STATE CONSUMER DISPUTES REDRESSAL COMMISSION
WEST BENGAL
FIRST APPEAL NO. SC/19/A/277/2022
WITH
SC/19/IA/55/2024 (null)

Tarun Kr. Mukherjee (Proprietor)
PRESENT ADDRESS - S/o, Lt Sushil Kumar Mukherjee. 28, Tarka Siddhanta Lane, P.O. & P.S Bally, Dist: Howrah, PIN : 711201.
Smt. Swapna Banerjee
PRESENT ADDRESS - W/o, Ashok Kumar Banerjee. 1/3, Beni Madhab Banerjee Lane, P.O. & P.S. Bally, Dist: Howrah, PIN: 711201, West Bengal.

.....Appellant(s)

Versus

Bally Co-Op. Bank Ltd.
PRESENT ADDRESS - 396, G.T.Road, P.O. & P.S.- Bally, Dist- Howrah-711201
The Secretary, Bally Co-operative Bank Ltd.
PRESENT ADDRESS - 396, G.T.Road, P.O. & P.S.- Bally, Dist- Howrah-711201
The Chairman, Bally Co-operative Bank Ltd.
PRESENT ADDRESS - 396, G.T.Road, P.O. & P.S.- Bally, Dist- Howrah-711201

.....Respondent(s)

BEFORE:
HON'BLE MR. RAJES GUHA RAY, JUDICIAL MEMBER
HON'BLE MR. SANTANU SAHA, MEMBER

FOR THE APPELLANT: Tarun Kr. Mukherjee (Proprietor), Mr. Tamojit Sett (Advocate)
FOR THE RESPONDENT: Bally Co-Op. Bank Ltd. Mr. S. S. Kamlay. (Advocate)

DATED: 11/08/2026

ORDER

Mr. Rajes Guha Ray, Judicial Member

1. This appeal has been directed against the impugned final Order and Judgment dated 30.08.2022 passed by Ld. DCDRC, Howrah in Complaint Case No. CC/255/2019 (the impugned order depicts the number as HDF 255 of 2019).

1.1. The factual matrix of this appeal is that the Appellants filed the aforesaid consumer complaint case before Ld. District Commission, Howrah against the OPs/Respondents contending inter alia that the Complainant No. 1 is a customer of the OPs having A/C No. CC/67 under

the name and style M/S. Art Construction and he availed a loan (cash credit sanction) from the Bank of Rs. 4,50,000/- against securities of Rs. 2,20,000/- in favour of his firm. The complainant no. 2 is the daughter and only legal heir of the guarantor namely Late Ajit Kumar Mukherjee.

1.2. Later, due to severe losses the borrower/complainant no. 1 i,e. the appellant no. 1 decided not to continue with his said CC Account No. 67 with the Bank so he intended to close that Account and repay the Bank's dues. He informed and instructed the OPs about the same by his letter dated 26.05.2005 and again on 18.10.2005 to which the Bank vide their letter dated 23.10.2005 asked him to clarify as to how the claims could be settled. The Complainant No. 1 on 05.11.2005 asked the OPs to treat said account CC/67 as NPA as it had already become NPA since 01.08.2004. Due to the securities being held against said account the Complainant No. 1 incurred several losses in interest on such securities which had matured by them but were held against said loan. Still he informed the Bank on 26.10.206 that he intended to pay the bank's dues and asked the OPs to adjust his securities against that account and he would pay any remaining amount by borrowing from his friends. Thereafter, on mutual agreement several meetings between the Complainant and the OPs were held and the Complainant No. 1 deposited Rs. 20,000/- on 19.12.2006 by cheque against said account. Then upon getting no befitting response from the Bank regarding compromise settlement, the Complainant No. 1 informed the matter in detail to the Deputy General Manager, Urban Bank Division, Reserve Bank of India on 11.07.2007 to which they replied and asked the Complainants to amicably settle the dispute with the OPs. Thereafter, the Complainant No. 1 asked the OPs for a one time settlement on 02.01.2009 of the dues against said loan to which the OPs disagreed although they started adjusting securities against said loan without informing the Complainant. In the meantime the OPs called the Complainants several times in their office and forcefully insisted him to pay a hefty and unjustified amount etc.

1.3. The Complainants raised the issue before the Registrar of Cooperative Societies through his letter dated 20.02.2009 and also before the Additional Registrar of Cooperative Societies through its letter dated

22.06.2009 requesting for compromise settlement with the Bank/OPs upon which the Bank made no response. On 19.04.2012 the Bank again sent a letter asking the Complainant No. 1 to repay the dues.

1.4. The Complainants managed to deposit a sum of Rs. 20,000/- being the first instalment amount by cheque no. 016696 dated 17.05.2012 against the closing of the loan A/C no. CC/67 as it was verbally decided between the parties that on payment of Rs. 80,000/- in six instalments, bank would close the account. Thereafter, the Complainants received a letter from the Bank dated 03.06.2012 stating that it was verbally decided in the meeting that upon payment of Rs. 1,00,000/- in maximum six privilege instalments (out of which Rs. 20,000/- had been paid on 17.05.2012 which shall get adjusted) the Bank's claims against said loan would be settled to which the Complainant was surprised to see that the compromise amount as Rs. 1,00,000/- instead of Rs. 80,000/- as it was decided previously. Thereafter, several correspondences made and in course of time the Complainants deposited Rs. 10,000/- five times on different occasions as detailed in the complaint petition.

1.5. Due to Complainant No. 1's financial distress, upon correspondences between the Complainants and OPs it was decided on mutual settlement that the loan accounts shall be closed upon a total payment of Rs. 1,00,000/- within privilege instalments as proposed by the OPs out of which the Complainant No. 1 already paid Rs. 60,000/- by five instalments whereas the Complainant No. 1 had insisted to pay Rs. 80,000/- as settled amount and upon finding such willingness the OPs have promised and assured to settle the matter and close the loan account upon receipt of the final instalment.

1.6. On 11.09.2014 the OPs sent a letter to Complainant No. 1 claiming an amount of Rs. 3,68,433.33 including interest outstanding as on 31.05.2014 which is ridiculous as after settlement the Complainant No. 1 had to pay only balance of Rs. 20,000/- out of the previously settled amount of Rs. 80,000/-. In the meantime the OP Nos. 1 and 2 harassed the complainant No. 1 in several times in person, publicly for which the Complainant was compelled to lodge written complaint before the O.C. Bally Station on 28.11.2016.

1.7. On 20.05.2017 at a meeting called in the office of the Bank the Complainant No. 1 was asked to pay sum of Rs. 28,000/- to settle the bank's claim against said loan while the Bank owed only the final instalment amount of Rs. 20,000/-. The Complainant No. 1 agreed to this proposal of the Bank but could not arrange the funds within short period of one week. The Complainants raised the matter before the banking Ombudsman after finding no proper response from the Bank authorities. The complainants further contended that he has already paid 4,68,654/- and as on 04.09.2013 he already paid Rs. 5,28,654 after payment of Rs. 60,000/- out of settled amount of Rs. 80,000/-. It is father alleged that the O.Ps have wrongly deducted Rs. 1,14,000/- from the Account of father of the complainant no. 2 on 14.03.2018 without notice and without informing complainant no. 1 and asked another guarantor Murari Mohan Dey to pay Rs. 3,43,646.33.

1.8. At this juncture the bank had already received a total amount of Rs. 6,42,654/- against that Account. The Complainants through his Advocate sent notice dated 23.07.2019 requesting the OPs to settle all claims and close the account and issued a no dues certificate.

The OPs have tried to misappropriate the Petitioner's money and have made serious breach of trust etc. So the Complainants filed that case praying for direction to the OPs to settle all claims, issuing no dues certificate, to return the excess amount wrongfully deducted and compensation of Rs. 3,00,000/-.

2. The Ops/respondents appeared and filed written version contending inter alia that the complaint is bad or non-joinder or mis-joinder of necessary parties, there is no cause of action for this case. It is contended that both the guarantors of Complainant No. 1 namely, Ajit Kumar Mukherjee and Murari Mohon Dey took the entire responsibility to repay the loan availed by the complainant No.1. It is further stated by the OPs that the Complainant No. 1 along with the OP No.1 was present before the Assistant Registrar of Cooperative Societies, Howrah for settling the dispute through arbitration being dispute case no. 366/2007-2008 and the arbitrator passed an award in favour of the OPs on 31.07.2008 wherein Ld. arbitrator clearly stated that after encashment of KVP the present balance

outstanding which stands as principal Rs. 1,98,297.33 and interest Rs. 1,361/- totalling Rs. 1,99,658.33 and considering the written prayer of the Complainant No. 1 and Banks no objection and for the sake of recovery of public money the award was passed and it was noted that as the uncharged interest of Rs. 35,400/- as on 31.07.2008 is already charged with the principal amount and interest due on 19.08.2008 is only Rs. 1,361/- etc. It is further contended that the Complainants has suppressed some facts. It is also submitted that whatever correspondences made by the Complainant No. 1 after passing of the award dated 19.08.2008 is not maintainable and were unwarranted. The OPs upon compliance of this award did not charge any interest upon the decretal amount of Rs. 1,99,658/-. It is stated that the outstanding dues of the Complainant No. 1 against that loan account was Rs. 3,94,850.33 till 31.12.2018 which presently stands to Rs. 4,32,354.33 and if complainants clear that dues at a time only the OPs shall have the option of issuing no dues certificate in favour of the Complainant No. 1.

Ld. Forum below passed the impugned Order dismissing the case on contest by holding that the other guarantor Murari Mohon Dey is a necessary party to this case but has not been made party etc. However, it reveals from the impugned order itself that the O.Ps. did not filed any evidence on affidavit on their behalf nor any written notes of argument.

3. Being aggrieved and dissatisfied with the impugned Order the Appellants have preferred this appeal inter alia on the following grounds:

i) that Ld. District Commission wrongly held that as the guarantor no. 2 namely Murari Mohon Dey has not been made a party in the complaint case the said case was liable to be dismissed whereas the Complainant No. 1 had clearly mentioned that Murari Mohon Dey is guarantor no. 2 and that no amount had been deducted from his account by the OPs.

ii) that OPs did not mention any time period within which the Complainant No. 1 was supposed to deposit the total sum of Rs. 1,00,000/- as asked by the OPs after their meeting for a one time settlement of all dues.

iii) that the point of arbitration order being passed by the Additional Registrar of Cooperative Societies as allegedly mentioned by the OPs for one time settlement in favour of the OPs but the OPs still thereafter agreed to make settlement with the Complainants and therefore, same the Complainant No. 1 the letter dated 03.06.2012 asking to pay Rs. 1,00,000/- in six privilege instalments and thus the arbitration order automatically fails. The OPs misled Ld. District Commission who did not notice the chronology of events and passed the impugned final Order and judgment etc.

4. The following points are to be considered for arriving at a decision in this appeal.

POINTS FOR CONSIDERATION

1. Is the impugned Order suffers any illegality or infirmity;
2. Whether the impugned Order is liable to be set aside;

DECISIONS WITH REASONS

5. Ld. Commission below though held that the complainants are consumers and also held that the Commission has jurisdiction to entertain this case but, did not go deep into merit of the case while passing the impugned judgement and order and dismissed the case by holding that the other guarantor Murari Mohan Dey is a necessary party of this case but the complainants did not make him a party and accordingly Ld. Commission below made the other points redundant.

6. In this appeal the respondents did not contest and on last five-six occasions did not turn up before this Commission and ultimately this appeal has been heard in absence of the respondents.

It has been argued by Ld. Advocate for the appellants that the appellant no. 1 clearly mentioned that Murari Mohan Dey was his guarantor no. 2 and that no amount had been deducted from his account by the respondents, although he was asked to pay huge amount by the respondents in spite of settlement with the appellant no. 1 being made.,

so, neither the guarantor no. 2 was an aggrieved party nor was he liable in any manner in the instant matter. It is further argued that Ld. Commission has neglected the case of the appellants and passed a biased order in favour of the respondents on the basis of their written version only as the respondent never appeared before Ld. Commission after filing their written version and thereafter did not file any evidence on affidavit and did not contest the case diligently.

7. The is a case of consumer disputes. Unlike a regular civil suit the rules as laid down in the Code of Civil Procedure need not be meticulously followed. In a consumer dispute case the basic points like (i) whether the complainant is a consumer and whether there is relationship between the parties; (ii) if there is deficiency in service or unfair trade practice and other one or two points like limitation period for filing the case and cause of action are to be taken care of. However, the issue of non-joinder of necessary party in the proceeding is also vital for adjudicating a case. A necessary party to a proceeding is to be ascertained on the basis of nature of the case and the reliefs claimed therein. Mere involvement a party in the subject transaction under the dispute won't suffice to hold such a party as a necessary party. Unless and until relief is claimed against a party or when the relief if granted, can affect the interest of such party, then such a party can be considered as a necessary party to such proceedings. Even if any findings in regard to a particular relief or reliefs covers the interest of such a person, yet it does not necessarily mean that other relief or reliefs also cannot be granted or the entire case shall fail.

8. In this case the loan in question has been admitted. Undisputedly, the appellants/complainant no. 1 made several attempts to settle the outstanding dues payable to the respondents/opposite parties. Admittedly, an Arbitration proceeding was held and an award passed in favour of the respondents/opposite partiers. It also transpires that even after passing of such award by the arbitrator a settlement between the complainant no.1 was done. Some payments were made by the complainant no. 1 etc. It is also matter of records that no amount has been deducted from the guarantor no. 2 for realisation of outstanding dues. This is not a case by the bank/opposite parties for realization of

their outstanding dues from the borrower and the guarantors. It is a case filed by the borrower/complainant no. 1 along with legal heir of the guarantor no. 1 being consumers of the bank/opposite parties. The commission has to consider whether there is any deficiency in service on the part of the opposite parties towards the consumers/complainants and if any relief or reliefs can be granted to the complainants in present form of this case. This point is to be considered that in this case the opposite parties have not led any evidence in support of their case. In this position this Commission does not find any justification to dismiss the entire case on the ground of non-joinder of necessary party on the basis of the pleadings of the written version and as such the impugned judgement and order suffers infirmity and thus deserves to be set aside.

9. However, considering the nature and circumstances of the case the complainant case should be remanded back to Ld. Commission below for fresh adjudication of the disputes giving an opportunity to the complainants /appellants to make the said guarantor no. 2 namely Murari Mohan Dey a party to this case and giving both the parties of being heard including leading evidences.

Accordingly, the appeal succeeds.

10. Hence, it is

o r d e r e d

that this appeal being no. SC/19/A/277/2022 is hereby allowed ex parte.

The impugned judgement and order dated 30.08.2022 passed by Ld. DCDRC, Howrah in Consumer Complaint Case No. CC/255/2019 i.e. HDF 255 of 2019 is hereby set aside.

The complaint case is remanded to the Ld. Commission below with a request to readmit the same to its original file and number and decide the case afresh without being swayed by any observation or comments made by this Commission herein, as early as possible, after giving opportunities to both sides of being heard and adducing evidences and

also after giving an opportunity the complainants to implead said Murari Mohan Dey as a party to this case if they desire.

Both the parties are directed to appear before the Ld. Forum below on 02.09.2026.

Parties do bear their own costs.

Send a copy of this order to Learned DCDRC, Howrah for information and compliance.

Supply copies of this judgement and order to the parties free of costs.

.....
RAJES GUHA RAY,
JUDICIAL MEMBER

.....
SANTANU SAHA,
MEMBER