

# Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

"An aware consumer is an asset to the nation"

Website : [www.advantageconsumer.com](http://www.advantageconsumer.com)

VOLUME – XXXVI

JANUARY 2024

ADVANTAGE - I

## Queries & Answers through the Web

([www.advantageconsumer.com](http://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.)

## Penalty imposed on ICICI Bank, for losing the original property document of the customer, who had mortgaged it while availing a loan, confirmed.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI

FIRST APPEAL NO. 1661 OF 2019

(Against the Order dated 08/07/2019 in Complaint No. 114/2015 of the State Commission West Bengal)

ICICI BANK LIMITED

THROUGH ITS AUTHORIZED SIGNATORY, ICICI TOWERS,  
BANDRA KURLA COMPLEX, BANDRA (EAST).

MUMBAI-400051

.....Appellant(s)

Versus

DILIP KUMAR SETT

E/O. VILLA NO. 30, IDEAL VILLAS, KOCHPUKUR, NEW  
TOWN (NEAR AQUATICA), DIST. SOUTH 24 PGS.

KOLKATA-700156

.....Respondent(s)

### **BEFORE:**

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

HON'BLE MR. JUSTICE KARUNA NAND BAJPAYEE, MEMBER

**Dated : 06 Feb 2023**

### **ORDER**

1. This appeal under section 19 of The Consumer Protection Act, 1986 is in challenge to the Order dated 08.07.2019 of the State Commission in complaint no. 114 of 2015.

2. Mr. Anand Shankar Jha, learned counsel appears for the appellant (the 'bank'). No one appears for the respondent (the 'complainant').

We have heard the learned counsel for the bank and have perused the material on record including *inter alia* the State Commission's impugned Order dated 08.07.2019 and the memorandum of appeal.

3. The short point in the matter is that even after the complainant had repaid its loan to the bank, the bank first did not return his pledged documents and subsequently informed him that one original document of his property i.e. original agreement for sale dated 27.03.2008 had been lost / misplaced. Holding it to be 'deficiency in service', the State Commission ordered the bank to pay compensation of Rs. 5 lakhs to the complainant within 40 days failing which the awarded amount would carry interest at the rate of 9% per annum. The State Commission also allowed cost of Rs. 40 thousand.

4. It is well-evincd, and, in fact, it is admitted to by the bank itself, that it has lost / misplaced the original property document i.e. the original agreement for sale of the complainant's flat.

5. Learned counsel for the bank in his submissions does not dispute that the said original property document has been lost / misplaced by the bank. His submissions are confined only to the quantum of compensation awarded by the State Commission. In the opinion of the learned counsel compensation of Rs. 5 lakhs for an original agreement for sale is unreasonably high. Submission is that the concerned document is not of such importance or significance as may call for such compensation.

6. We may however observe that loss of an original property document materially affects the saleability and value of the property. A question mark clings and obtains on the property, in perpetuity. Regarding the argument that the concerned document is not of much importance or significance, suffice is to note that the bank, in its own wisdom, had deemed it appropriate and necessary to get the said document pledged with it as a condition precedent to the grant of loan, whi On the face of it, the compensation awarded by the State Commission, by all means, appears just and equitable, commensurate with the loss and injury suffered. We find no good reason to take a different view of the matter than which has been taken by the State Commission.

Disconcertingly enough, there is nothing on record to show that the bank had conducted any inquiry to fix accountability or undertaken any action to inculcate systemic improvements for future so that such instances of deficiency get minimised *vis a vis* the common ordinary consumers at large.

When, by its own admission, it had lost / misplaced the complainant's original property document, the bank should have, on its own, in the normal wont of its functioning, got the concerned document reconstructed, handed over the reconstructed document to the complainant, with courtesy and apology, as also ought to have conducted an internal inquiry to fix responsibility as well as undertaken systemic improvements for future. It, however, rather deemed it apt to contest the case before the State Commission, and after a self-evidently fair order from the State Commission, it deemed it apt to prefer appeal before this Commission, to assail the quantum of compensation, which, but, on the face of it itself, is so very reasonable and fair. The bank's position and approach in such matter where it is admittedly at fault is difficult to understand or appreciate. We may elaborate further.

7. At this stage learned counsel for the bank submits that he wishes to withdraw the appeal unconditionally. He also submits that the amount if any deposited by the bank with the State Commission in compliance of this Commission's Order dated 28.08.2019 along with interest if any accrued thereon may be forthwith released to the complainant and further that the balance awarded amount will be made good by the bank within eight weeks from today.

8. In the wake of the above submissions, the present appeal no. 1661 of 2019 stands dismissed.

The State Commission shall forthwith release the amount if any deposited by the bank in compliance of this Commission's Order dated 28.08.2019 along with interest if any accrued thereon to the complainant as per the due procedure.

The balance awarded amount shall be made good by the bank within eight weeks from today, failing which the State Commission shall undertake execution, for '*enforcement*' and for '*penalty*', as per the law.

9. The Registry is requested to send a copy each of this Order to the parties in the appeal and to their learned counsel as well as to the State Commission immediately. The stenographer is requested to upload a copy of this Order on the website of this Commission immediately.

'Dasti', in addition, to facilitate timely compliance. ■

# Clinical Laboratory penalised for providing an erroneous report.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI

## REVISION PETITION NO. 712 OF 2019

(Against the Order dated 02/01/2019 in Appeal No. 871/2018 of the State Commission Rajasthan)

SRL LIMITED & 3 ORS.

(FORMERLY KNOWN AS SUPER RELIGARE LABORATORIES  
LTD.) HAVING ITS REGISTERED OFFICE AT FORTIS

HOSPITAL, SECTOR 62, PHASE III,

MOHALI-160062

PUNJAB

.....Petitioner(s)

Versus

ASHISH KHANDELWAL

S/O. SH. GHANESHYAM C/O. SHREE GANESH ENTERPRISES,  
NEAR GULKANDI DEVI SCHOOL, HINDAUN KARAULI  
ROAD, GANGAPUR CITY, SAWAI MADHOPUR, RAJASTHAN -  
322201.

DISTRICT-SAWAI MADHOPUR

RAJASTHAN

.....Respondent(s)

### **BEFORE:**

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

HON'BLE MR. SUBHASH CHANDRA, MEMBER

**Dated : 06 Feb 2023**

### **ORDER**

1. This revision petition has been filed under section 21(b) of The Consumer Protection Act, 1986 in challenge to the Order dated 02.01.2019 of the State Commission in appeal no. 871 of 2018 arising out of the Order dated 26.09.2018 of the District Commission in complaint no. 761 of 2012 (old no. 1168 of 2010).

2. We have heard the learned counsel for the petitioners (the 'diagnostic centre') and for the respondent (the 'complainant') and have perused the record including *inter alia* the Order dated 26.09.2018 of the District Commission, the impugned Order dated 02.01.2019 of the State Commission and the petition.

3. Brief facts, as evincing from the material on record, are that on 23.02.2010 the complainant got his semen tested from the revisionist diagnostic centre, which reported: 'VOLUME: 0.1 ml; SPERM COUNT: NO MOTILE OR DEAD SPERMATOZOA SEEN'. The complainant then got his semen tested on 03.03.2010 from another laboratory i.e. Jaipur X-Ray & Sonography Research Centre, which reported that 'Volume: 03 ml; Total sperm count: 68 million/ml'. Thereafter the complainant again got his semen tested from the diagnostic centre on 05.03.2010, which, this time, reported 'VOLUME: 1.0 SPERM COUNT: 90 mill/mL'. The reference range for sperm count was '20.0-150.0 mill/ml'.

The complainant's case is that in the first report dated 23.02.2010 the diagnostic centre erroneously reported that his semen contained no spermatozoa at all, which led to the inference that he was infertile and caused acute and unbridgeable misunderstanding with his wife and ultimately resulted in a divorce.

4. The contention of the learned counsel for the diagnostic centre is that the result of semen test depends upon the volume of the sample taken. In the first report the volume was only 0.1 ml and probably therefore it showed no presence of spermatozoa. In the subsequent two reports, one from another laboratory and one from the diagnostic centre itself, the volume was 3 ml and 1.0 ml and they thus showed presence of spermatozoa.

5. Learned counsel for the complainant contends that the first report was misleading and patently erroneous. There was no mention therein that its findings were dependent on the volume of the sample. The clear implication of the report, showing nil sperm count, was that the complainant was infertile. This however was totally belied by the subsequent two reports, both independently showing adequate sperm count sufficient for fertility. Learned counsel also dwells on the irredeemable implications of such false report, which obviously could, and did, follow in this case.

6. We note that nowhere in any of the reports there is a mention that the findings are dependent on the volume of the sample. Nor is any remark made in the first report to the effect that the volume was insufficient to serve its diagnostic purpose or to be treated as a reliable sample or that therefore the test ought to be undertaken again with sufficient sample volume. Pertinently, the spermatozoa count is given in unit of 'per millilitre'. As such the contentions on behalf of the diagnostic centre fail miserably.

7. The clear implication of the erroneous first report was that in the complete absence of spermatozoa count the complainant was dubbed infertile. That this was a patent error was clear from the subsequent two reports, including one from the same diagnostic centre itself, both of which reported spermatozoa count within the reference range meaning thereby that the complainant was in fact fertile.

8. The fact finding has been undertaken by the two fora below. They have returned concurrent findings. We do not find any palpable crucial error in appreciating the evidence by the two fora below, as may cause to require fresh *de novo* re-appreciation in revision. We also do not find any jurisdictional error, or legal principle ignored or erroneously ruled. The award made by the District Commission, as affirmed by the State Commission, too, appears just and equitable in the facts of the case. As such, we discern no good ground for interference in the exercise of the revisional jurisdiction of this Commission.

9. We would however like to go further into the patent error committed by the diagnostic centre in its first report and its implications on the complainant. We also note that no steps to inculcate systemic improvements for future seem to have been taken by the diagnostic centre to ensure that recurrence of such error in respect of other common consumers is minimised in future.

10. At this stage however learned counsel for the diagnostic centre submits that the diagnostic centre does not wish to press its revision petition. She also submits that the diagnostic centre will introspect on the error which occurred in the first report and imbibe systemic improvements for future. She further submits that the amount if any deposited with the District Commission in compliance of this Commission's Order dated 30.04.2019 along with interest if any accrued thereon may be forthwith released to the complainant and that the balance awarded amount will be made good by the diagnostic centre within 08 weeks from today. She requests that this case may not be treated as a precedent.

11. In the wake of the above submissions nothing further needs to be adjudicated and the instant r. p. no. 712 of 2019 stands dismissed.

The amount if any deposited by the diagnostic centre with the District Commission in compliance of this Commission's Order dated 30.04.2019 along with interest if any accrued thereon shall be forthwith released by the District Commission to the complainant as per the due procedure. The balance awarded amount shall be made good by the diagnostic centre within 08 weeks from today, failing which the District Commission shall undertake execution, for 'enforcement' and for 'penalty', as per the law.

The decision in this case shall not be treated as a precedent.

12. The Registry is requested to send a copy each of this Order to the parties and to their learned counsel as well as to the District Commission immediately. The stenographer is requested to upload this Order on the website of this Commission immediately. ■

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# Consumer's Responsibilities

- Consumers must exercise his Rights.
- Cautious consumer do not buy blindly.
- Filing complaint for the Redressal of Genuine Grievances.
- Do not compromise on Quality.
- Beware of false advertisement.
- Don't forget to take receipt and guarantee card.

## **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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