

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

“ An aware consumer is an asset to the nation”

Website : www.advantageconsumer.com

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ADVANTAGE - VII

Queries & Answers through the Web

(www.advantageconsumer.com is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

**Abhinandan!
Congratulations!!**



Hon'ble Smt. Droupadi Murmu

On being elected as the 15th
President of Republic of India

Advantage Consumer and the Consumer Protection Council, Rourkela collective wishes a golden era to this Great Nation, under your caring leadership.

Answered Query

Sub: Requesting for a copy of case published in www.advantageconsumer.com

Requesting a PDF copy of below mentioned case published on your website:

“Co-operative Societies do come under the purview of the Consumer Protection Act and hence the District Forum can exercise jurisdiction over them”. (From the order dated 13.3.2001 in Appeal Nos. A-1428 to 1431/99 of the State Commission, Delhi)

Smt. Kalawati &Ors. --- Petitioners
Vs.

M/s United Vaish Co-operative Thrift & Credit Society Ltd. --- Respondent

Before: Hon'ble Mr. Justice D.P.Wadhwa, President, Hon'ble Mr. Justice C.L. Chaudhry, Member, Hon'ble Mr. Justice J.K.Mehra, Member, Mrs. Rajyalakshmi Rao, Member, Mr. B.K. Taimni, Member. This would help me in my personal case in front of Thane District additional Consumer Forum, Belapur.

R. G. Chaubal
Navi Mumbai

Ans: It is easy to generate the Order of the NCDRC, displayed in our website

www.advantageconsumer.com, in a format you need. Simply copy and paste the same in MS Word and save it as PDF file. So simple, is not it? Anyhow, attached please find the referred Order in PDF format.

B.VAIDYANATHAN
CHIEF MENTOR

Complaint, where forgery and fraud has been alleged by one party against the other party and the same is denied by the other party, cannot be decided in a summary procedure under the Consumer Protection Act.

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 767 OF 2020

1. MANISHA SOHILKUMAR CHOVIYA

W/o. SohilkumarChovatiya,
Through Mr. Sunil Kumar Garg (SPA),
R/o. 7, Arjun Nagar,
Kotla Mubarakpur,
New Delhi - 3

.....Complainant(s)

Versus

1. HDFC BANK LTD. & ORS.

Through its Chairman, Regd. Office at HDFC Bank House,
Senapati Bapat Marg, Lower Parel (W),
Mumbai - 400 013

2. HDFC BANK (JETPUR BRANCH)

Near Ambar Cinema, Jetpur - 360 370

Rajkot. Gujarat

3. PARESH BHAI MOHANLAL MANPARA

Junagadh Zanzarda Road, Tirth Apartment, 1st Floor, B-103,
Vill-Junagadh, Tahsil-Junagadh,

Junagadh. Gujarat

.....Opp. Party(s)

BEFORE:

**HON'BLE DR. S.M. KANTIKAR, PRESIDING MEMBER
HON'BLE MR. BINOY KUMAR, MEMBER**

Dated : 03 Jan 2022

ORDER

BY BINOY KUMAR, MEMBER

This Consumer Complaint has been filed by Ms. Manisha SohilkumarChovatiya wife of Mr. Sohil Kumar Chovatiya under Section 21 (a) (i) of Consumer Protection Act, 1986 (For short the Act) through her special Power of Attorney, Sh. Sunil Kumar Garg. In the Complaint, the complainant has alleged fraud on the part of the Opposite Parties to the tune of Rs.1 crore 71 lakhs and prayed for refund of this amount along with interest @ 10 % per annum with effect from 11.01.11 till the date of filing of the Complaint.

The brief facts of the case are that the Complainant who is a Non-Resident Indian staying in Ecuador had opened an account in a branch of OP 1 at Jetpur, Gujarat (Opposite Party No.2) at the behalf of OP No.3 (Sh. Paresh Bhai Mohanlal Manpara). On 24.06.2009, the Complainant had provided her mobile number for Insta-alert and regular updates. On 24.07.2009, she applied for Easy Shop Gold International Debit Card and thereafter for net banking alongwith E-mail ID. On 12.10.2009, the Complainant had applied for third party transfer through the same E-mail ID.

Between 25.06.2009 to 29.07.2011, the Complainant had deposited Rs.1 crore 75 lakhs in her account. In the Complaint itself, the Complainant has alleged that the officials of OP No.1 and OP No.2 along with OP No.3 had colluded in opening the Account and depositing the amount by her. OP No.3 had convinced the husband of Complainant to open the account with Opposite Party No.1. The Opposite Party No.3 had further convinced her husband to put substantial sum in the account for investing in Birla Sun Mutual Fund”.

The Complainant states that when she returned to India on 21.02.2018. Her husband visited the Branch (OP No.3) and found that the money deposited had been siphoned off.

It was alleged that OP No.3 (Mr. Paresh Bhai Mohanlal Manpara) had made the Complainant to invest money in Birla Sun Life Mutual Fund. After three months of initial investment, OP No.3 without the knowledge of the Complainant or her husband transferred that amount from Birla Mutual Fund to the account of the Complainant and further withdrew the amount of Rs.65 lakhs. Further, OP No.3 wanted the Complainant and her husband to invest another Rs.35 lakhs in Share khan on 11.01.2011 in online trading account and the husband of the Complainant had accordingly deposited the said amount in the account of the Complainant. It was found that OP No.3 had withdrawn the amount from the Complainant’s account with manipulated receipt of Sun Birla.

The Opposite Party has in its written version stated that the Complainant, her husband and OP No.3 were known to each other and that the investments were done by OP No.3 with express knowledge of the husband of the Complainant, that while the account was opened in 2009, it was only in the year 2018 that the Complainant raised the issue of siphoning of the amount from her account to the tune of Rupees 1 crore 71 lakhs, that the Opposite Parties No.1 & 2 helped the Complainant with the Account details as desired. Based on the alleged fraud noticed, the Complainant’s husband filed an FIR in Police Station, Jetpur City. An FIR No.105 to 2019 was registered on 18.11.2019. In the FIR, the Complainant’s husband has alleged transfer of funds from the Complainant’s account by Sh. Paresh (OP No.3). He further alleged that OP No.3 had forged signatures of his wife in the Bank forms and submitted change of the mobile number. It was further stated that OP No.3 had taken the husband in confidence and breached his trust and made and showed him fake receipt of Sun Birla. OP No.3 took him in confidence and made him open the bank account and got deposited Rs.1 crore 75 lakhs for investment in various mutual funds. OP No.1 & 2 had colluded with OP No.3 in change of mobile numbers, etc. and did not detect the forged signatures of the Complainant.

Heard, the Arguments of learned Counsel for both sides and perused the material available on record. The main issues involved in this Complaint are those relating to forgery, cheating, collusion and breach of trust. Attention is drawn to the case of this Commission in Consumer Complaint No.76 of 2011 decided on 17.12. 2019 wherein relevant para-No.16 & 17 which reads as under:

“16. From the above judgments, it is brought out that complaint case where forgery and fraud has been alleged by one party against the other party and the same is denied by the other party cannot be decided in a summary procedure under the Consumer Protection Act, 1986 because it requires lot of voluminous evidence to be produced by both the parties in support of their assertions, which is not possible in the summary proceedings. Proper forum for adjudication of such complaints is only the Civil Court having proper jurisdiction.

17. Based on the above discussion, this complaint cannot be decided under the summary procedure laid down in the Consumer Protection Act, 1986 as it would require voluminous evidence to be produced by both the parties in support of their assertions. The proper forum for the present complaint would be the civil court of appropriate jurisdiction. Accordingly, the CC No.76 of 2011 is dismissed. However, the liberty is granted to the complainant to approach the Civil Court of proper jurisdiction for seeking relief in the matter, if so advised.”

The Complaint is an NRI staying in Ecuador. Her husband is an investor. The bank account was opened with the express objective of making investment. The bank account had all the modern technological facilities of mobile alert, E-Mails, third party transactions, internet and international banking, etc. While admitting that the Complainant was staying abroad, the fact remains that she did not check her account for the transactions being done in her account since the day of opening in 2009 till 2018. It is a fact that OP No.3 was known to the husband of the Complainant. The Account was opened with express understanding between OP No.3 and the husband of the Complainant to carry out investment in various funds. It is seen from the bank statement of transactions that net banking and RTGS were being done on a regular basis from the year 2009 till 2018. It is surprising that the Complainant never checked her account notwithstanding her stay abroad. The amount involved is very heavy. It is not understood whether the IT Returns were ever filed in this regard.

This matter requires a detailed investigation preferably by the Police in view of the elements of forgery, cheating, breach of trust etc. being involved and FIR having been filed. This Commission is not the appropriate forum to decide on matters like this. In such a situation, the issue of deficiency of service as stated by the Complainant on the part of the OP No.1 & OP No.2 is not relevant at this stage. Further, whether certain bank officials colluded along with OP No.3 is once again a matter of detailed investigation. Since, the husband of the Complainant has filed FIR in the matter in 2019, it is expected that the police would carry out the necessary investigation.

In view of the forgoing discussion, we dismiss the complaint giving liberty to the Complainant to file the Complaint in an appropriate Court of Law. We also further request the DGP of Gujarat Government to get completed the enquiry in the matter as per the FIR filed expeditiously, preferably within a period of six months. No order as to cost. All pending Applications, if any, stand disposed of.

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Consumers Beware!! Without proper evidence complaint will fall flat.

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI
FIRST APPEAL NO. 353 OF 2015**

(Against the Order dated 16/03/2015 in Complaint No. 106/2002 of the State Commission Maharashtra)

BRITANNIA INDUSTRIES LIMITED

HAVING ITS REGISTERED OFFICE AT: 5/1A, HUNGERFORD STREET,

KOLKATA-700017

.....Appellant(s)

Versus

DR. SURENDRA RAMKISHAN DHELIA

9, PODAR HOUSE, 2ND FANASWADI,

MUMBAI-400002

.....Respondent(s)

BEFORE:

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

Dated : 03 Jan 2022

ORDER

1. Heard Mr. Sidharth Bawa, Advocate, for the appellant. The respondent has sent a letter dated 30.11.2021, stating therein that the case be decided on the basis of the papers already filed by him.
2. This appeal has been filed from the order of State Consumer Disputes Redressal Commission, Maharashtra dated 16.03.2015, passed in CC/106/2002, allowing the complainant and holding the appellant as guilty of committing negligence in preparing the bread and directing to pay/deposit Rs.2.51 lacs, as the compensation.

3. The respondent filed CC/106/2002, for compensation of Rs.7.51 lacs along with interest @18% per annum w.e.f. 16.04.2001. It has been stated in the complaint that Dr. Surendra Ramkishan Dhelia (the complainant) was a medical practitioner. Britannia Industries Limited (the opposite party) was a Public Limited Company and manufacturer of the various food items. The opposite party manufactured bread in brand name "Britannia Premium Bake Super Soft Deluxe Bread" and sold it, in the market. The complainant purchased one packet of "Britannia Premium Bake Super Soft Deluxe Bread" on 15.04.2001, for his guests including one child at his residence. When that bread was served to them for consumption, then the complainant noticed that few plastic pieces embedded inside several slices. The complainant prevented his guests from consuming the bread. The complainant lodged a complaint on 16.04.2001, on telephone at the Mumbai office of the opposite party. On 16.04.2001 at 3:40 PM, one Mr. A.C. Luis, an officer of the opposite party, came to the residence of the complainant. On examination of the slices of the bread, he confirmed that there were plastic pieces. Thereafter, he went back and again came at 5:45 PM, along with one Tendulkar. Both of them again checked the bread in the said packet and confirmed that there were plastic pieces inside the slices. However, they refused to give writing in this respect at that time. They assured that they would again come on next day along with their Senior Officer. Mr. A.C. Luis along with one Karmakar, Standard Manager and one Maniyar, Production Manager of the company came on 19.04.2001. Once again, they inspected the bread and the packet and confirmed existence of plastic pieces in the bread. They collected few slices from the complainant. On the complainant insistence they gave a hand written receipt, acknowledging the fact of having taken the same with a note "prima facie paper like body was seen in number of slices". They informed that this sample would be analysed in laboratory and the report would be given to him. The complainant received a letter dated 18.05.2001, signed by Karmakar and in the last portion of this letter he has written that "It is possible that during production, new unchecked mould might have found its way without cleaning by air-blast, which is the rarest of the incidence". The complainant received another letter dated 31.05.2001, signed by Karmakar, mentioning therein that in spite of repeated analysis at couple of times, authentic reports on the genuineness have not been reported. When the complainant made further correspondence with the officers of the opposite party, then, they vide letter dated 08.06.2001, disowned the packet of the bread, being the packet of the opposite party. A copy of 'analysis report' was also sent to the complainant. The complainant, vide letter dated 02.07.2001, lodged the protest against the analysis report. Thereafter, no reply was given to the complainant. The complaint was filed on the allegations that the opposite party has committed negligence in manufacture of bread.

4. The opposite party filed its written reply and contested the complaint. It has been stated that the opposite party is a multinational company of repute, which was awarded ISO 9002, status of M/s. TUV Management Services GmbH. The opposite party follow most modern and state of art procedure for preparing bread and other product in its factory, maintaining highest standard and ensure best quality of bread. The opposite party maintains moisture, fat, salt, protein, fortification with soya, sugar, and softness contents in ratio of particular standard. The bags used for packaging the bread are checked for the printed matter on the wrapper, the grammage of the wrapper, any objectionable odour and sealing. The opposite party has an in-house laboratory, manned by trained personnel. As soon as the opposite party received the complaint of the complainant, Sales Officer, Mr. A.C. Luis was instructed to attend the complainant immediately. Mr. A.C. Luis and Mr. Tendulkar visited the complainant in the evening. They were not satisfied about the genuineness of the product. They wanted to collect the sample of the bread, which was not agreed by the complainant. The opposite party, then deputed Mr. Karmakar, Standard Manager and Mr. Maniyar, Production Manager, on 19.04.2001, who visited the complainant. The complainant allowed them to take few slices of the bread. On testing, these breads were found as not matching with the standard of the contents maintained by the opposite party in its bread as such the report was submitted that these breads were not manufactured by the opposite party. The complainant was informed in this respect vide letter dated 31.05.2001, later on a copy of the report was also supplied to him. They denied that the letter dated 18.05.2001, was written by Karmakar or signed by him.

5. State Commission, by the impugned order found that the opposite party carried out test of the sample bread at its own laboratory that too after about one month as such this report is not reliable. The officers of the opposite party were satisfied with the wrapper of the bread belonged to the company, before taking the sample. Which was confirmed from the letter dated 18.05.2001 written by Karmakar. In such circumstances, **affidavit** of the complainant was believed and it was held that the opposite party was guilty of committing negligence in the manufacture of the bread.

6. I have considered the arguments of the counsel for the appellant and examined the record. A perusal of the records, shows that the complainant neither produced the wrapper of the bread nor sample of the bread for its analytic report before State Commission. The burden of proof was upon the complainant to prove that (i) The contaminated bread was manufactured by the appellant and (ii) In this bread, foreign materials (plastic pieces) were found.

7. State Commission based its findings on (i) as the officers of the appellant had collected the sample as such, they were satisfied that the product belonged to the appellant and (ii) in the letter of Karmakar dated 18.05.2001, he had admitted the possibility of new unchecked mould might have found its way without cleaning by air-blast, during production. These two circumstances were not sufficient to record a finding that the appellant had manufactured contaminated bread. The report of the appellant has been ignored as it was tested in its own laboratory. On visual examination, some suspicion was noted by Karmakar and on its basis forming opinion relating to contamination is not sufficient. There is absolutely no evidence to prove that the bread sold to the complainant contained plastic pieces, as alleged by the complainant, as such negligence on the part of the appellant is not proved.

O R D E R

In the result the appeal succeeds and is allowed. The order of State Commission dated 16.03.2015, passed in CC/106/2002, allowing the complainant, is set aside. The complaint is dismissed. If the appellant has deposited any amount before this Commission, it may be returned to the appellant, along with accrued benefits.

Dear Readers,

The above case confirms what we have been harping all along. The decisions of the lower fora on many occasions have been overruled by the Appellate Commission, for some reason of the other. Thus, the complainant consumer is bound to feel aggrieved and harassed.

Hence, we in the Council have always been publicising only those Orders of the National Commission or Supreme Court only.

-CHIEF MENTOR

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Support Your Cause

Consumer Protection Council, Rourkela is a registered voluntary organization, espousing the cause of the consumer. To a great extent, for its sustenance it depends on the good will of its donors like you. We solicit your support for sustaining the multifarious activities of the council. Donation to the council is eligible for tax exemption under Section : 80-G(5) (iv) of the IT Act. Donation may please be contributed through cash or crossed cheque / DD, drawn in favour of “ **Consumer Protection Council, Rourkela**”.

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