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'AMITABHA DASGUPTA' ON PRODUCT LIABILITY, UNWARRANTED REMITTING TO CIVIL COURT, AND LOST CONTENTS OF LOCKERS

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CASE COMMENT
'AMITABHA DASGUPTA' ON PRODUCT
LIABILITY, UNWARRANTED
REMITTING TO CIVIL COURT, AND
LOST CONTENTS OF LOCKERS

—*Chandan Maheshwari**

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I. INTRODUCTION

This paper analyses a part of the ruling in the matter of *Amitabha Dasgupta v United Bank of India*,¹ rendered by the Supreme Court of India. The matter arose out of an appeal from the ruling of the National Consumer Disputes Redressal Commission (NCDRC), and discusses issues of product liability for lost contents of lockers offered by locker facility service providers, without considering the provisions on product liability. In this paper, author contends that the Supreme Court erred in holding that the civil court had jurisdiction for adjudicating the issue of product liability, or more specifically in this case, for adjudicating on the liability for lost contents of lockers.

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¹ *Amitabha Dasgupta v United Bank of India* 2021 SCC OnLine SC 124 (SC).

A. FACTS

The Appellant Amitabha Dasgupta had been a long-time customer of the locker facility offered by Respondent 1 (United Bank of India (R1)). When on 27th May, 1995, the Appellant visited R1 to operate the locker and deposit the locker rent, he came to know that his locker had been broken open on 22nd September, 1994 for non-payment of rent for 1993-1994. The locker had then been allotted to another customer. Upon correspondence with Chief Manager of R1 (R3 in this case), he admitted that there were no outstanding dues to be paid by the appellant and he apologized for breaking open the locker.

On 17th June, 1995, the Appellant went to collect the locker's contents. It was alleged that he found only two of the seven ornaments that had been deposited, in a non-sealed envelope. R1 contended that those were the only contents found in the locker when it was broken open.

The Appellant then filed a consumer complaint before the District Consumer Forum calling for return of the seven ornaments, or alternatively Rs 3,00,000 to be paid by R1 for cost of lost jewelry and compensation for damage. The District Forum allowed the complaint and held that there had been deficiency of service in breaking open the locker even though there were no pending dues. It was also held that R1 had failed to prove that there were only two ornaments in the locker at the time of its breaking open, since there had been no independent witness to the same. R1 was directed to either return the remaining ornaments, or pay the cost of Rs 3,00,000 in addition to a sum of Rs 50,000 for mental agony, harassment, and cost of litigation.

On appeal by the Respondents, the State Commission upheld the finding of deficiency of service but reduced the amount of compensation from Rs 50,000 to Rs 30,000. However, with respect to the finding of cost of ornaments, the State Commission held that such a determination could only be made upon production of elaborate evidence. It was said that the consumer fora are not equipped to undertake such an exercise as it only conducts summary trials. The Appellant was directed to approach the civil court for adjudication on contents of the locker.

Revision petition was then preferred against the order of the State Commission by the Appellant. The NCDRC dismissed the petition and upheld the findings of the State Commission. After this, the Appellant moved the Supreme Court against the order of the NCDRC.

The Supreme Court framed two questions for consideration in this matter. *First*, whether the Bank owed a duty of care to the locker holder under the

laws of bailment or any other law with respect to contents of the locker? Also, whether the same could be effectively adjudicated in the course of consumer dispute proceedings? *Second*, whether the Bank owed an independent duty of care to its customers with respect to diligent management and operation of the locker, separate from its contents? Also, whether compensation could be awarded for noncompliance with such duty?

The Supreme Court noted that there is no uniform law or set of practices applicable to the entire locker facility industry. After an analysis of case laws both from Indian courts and those abroad (from New York,² Ohio,³ and Illinois⁴), the Supreme Court held that the decision would hinge on factual findings on whether the bank had knowledge of the contents of the locker; or whether the locker holder had prepared any receipt or inventory of the articles placed inside the locker or was otherwise able to prove the particulars of the items deposited in the locker. It was held that these questions could not be answered in proceedings before the consumer fora and must be evaluated by the civil court on appreciation of evidence. The Supreme Court kept open all questions of fact and law open as to the contents of the locker, inasmuch they were disputed by R1.

On the second question, it was held that R1 had been grossly negligent, and the Supreme Court awarded Rs 5,00,000 for deficiency of service and Rs 1,00,000 as litigation expenses. The Court also laid down certain principles to guide the Banks in operating their locker facilities until comprehensive guidelines were issued in that regard by the Reserve Bank of India.

B. ANALYSIS

It is the author's contention that the determination of the Supreme Court on the first question is not sustainable in law. The Supreme Court holding that the question of compensation for contents of the locker could not be adjudicated by the consumer fora because of disputed facts and the need for elaborate evidence is erroneous.

The author attempts to discuss the shortcomings of the judgment under the following headings.

² *Roberts v Stuyvesant Safe Deposit Co* (1890) 123 NY 57.

³ *Blair v Riley* (1930) 175 NER 210.

⁴ *National Safe Deposit Co v Stead* 95 NER 973.

(a) Provisions for Product Liability

The Consumer Protection Act, 2019 contains provisions for product liability. Section 2 (34) defines product liability as

“The responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto.”⁵

Section 2 (22) defines the relevant harm as

“Damage to any property, other than the product itself” and ‘mental agony or emotional distress attendant to ... damage to property.’⁶

Section 85 lays down the wrongs for which a product service provider is liable in a product liability action; among the wrongs listed is the provision that the service provided was faulty, imperfect, deficient, or inadequate in quality, nature or manner of performance which is required under any law or pursuant to any contract or otherwise.⁷ A product service provider is also liable for acts of omissions or commission or negligence or conscious withholding any information which caused harm. Section 39 (e) makes it clear that the District Commission may award compensation in a product liability action.⁸

On a perusal of the provisions discussed above, it is amply clear that the matter under comment was a case of product liability, and that the consumer fora have been given the jurisdiction to decide on such matters, expressly. The Supreme Court’s silence on these provisions in the matter under comment is improper, to say the least.

The fact that the 1986 Consumer Protection Act did not have provisions for product liability is of little consequence here, because similar matters have earlier been decided by the consumer fora, even under the framework of the 1986 Act. Some of those judgments are discussed later in the paper.

(b) Questions of Procedure

The issue which we are putting under the lens here is whether the liability for diligent management & operation of the locker on one hand, and for the

⁵ S 2(34), Consumer Protection Act 2019.

⁶ S 2 (22), Consumer Protection Act 2019.

⁷ S 85, Consumer Protection Act 2019.

⁸ S 39 (e), Consumer Protection Act 2019.

locker's contents on the other hand should be decided in a single proceeding or not?

It is worth noting that there is nothing in the Consumer Protection Acts (both of 1986 and of 2019) which suggests that the consumer fora cannot be guided by the principles contained in the Evidence Act⁹ or the Code of Civil Procedure.¹⁰

The Code of Civil Procedure, 1908 provides in its Order II Rule 1 that every suit should be framed so as to afford grounds for final decision upon the subjects in dispute and to prevent further litigation concerning them.¹¹ It also states in Order II Rule 2 that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action.¹² No interest is served in allowing for two different proceedings for something that could have been adjudicated in a single proceeding. Neither the substantive entitlements under consideration nor the remedy to be availed were materially different in the issue that was carved out by the Supreme Court for adjudication by the civil court.

Lord Coleridge authored a dissenting opinion in the matter of *Brunsdan v Humphrey*¹³ which is very apt in this discussion. He stated that

“It seems to me a subtlety not warranted by law to hold that a man cannot bring two actions, if he is injured in his arm and in his leg, but can bring two, if besides his arm and leg being injured, his trousers which contain his leg, and his coat-sleeve, which contain his arm, have been torn.”

The Supreme Court reasoned that the questions concerning relationship between the locker service provider and locker holder, and the liability for contents of the locker required taking elaborate evidence suitable only to the civil court. It is the author's contention that merely because questions are difficult cannot possibly be a ground for giving up an otherwise existing jurisdiction. Consumer protection law aims at speedy redressal of consumer complaints, and asking complainants to approach the civil court for answering difficult questions can only work to the advantage of market players who would be interested in limiting their liability or merely making it harder for consumers to

⁹ Indian Evidence Act 1872.

¹⁰ Civil Procedure Code 1908.

¹¹ Or II r I, Civil Procedure Code 1908.

¹² Or II r II, Civil Procedure Code 1908

¹³ *Brunsdan v Humphrey* (1884) 14 QBD 141 (CA).

avail legal remedies. The NCDRC has been clear about this in the past.¹⁴ Noting that the Consumer Protection Act specifically invests the consumer fora with the powers of a civil court in respect of summoning and examining witnesses, discovery of documents and other materials, and the taking of affidavits and reports of analysis or tests etc.¹⁵, the NCDRC has previously held that

“The mere fact that witnesses may have to be examined and their cross examination may also be necessary is not by itself a valid ground for refusing adjudication of the dispute before the Redressal Forums constituted under the Consumer Protection Act.”¹⁶

It was held that unless the consumer forum found, after a careful scrutiny of the pleadings and the documents relied on by the parties, that a satisfactory adjudication of the matter cannot be conducted by it because of the exceptionally complicated nature of the issues involved, it will not be just or proper to decline to adjudicate upon a complaint. The NCDRC rightly concluded that to hold otherwise would amount to unjust denial of the benefits of the consumer protection law to claimants by erroneous abdication of its jurisdiction by the forums.

In the case under comment, no such ‘exceptional complicated nature’ has been made out in the judgment. It cannot possibly be exceptionally complicated to rule on the legal relationship by looking at the agreement between the service provider and consumer or looking at general principles of law in the absence of ascertained industry standards. In fact, in the matter under comment, the District Forum had initially ruled on liability for contents of the locker. It is only the State Commission that set aside the award on that count without faulting the District Forum’s reasoning or holding that the burden of proof was not met by the complainant. Additionally, this setting aside did not result in dismissing the complainant’s case or asking for the District Forum’s reconsideration on taking additional evidence, but the indication that a civil court might do the job appropriately.

(c) Precedents Cited

Let us now consider the case law cited by the Supreme Court in the judgment itself. Four of these matters decided by the NCDRC were where the consumer fora had ruled on liability for lost contents of lockers without asking the claimants to fall back on a civil suit.

¹⁴ *S.K. Abdul Sukur v State of Orissa* 1991 SCC OnLine NCDRC 8 (NC).

¹⁵ S 38 (9), Consumer Protection Act 2019 and s 13 (4), Consumer Protection Act 1986

¹⁶ *S.K. Abdul* (n 15).

One of these precedents is *Punjab National Bank, Bombay v K.B. Shetty*.¹⁷ In this matter, the NCDRC cut through the submission of the Bank concerning lessor-lessee relationship with the customer and ruled on the point. Affidavit of the complainant and his wife on the contents of the locker, and a valuation report of jewelry of which a part was allegedly kept in the locker was accepted as bona fide and taken to establish contents of the locker. Register of operation of the lockers was also taken into evidence. The Bank's contention that the locker had been left open deliberately by the complainant's wife was also rejected as it was only 50 days after the wife's last operation of the locker that the Bank reported it open. The Bank's non-initiative in asking to cross-examine the complainant was also taken as material before the NCDRC to reject the Bank's challenge against the award.

Another judgment cited was the one in *Mahender Singh Siwach v Punjab & Sind Bank*.¹⁸ In this matter, details of the locker's contents given by the complainant in a timely FIR were held to be sufficient to establish contents of the locker. The FIR's details were corroborated by an affidavit of the complainant, a valuation report, and the affidavit of the valuer. Photograph of the complainant's daughter-in-law wearing the lost jewelry in her marriage was also taken as relevant evidence to establish the jewelry stored in the locker.

In another judgment cited,¹⁹ statement of the complainant given to the police and his affidavit along with receipts of the jewelry's purchase and source of income were held to be sufficient proof of contents of the locker.

In the case of *Mamta Chaudaha v SBI*,²⁰ a standard three-line affidavit about contents of the locker in absence of any detailed description of jewelry or evidence of damage to the locker or to the additional private lock placed on the locker was held to be not sufficient to prove any loss. The NCDRC held that the complaint had been made on false grounds, intentionally. It is worth noting that the NCDRC dismissed the complaint in this matter, instead of discussing the propriety of a civil suit for the answer to the issues.

These judgments collectively demonstrate that it is well within the competence and jurisdiction of the consumer fora to rule on the fact of and liability for contents of lockers. The failure of a litigant to prove their case should not

¹⁷ *Punjab National Bank v K.B. Shetty* 1991 SCC OnLine NCDRC 6: (1991) 1 CPC 592 (NC).

¹⁸ *Mahender Singh Siwach v Punjab and Sind Bank* 2006 SCC OnLine NCDRC 62 : (2006) 4 CPJ 231 (NC).

¹⁹ *Pune Zilla Madyawarti Sahakari Bank Ltd v Ashok Bayaji Ghogare* 2015 SCC OnLine NCDRC 2832 (NC).

²⁰ *Mamta Chaudaha v SBI* 2019 SCC OnLine NCDRC 731: (2020) 1 CPJ 276 (NC).

grant them the liberty of a second innings in civil court, irrespective of the unattractiveness of the prospect.

The only judgment cited that talks about the propriety of a civil suit for determining contents of the locker, is the NCDRC decision in *UCO Bank v RG Srivastava*.²¹ But given all the other pointers in opposition to such a course of action, the view is not sustainable in law and should have been held as such by the Supreme Court.

II. CONCLUSION

In the light of, express statutory provisions enabling the consumer for a to decide on issues of product liability, prior NCDRC decisions conclusively ruling on liability for lost contents of lockers, and no indication of why the issues present were of an exceptionally complicated nature, there is no doubt that the Supreme Court's holding that these issues can only be appropriately adjudicated upon by the civil court is flawed. The judgment also allows for further unwarranted litigation, and at the same time, blunts the utility and denies claimants the benefit of having a statute devoted to consumer protection.

For these reasons, the judgment in *Amitabha Dasgupta* and its sustainability in law and as precedent needs to be reconsidered.

²¹ *UCO Bank v R.G. Srivastava* 1995 SCC OnLine NCDRC 3; (1996) 1 CPR 97 (NC).