvested for about eight terms automatically at the same rate of interest. The bank failed to pay the interest promised on the ground that the interest rates payable on fixed deposits were changed by Reserve Bank of India during the period of investment. It was observed that the bank did not inform the complainants about the reduction in interest rates and this was obligatory and the bank has failed to render proper service in this regard. The order of the District Forum directing the bank to pay interest was upheld. ***Jalgaon Janata Sahakari Bank Ltd. v. Rishikesh Prabhakar Kukarni & another 1999 (2) CPR 451 (SCDRC - Maharashtra)***

The appellant had deposited a cheque for collection for an amount of Rs. one lakh in 1983. Eventhough the proceeds of the cheque were collected in 1983 itself, the amount was not credited to the account of the appellant for over a period of seven years. The State Commission and the National Commission decided the case in favour of the appellant directing the bank to pay the amount of Rs. one lakh along with interest at the rate of 12% per annum. The appellant filed this appeal before the Hon'ble Supreme Court, relying upon the provisions of section 34 of the Civil Procedure Code, on the ground that the National Commission and the State Commission were not justified in rejecting the appellant's claim for interest at the rate of 24 % per annum. It was held that in proceedings under Consumer Protection Act interest cannot be claimed under section 34 of the Civil Procedure Code as its provisions have not been specifically made applicable to the proceedings under the Act. However, the general provision of section 34 of Civil Procedure Code being based upon justice, equity and good conscious would authorise the Redressal Forums and Commissions to also grant interest appropriately under the circumstance of each case. Interest may also be awarded in lieu of compensation or damages in appropriate cases. Interest can also be awarded on equitable grounds. ***Sovingtorg (India) Ltd. v. State Bank of India 1999 (3) CPR 56 (SC)***

A complaint was filed by the appellant/complainant before the District Forum alleging that in violation of the agreement between the complainant and the opposite party, the opposite party charged interest which constituted deficiency in service. District Forum held that the complainant was not entitled to reopen the question of interest. In appeal it was held by the Commission that when the bank by an agreement agrees to charge a particular interest on loan then the bank could not unilaterally enhance the interest rate and consumer complaint about higher rate of interest charged would be maintainable. ***V.Gilbert V/s The Manager, Vijaya Bank (Br.) & Anr - 2000(1) CPR 180 SCDRC (Ker)***

A complaint was filed before the District Forum as less interest was credited to the PPF account of complainant respondent by the Bank. The mistake was rectified on being pointed out by respondent by crediting lesser interest amount after a few days. An award of compensation was passed by the District Forum for the inconvenience caused to the complainant/respondent. In the appeal before the State Commission, the appellant bank took the defense that the mistake

occurred due to heavy work in closing financial year and by inadvertence. The Commission held that the compensation awarded by the Forum for deficiency in service was reasonable and called for no interference. ***The Branch Manager, State Bank of India V/s Shri K.J.Joseph-2000(2) CPR 376 SCDRC (Meghalaya)***

The complainant/respondent deposited an amount in double deposit scheme with the appellant bank but on maturity was given only lesser amount on the ground that RBI had reduced interest rate w.e.f 8.10.1992 i.e. prior to the date the deposit was accepted. District Forum found deficiency in service on the part of the appellant bank. The State Commission held that though a depositor cannot be paid interest higher than the one prescribed by the Reserve Bank of India but all such facts if not disclosed to the depositor while accepting the deposit would amount to deficiency in service on the part of the bank. ***District Co-operative Central Bank Ltd Vs. Kailash Prasad Tiwari 2003 (2) CPR 195 SCDRC (MP)***

The bank, by mistake did not make any debit entry in the account of the complainant. And later, it made a debit entry in the account and also debited the interest on it. It was held that the charging of interest for belated mistaken credit from the customer by the bank is not valid. ***Anjana Kundu Vs. Branch Manager, Bank of Baroda - 2003 (3) CPR 67 (NC)***

### **Lien**

The dispute that arose was whether the action of the bank in realizing the amount of fixed deposit and crediting that amount in the cash credit account of the complainant exercising its general lien under Section 171 of Contract Act, is legal and binding on the complainant. In the absence of any evidence to show that there was a contract to the contrary to defeat the general right of lien of the bank, it was held that there was no deficiency of service. Since, the recovery suit filed by the bank against the complainant is pending, it was held that questions regarding whether the banks adjustment is right or wrong can be decided by the Civil Court after taking elaborate oral evidence and not in summary proceedings before the Forum. ***M/s Sanjiv Textiles Pvt. Ltd. Vs.State Bank of India & Ors – 1992 (1) CPR 238 (SCRDC – Guj).***

Where even after discharging the loan for which jewels were pledged, the bank did not return the jewels on the ground that the complainants earlier loan is still due, it was held that bank is entitled to retain the jewels as a lien under Section 171 of the Indian Contract Act. ***The Branch Manager, Canara Bank Vs. P.Moovendan - 1992(2) CPR 455 (SCRDC – Mad) .***

The Revision petition arises out of the order dated 6th October,1994 passed by the State Commission, Maharashtra.The Revision petitioner was opposite party in the complaint filed by the respondent. The complainant alleged that the had a S/B account with the opposite party bank. He withdrew Rs.20,000/- from the account and deposited the amount with the opposite party bank in two term deposits of Rs.10,000/-each in his and his brother's name. The Bank refused to make the payment to the complainant by saying that there is a loan outstanding against his brother amounting to Rs.20,000/-. It was held that even if any security is not expressly pledged or made a security for a loan a banker can appropriate the amount due from the party to whom the amount under some other account is payable. ***State Bank of India Vs. Jawaharlal,CPR 1995(3) 632(NC)***

The complaint was filed under Sections 12 & 17 of the Consumer Protection Act. It was the case of the complainant that complainants availed credit card service facility and a sum of Rs.1,27,918/- became due under the said credit card . The complainant opened a current account and deposited Rs. one lakh. The complainant issued a cheque for Rs.65,000/- but it was dishonoured as the Rs. one lakh adjusted towards dues in the credit card. It was held that there was no deficiency in service on part of bank in exercising right of set off and adjusting the amount from current account of customer to the amount due in credit card of such a customer complaint dismissed. **V. Saraswati & Anr. Vs. ANZ Grindlays Bank, CPR(3) 64 (SCDRC - Karnataka)**

The jewels pledged in respect of a jewel loan were not released even after repayment of the said loan, in exercise of the right of banker's lien as provided under section 171 of the Indian Contract Act, 1872 on the ground that the complainant has failed to repay another loan taken by the complainant from a different branch of the bank. The same was held not to be deficiency in service on the part of the bank. **The Branch Manager, Canara Bank & Ors., v. Chandrababu 1996 (1) CPR 173 (SCDRC-TN)**

Where the bank in exercise of the lien under Section 171 of Contract Act, 1872 adjusted the amount lying in the current account of the complainant towards the outstanding dues of the complainant and have also filed a suit for recovery, they could not be held liable for deficiency of service if the cheques on the said account issued by the complainant subsequent to being informed of the intention of the bank to so adjust, were dishonoured. Appeal was allowed, DF order set aside and complaint was dismissed. **The Nedungadi Bank Ltd., v. A. Parameswaran 1996 (2) CPR 380 (SCDRC-Kerala)**

The question whether the bank has a lien on the separate savings bank account of the partner for the balance due to the bank from the partnership firm and whether the amount lying in that separate account fo the partner can be set off against the loan secured by the partnership firm was answered in the negative on two counts - (i) the lien under section 171 of the Contract Act, 1872, on the bank account arises only when there is no contract to the contrary and from the records it was noticed that the complainant had entered into an agreement with the bank mortgaging / hypothecating land / machinery as guarantee; and (ii) the civil suit filed by the bank against the firm, wherein the liability of the partners is yet to be determined is pending and the liability of the complainant partner is not yet determined. **Branch Manager, PNB v. Gurmukh Singh 1997 (1) CPR 3 (SCDRC-HP)**

Where the bank, while exercising the banker's general lien, did not pay the amounts due to the complainant on maturity of the deposit made by the complainant with the bank, on the ground that the complainant as a guarantor in a different loan transaction was liable to be repay the loan, it was held that there was no deficiency in service. The Order of State Commission allowing the complaint was set aside, and the complaint was dismissed. **PNB & Anr., v. Charan Singh Guha Singh 1996 (2) CPR 179 (NC)**

By withholding shares pledged to it by the complainant, the bank cannot be stated to have committed deficiency in service, when the same was done in exercise of banker's lien for the purpose of requiring the complainant to settle outstanding

loans nor the decision of the bank in not extending credit facilities could be assailed before the consumer fora as banks will have to take a decision to so extend based on various factors and the same would not amount to deficiency of service.

***Vimal Chandra Grover v. Bank of India 1996 (2) CPR 266 (NC)***

Where the bank in exercise of bank's lien under section 171 of the Contract Act, 1872 refused to part with the proceeds of the fixed deposit on the ground that a loan taken by the complainant on an earlier fixed deposit is still outstanding, it was held that there was no deficiency in service as the lien being a right of defence and not of action can be claimed in respect of a time barred debt. ***The Branch Manager, UBI & Anr., v. Tele Surya Rao 1997 (2) CPR 12 (NC)***

The bank refused to pay the deposit of the complainant on the ground that he was the Chairman of a company from which certain amounts were outstanding to the bank. It was observed that a company is a legal entity and the bank under the law cannot exercise any lien over the FCNR deposits made by the first complainant on the ground that he was the Chairman of the company when overdraft was granted. If there was a personal guarantee given by the complainant position would have been different. But there is not evidence to substantiate this. It was held that complainant is entitled to get refund of the deposit amount with interest. ***Sri Thomas George & Anr v. Allahabad Bank 1998 (1) CPR 405 (SCDRC - Kerala)***

The complainant was aggrieved by the non-payment of TDR's on its maturity by the bank. The District Forum directed the payment of the maturity value of TDR's along with interest at the rate of 18 % from the date of maturity and Rs.2000/- as compensation and Rs. 200/- as Advocate's fee. The bank filed an appeal against the order of the District Forum, inter alia, taking the contentions that a civil suits on the same matter and the TDR's have been retained by the bank in exercise of its lien under section 171 of the Contract Act as security for payment of advance taken towards advocate's fee, court fee etc. for appearing in the bank's case. It was held that the civil suits have nothing to do with TDR's and they have been filed for recovery of advocate fee, court fee from the complainant, which were paid to him for pleading the bank's case as an advocate and therefore the Forum shall have full jurisdiction to entertain the complaint. It was further held that the complainant did not bail out the concerned TDR's for payment of advocate fee, court fee etc. paid by the bank to the complainant and whatever fee which was paid to him was in his capacity as advocate to the bank, without any security of TDR's. It was observed that as a consumer the complainant had bailed nothing to the bank and withholding of payments due to on maturity of TDR's was gross deficiency on the part of the bank. ***State Bank of India & Anr. v. Narayan Das Mishra & Anr. 1998 (2) CPR 294 (SCDRC - Madhya Pradesh)***

The bank refused to pay the two FDRs jointly owned by the complainants and purchased by them in 1990 by invoking its general lien for enforcing guarantee given by one of the complainants. It was held that the bank was legally not justified in creating a lien unilaterally on the FDRs for enforcement of guarantee given by one of the complainants in 1983. It was held that there has been serious deficiency in service on the part of the bank. ***Smt. Putlibai & Anr. v. State Bank of Indore 1998 (1) CPR 503 (SCDRC - Madhya Pradesh)***

The bank retained the collateral security of the complainant even after the cash credit account was closed and no amount was due in respect of that account. However, the complainant was a guarantor for another person against whom recovery proceedings were pending. The bank retained the securities as per the terms of the contract of guarantee and also in exercise of its power of general lien under section 171 of the Indian Contract Act, 1872. Therefore, the appeal was allowed and the order passed by the District Forum was set aside. **Bank of India v. Pramod P. Dhond 1999 (1) CPR 246 (SCDR - Goa)**

Non-release of security documents by bank despite complainant having cleared the loan account on the ground that other debts were due and payable by sister concerns of the complainant. Held that to create banker's lien over several accounts, they must belong to customer in the same capacity. Therefore, the complainant can be considered as a consumer of the bank under Section 2 (1) (d) of the Consumer Protection Act, 1986 and the non-release of the security documents by the bank will amount to deficiency of service. **M/s.Pondy Polymers (P) Ltd Vs. The Branch Manager - 2005 (1) CPR 189**

### **Limitation**

The complainant had alleged that by squeezing the working capital account, the bank is guilty of deficiency in service. It was held that since the complaint was filed much after the expiry of the period for filing a suit for damages, the complaint is a stale one and cannot be entertained. Though law of limitation has not been expressly made applicable to proceedings under Consumer Protection Act, 1986, general principles of law of limitation are to be applied to such proceedings in the interest of justice, equity and fair play. If a remedy under the general law has become barred under the law of limitation, a valuable right accrues to the other party. Hence a consumer cannot come before the Redressal Forum and argue that his time barred claim should be adjudicated by the Forum on the ground that the law of limitation is not applicable to the proceedings before it. **A.N. Raju Vs. Chairman/Managing Director, Andhra Bank – 1992(1) CPR 437 ( NC)**

The State Commission had passed ex parte orders against the appellant since despite notice they remained absent and did not file any version within the period of 30 days. The written version was sent by post after 30 days of service of notice. The present appeal before the National Commission was filed along with delay condonation application. The reasons stated by the appellant to explain the delay were that the order of the State Commission was received by the Bank but the same was received in the concerned department of the bank much later and that the concerned officer happened to be on leave etc . It was held that these were unacceptable to justify condonation of delay and appeal was dismissed. **Citi Bank N.A. Vs. Ganesh Narain Saboo -1992(2) CPR 672 (NC) .**

Where the cause of action arose in 1985 and the civil suit filed earlier by the complainant was withdrawn without the permission to file fresh suit, it was held that there was no error committed by the District Forum in not registering the complaint filed by the complainant in the year 1991, on the ground that it is barred by limitation. **Basir Usman Vidha Vs. The Manager, United Commercial Bank & Anr. – 1992 (1) CPR 748 (SCRDC – Guj)**

Shares pledged with the bank as security was sold by the bank and the grievance of the complainant was that shares would have fetched a higher price in the open market, it was held that allegations are regarding deficiency of service and a complaint is maintainable under the Consumer Protection Act. However, since the complainant had not initiated legal action within three years from the date on which the shares were sold and sale proceeds were credited to her account, it was held that complaint cannot be entertained as it had become a stale complaint. This decision has been upheld by the National Commission vide its orders dated 1.09.1992 reported in 1992 (2) CPR 663. **Mrs. R.D. Chinoy Vs. Central Bank of India -1992(2) CPR 285 (SCRDC – AP).**

This Revision Petition arises out of an order passed by the State Commission allowing the complaint filed by the Respondent. The complaint filed in 1994 was regarding the non-release of gold ornaments, even though the loan being repaid in 1986, on the plea that loanee had outstanding against a cash credit account. The National Commission quoted with approval the findings of the State Commission allowing the claim of the complainant on the reasoning that the complaint was not barred by Limitation. It was observed that by judicial decision 'suit' as contemplated under section 10 of the Limitation Act, 1963 has a wider meaning and that it includes any legal proceeding strictly dealt with by the Civil Procedure Code brought by one party against another. Further, it was opined that in suitable cases the principle enunciated in section 10 as aforesaid may apply to other proceedings also. A banker (within the meaning of section 171) who holds any goods as security from a customer is a trustee as the security is not intended to be transferred to him and he does not acquire any title to it, except on the basis of a legal proceeding. Hence, a proceeding can be brought against a banker even after the expiry of the period of limitation. It was observed that the two loans were taken for two different purposes at different times and a separate and independent security was given for each loan and there was no mention of the gold loan being given as collateral security for the subsequent loan. **State Bank of India & Others v. Ananda Mohan Saha 1999 (2) CPR 18 (NC)**

Complainant had a fixed deposit with the appellant bank and was surety for a person in bank loan. The loan amount was not repaid and bank adjusted loan amount against maturity value of fixed deposit by exercising lien. This act of the bank was challenged on the ground that bank suit for recovery of loan was dismissed as barred by limitation. The issue is whether lien under section 171 of Contract Act can be exercised when the debt is barred by limitation. It was held that the bank was within its right when it exercised right of lien even where the debt is barred by limitation and hence there was no deficiency in service on the part of the bank. **The Manager, Canara Bank V/s Dr.P.V.Muhammed -2000(1) CPR 627 SCDRC (Ker)**

### **Loans and Advances**

No relief can be sought under the Consumer Protection Act against a Bank where Bank failed to advance further amount or discontinued the overdraft or cash credit facility. **Mukesh Jain Vs. V.K. Gupta & another 1991(1) CPR 364 (NC).**

It is for the Bank to decide whether a particular party is eligible for credit within the framework of the credit policy laid down by the Government of India and the Reserve Bank of India. It will not be open to the Commission to substitute its judgment

for the decisions to be taken by the Bank for giving bank credit. If there is any evidence of proved abuse or exercise of their authority for giving credit by bank Officials, redressal has to be sought from the officers of the Bank in their higher echelons, the Reserve Bank of India and the Government of India who have laid down the guidelines and norms for Bank credit. **Ram Kripal Bhargava Vs. Union Bank of India & Ors 1991(1) CPR 448 (NC).**

There is no deficiency in service where the bank did not provide loan to a customer because it is for the bank to satisfy itself whether applicant for bank's financial assistance was creditworthy & the project to be financed was technically feasible & economically viable. **Smt. Asha Sharma Vs. Union of India & Ors 1991 (1) CPR 575 (NC).**

When the complainant approached the opposite party bank for continuance of credit facilities, the bank had insisted that he should reduce the outstanding balance in his account. It was held that it is in the discretion of the bank to determine whether credit has to be allowed to a party to the extent of sanctioned limits, keeping in view how the party is discharging his obligations towards the bank. Therefore, refusal of the bank to enhance the existing sanctioned limits of credit or even to continue to grant credit to the extent of the limits already sanctioned cannot and does not constitute a breach of the bank's obligations toward its debtors. It is primary duty of the bank to ensure that the money of the depositors which it invests in the form of credit is safe. It was held that there was no deficiency of service on the part of bank. **M/s Essex Farms ( P ) Ltd. & Anr. Vs. Punjab National Bank & Anr. 1992(1) CPR 68 (NC)**

The complainant, who had availed credit facilities from opposite party bank had alleged that loss in his business was due to inadequate credit and failure to provide timely credit by the bank. It was held that where it has not been precisely explained as to how the bank could be held responsible for the loss incurred by the appellant due to fluctuations in foreign exchange, for non-return of the bank guarantee or delay in issuing bank guarantee, complaint against the bank cannot lie. **M/s Krishna Conductors Pvt. Ltd. Vs. Andhra Bank & Ors - 1992(1) CPR 434 (NC) .**

The complaint was that the bank failed to provide to the complainant working capital assured to be provided for running his factory. It was held that banks have the discretion to decide whether to sanction any working capital facilities to a party, and having sanctioned them whether it is justified to continue to provide those facilities and that the banks are within their right to withhold the provision of such facilities if the performance of the loanee is not satisfactory. Again it is for the banks to decide whether rehabilitation financial assistance for the purpose of rehabilitation and nursing of sick industries ought to be provided or not. Also, on facts, the complainant had failed to comply with the conditions attached to working capital facilities. It was held that there was no deficiency of service. **M/s Kraft Paper Mills Pvt. Ltd. Vs. New Bank of India & Ors - 1992(2) CPR 703 (NC).**

Where the bank had not granted the facility of advance of loan requested by the complainant, it was held that it is legally open to the banking company concerned to take a decision in good faith in the exercise of its bonafide discretion as to whether it is safe to make advances of public funds to any particular party and arrive at a decision after examining the relevant facts and circumstances. It cannot be said that when after consideration of relevant factors the Bank in its



discretion decides not to grant further advances there has been any deficiency of service on the part of the Bank. **Ambika Cold Storage ( P) Ltd. Vs. State Bank of India - 1992(2) CPR 719 (NC).**

TAHDCO recommended to the opposite party bank for grant of loan to the complainant. But the bank found it not feasible and refused to sanction the same. District Forum though found that it cannot direct the bank to advance the loan, but held that if loan had been sanctioned the complainant would have earned profit and directed the bank to pay compensation. It was held by State Commission that sanctioning of loans by the banks are matters within their exclusive discretion depending upon the viability of the project, the creditworthiness of the borrower, his sense of honesty in repaying the loan etc. and it is not open to the Forums constituted under the Act to substitute its judgement for the decision of the Bank. It was also held that where decision of the bank not to grant the loan is not liable to be questioned, there is no scope for a presumption that if the loan had been granted, the complainant would have made profit. **The Regional Manager, State Bank of India & Anr. Vs. A. Periasamy -1992(2) CPR 395 (SCRDC – Mad) .**

The complainant had claimed a sum of Rs.61 lacs from the SBI but SBI had refused to provide loan on the ground that the Small Scale Industry was not viable. The unit was declared viable and later financed by Himachal Pradesh Financial Corporation. The bank took the stand that even if SIDBI and HPFC have found the project viable for term loan, the bank did not consider the proposal as a fair banking risk and hence declined to finance the project. The Commission held that it is for the bank or financial institution to decide whether to provide loan to any industry after taking into consideration its viability and its judgment cannot constitute deficiency in service. **Ashok Prabhakar Vs. SBI & Ors. 1993(I) CPR – 103 (NC)**

A complaint was filed while the Respondents who had applied for a loan of Rs.20,000/- from the appellant bank to start a bakery unit. Though two instalment of the loan were paid there was delay in payment of the third instalment. The District Forum had allowed the complainant to realize Rs.1,000/- as compensation from the appellant bank for the negligence in the matter. The Commission observed that the appellant bank did not care to disburse the last instalment of the loan amount within a reasonable time. It held that even though the bank have the right to grant or refuse loans, causing undue delay in releasing the instalments of the sanctioned loan for no fault of loanee is a negligence and deficiency in service and did not interfere with the order passed by the District Forum. **The Kottayam Co-operative Agricultural Development Bank Ltd Vs. Sarada Chandran & Another 1993(1) CPR 603 (SCDRC-Kerala)**

The complainant applied for a loan of Rs.10 lacs but was sanctioned a loan of Rs.1 lakh. The complainant's grievance was that the loan of Rs.1 lakh was insufficient for his business and he suffered a loss in the business and claimed around three lakh as compensation. The bank stated that the complainant was a defaulter and the bank had filed civil suit for recovery of the loan amount. In view of the facts, the commission held that the refusal on the part of the Bank to grant required loan facility to complainant does not amount to deficiency in service. **Devidas V Kale Vs. Bank of Maharashtra (1993 (2) CPR 207) (SCDRC-Bombay)**

The complainant applied for loan against security of Vikas Patra. Though initially the loan was declined due to financial restraints, subsequently it was sanctioned by higher authorities. However, the bank could not disburse the loan amount as the complainant failed to produce Vikas Patra. The State Commission held that there is no deficiency in service on the part of Bank when initially it failed to provide loan but subsequently sanctioned it, still it could not be disbursed as complainant failed to furnish security. ***O.P.Kingar Vs. Union Bank of India 1993 (2) CPR 309 (SCDRC- Karnataka)***

The complainant started a printing unit with financial aid from SFC and M/s. Laxmi Commercial Bank sanctioned a working capital loan of Rs.50,000/-. Later the complainant applied for a loan of Rs. 15 lacs. In the meanwhile the assets and liabilities of Laxmi Commercial Bank were transferred and amalgamated with Canara Bank which took over and started functioning in the same premises. Canara bank refused to grant loan to the complainant mainly on the ground that he did not submit audited balance-sheets of his unit for the past years. After appreciating the facts involved in the case, the Commission held that it is for the bank to decide whether a particular person is eligible for credit within the framework of the credit policy and looking at his past performance viability of project and it is not open to the Redressal Forum to substitute its judgment of decision to be taken by bank. ***Parmananda Tripathy Vs. Canara Bank & Ors 1993(2) CPR 645 (NC)***

The complainant is a small scale unit which obtained loan from bank which was sanctioned for one year. the complainant applied for extension of loan facility on expiry of period. Sanction for extension had been received from the Divisional Office but branch office did not issue the sanction. Instead the Branch office started debiting interest from the account of the complainant. The Commission held that the action taken by the bank in debiting complainant's account with interest vitiates principles of natural justice. Instead of passing any order on the application for extension of period of the loan facility, the bank started debiting interest from the complainant. It was held that this constituted deficiency in service for which bank is liable to compensate complainant for harassment and sufferings. ***M/s.Bharat Appliances Vs. Syndicate Bank & Ors 1993(2) CPR 651(SCDRC- UP)***

The complainant who had a current account in Central Bank of India was granted cash credit limit of Rs.1,75,000/- for his business . The complainant requested for enhancement of cash credit facility, which was not replied by the Bank. The complainant had also a fixed deposit of 1 lakh with the bank. The bank however cancelled the cash credit facility to the complainant. The State Commission placed reliance on the decision in Ramkripal Bhargava Vs. Union Bank of India and others and stated that the refusal to provide financial support to an industry does not amount to deficiency in the service. ***Rajendra Chandak Vs. Central Bank of India 1993(3) CPR 253 (SCDRC-Bombay)***

A partner of Satya Glass Industries on the ground filed the complaint that SBI, which had committed to provide his unit its need based working capital refused to sanction even a single penny working capital. The Commission held that when a person applies for bank loan he does not hire services of bank and his complainant against refusal to sanction loan by Bank is not maintainable and any complaint against abuse of authority by the Bank Officers or disregard of norms has to be regressed before higher officers of the Bank. ***Binay Bhushan Tiwari Vs. SBI 1993(3) CPR 631) (SCDRC- Bombay)***

The complainant had applied for working capital loan, which was denied by Union Bank on grounds of technical, commercial and financial viability of the project and the financial soundness of the managers of the project. The complainant had claimed Rs.50 lacs as compensation from Union Bank. The National Consumer Disputes Redressal Commission, New Delhi dismissed the petition on the ground that the refusal by a bank to provide financial assistance for a project for reasons cannot be deemed to be deficiency in service attracting mischief of the Consumer Protection Act. ***M/s.Laxmi Fabricators & Ors Vs. Union Bank of India & Ors 1994(1) CPR 89 (NC)***

The complainant who had an account with the Union Bank, approached for financial assistance for starting a new industrial unit and deposited Rs. 90,000/- with the Bank on the instructions of the Branch Manager. As the loan amount of 3Lakhs was not sanctioned, the complainant approached the Forum. The Forum placed reliance on National Commission decision in Ashok Prabhakar Vs. State Bank of India & Ors.(1993(1) CPR 103) and held that the decision of the bank not to provide finance on the ground that the project was not viable would not constitute deficiency in service on the part of the bank. and the complaint was dismissed. ***A. Shamsudheen Vs. Union Bank of India 1994(1) CPR 453 (SCDRC-Kerala)***

The complainant as a guarantor of his son who is proprietor of a small-scale factory filed the complaint alleging that though manager of opposite party Bank took running guarantee of Rs. 1Lakh, loan was not disbursed as a result of which factory of his son was closed causing huge loss. SBI contended that the firm of complainant's son was provided OD facility but did not pay back dues and ultimately a suit had to be filed for recovery of dues. Central Bank averred that bank allowed cash credit open limit and cash credit key loan to the firm but loan advanced was not paid for which mortgage suit had to be filed. The State Commission held that it is for the banks to decide whether to assist any firm with term and working capital loans and Commission not to substitute its judgment for decisions to be taken by banks. ***Ugra Mohan Jha Vs. Dighra, Zonal Manger, Central Bank of India &Ors 1994(2) CPR 23 (SCDRC-Bihar)***

Corporation Bank filed the said appeal against the order of the District Consumer Forum which took the view that bank has discretion of granting loan but dragged matter putting complainant to difficulties and awarded compensation. The State Commission held that the complaint is premature, as the complainant has approached the District Forum before the bank has taken a final decision on the application submitted by the applicant. The State forum held that the district forum was not right in thinking that the application original submitted by the complainant was still pending and was not disposed of by the bank and the Bank was giving assurance that the loan would be granted to the complainant. The order of the District Forum was set aside and the appeal of the bank was allowed. ***Corporation Bank Vs. P C Savithri 1994(1) CPR 97 (SCDRC-Kerala)***

The complainant had approached the forum against SBBJ's action of reducing the limit of cash credit from Rs.50,000/- to Rs.25,000/-. The reason shown in the letter was that the complainant's unit is not a small-scale industry. In the instant case, the Commission observed that having perused the letters issued by the opposite party Bank for reducing the cash credit facility, the bank was justified in reducing the limit of cash credit facilities to the extent of Rs.25,000/- and it cannot be characterized as deficient in service. ***Kailashmal Mehta Vs. SBBJ & Anr. 1994(2) CPR 173 (SCRDC- Rajasthan)***

The Complainant was filed the captioned Complaint alleging that the banking service rendered by the opposite party bank was deficient as the bank not allowing complainant to avail of his full limit facilities available to him. It was held that the consistent view of this Commission is that matters concerning the eligibility of parties to any credit assistance, viability of the project and continuation of the credit facilities or the operation of the account by any party, are within the discretion of the financial institution depending upon various sectors like financial discipline and past history of borrower and his ability to pay the loan and if such discretion is exercised bonafide, it will not amount to any deficiency on the part of the institution. Complaint dismissed. ***M/s. National Paper Box Manufacturing Company Vs. State Bank of Bikaner & Jaipur & Others CPR 1995(I)635 (NC).***

A Complaint was filed against the opposite party/respondent bank under sections 2, 14 & 15 for deficiency in banking service in cash credit facility. It was held that the bank cannot be said to be deficient in the rendering service. The respondent bank has given all possible financial help to the complainant but he failed to pay the installments of repayment of loan. Appeal dismissed. ***Precision Industries Vs. Bank of Borada, CPR 1995 (3) 387(NC).***

The complaint was filed under section 2(1)g & 14 of Consumer Protection Act for deficiency in banking service. It was the case of the complainant that the bank reduced his cash credit limit to Rs. 2 lakhs from 4 lakhs without any reason. It was held that the action of the opposite party bank in reducing the cash credit facility from Rs. 4 lakhs to Rs. 2 lakhs is arbitrary as no reasons have been indicated as to in what circumstances the opposite party bank came to this conclusion. The bank failed to satisfy the commission about the action taken by them. The complainant was entitled to get the compensation of Rs. 1 lakh. ***M/s. Arvind Modern Dal & Rice Mill Vs. Bank of Borada, CPR 1995(I) 715 (SCDRC - U.P).***

The complaint was filed under section 2 and 14 of the Consumer Protection Act for deficiency in banking service. The complainant had a small scale industry who availed loan from West Bengal Financial Corporation (WBFC) & DIC Calcutta after submission of Project Report which was found economically and technically viable by WBFC and DIC, Calcutta. The respondent Bank sanctioned the working capital loan to the extent of Rs. 2.84 lakhs. The respondent bank refused in the pretext that there is a considerable amount of debit balance in the account which should be liquidated before the disbursement. It was held that refusal of the bank to disburse the sanctioned loan on the pretext of the debit balance in other account amounts to deficiency in service. Complaint allowed. Awarded Rs. 2 lakhs as compensation. ***Indian Electric & Transformer co. & others Vs. United Bank of India, CPR (3) 618 (SCDRC - WB).***

The complaint was filed under Sections 12 & 17 of Consumer Protection Act. It was the case of the complainant that the opposite party bank closed the credit facility without intimation, which was sanctioned earlier. It was held that refusal of bank to continue to grant credit to the extent of limit already sanctioned does not constitute a breach of bank's obligation towards debtor, hence no deficiency in service. Complaint dismissed. ***N.S. Srirangarajan Vs. State Bank of India, CPR 1995(3) 5 (SCDRC - Karnataka).***

The complaint was filed under section 12 & 17 of Consumer Protection Act for alleging that the complainant took pain to spend a lot of time to comply with demand made by bank and incurred expenditure for getting loan. The appellant bank rejected the application for sanction loan. It was held that rejection of application for sanction of loan does not constitute deficiency in service. ***The Manager, State Bank of India & others Vs. V.V. Abraham, CPR(1)383 (SCDRC - Kerala).***

The complaint was filed against the opposite party bank under section 2 and 14 of Consumer Protection Act. The complainant alleged that the opposite party bank refused to sanction additional loan. It was held that refusal by bank to sanction additional loan does not amount to deficiency of service. Complaint dismissed. ***B.M. Suresh Kumar Vs. The Branch Manager, Indian Overseas Bank, CPR1995 (I)747 (SCDRC - Karnataka)***

Where a loan was sanctioned to the complainant for running a diesel pump set business and later after partial disbursement of the loan, it was verified on inspection that the complainant is not carrying any such business the bank stopped further amounts, it was held that there is no deficiency on the part of the bank, as alleged by the complainant, in not disbursing the remaining loan amount. The said order of the DF was confirmed by the State commission. ***Shyamal Kumar Ghosh v. U.B.I. Deganga Branch 1996 (3) CPR 76 (SCDRC-WB)***

Where the bank withheld the payments due to the complainants under the provident fund account, on the ground that the complainants in their capacity as Directors of a Mill stood as guarantors for a loan taken by the mill and that a suit for recovery of dues has already been filed by the bank against the mill and the complainants, the same was held to be deficiency of service on the part of the bank for the reason that the amounts deposited by the complainants with the bank under the PF account were in a capacity of trustees which is different from their capacity as Directors of the mill and as such not liable to be withheld, more so when the law is well settled that amounts lying in PF account are not attachable. ***Chinubhai N. Munshaw & Ors., v. Central Bank of India 1997 (1) CPR 412 (SCDRC-Gujarat)***

The bank was held liable for deficiency of service when, without serving any notice to the complainant, due to non-repayment of loan, it removed a motor car from the possession of the complainant, to whom the bank advanced the loan for the purpose of purchase of the said car. ***Pritpal Singh v. Citi Bank N.A. 1997 (1) CPR 403 (SCDRC-UT of Chandigarh)***

Where a loan was granted to a person on the security of the amounts deposited in FCNR deposit account in the name of the complainant, although it was held that the said security was not limited in time and would subsist as long as the loan was due, it was held that the said deposit was to be treated as a security only for the loan for which it was so kept and not for all the debts due from the borrower to the bank. To the extent where the bank withheld the amount due to the complainant after adjusting the loan for which the deposit was kept as security, the bank was held liable for deficiency in service and the complainant was held entitled to recover the said remaining amount. ***C.D. Patel v. Canara Bank & Anr. 1997 (3) CPR 65 (SCDRC-Karnataka)***

The bank withheld certain amounts due to the complainant under a letter of credit, on the basis of an alleged arrangement enabling the bank to do so and later on released the amount in favour of the complainant. The bank was held liable for deficiency in service in as much as the bank could not prove the existence of such an arrangement and the other terms and conditions of the letter of Credit exhibited a contrary intention. The bank was directed to pay interest for the period during which the amounts were withheld as well as costs to the complainant. ***R.S. Industries (Rolling Mills) Ltd., v. Branch Manager, Central Bank of India & Ors. 1997 (3) CPR 345 (SCDRC-Rajasthan)***

Where the complainant was not granted remission of a loan amount in terms of the scheme framed by the Government, the bank was held not to be deficient in providing banking service. The orders passed by the District Forum and the State Commission were set aside and the complaint was dismissed. ***The Special Officer Ambasamudram Co-op Primary Land Development Bank Ltd., v. Esakkimuthu Konar 1996 (2) CPR 7 (NC)***

Where the bank denied grant of working capital loan and it was found that such a decision was taken based on valid reasons, the same was held not amounting to deficiency in service. ***B.B. Tiwari v. SBI 1996 (3) CPR 190 (NC)***

National Commission, accepting the findings of the tribunals below dismissed the complaint on 3 grounds: (i) The petitioner had not complied with the conditions of the agreement for repayment; (ii) The suit was filed by the bank for recovery; (iii) the petitioners had admitted that they failed to repay the installments due to slump in the market. The **Supreme Court** was of the view that the rejection of the complaint under the first two grounds was not proper because there was mutual violation of the agreement, i.e, there was violation by bank resulting in the violation by the complainant and that the existence of the suit for recovery should not be considered as a bar in all cases. **Supreme Court** however held that since there was an admission on the part of the complainant that there was a default on her part, no interference was called for and the SLP was dismissed. ***Mrs. Viswalakshmi Sasidharan & Ors., v. Branch Manager, Syndicate Bank, Belgaum 1997 (1) CPR 107 (Supreme Court) [National Commission Section]***

The complainant's application for a loan of Rs. 10 lacs was sanctioned by the respondent Land Development Bank. However, only a part of the amount sanctioned was paid to the complainant and hence this complaint for deficiency of service. It was observed that the Consumer Protection Act is a new Act which has been devised for a specific purpose. It is a self-containing Act which indicates the jurisdiction of the machinery created under the Act. Section 1 (4) of the Act makes it clear that unless there is a notification by the Central Government to the contrary all matters pertaining to goods and services will be within the jurisdiction of the machinery created under the Consumer Protection Act. There is a specific provision in the Consumer Protection Act to the effect that a Co-operative Society may be brought before the Forum. It was further observed that on lifting of the veil, there is no real relationship of a Co-operative Society and its member. In reality it is found that it is a bank with welfare credit as its aim. The Society is rendering the service of granting loans on easy terms. The complainant has availed one such loan, she is a perfect customer. ***V. Kalavathy v. The Pondicherry Co-operative Central Land Development Bank Limited 1998 (3) CPR 238 (SCDRC - Pondicherry)***

The complainant's application for a loan under the Prime Minister's Rozgar Yojna filed through the Industries Department was rejected by the bank. The complaint filed before the District Forum was allowed. Aggrieved by the order of the District Forum the bank has filed this appeal. It was held that the non-grant of financial accommodation, loan or subsidy etc. does not amount to deficiency in service on the part of a bank. ***Syndicate Bank, Branch Gurgaon v. Sanjay Kumar 1998 (3) CPR 312 (SCDRC - Haryana)***

The complainant had availed medium terms loan and cash credit loan of different amounts. The complainant's request for a loan of Rs.15,000/- to avail of a contractual commitment was not considered by the bank. The complainant had to discontinue its business on account of the refusal to grant loan. It was observed that there is no prima facie ground for non-consideration of prayer for loan. The District Forum rightly held that complainant was entitled to compensation and the compensation was enhanced to Rs.50,000/-. It was observed that although a bank had right to decide the question of granting a loan to a particular customer but where the bank consented to give advance but did not give the same, matter stood on a different footing. ***M/s Teletronics v. Regional Manager State Bank of India & Anr. 1998 (2) CPR 197 (SCDRC - West Bengal)***

The complainant had availed a cash credit facility from the bank on the security of some Life Insurance Policies, NCCs and CCRs. The arrangement was that the bank would collect the maturity proceeds from the life insurance policies and adjust the same towards dues. However, the bank collected the proceeds after a long period. District Forum held that there was deficiency in service and hence this appeal. It was observed that the reasons for not collecting the proceeds in time were not mentioned by the bank. The recovery suit filed by the bank against the complainant in the Civil Court will not have a bearing on the proceedings before the Consumer Forum and the complainant was entitled to relief consequent on its deficiency in service. The bank was directed to deduct the interest charged on the complainant during the period the bank failed to collect the proceeds. It was further observed that if any order is passed under the Consumer Protection Act it will be binding on parties although any of them has right under Civil Procedure Code to bring a suit to enforce civil right thereafter. ***The Federal Bank Ltd & Anr. v. M/s Calcutta Stores Supply Company & Ors. 1998 (1) CPR 383 (SCDRC - West Bengal)***

The complaint was filed alleging deficiency in service on the part of the respondent bank in that they failed to advance the loan as per the scheme drawn up to help rehabilitation of people affected by loot and arson following assassination of Mrs. Indira Gandhi. It was observed that in the matter of grant of loan or financial accommodation, the financial institutions exercise their discretion in accordance with their best judgment after taking into consideration relevant factors. If the loan or financial accommodation is not granted after taking into consideration relevant factors, it cannot be said that there was any deficiency of service as defined in section 2 (1) 9g) of the Act. ***Study Circle v. Punjab National Bank & Another 1999 (1) CPR 602 (SCDRC - Madhya Pradesh)***

The Cheque drawn by the complainant on the cash credit account was returned unpaid with endorsement 'refer to drawer'. In view of the National Commission's decision in *Essex Farms (P) Ltd. v. Punjab National Bank* (where it was held that the refusal of the Bank to enhance the existing sanctioned limits of credit or even to continue to grant credit to the extent of the limits already sanctioned cannot and does not constitute a breach of bank's obligation towards its debtors) , it was held that there is no scope for the complainant to raise a consumer dispute in respect of non-encashment of cheque. It would not be open for the Commission to substitute its judgment in relation to the honouring the said cheque and therefore the complaint is not maintainable. ***Dream Décor v. State Bank of India & Another 1999 (1) CPR 234 (SCDRC - Goa)***

The complainant had sought a direction from the District Forum to the bank to write off loans due from him, as per Government order to the effect that agricultural loans need not be repaid if the loan amount did not exceed Rs.10,000/-. The complaint was dismissed by the District Forum for non-appearance and hence this appeal. The finding of the State Commission was that the dispute sought to be raised by the appellant/complainant is outside the jurisdiction of the Tribunals under the Act because the appellant is not a recipient of any service in that for any consideration going from him to the bank. Even assuming that writing off loans of the agriculturists is a mode of service to be rendered by the banks to their customers, that service is not for any consideration received by the bank from its customers. ***Mantri Veera Mallaiah v. Bank Manager, Central Co-operative Society Bank 1999 (1) CPR 51 (SCDRC - Andhra Pradesh)***

The complainant had availed a housing loan from the bank. The District Forum had directed the bank to receive instalments Rs.1500 p.m. towards repayment of loan and interest. However, the complainant had defaulted in making timely payment of interest amount. It was held that any mistake by bank in calculating the monthly instalment cannot be said amounting to deficiency in service. It was further held that since the complainant has defaulted in making timely payment of interest amount, in terms of the agreement and the guidelines of the Government of India, the bank was fully justified to initiate action against the complainant to recover loan and interest and as such the order of the District Forum awarding compensation to the complainant is liable to be set aside. ***Regional Manager, Punjab National Bank v. Hriday Narain 1999 (2) CPR 467 (SCDRC - Bihar)***

The bank had sanctioned a loan of Rs. 23,000/- in favour of the complainant. However, the last instalment of Rs.8000/- was not released. The complainant had filed the complaint claiming a loss of Rs.10,00,000/- on the ground that the Eucalyptus trees which the complainant was growing were underdeveloped and has caused loss to him. It was observed that the complaint had failed to produce any evidence in support of his claims. Further, the complaint had filed a suit before the Civil Court wherein he had prayed for damages also. However, no decree for compensation was awarded. The complaint had not filed any appeal against the decree and no-award of compensation. All the claims of compensation as have been incorporated in the complaint, should have been included in the suit by the complainant, which he has failed to do. As such,



the complainant is precluded from filing the present complaint and as such the complaint is liable to be dismissed. **Shiv Prashad v. Punjab National Bank 1999 (3) CPR 208 (SCDRC - Himachal Pradesh)**

A complaint was filed before the District Forum alleging deficiency in service on the part of the respondent bank in directing the appellant to purchase seeds from a particular shop when quality seeds were not available in the shop. The District Forum dismissed the complaint holding that the transaction related to loan. The issue before the Commission is the whether the direction of the bank to purchase seeds from a particular shop and consequently the failure of the shop to supply the seeds amounted to deficiency in service or not. The State Commission, in appeal, held that the District Forum was not right in dismissing the complaint on the ground that the transaction relates to loan and is not triable by the District Forum. The case is remanded to District Forum. The Commission also observed that the bank should not have issued direction for a particular firm but should have invited quotations. **Udai Beer Singh V/s Branch Manager, State Bank of India & Anr-2000 (2) CPR 45 SCDRC (UP)-**

The complainant had taken loan from opposite party No.1 bank to purchase a bus. However as he could not pay back the amount of loan in installments, the bus was surrendered to the bank for its safe custody. The complainant alleges that the bus was not released in time as a result of which the complainant suffered loss in business and alleges deficiency of service on the part of the bank. The Commission dismissing the complaint observed that none of the evidences brought out in the complaint or during the course of arguments involve rendering of service by bank to the complainant for which the complainant be termed as consumer within the meaning of section 2(1)(d) of the Act. **Ram Vir Singh V/s Canara Bank & Ors-2000(2) CPR 320SCDRC (UP)**

The complainant alleged that there was deficiency in service on the part of the Bank in not processing their request for sanction of additional loan to revive their sick unit. The Complainant had not been able to furnish guarantee as required by the bank. It also had already obtained a huge loan running into several lakhs and since it could not proceed well, it turned out to be a "Sick Unit". It was held that the bank as a financial institution will be within its rights to exercise all precautions while sanctioning and granting loan to any party and it is not deficiency of service on the part of the bank in not processing application of the complainant the way he desired. **Rudraksh Aqua Farms Pvt Ltd & anr Vs. Bank of India - 2003 (1) CPR 432**

The Complainant had applied for a loan of Rs.1 lakh but the bank sanctioned a loan of Rs.35,000/- to the complainant. It was held that a person cannot have a vested right of being provided entire amount of loan applied for as sanctioning of loan is within the discretion of the bank and therefore, there is no deficiency in service on the part of the bank. **Velappan Nair, Manager, Kerala State Co-op Bank & anr Vs. K.P.Suran - 2003 (3) CPR 44 (NC)**

The respondents, for purchase of product of complainant, opened an irrevocable without recourse at sight letter of credit in favour of the complainant. The complainant supplied goods but payments were not released by the bank on a plea of certain discrepancies in documents. Held that withholding of payment under letter of credit by bank without just cause constitutes deficiency in service. **Swadesh Polytex Ltd Vs. Central Bank of India & ors - 2004 (2) CPR 23 (NC)**

The complainant failed to repay the bank loan within 11 months as stipulated in loan agreement. The Bank proceeded to auction the pledged jewellery of the complainant. It was held that there is no deficiency in banking service when on non-payment of loan as per the loan agreement, the bank proceeded to auction the pledged articles. ***Dr. Baswraj Shiddhya Vhasmath Vs. Solapur DCCB - 2004 (2) CPR 574***

### **Locker**

The leasing of a locker in the custody and control of the Bank and which is also responsible exclusively for its security, does not and cannot create the relationship of landlord and tenant between the Bank and the locker holder. The character of an agreement has to be determined by its contents and its true nature cannot be altered by agreement among the parties. Again the parties cannot be relieved of their obligations under the agreement by merely changing the name of the agreement as being between a landlord and a tenant. In fact, the appellant could not have contracted out of his responsibilities in relation to the locker by describing the agreement as that of between landlord and tenant. It appears to be *tour de force* on the part of the appellant to seek release from its obligations under the locker agreement. In view of the above, it was held that Bank is liable for loss of ornaments in the locker hired by it to the customer. ***Punjab National Bank, Bombay Vs. K.B. Shetty 1991 (2) CPR 633 (NC)***.

Increase in rent of locker from Rs. 75/- to Rs. 200/- per annum without any improvement in banking service, was held to be deficiency in rendering of service (as per the majority of the members of the Commission) and directions were issued to the bank to charge the earlier rent of Rs. 75/- per annum and the bank was allowed to increase the rent upto the same level as other nationalized banks. [The President of the Commission dissented for the reason that although the complainant is a consumer within the definition of the section 2(1)(d) of the Consumer Protection Act, 1986 and the service rendered by the bank is service as defined under section 2(1)(o) of the Act, however the Consumer Fora are not appropriate authorities to fix such rents.] ***P.D. Dalmia v. Branch Manager, Vijaya Bank 1997 (1) CPR 415 (SCDRC-WB)***

In the case where a bank locker was found open and its contents emptied, the question whether the bank was liable for deficiency in service was left open for the Civil Court to decide as the same required detailed examination of evidence. The decision of the State commission was set aside and the complaint was dismissed. ***UCO Bank v. R.G. Srivastava 1996 (1) CPR 97 (NC)***

There were rival claimants to a locker and its contents. However, the bank without intimation to the hirer (as per the bank's records), broke open the locker and kept the contents in safe custody and refused to return the contents to the hirer (as per the bank's records) on the ground that there was a rival claimant to the said locker, although there was no record to indicate that the locker was hired to the rival claimant. The act on the part of the bank was held to be deficiency in service towards the hirer (as per the bank's records) of the locker. ***Ratikanta Panda v. Satyananda Sahoo & Ors. 1997 (2) CPR 295 (NC)***

### **Cases Involving Voluminous Evidence and Complicated Questions of Law and Fact**

The complainant was a partner of a partnership firm which had cash credit accounts with the opposite party bank. The complaint was that the bank wrongfully, negligently and unauthorisedly made payments on the authority of one of the partners resulting in debit balance in the accounts of the firm. Dismissing the complaint, it was held that where complainant's case is not a simple case of deficiency in service but involves determination of complex questions of facts and interpretation of laws and rights and obligation of parties under various statutes which cannot be satisfactorily determined by the Commission in the time frame provided under the Act, it would be better for the complainant to seek redressal of his grievances in a civil court if so advised. ***Panalal Vs. Bank of India & Ors - 1992(1) CPR 34 (NC)***

The complainant had alleged that the bank had not sanctioned loan to him under Rural Industrialization Scheme inspite of being entitled to it under the credit policy of the Government/guidelines framed by RBI. The State Commission took the view that adjudication of the dispute can be done only in a regular civil court as it would necessitate adducing of elaborate oral/documentary evidence. It was held that it is the responsibility of Consumer Forums to entertain bonafide complaints of deficiency in service by the banks and financial institutions keeping, however, in view the limitations of the Consumer Forums whether it would be possible for the Forums to render justice in such complaints or it would be expedient to leave the parties to seek redressal in the Civil Courts keeping in view the questions of facts and law and the time frame within which the Forums have to dispose of the complaints. However, Consumer Forums should not refuse to entertain complaints and forbear adjudication on the plea that oral and documentary evidence has to be taken and examined. It was observed that Policy laid down by the Government of India and the guidelines of the Reserve Bank of India in the matter of bank credit are mere guidelines and the responsibility for taking decision vests with the bank or institution which has to give the credit eventually. ***A.N.Sharma & Ors Vs. Divisional Manager, Syndicate Bank & Anr - 1992(1) CPR 442 (NC)***

The complainant along with his partner had opened a current account with the opposite party bank in the name of partnership firm, which was to be operated jointly by both the partners. Admittedly this account was not operated since long. The second partner opened another account with the opposite party in the name of the firm describing himself as sole proprietor and misappropriated some amount. The complainant claimed compensation against the bank for allowing opening of fictitious account and enabling the other partner to siphon away money. It was held that complicated issues involved in the complaint cannot be satisfactorily adjudicated in the proceedings under the Consumer Protection Act and it was left to the complainant to seek redress in a Civil Court if he so chooses. The complaint was dismissed. ***Jayachandra Kumar Vs. Chairman, State Bank of India -1992(2) CPR 699 (NC)***.

When the complainant alleges that a particular discharge voucher/receipt was taken from him under threat, duress, coercion and undue influence and consequently not binding on him, it was held that, unless the complainant gets such voucher/receipt set aside by a competent civil court, he cannot maintain a complaint for deficiency of service. ***Mr. A.J. Coelho Vs. Canara Bank -1992(1) CPR 402 ( SCRDC - Kar)***

The complaint related to alleged deficiency in service of the American Express bank in respect of forward foreign exchange contracts entered between the parties. The issue related to contracts that are booked for a maximum period of 6 months

and being rolled over by renewal by payment of a price for rolling over a contract and brokerage. The Commission took the stand that the transactions of Foreign Exchange Contracts are quite complex in nature and that a satisfactory adjudication of these matters will not be possible before the Consumer Forum. ***M/s.Garden Silk Mills Ltd, Vs. American Express Bank Ltd 1994(2) CPR 603 (N C)***

The complaint was filed under Sections 12 and 17 of the Consumer Protection Act for deficiency in banking service. It was the case of the complainant that the opposite party bank charged and collected an excess interest. It was held that where complaint requires recording of voluminous evidence of numerous transactions proper remedy would be to approach Civil Court and not a complaint under Consumer Protection Act. Complaint dismissed. ***Narayan A Karkera Vs. The Corporation Bank, CPR1995 (3) 67 (SCDRC - Karnataka)***

The complaint was filed under Sections 12 & 17 of Consumer Protection Act. The complainant had availed a term loan during the year 1978. It was the grievance of complainant that the opposite party bank charged increased rate of interest without any notice and consent of the complainant. It was held that complaint about bank having charged excess interest on a term loan which was in operation since 1978 would necessarily require recording of voluminous evidence and remedy lies with Civil Court. Complaint dismissed. ***M/s. Ganesh Mahal Vs. The Manager, Karnataka Bank Ltd. & Anr, CPR(3) 1995 126 ( SCDRC - Karnataka).***

Where, on the lines of the decision of the National Commission in Omega Packing Pvt. Ltd., v. Central Bank of India & Ors. (I(1995) CPJ 1 = 1995 (1) CPR 247 (NC)), the District Forum refused to entertain a complaint under the Consumer Protection Act, 1986 on the ground that elaborate evidence is required to be appreciated for determining the allegations of fraud and that it required perusing 360 entries of accounts, the same was upheld by the State Commission. However, the State Commission modified the order of the District Forum as regards compensation and enhanced the same, with a direction to the bank to recover the said amounts from the officers of the bank responsible for negligence leading to charging of excess interest. ***Dr. B.G. Achar & Anr., v. Bank of India and others. 1997 (2) CPR 201 (SCDRC-Karnataka)***

Where the complainants alleged that their accounts were debited on the basis of forged cheques and as such the bank, by not re-crediting those amounts, is liable for deficiency of service, the State Commission opined that the said matter involved determination of liabilities based on elaborate appreciation of evidence which cannot be undertaken under the summary procedure laid down in the Consumer Protection Act and as such disposed of the matter directing the complainants to seek remedy before a competent civil court. ***Motlib Ali & Ors., v. Canara Bank. 1997 (3) CPR 164 (SCDRC-Assam)***

A complaint was filed for deficiency of service in respect of payment made by the bank towards two cheques which were alleged to be forged. The matter was considered in the light of the opinion of the handwriting expert produced by the bank stating that the cheques were not forged and was remanded back to the District Forum for fresh decision after giving the complainant an opportunity to produce expert opinion in rebuttal and to cross-examine the expert witness of the bank. ***Canara Bank v. Uppal Brass Industries & Ors 1996 (1) CPR 109 (NC)***

Where a complaint was filed for deficiency of service on the ground that the bank was not repaying the alleged excess payments made by the complainant while settling a loan nor did the bank give the complainant's concern the benefit of a rehabilitation scheme, the State Commission dismissed the complaint on the ground that the forum under the Consumer Protection Act, 1986 is not the appropriate authority to adjudicate such disputes. The National Commission upheld the order passed by the State Commission and dismissed the appeal on similar grounds. **R. Sethuraman v. The Manager, IOB & Anr. 1996 (2) CPR 136 (NC)**

Where the complainant alleged that the loan amounts disbursed by the Financial Corporation and SBI were not sufficient and that the same were released after considerable delay of time, which was strongly opposed by the financial corporation and SBI stating that the same was due to the recalcitrant attitude of the complainant, the Commission dismissed the complaint on the ground that the said allegations required elaborate appreciation of evidence which cannot be resorted to under the summary proceedings under the Consumer Protection Act, 1986 and that the commission cannot substitute its judgement for decisions to be taken by the banks while providing financial assistance. The Commission relied on the decisions in Ram Kripal Bhargava v. UOI and others (reported in 1991 BRLJ 14) and Parmananda Tripathy v. Canara Bank & Others (reported in 1 (1993) 1 CTJ 123 (N.C.)). **Abdul Hamed v. MD, Bihar State Fin Corp & Br. Manager, SBI 1996 (1) CPR 387 (SCDRC-Bihar)**

The dispute is regarding accounts in respect of the various amounts collected, the dates of deposits and the interest accrued, and the amount payable to the complainant by the opposite parties. It was observed that such a dispute cannot be resolved in a summary proceeding in the Consumer Commission. This is a dispute which should be agitated in a Civil Court where elaborate evidence can be recorded and the dispute resolved. **NEPC Micon Limited v. The Federal Bank Ltd. and Ors 1998 (1) CPR 305 (SCDRC - Tamil Nadu)**

The dispute was regarding the legitimacy of certain bank charges. It appears that opp party 1 and some other banks formed a Consortium, of which opposite party 1 is the lead bank, to grant credit facilities to the complainants. The complainant stated that the lead bank, under the guidelines and circulars issued by the Reserve Bank of India, could levy a service charge for services rendered but the fee must not exceed 0.25%. The fee had to be settled after negotiating with the customer. The complainant alleges that the bank in total disregard of RBI guidelines and without any negotiation with the complainant debited the complainants account to the tune of Rs.93 lakhs. The complainant had prayed for a compensation of a huge amount. It was held by the Commission that where the question raised in a consumer complaint were complicated questions of fact and law and will take elaborate evidence, such complaint could not be decided by Consumer Forum. **The Bombay Dyeing and Manufacturing Co.Ltd. V/s Union Bank of India- 2000(3) CPR 38 (NC)**

An amount of Rs.11,25,000/- was alleged to have been withdrawn from saving A/c of the complainant on the basis of forged cheques in connivance with bank employees. Held that a complaint alleging withdrawal of amount from savings A/c of complainant on forged cheque involves complicated and complex questions of facts, which cannot be decided in a consumer complaint. **Srikrishan Dass Vs. Dena Bank - 2003 (2) CPR 8**

### Locker:

The issue for consideration is whether there was deficiency in service on the part of the bank with regard to operation of locker. The State Commission observed that bank locker found lying open and the bank informing the locker hirer after 16 months of last operation of locker that it was lying open would amount to deficiency in service and the bank would be liable to compensate for the loss. ***UCO Bank & Anr Vs. Shiv Kumar Singh- 2003 (3) CPR 304 SCDRC (MP)***

### Res Sub Judice

In the complaint, the complainant had prayed to direct the bank to release the amount of FDR to the complainant along with interest and credit the same to his account in that bank. In the suit filed by the bank against the complainant, an application for attachment of the FDR of the complainant was made. It was held that where the subject matter of the complaint and a civil suit between the parties are identical and the reliefs claimed are substantially the same, the matter being sub-judice, the District Forum could not have gone into the merits of the case and directed the bank to release the amount of the FDRs. Holding that there was no deficiency of service on the part of the bank for not releasing the amounts of FDRs to the complainant, the order of the District Forum was set aside. ***Bank of India Vs. Sadhu Ram Gupta -1992(2) CPR 165 (SCRDC – Punj) .***

The bank which had sanctioned cash credit limit to the complainant had stopped releasing cash credit facility to him and complaint was filed alleging deficiency of service. Civil suit filed by the bank against the complainant for recovery of outstanding amounts of various loans was pending. It was held that where questions and issues arising in a complaint are inextricably intertwined with the claims, questions and issues arising in a pending civil suit and thus the matter is sub judice, the complainant is not entitled to any relief from the State Commission but is at liberty to seek his relief from the Civil Court either in the proceedings that are already pending or any other independent proceedings as may be open to him in law. ***Jai Bharat Steel Industries & 3 others Vs.Punjab National Bank & Anr. - 1992(2) CPR 191 (SCRDC – Punj).***

When the bank labouring under misunderstanding of law did not release the jewels pledged for a jewel loan on the ground that the education loan taken by the complainant is outstanding, there is no deficiency in service, moreso when the bank has already instituted a suit for recovery of the educational loan it is possible for the complainant to agitate such questions of law. The order of district forum directing compensation was set aside and the complaint was dismissed. ***Kannan v. Canara Bank 1996 (2) CPR 372 (SCDRC-Pondicherry)***

Where a title suit filed by the bank for recovery of dues from the complainant was pending before a competent civil Court, the dispute based on the same facts are not to be entertained under the Consumer Protection Act, 1986. This is in accordance with the decision of the National Commission in the case of M/s. Dees Pistons (Pvt.) Ltd., v. State Bank of India & Anr. (reported in 1991 (1) CPR 148). Further the complaint for raising the credit limit by the bank is liable to be dismissed as the banks have discretion in matters of sanctioning loans and the National Commission had reiterated the same in Bank of Baroda v. Arvinda Modern Dal & Rice Mill (reported in I (1996) CPJ 271 (NC)). ***M/s. Tiwary Engineering v. Bank of India & Anr. 1996 (2) CPR 283 (SCDRC-Bihar)***

Where the bank restricted / stopped credit facility to the complainant due to the carelessness, negligence on the part of the complainant it was not held to be deficiency in service, moreso when it was observed that the complaint was filed during the pendency of a suit before a competent civil court filed by the bank for recovery of dues from the complainant. The complaint was dismissed. ***Pragati Industrial Motors Ltd., & Ors., v. Bank of Baroda & Anr. 1996 (2) CPR 44 (SCDRC-UT of Chandigarh)***

The complainant alleged deficiency on the part of the bank for not enhancing his cash credit limit thereby resulting in loss to the complainant and the bank refuted the same on the ground that the complainant is a defaulter and a suit has been filed against the complainant. The State Commission refused to interfere in the matter in accordance with the orders passed by the National Commission in *M/s. Dees Pistons (Pvt) Ltd., v. State Bank of India & Anr (1991(1) CPR 48)* and reiterated by National Commission in *Bank of Baroda v. Arvinda Mohan Dal & Rice Mill (I(1996) CPJ 271 (NC))* stating that when the matter is sub-judice before a competent civil court the consumer forum will not entertain a petition in respect of identical subject matter and also on the ground that banks have a discretion while sanctioning loans and the decision rests with the bank. The complaint was dismissed. ***Tiwary Engineering v. Bank of India and Anr. 1997 (3) CPR 535 (SCDRC-Bihar)***

Where the complainant has availed credit facilities from the bank and the bank has initiated proceedings before the competent authority for the recovery of the amount due from the complainant, the Commission without going into the merits of the case, left it to the complainant to defend those proceedings and raise therein all questions available for the complainant and dismissed the complaint. ***M/s. Master Drillers, Nagpur and ors., v. Nagpur Nagarik Sahakari Bank Ltd., & Ors 1996 (2) CPR 89 (NC)***

The complaint was filed for alleged deficiency in respect of freezing of account and dishonouring cheques and for withdrawal of guarantee. It was held that since a suit was instituted prior to the filing of the present case, the complainant can take up the legitimate pleas therein as well as file counter claim, if so advised. Parallel proceedings in the Civil Suit as well as in the present complaint are not contemplated although remedy under the Consumer Protection Act is in addition to the remedy provided in Civil Court. The complainant, therefore, has to be relegated to the remedy in the Civil Court. It was further held that complicated questions of fact are involved particularly with respect of a will alleged to have been forged. This question requires recording of detailed evidence and on mere affidavits and that too between the present parties, the complainant and the bank cannot be properly adjudicated. The other brothers of the complainant who are taking benefit under the will are not parties in the complaint. On that ground also, the complainant is to be relegated to his remedy in the Civil Court. ***Sh. Gurdev Singh v. Punjab National Bank 1999 (3) CPR 23 (SCDRC - Punjab)***

## Securities

The complainant had availed loan for purchasing a tractor and the tractor was hypothecated to the bank. When the complainant committed default in payment of the installment, the bank seized the tractor in accordance with the terms and conditions subject to which the loan was advanced. Held that there was no deficiency in service. ***M.V. Krishna Reddy Vs. Andhra Bank Gudur –1992(1) CPR 456 (SCRDC – Hyd)***

The complainant's case against the bank was that the Bank had locked and sealed two rooms in the premises where the stocks were stored. The Bank's contention was that it is within its discretion to consider whether the stock is sufficient to meet obligations of the borrowers and take appropriate action to safeguard its interest. The decision of the banking authorities is not subjected to review by the forums constituted under Consumer Protection Act. The State Commission held that when the bank loan has been advanced primarily at the stock of goods, it is for the bank to consider whether the stock is sufficient to meet obligations of the borrowers. ***Babu Ranganathan Vs. Manager, State Bank of Saurashtra & Another 1994 (3) CPR 149 (SCDRC- Tamil Nadu)***

Complaint was filed under section 2 and 14 of Consumer Protection Act for deficiency in banking service. The complainants availed loan facility by pledging their gold ornaments. Despite the repayment of loan, bank refused to release ornaments. It was held that bank's conduct is arbitrary and illegal and it is liable to be directed to release ornaments to complainant or its market price with 18% interest Appeal allowed. ***Bhaskar Ramakrishna, Vasco Vs. Manager, Goa Urban Co-op. Bank Ltd. CPR(1) 6(SCDRC - Goa)***

The complainant had opened a Current Overdraft Account along with two others by lodging shares as security. Certain errors and irregularities in the account were brought to the notice of the bank by the complainant and he requested for return of the shares. The request was turned down by the Bank. In a writ appeal arising out of a writ petition filed by the complainant for release of security, the High Court of Calcutta directed the complainant to file a separate suit in the Civil Court for vindicating their right of damages. Subsequently, the present proceeding before the State Commission was initiated by the complainant. It was held that deficiency in sending banking accounts in time does not ipso facto entitle a consumer to compensation unless such compensation is proved objectively by cogent evidence. It was observed that compensation simpliciter arising out of any breach of contract must be filed before a Civil Court. But if the compensation be for any deficiency in service covered by the Consumer Protection Act, 1986, it can be filed before a Consumer Court in view of the section 3 of the said Act. ***Debabrata Mukherjee v. Allahabad Bank 1998 (3) CPR 80 (SCDRC - West Bengal)***

A loan was granted to the complainant by the opposite party bank. Opposite party no.2 was required to deposit margin money with the bank and on its failure to do so, the complainant himself had deposited the margin money. The complainant had averred that the bank had failed to return the margin money paid by the complainant, when the same was later deposited by opposite party no.2 and the bank has also removed machineries and raw materials from the complainant's premises and claimed for compensation. It was found that there were amounts due from the complainant to the bank and the bank had adjusted the margin amount towards the dues. It was also found that the Hypothecation agreement provided



for bank entering the premises and seizing the materials. In the circumstances, it was held that there is no deficiency in service. ***Vasanthi Plastic Industries v. The Manager, Bank of Baroda & Another 1998 (1) CPR 387 (SCDRC - Tamil Nadu)***

When the complainant went and was at the cash counter of the bank to deposit money terrorists entered the bank and looted the cash. The complaint was filed alleging deficiency in service. It was observed that the disputed question on which the decision of the case rests is as to whether the complainant had actually handed over the cash to the bank cashier and thereafter there was a loot or before the amount was handed over to the cashier, the terrorists looted the amount from the complainant and the cashier. It was held that such disputed questions cannot be adjudicated in summary proceedings. It was further observed that in case the amount had not been handed over to the cashier, there would be no deficiency in rendering service by the bank. ***Punjab National Bank v. Krishan Kumar Modi 1998 (2) CPR 48 (SCDRC - Punjab)***

The complainant was aggrieved by the non-return of documents given as security even after repayment of the loan. The District Forum passed an order in favour of the complainant and hence this appeal. Relying on the decision of the National Commission in *M/s Shankar Tube Wells v. The Branch Manager, State Bank of India 1997 (2) CPR 3*, it was held that the case relating to release of documents by way of security by bank on repayment of loan gives rise only to a civil dispute and complainant can not be said to be a consumer within the meaning of Consumer Protection Act, 1986. ***Canara Bank & Another v. C. Appu 1999 (1) CPR 580 (SCDRC - Kerala)***

It was held that the non-release of documents by the bank on repayment of loan which were deposited as security for loan after repayment of loan does not give rise to consumer dispute and only a civil case can be filed. Further, it was observed that the mortgager being another person, only that person can ask for return of the title deeds and not the complainant. ***Xavier Estates v. Senior Manager, Indian Bank 1999 (2) CPR 160 (SCDRC - Tamil Nadu)***

The complaint pertained to the alleged failure of the bank to get the hypothecated stock insured. It was observed that the hypothecation agreement provided that the stock is to be kept in the mill at the risk and expense of the complainant. Further, the complainant had not hired the service of the bank for getting the stock insured. Held that there was no deficiency in service on part of the bank. ***Sri Sainath Oil Mills v. State Bank of India 1999 (3) CPR 140 (SCDRC - Andhra Pradesh)***

A bank loan was offered by the appellants in favour of a company of which the complainant was the Managing Director. Certain shares and debentures in the personal name of the complainant were pledged as security. Bank retained those shares by exercising its right of general lien u/s 171 of Contract Act. The issue is whether a bank can retain securities which are owned by an individual for repayment of the debt owed by the company to the bank and in doing so whether there is deficiency in service on the part of the bank. It was held that where certain shares in individual name of the Managing Director of Company were pledged as security for loan given to the company by bank with other security provided by

company, the bank would be entitled to retain possession of such shares till repayment of loan and hence there was no deficiency in service on the part of the bank. ***Bank of India V/s S.N.Chawla 2000(1) CPR 1 (NC)***

The bank did not return the title documents of the complainant kept as security, despite repayment of bank loan. During the course of proceeding before the State Commission, documents were returned. The State Commission dismissed the complaint holding that though the bank was deficient in service but complainant did not suffer any loss. The National Commission held that the complainant is entitled to be compensated even though he did not suffer any loss, for deficiency in service of bank in non-release of title documents despite repayment of whole loan amount. ***Doson Chemicals Pvt Ltd & Ors Vs. United Bank of India & anr - 2003 (1) CPR 320 (NC)***

The complainant alleged that the bank sold her pledged jewellery without giving any notice to her before putting the jewellery on auction. It was held that when the bank receives interest and other charges in a loan transaction on security, it is a consideration and borrower is a consumer of bank. ***The Manager, Canara Bank Vs. G.Kala Kumari - 2003 (1) CPR 596***

The Complainant had availed loan from the bank by deposit of title deeds. The bank refused to release the title deeds on repayment of entire loan amount on the plea that the loanee had stood surety for another borrower. It was held that non-return of title deeds on repayment of entire loan amount on the ground that the borrower had stood surety for another bank loan was deficiency in service. ***Rajkot Nagrik Bank Ltd Vs. Piyush Ratilal Thakkar - 2003 (1) CPR 233***

The Complainant obtained a cash credit facility from the bank and stored the hypothecated goods in shop and godown. The shop was insured by the bank at the cost of the complainant. Claim for the loss on account of flood/ heavy rains, preferred by the complainant, was not accepted by the insurance company as the godown where the loss was alleged to have occurred was not covered by any insurance policy. It was held that there is no obligation on bank to take an Insurance Policy for business premises of borrower, which was hypothecated to the bank, after recall of loan by Bank and having filed recovery suit against borrower. ***Canara Bank Vs. Naresh Kumar Jain & others -2003 (1) CPR 103 (NC)***

The non-return of title deeds pledged with the bank by the borrower would amount to deficiency of service on the part of the bank and the bank was directed to pay compensation of Rs.1, 00, 000/- for the loss caused to the complainant and cost quantified at Rs.25, 000/- . ***C.L.Khanna Vs. Dena Bank - judgment dated September 2, 2005 of the National Consumer Disputes Redressal Commission***

A finance company which financed purchase of vehicle will not be empowered by clause in agreement that in case of default in payment of installment it could terminate agreement and repossess the vehicle to take possession of vehicle by force without a process of law. In this case, the State Commission issued directions to be followed by all the financing companies and banks engaged in the business of financing vehicles. ***Citicorp Maruti Finance Ltd Vs. Vijayalaxmi - 2005 (2) CPR 326***

### **Security in bank**

Where a locker was alleged to be already open and the ornaments therein were missing, the conduct on the part of the bank in not conducting any departmental enquiry nor being able to produce evidence as to the details of persons who have accessed the locker, the Commission held, in the light of the decision of the National Commission in Punjab National Bank, Bombay v. M.B. Shetty (FA No. 7 of 1991 decided on 06/08/1991) that the bank has been deficient in providing service and allowed the complaint in part. ***Ugam Singh v. GM, SBI & Ors. 1996 (1) CPR 188 (SCDRC-Rajasthan)***

The complainant claimed from the bank an amount of Rs.45, 000/- with interest since he was robbed at the counter of the bank on his visit to deposit the amount in his current account. The bank was held responsible for deficiency of service under Section 2 (1) (o) on the ground that ensuring safety of the money to be deposited and/or withdrawn inside the bank premises is implicitly part of service rendered by a bank to a customer. ***Col.D.S.Sachar Vs. Punjab & Sind Bank-Order of the National Consumer Disputes Redressal Commission dated April 28, 2005 passed in Revision Petition No.1046 of 2003/A***

### **Strike**

When there is suspension of business by the Bank due to illegal strike by the employees, Bank is not liable to pay compensation caused by it. The Commission observed that in the present case the requirements of Section 14(1)(d) of the Consumer protection Act, 1986 is not satisfied since there is nothing on record to establish that the suspension of banking operations during the strike period was caused on account of any negligence on its part (bank). ***Consumer Unity and Trust Society, Calcutta Vs. The Chairman and Managing Director, Bank of Baroda 1991(1) CPR 264 (NC).***

A claim was made on behalf of the customers of the bank for grant of compensation for loss and inconvenience caused on account of suspension of business due to strike resorted by employees of the bank. It was held that when suspension of business of a bank was caused on account of an illegal strike resorted to by the employees without any notice and entry of officers and willing members of the staff was prevented by demonstrating workmen, the inconvenience, loss or injury caused to the consumers cannot be said to be due to the negligence of the Bank. The inability of the bank to conduct banking operations was due to reasons wholly beyond its control and clearly falling within the well-known exception of “*force majeure*”. No claim for compensation against the bank is sustainable under the said facts. It was suggested by the National Commission that whenever a strike notice is served and a strike appears to be imminent, the concerned bank should publish in the leading local newspapers informing the customers about the possibility of there being a strike in the bank so that the customers may not be taken by surprise, but may instead, be enabled to withdraw sufficient amounts to meet their requirements during the period of the threatened strike. ***Consumer Unity and Trust Society Vs. Bank of Baroda - 1992(1) CPR 837(NC).***

The complaint was filed against the opposite party /respondent bank under section 2(g) and 14(1)d for deficiency of service due to the illegal strike of its employee. The issue before the Supreme Court for consideration was, whether a banking

company which render service within meaning of clause (g) of section 2 of the Consumer Protection Act,1986 is liable to compensate its customers for loss of service due to illegal strike by its employees. It was held that a banking company which renders service within meaning of clause (g) of section 2 of the Consumer Protection Act, 1986,is not liable to compensate its customers for loss of service due to illegal strike by its employees when the loss was not caused due to negligence of bank. ***Consumer Unity & Trust Society, Jaipur Vs. Chairman and MD,Bank of Baroda,Calcutta, CPR1995(1) 420 (SC).***

The appeal filed by the complainants against the Order of the State Commission awarding a very nominal compensation to the complainants instead of Rs. 25,000/- as sought by the complainants, was dismissed by the NC. The NC also agreed with the observations of the State Commission that where the bank did not credit (pertains to September salary) the sums to the accounts of the complainants on the ground that there was a strike called by the award staff in its service branch, the bank has been deficient in rendering service, for the reason that the bank staff were not on such a strike that the work was totally paralysed or the officers and willing staff members were not allowed to enter the premises of the service branch. **Madhubhai R. Patel & Ors., v. SBI & Anr. 1996 (2) CPR 189 (NC)**