REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3966 OF 2010

Amitabha Dasgupta ...Appellant

Versus

United Bank of India & Ors. ...Respondents

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

1. This appeal, by special leave, arises out of the judgment of the National Consumer Disputes Redressal Commission ('National Commission') delivered on 18.12.2008 dismissing the Revision Petition filed against the judgment of the State Consumer Disputes Redressal Commission ('State Commission') dated 12.10.2004.

2. The following are the facts out of which this appeal arises:

2.1 In the early 1950's, the Appellant's mother (since deceased) took a locker on rent bearing No. A-222 in the Deshapriya Park, Kolkata Branch of the Respondent No. 1 Bank. In 1970, the Appellant/Complainant was included as a joint holder of the locker. On 27.05.1995, the Appellant visited the Respondent No.1 Bank to operate the locker and deposit the locker rent. However, the Appellant was informed that the Bank had broken open his locker on 22.09.1994 for non-payment of rent dues for the period of 1993-1994. Further, that the locker had subsequently been reallocated to another customer.

2.2 On 29.05.1995 and 2.06.1995, the Appellant sent communications to Respondent No. 1 claiming that such breaking of his locker by the Bank was illegal since he had cleared dues for 1994-1995 on 30.07.1994, i.e., prior to the breaking of the locker. The Chief Manager of Respondent 1, who is Respondent No. 3 in the present appeal, responded to the communication and admitted to having inadvertently broken open the locker, though there were no outstanding dues to be paid, and apologized for the same. He stated as an ancillary point that reminders for the payment of dues had been sent on 25.11.1993 and 23.02.1994. However, that these would have no

meaning since the dues were subsequently paid by the Appellant on 30.06.1994.

2.3 On 17.06.1995, when the Appellant went to collect the contents of the locker, it is alleged that he found only two (one pair of bangles and one pair of ear pussa) of the seven ornaments that had been deposited in the locker in a non-sealed envelope. However, Respondent No.1 Bank contends that only those two ornaments were found in the Appellant's locker when it was broken open. That the same is evident from the inventory prepared by Respondent No. 1 when the locker was broken open in the presence of an independent witness.

2.4 Subsequently, the Appellant filed a consumer complaint before the District Consumer Forum ('District Forum') calling upon Respondent No. 1 to return the seven ornaments that were in the locker; or alternatively pay Rs. 3,00,000/- towards the cost of jewelry, and compensation for damages suffered by the Appellant.

2.5 The District Forum allowed the complaint and held Respondent No. 1 liable for deficiency of service, relying upon Respondent No. 3's admission that the Bank had inadvertently broken open the Appellant's locker though there were no pending

rent dues. Further, on the claim for the cost of seven ornaments, it was held that Respondent No.1 could not prove that there had been only two ornaments in the locker since there were no independent witnesses in the presence of whom the locker was opened. Hence, Respondent No. 1 was directed to return the entire contents of the locker, or alternatively pay the Appellant Rs. 3,00,000/- towards cost of the jewelry and, Rs. 50,000/- as compensation for mental agony, harassment, and cost of litigation.

2.6 On appeal, the State Commission vide order dated 12.10.2004 accepted the District Commission's findings on the question of deficiency of service, though it reduced the compensation from Rs. 50,000/- to Rs. 30,000/-. However, with respect to recovery of the cost of the ornaments, the State Commission, relying upon the judgment of the National Commission in ***UCO Bank v. RG Srivastava***,[1] observed that the dispute on the contents of the locker can only be decided upon provision of elaborate evidence. That the Consumer Forum was not equipped to undertake this evaluation since it only has jurisdiction to conduct a summary trial. Therefore, the Appellants

1 1996 (1) CPR 97.

were directed to approach the civil court for adjudication on the contents of the locker.

2.7 The Revision Petition against the order of the State Commission was dismissed vide the impugned order. The National Commission by the impugned judgment, accepted the State Commission's holding on the limited jurisdiction of the Consumer Forum to adjudicate on the recovery of the contents of the locker.

Hence, the present appeal.

3. Learned counsel for the Appellant submitted that even if the case is remitted to the civil court for adjudication on the issue of the contents of the locker, it would be highly improbable to ascertain the same since the contents of a locker are exclusively known only to the locker holder. On the question of damages, he relied on ***Charan Singh v. Healing Touch Hospital & Ors.***[2] to argue that compensation must be awarded to bring a qualitative change in the attitude of the service provider.

3.1 Per contra, learned counsel for the Respondents submitted that the National Commission's holding does not warrant interference. He submitted that compensation for the loss of

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2(2000) 7 SCC 668.

jewellery can only be awarded after appreciation of evidence by the trial court.

4. Heard Learned Counsel for both parties. Based on a perusal of the record, the following issues arise for consideration in the present appeal:

> 4.1 ***First,*** Whether the Bank owes a duty of care to the locker holder under the laws of bailment or any other law with respect to the contents of the locker? Whether the same can be effectively adjudicated in the course of consumer dispute proceedings?
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> 4.2 ***Second,*** irrespective of the answer to the previous issue, whether the Bank owes an independent duty of care to its customers with respect to diligent management and operation of the locker, *separate from its contents*? Whether compensation can be awarded for non-compliance with such duty?

I. Relief with Respect to the Contents of the Locker

5. Disputes between banks and locker holders, pertaining to loss of articles placed inside the locker, have been subject to judicial consideration in various jurisdictions for nearly a

century. For a broader understanding of the subject, we find it necessary to briefly refer to certain judgments of foreign jurisdictions, before clarifying the position under Indian law.

5.1 The dominant view of courts around the globe has been that the bank is in the position of a bailee with respect to the goods placed inside the locker by the locker holder. In ***Roberts v. Stuyvesant Safe Deposit Co.***,[3] the defendant company permitted the police under a search warrant, to confiscate the articles that were inside the plaintiff's locker. However, the articles were subsequently stolen from police custody. A suit was filed by the plaintiff, alleging that the defendant company failed to comply with the duty of care required under the law by permitting the police to take away articles that were not mentioned in the search warrant. Affirming the plaintiff's contentions, the Court of Appeals of New York made the following observations about the relationship of bailment between the parties:

> "The legal relationship which the defendant held to the plaintiff, and out of which this controversy has arisen, was that of a bailee or depositary for hire. The fundamental question in the case is whether the defendant, upon the undisputed evidence in the record, discharged those duties and obligations to the

3(1890) 123 N.Y 57.

> plaintiff which the law imposed upon it in regard to the care and custody of her property."
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> (emphasis supplied)

It is pertinent to note the Court's observation that whether or not the defendant had discharged its obligations as a bailee would have to be discerned from the undisputed evidence on the record.

5.2 The position of law stated in ***Stuvyesant Safe Deposit Co.*** (supra) has been reiterated in subsequent precedents which have governed the law on the field such as ***Emma M. Lockwood v. The Manhattan Storage & Warehouse Company***,[4] ***Mayer v. Brensigner***,[5] ***National Safe Deposit Co. v. Stead***.[6] In ***Cussen v. Southern Cal. Savings Bank***,[7] money kept by the plaintiff in the bank's safe deposit vault was lost. The Supreme Court of California held that the bank was liable under the laws of bailment. However, it observed that the plaintiff would have to make a *prima facie* case that they had deposited the money inside the locker, and that it was subsequently lost. The burden of proof would then shift to the defendant bank to prove that it exercised

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4 50 N.Y.S 974 (N.Y. 1898).
5 54 N.E 159 (1899).
6 95 N.E. 973 (1911).
7 65 P. 1099 (1901).

the necessary care required under the laws of bailment for the protection of its contents. Therefore, before applying the laws of bailment, the court must first find on the facts of the case whether the plaintiff had transferred possession of the articles to the bank.

6. To identify if the relationship of bailment exists between the bank and the locker holder under Indian law, it is necessary at the outset to refer to the relevant provisions under the Indian Contract Act, 1872 ('Contract Act'):

> "**148. 'Bailment', 'bailor' and 'bailee' defined.**—A 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the 'bailor'. The person to whom they are delivered is called the 'bailee'.
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> **149. Delivery to bailee how made.—**The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf."

Thus, from the aforementioned provisions, it can be inferred that three components need to be fulfilled for the existence of bailment. These are: (i) delivery of goods from one person to another by transfer of possession, actual or constructive; (ii) an

express or implied contract for delivery; (iii) delivery should be for accomplishment of a purpose.

7. Unfortunately, there is no substantive domestic legislation or sector-specific regulations which may throw light upon the issue of whether banks are responsible under the laws of bailment for the loss of articles placed inside the locker. On 4.12.2006, the Reserve Bank of India ('RBI') had issued a Draft Circular on Safe-Deposit Lockers ('2006 Circular').[8] This circular was only in the form of a proposal issued to the banks and hence does not have any binding value. However, it is useful in understanding the RBI's position at that stage. Clause 2.1 of the 2006 Circular states:

> "2. Security aspects relating to Safe Deposit Lockers:
> 2.1 It is clarified that the relationship between the bank and the locker hirer is in the nature of a 'bailor and bailee' and not 'landlord and tenant' though the bank has no knowledge of the contents of the locker and the bank is required to exercise due care and necessary precaution for the protection of the lockers provided to the customer."
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> (emphasis supplied)

On perusal of the 2006 Circular, it is evident that *at that point in time*, the RBI had recommended that the laws of bailment ought to guide the relationship between the bank and the locker

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8https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=3196.

holder, even if the bank has no knowledge of the contents of the locker.

7.1 The RBI had also issued guidelines covering *inter alia*, the subject of safe custody of articles placed inside the lockers (Circular No. RBI/2006-2007/325) on 17.04.2007 ('2007 Circular').[9] There was no clause on the nature of the legal relationship between the bank and the locker holder in the 2007 Circular. The only reference to the Contract Act was as follows:

> "3.5 Banks are advised to be guided also by the provisions of Sections 45 ZC to 45 ZF of the Banking Regulation Act, 1949 and the Banking Companies (Nomination) Rules, 1985 and the relevant provisions of Indian Contract Act and Indian Succession Act."
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> (emphasis supplied)

However, this observation was made in the specific context of return of safe custody of articles to the survivors/legal heirs of deceased locker holders and hence may not have much bearing in the present case.

7.2 Subsequently, in response to a Right to Information ('RTI') enquiry made in 2017, the RBI, and various public sector banks, stated that as per the agreement entered into with the customers who are hiring/leasing the lockers, the banks have no liability for loss or damage of articles placed inside the bank lockers. Hence the position of the RBI from 2006 to 2017 has undergone a sea-

9 https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=3422.

change. The position adopted by the banks was challenged before the Competition Commission of India ('CCI') as being in the nature of an anti-competitive practice. The CCI dismissed the claim, while making the following observations:[10]

> "7. In the instant case, there is no such material to suggest any understanding/consensus/arrangement amongst the Opposite Parties to have pursued any of the aforesaid prohibited activities. Suspicion of a cartel has been raised in the information as all the Opposite Parties allegedly do not take responsibility for any loss of valuables kept by customers availing safety deposit locker facility from them. However, the RTI replies of some of the Opposite Parties suggest that they are not completely absolved for loss of valuables kept in their locker. For instance, the reply dated 7th October, 2015 of Bank of Baroda inter alia states that in case of loss suffered by the lessee due to theft or burglary etc. of safe custody locker, the liability of the bank will depend upon the facts and circumstances surrounding the burglary. Further, the reply dated 13th October, 2015 of Dena Bank states that the responsibility of the bank shall be governed by the terms and conditions laid down in the memorandum of hiring of locker and the guidelines issued by RBI from time to time. Reply dated 19th October, 2015 of Andhra Bank states that the relationship between the bank and its customer, in case of safe deposit locker, is that of 'lessor and lessee' and the particulars of the articles kept in safe deposit locker will not be disclosed by the customer to the bank and hence, the bank cannot take responsibility for compensating any loss as the extent of such loss cannot be assessed. It has been further stated that the bank, however, takes all necessary measures and precautions to safeguard the lockers provided to the customers. Similarly, the reply dated 30th October, 2015 of Corporation Bank states that

10 Kush Kalra v. Reserve Bank of India, 2017 SCC OnLine CCI 41.

> its liability in case of theft/loss of valuables kept in its safety lockers depends upon the parameters on which the bank takes insurance on the lockers and the same parameters will be adopted while settlement of claims in case of theft. Taking into consideration all these replies and in the absence of any material suggesting collusion amongst the Opposite Parties, it cannot be said that a uniform practice is followed by all the Opposite Parties to avoid responsibility/liability for loss of valuables kept by customers availing their safety deposit locker facility."
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> (emphasis supplied)

Therefore, the CCI took notice of the fact that it is common industry practice for banks to disclaim liability for loss of articles placed inside the locker, though there are no uniform parameters or policies guiding the same. Additionally, the banks have stated that acceptance of responsibility for loss of articles placed in their locker facility will depend upon the relevant facts and circumstances of each case, such as the terms of the locker hiring agreement, the circumstances under which the articles were lost or stolen, and so on.

8. There has also not been any authoritative pronouncement from this Court on the issue of whether banks are responsible as bailees, or in any other capacity, for any loss or damage to the contents of the lockers. However, there have been various High Court judgments guiding the field. One of the notable cases in

which this issue arose was ***Jagdish Chandra Trikha v. Punjab National Bank***.[11] In this case, the appellants had, before the partition of India, entrusted a sealed box of gold ornaments to the respondent bank in Peshawar on the payment of a fee for safekeeping. The box was moved to the Rawalpindi branch, then subsequently to the Lahore branch, and finally to India in November 1961 under the Indo-Pakistan Movable Property Agreement. Upon presentation of the box, the Appellant refused to take delivery since the appearance and weight of the box was different from what it had been when it was deposited. A suit was filed seeking delivery of the ornaments or alternatively recovery of the market value of the ornaments. Referring to the relevant common law authorities, the Delhi High Court held that the bank would be liable in the capacity of a bailee for the loss of the ornaments:

> "71. The Box was entrusted to the defendant Bank at Peshawar. <u>The same was accepted by the Bank as a bailee</u> and it was expected that the usual care which is demanded on such matters would be undertaken…it is established that the defendant Bank failed to discharge its duties as a bailee and did not take care of the goods of the parents of the plaintiff as one would under similar circumstances, take of his own goods of the same bulk, quantity and value as the goods bailed."

11 AIR 1998 Delhi 266.

(emphasis supplied)

It is important to note that in the facts of ***Jagdish Chandra Trikha*** (supra), the High Court found that there was complete entrustment of possession of the appellant's ornaments. The articles to be safeguarded were handed over by the customer to the bank in a sealed box, which was then taken to a safe place to be stored. Though the respondent bank claimed it did not have any knowledge of the contents of the box, it was *proved from evidence* that the appellant's predecessors had handed over a detailed list of the jewellery which was placed inside the safe deposit box to the bank. It was further proved that the customer did not have any access to the same after entrustment to the bank. Hence the High Court considered it a fit case to apply the laws of bailment.

8.1 However, the locker service provided by the banks has evolved since the pre-independence days. In that era, the bank's employee was entrusted with the relevant goods for safe keeping. Complete access to the valuables, if any, remained with the bank till the time the customer claimed return of the same. However, due to modernization of the locker system, banks now provide customers with partial access to the lockers. Under the current

system, the bank allocates a locker to the customer on the payment of rent. The customer is then provided with a key to the locker through which he can gain partial access to the locker. The bank has a master key to the locker and the customer can gain complete access to the locker only when the bank uses its own key to the locker. Therefore, a combination of the bank's key and the locker holder's key is required for opening a locker, providing neither with complete access. In more advanced, digitally operated locker systems, such 'keys' may not be physical keys but may consist of passwords or data which is exclusively known to the bank and the customer. Further, the bank may not have any receipt of the exact particulars of the articles placed inside the locker, as was the case in ***Jagdish Chandra Trikha*** (supra). The question that therefore arises for consideration before this Court is whether the modern-day bank locker system would be guided by the laws of bailment.

8.2 An important decision which has considered the modern-day bank locker system is that in ***Natioal Bank of Lahore Ltd. v. Sohan Lal Saigal***.[12] In that case, the appellant bank had provided locker service for the safe custody of valuables. The

[12]AIR 1962 P H 534.

locker could be operated jointly by the locker holder and the bank's custodian. However, the respondent locker holder was able to prove before the Civil Court that the Manager/custodian of the bank had tampered with the locker such that it could be operated even without the locker holder's personal key. Hence the Civil Court concluded that the Manager had exclusive control over the lockers. Consequently, referring to the decisions of the Court of Appeals of Ohio in ***Blair v. Riley***[13] and the Supreme Court of Illinois in ***National Safe Deposit Company v. Stead, Attorney General***,[14] the Punjab and Haryana High Court held that the bailor-bailee relationship applied. In this regard, the High Court observed that:(Pg. 578)

> "It may be that the person who hires a locker retains some control over it by having one key with himself but if the locker can be operated without any key, as was possible in the lockers which were rented out to the plaintiffs, then at once any impediment in the way of control and possession of the Bank to whom the locker belonged and in whose strong room it was to be found, would be removed and it could well be said that the bank was strictly in the position of the bailee."
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> (emphasis supplied)

The High Court further observed that the locker holders had produced specific evidence in the form of lists of the articles of

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13 175 N.E.R 210.
14 95 N.E.R. 973.

jewellery deposited inside the lockers so as to prove the extent of loss they had suffered.

8.3 In ***Mohinder Singh Nanda v. Bank of Maharashtra***,[15] forty-four safe keeping lockers in the Respondent bank were broken open by miscreants and the contents were emptied. The Punjab & Haryana High Court held that the bank would not be liable for the loss of articles, if any, since the bank had no knowledge of the contents of the locker:

> "4. But there is no evidence on record to show that the defendant-Bank had the knowledge of the articles in the locker. Unless there is entrustment of the property to the defendant Bank, the Bank cannot be held responsible for the theft. The plaintiffs have miserably failed to prove that there was entrustment of the articles with the defendant Bank and that the Bank authorities were aware of the articles placed in the locker."
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> (emphasis supplied)

8.4 Subsequently, the Punjab and Haryana High Court again undertook a comprehensive look into the present-day locker system in ***Atul Mehra v. Bank of Maharashtra***,[16] which pertained to the same bundle of facts as in ***Mohinder Singh Nanda*** (supra). The appellant locker holders filed a suit alleging that due to the robbery, jewels worth Rs. 4,26,160/- were stolen from his locker. It was claimed that the respondent bank had not

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15 1998 ISJ (Banking) 673.
16 AIR 2003 P&H 11.

complied with the duty of care owed under the laws of bailment. However, the trial court found that the knowledge of the weight and value of the articles stored inside the locker was exclusive to the customer, and the bank did not have notice of the same. Further, the appellants had not produced any evidence at the stage of trial to establish the contents of the locker. Consequently, the Single Judge Bench of Nijjar J. opined that the provisions with respect to bailment under the Contract Act would not apply as follows:

> "17…The respondent bank could only be fastened with liability on the contents of the locker being disclosed to it. In the absence of this information, it would have to be held that there was no entrustment of the goods to constitute bailment as required under Section 148 of the Indian Contract Act, 1872.
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> 18…These authorities are of no assistance to the appellants in the present case. In all these cases, exclusive possession of the property had been handed over by the bailor to the bailee. I am of the considered opinion that exclusive possession is a sine qua non for bailment. Therefore, I have no hesitation in coming to the conclusion that mere hiring of the locker would not be sufficient to constitute a contract of bailment as provided under Section 148 of the Indian Contract Act, 1872. In order to constitute bailment, as provided in Section 148 of the Act, it is further necessary to show that the actual exclusive possession of the property was given by the hirer of the locker to the bank. It is only thereafter that the question of reasonable care and quantum of damages would arise. In the present case, it is impossible to

> know the quantity, quality or the value of the jewelry which was allegedly kept in the locker at the time when the robbery occurred. ..... In the present case, the plaintiffs alone had the knowledge of contents of lockers, therefore, the plaintiffs had to lead independent evidence to prove that jewelry was actually in the locker on the date of the robbery. Even if the plaintiffs had proved this peculiar fact; they would still have to prove the value of the jewelry."
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> (emphasis supplied.)

Therefore, the High Court concluded that mere leasing out of the locker *ipso facto* would not establish a relationship of bailment between the bank and the locker holder. In order to establish exclusive possession, the claimant must prove that the bank had knowledge of the contents of the locker. Alternatively, where the locker holder alone has knowledge of the contents, they must lead independent evidence to prove that their articles or valuables were actually inside the locker, and the valuation of the same.

8.5 However, Nijjar J. differentiated the holding in ***Sohan Lal Saigal*** (supra) by observing as follows:

> 20. "In that case, the learned trial court had held that entrustment and the valuation of jewelry had been proved.....On the twin grounds of exclusive possession of the jewelry deposited in the locker and entrustment thereof to the Bank, it has been held that the Bank would be in the position of bailee."
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> (emphasis supplied)

Therefore, in ***Sohan Lal Saigal*** (supra) entrustment of jewelry was proved on production of elaborate evidence before the trial court. However, in ***Mohinder Singh Nanda*** (supra) and ***Atul Mehra*** (supra) no evidence was led to prove the entrustment of jewelry to the bank, and hence the claimant locker holders were unable to succeed in obtaining relief. Nijjar J. further observed that:

> "22…Whatever property is deposited in the locker is, undoubtedly in the custody and possession of the bank. Merely because the locker can be operated only in the presence of the locker hirer would not amount to joint possession of the locker. The Banker can always open the locker with a "master key". The hirer of the locker is not in a position to open the locker without the assistance of the bank. The hirer has access to the locker only during specified banking hours. The banker has no such limitation. It must, however, be noticed that the transaction of bailment would only be established if the provisions of Section 148 of the Indian Contract Act are complied with. With regard to this, it is the submission of Mr. Jagga that the plaintiffs have miserably failed to prove that the jewellery was kept in the locker as claimed in the plaint. There being no entrustment or delivery of possession, Section 148 of the Act cannot be invoked by the plaintiffs."

Therefore, the Court in ***Atul Mehra*** was sympathetic to the fact that the principles of bailment may be applicable even to the contemporary dual-key locker system if the bank is in the

possession of a master key or has substantial degree of access to the locker. However, the plaintiff would first have to prove that they had indeed handed over possession of certain articles for being deposited in the locker of the bank. If this requirement is not satisfied, the Court is barred from going into other issues such as whether the locker holder and the bank were in joint possession, etc.

8.6 Having perused the aforementioned precedents, we find that what was commonly contested in all these cases is whether delivery of possession or entrustment of valuables from the locker holder to the bank had taken place, for the purpose of Section 148 of the Contract Act. Even in the relevant foreign precedents which we have noted, the application of the principles of bailment was contingent on determining whether possession was transferred in the facts of the case. This in turn requires 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. We are of the considered opinion that these questions cannot be adjudicated upon in the course of proceedings before

the consumer fora. This aspect must be evaluated by the civil court, upon appreciation of evidence led by the parties, as was done in all the aforementioned decisions of ***Jagdish Chandra Trikha*** (supra), ***Sohan Lal Saigal*** (supra), ***Mohinder Singh Nanda*** (supra) and ***Atul Mehra*** (supra).

8.7 It is true that the National Commission has, in previous decisions such as ***Punjab National Bank, Bombay v. K.B. Shetty***,[17] and ***Mahender Singh Siwach v. Punjab and Sind Bank***,[18] awarded the value of articles which have been stolen or gone missing from bank lockers. Moreover, in ***Pune Zilla Madyawarti Sahakari Bank Limited v. Ashok Bayaji Ghogare***,[19] the National Commission has gone to the extent of holding that the affidavit of the locker holder should ordinarily be accepted for proving the contents of the bank locker, unless the same stands impeached by way of cross examination. However, it is relevant to note that in the facts of the aforementioned cases, the complainants had produced detailed and precise documentary proof for corroborating the extent of jewellery

17 1991 (1) C.P.C. 592.
18(2006) 4 CPJ 231 (NC).
19 2015 SCC OnLine NCDRC 2832.

placed inside the locker, which has not been done in the present case.

8.8 In ***UCO Bank*** (supra), similar situation arose as in the present case, wherein the respondent locker holder claimed that his locker was tampered with and broken open, and valuables were subsequently lost, due to the negligence of the bank. The bank not only disputed the value of jewellery kept inside the locker, but also denied any negligence in the breaking open of the locker. The locker holder had only produced an affidavit in respect of the value of the jewellery claimed by him. Hence the National Commission held that it is appropriate that both these issues should be remitted for determination in a civil suit in a competent civil court, after adducing of elaborate evidence on both sides.

8.9 In the recent case of ***Mamta Chaudaha v. Branch Manager/Head Manager, State Bank of India***,[20] the National Commission again observed that the appellant locker holders had not produced any evidence apart from a standard affidavit to prove that they had kept a specified quantity of gold ornaments inside the bank locker. Further, there was no evidence of forcible

20 (2020) 1 CPJ 276 (NC).

entry to the locker. Hence the complaint for recovery of value of the ornaments was dismissed.

8.10 In light of the aforementioned conflicting decisions of the National Commission, we find that the approach adopted by the National Commission in the impugned judgment is the correct approach. In the present case, the Respondent bank has not disputed their negligence in breaking open the locker in spite of clearance of rental dues by the Appellant. However, the number of items originally deposited by the Appellant inside the locker is a contested fact. Hence, we do not propose to record any conclusions on whether the Appellant locker holder in the present case is entitled to claim return or recovery of the value of the ornaments alleged to have been deposited by him. We are in agreement with the findings in the impugned judgment to the extent that the Appellant must file a separate suit before the competent civil court for seeking this relief and for proving that the aforesaid items were actually in the custody of the bank. This is especially inasmuch as the contents of the locker are disputed by the Respondent bank. Hence it is clarified that all questions of fact and law are left open before the civil court to decide on the

merits of the case, including as to whether the law of bailment is applicable, or any other law as the case may be.

II. Separate Duty of Care of the Bank with regard to Locker Management

9. As discussed supra, imposition of liability upon the bank with respect to the contents of the locker is dependent upon provision and appreciation of evidence in a civil suit for such purpose. However, this does not mean that the Appellant in the present case is left without any remedy. Banks as service providers under the earlier Consumer Protection Act, 1986, as well as the newly enacted Consumer Protection Act, 2019, owe a separate duty of care to exercise due diligence in maintaining and operating their locker or safety deposit systems. This includes ensuring the proper functioning of the locker system, guarding against unauthorized access to the lockers and providing appropriate safeguards against theft and robbery. This duty of care is to be exercised irrespective of the application of the laws of bailment or any other legal liability regime to the contents of the locker. The banks as custodians of public property cannot leave the customers in the lurch merely by claiming ignorance of the contents of the lockers.

9.1 In this regard, we may refer to the observations made by the

National Commission in the decisions discussed in Part I of our opinion. In ***Punjab National Bank*** (supra), in addition to directing return of the cost of the ornaments lost, the National Commission also made a separate finding on the negligence of the bank in maintaining the security and safety of the locker:

> "4. The last and the most important question is whether the appellant Bank has been guilty of negligence in ensuring the security and safety of the locker. The State Commission has taken adverse notice of the fact that the appellant Bank did not probe departmentally when the locker had been found open on the 9th June, 1988and treated the matter as closed so far as the Bank is concerned. It was content with lodging a report with the police. It is a matter of common knowledge, the Master Key of the locker is with the Bank; the locker can be opened only with the Master Key and the Key with the locker holder. <u>The mechanism is, however, such that the locker must get closed, if the locker holder takes out his/her key. Further, a certificate is recorded by the custodian of the Bank that all the lockers operated during a day have been checked and found properly locked</u>. Such a certificate was also recorded on the 21st April, 1988. The State Commission, therefore, come to the conclusion that the Bank was negligent, in ensuring the security of the locker with the result that it was found on the 9th June, 1988 to have been opened unauthorized. For this the State Commission has held that the Bank is squarely responsible and therefore liable to make good the loss suffered by the respondent complainant. This Commission fully concurs with the findings of the State Commission."
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> (emphasis supplied)

Accordingly, the bank was ordered to pay separate costs of Rs 3,500/- by way of compensation to the locker holder.

9.2 In ***Mahendar Singh Siwach*** (supra) the bank negligently allowed a third party, who was the previous allottee of the locker, to break open the appellant's locker and take away the valuables therein. It was found that the bank had failed to duly record and complete the required formalities with respect to change of allotment from the third party to the current allottee, i.e., the appellant. The National Commission arraigned the gross deficiency in service committed by the bank as follows:

> "…We find that the record itself proves gross negligence and deficiency in service on the part of the opposite party Bank in rendering service. Firstly, O.P.'s argument is that fraud committed by Mr. Ramendra Singh Grover, the third party in removing the contents of the locker comes under criminal jurisdiction, has no relevance as regards enforcement of civil liability against the opposite party Bank under Consumer Protection Act. There is no other valid argument given on behalf of the bank except to contend that they did not know the details of the contents of the locker and hence the Bank cannot be made liable. The Bank officials admitted their mistake and stated that they are liable to compensate for the same. It is also interesting to see the evidence produced on record, i.e. an extract from the order of the Learned Sessions Judge, Meerut dated 22.4.1996 granting bail to Mr. Grover which is reproduced hereunder:
>
> *"It appears that the alleged crime could not have been committed without the connivance of the bank authorities. If the locker in question was allotted to the applicant in the year 1978, it is not clear how it could be allotted to Mahendra Singh Siwach in the year*

1979. Further, when Mahendra Singh Siwach has been operating the locker for all these years having his account No. 284 it is not understandable how the Bank could without verifying from record, accept the request of the applicant that the locker be broken open as the key had been lost. It was necessary for the bank authorities to have referred to the bank record and should have also intimated Mahendra Singh Siwach about this request of the applicant. Not only this, the bank authorities in the circumstances ***mentioned above should have*** *prepared an* ***inventory of the articles and should*** *have* ***got them valued before handing over the*** *same to* ***the applicant****. It does not appear that the police has taken any action against the concerned delinquent bank official. The applicant-accused claims that he was the owner of the property kept in the locker and the locker belonged to him. In these circumstances, when no action has been taken against the bank authorities, I think it proper to release the applicant also on bail.*

xxx

It is very strange that the opposite party has not referred to the duties cast on them under their own instruction manual which is on the guidelines of the Reserve Bank of India to support their case. Similar Manual of Instructions of United Commercial Bank on the guidelines of Reserve Bank of India filed by the Complainant is reproduced hereunder:

"Maintenance of Record

6.1 Locker Register (Form G -126)

This Register should be maintained lockerwise in serial order so as to facilitate locating the details of the hirer from the locker number. All the details such as the name(s), their addresses, operational instructions, rent paid, etc., should be recorded. The name(s) of the

hirer(s) should be indexed in the Register according to alphabetical order.

6.4 Locker Key Register

The branch should also maintain a Locker Key Register. This should be maintained keywise to lockerwise and lockerwise to keywise so as to facilitate tracing the number of Locker from the Key number and tracing the number of Key from the Locker number. Moreover, when the locks of the lockers are interchanged, such changes should be immediately recorded in the Locker Key Register. It should be marked 'Strictly Private' and should be kept in personal custody of Custodian of locker cabinets. A suggested proforma of Locker Key Register is given in Annexure 1.

6.5 Daily Register of Access to Hired Lockers (G-125)

Signature of the operator on Locker should be obtained in this Register. Date and time of operation should also be recorded therein.

***6.6** Branch should also maintain a pass book to keep a record of total number of Lockers hired and number of Lockers surrendered so that it is possible to find out at a particular time the number of Lockers let out and number of Lockers lying vacant.*

At the time of half yearly closing, the stock of keys on hand should be verified in reference to Lockers lying vacant.

12.3.1 Breaking Open of Locker Due to Loss of Key

When intimation has been received from hirer(s) about loss of key, the following procedure should be adopted for breaking open the Locker:—

(a) An application should be obtained from hirer(s) requesting for breaking open the Locker.

(b) The charges for breaking open the Locker should be realized from the hirer in advance and kept in Sundry Creditors Account.

(c) An appointment should be made with the agents of the makers of lockers cabinet, to send their mechanic to drill open the Locker in consultation with the hirer(s). Locker should be broken open in the presence of the hirer(s), the Manager, Accountant and Custodian of the locker cabinet, and one respectable witness. A suitable remark about breaking open of Locker should be made in Locker Register, Renewal Diary and Specimen Signature Card.

xxx

The procedure laid down by the Reserve Bank of India guidelines has been completely flouted by the opposite party by not maintaining the locker register, locker key register, non-payment of rent dues and lastly the procedure that should be adopted for breaking open a locker etc."

(emphasis supplied)

9.3 In ***Mamata Chaudaha*** (supra), though the National Commission dismissed the complaint on the facts of that case, it noted that the relationship between the bank and the locker holders, who are also the account holders of the bank, will be that of a service provider and consumer.

10. We may also refer to the circulars which the RBI has issued on this subject from time to time. The 2007 Circular (supra) has, inter alia, provided the following recommendations for facilitating easy and safe operation of lockers:

> "1.4 Banks are also advised to give a copy of the agreement regarding operation of the locker to the locker-hirer at the time of allotment of the locker.
>
> **2.1 Operations of Safe Deposit Vaults/Lockers**
>
> Banks should exercise due care and necessary precaution for the protection of the lockers provided to the customer. Banks should review the systems in force for operation of safe deposit vaults / locker at their branches on an on-going basis and take necessary steps. The security procedures should be well-documented and the concerned staff should be properly trained in the procedure. The internal auditors should ensure that the procedures are strictly adhered to.
>
> xxx
>
> 2.2 (ii) Where the lockers have not been operated for more than three years for medium risk category or one year for a higher risk category, banks should immediately contact the locker hirer and advise him to either operate the locker or surrender it. This exercise should be carried out even if the locker hirer is paying the rent regularly. Further, the bank should ask the locker hirer to give in writing, the reasons why he/she did not operate the locker. In case the locker hirer has some genuine reasons as in the case of NRIs or persons who are out of town due to a transferable job etc., banks may allow the locker hirer to continue with the locker. Further, banks should ask the locker hirer to give in writing, the reasons why he/she did not operate the locker. In case the

> locker-hirer has some genuine reasons as in the case of NRIs or persons who are out of town due to a transferable job etc., banks may allow the locker hirer to continue with the locker. In case the locker-hirer does not respond nor operate the locker, banks should consider opening the lockers after giving due notice to him…
>
> (iii) Banks should have clear procedure drawn up in consultation with their legal advisers for breaking open the lockers and taking stock of inventory."
>
> (emphasis supplied)

Hence the RBI had issued clear directions as far back as in 2007 imposing duty of care in respect of protection of the bank lockers and mandating transparency vis a vis the locker holder in allotment and breaking open of the lockers. However, it has been left to the discretion of the individual banks to formulate the exact procedures for fulfilling this duty of care. The banks are likely to draft the locker hiring agreements in a manner which is favourable to their interests, including clauses to the effect that the lockers are to be operated at the consumers' own risk.

10.1. On 1.07.2015, the RBI issued a Master Circular No. 59/2015-16 on Customer Service in Banks which included updated guidelines on locker operation. However, these were more or less similar to what has already been stated in the 2007 Circular. Further, neither of the aforementioned Circulars provide any guidance on the degree of care that needs to be

exercised by the bank for safeguarding the lockers or detail the exact steps that should be taken in this regard.

11. It appears to us that the present state of regulations on the subject of locker management is inadequate and muddled. Each bank is following its own set of procedures and there is no uniformity in the rules. Further, going by their stand before the consumer fora, it seems that the banks are under the mistaken impression that not having knowledge of the contents of the locker exempts them from liability for failing to secure *the lockers in themselves* as well. In as much as we are the highest Court of the country, we cannot allow the litigation between the bank and locker holders to continue in this vein. This will lead to a state of anarchy wherein the banks will routinely commit lapses in proper management of the lockers, leaving it to the hapless customers to bear the costs. Hence, we find it imperative that this Court lays down certain principles which will ensure that the banks follow due diligence in operating their locker facilities, until the issuance of comprehensive guidelines in this regard.

12. Thus, we emphasize that irrespective of the value of the articles placed inside the locker, the bank is under a separate

obligation to ensure that proper procedures are followed while allotting and operating the lockers:

(a) This includes maintenance of a locker register and locker key register.

(b) The locker register shall be consistently updated in case of any change in allotment.

(c) The bank shall notify the original locker holder prior to any changes in the allotment of the locker, and give them reasonable opportunity to withdraw the articles deposited by them if they so wish.

(d) Banks may consider utilizing appropriate technologies, such as blockchain technology which is meant for creating digital ledger for this purpose.

(e) The custodian of the bank shall additionally maintain a record of access to the lockers, containing details of all the parties who have accessed the lockers and the date and time on which they were opened and closed.

(f) The bank employees are also obligated to check whether the lockers are properly closed on a regular basis. If the same is not done, the locker must be

immediately closed and the locker holder shall be promptly intimated so that they may verify any resulting discrepancy in the contents of the locker.

(g) The concerned staff shall also check that the keys to the locker are in proper condition.

(h) In case the lockers are being operated through an electronic system, the bank shall take reasonable steps to ensure that the system is protected against hacking or any breach of security.

(i) The customers' personal data, including their biometric data, cannot be shared with third parties without their consent. The relevant rules under the Information Technology Act, 2000 will be applicable in this regard.

(j) The bank has the power to break open the locker only in accordance with the relevant laws and RBI regulations, if any. Breaking open of the locker in a manner other than that prescribed under law is an illegal act which amounts to gross deficiency of service on the part of the bank as a service provider.

(k) Due notice in writing shall be given to the locker holder at a reasonable time prior to the breaking open

of the locker. Moreover, the locker shall be broken open only in the presence of authorized officials and an independent witness after giving due notice to the locker holder. The bank must prepare a detailed inventory of any articles found inside the locker, after the locker is opened, and make a separate entry in the locker register, before returning them to the locker holder. The locker holder's signature should be obtained upon the receipt of such inventory so as to avoid any dispute in the future.

(l) The bank must undertake proper verification procedures to ensure that no unauthorized party gains access to the locker. In case the locker remains inoperative for a long period of time, and the locker holder cannot be located, the banks shall transfer the contents of the locker to their nominees/legal heirs or dispose of the articles in a transparent manner, in accordance with the directions issued by the RBI in this regard.

(m) The banks shall also take necessary steps to ensure that the space in which the locker facility is located is adequately guarded at all times.

(n) A copy of the locker hiring agreement, containing the relevant terms and conditions, shall be given to the customer at the time of allotment of the locker so that they are intimated of their rights and responsibilities.

(o) The bank cannot contract out of the minimum standard of care with respect to maintaining the safety of the lockers as outlined supra.

13. In the present case, it is undisputed that the Respondent Bank inadvertently broke the Appellant's locker, without any just or reasonable cause, even though he had already cleared his pending dues. Moreover, the Appellant was not given any notice prior to such tampering with the locker. He remained in the dark for almost a year before he visited the bank for withdrawing his valuables and enquired about the status of the locker. Irrespective of the valuation of the ornaments deposited by the Appellant, he had not committed any fault so far as operation of the locker was concerned. Thus, the breaking open of the locker was in blatant disregard to the responsibilities that the bank

owed to the customer as a service provider. The alleged loss of goods did not result from any force majeure conditions, or acts of third parties, but from the gross negligence of the bank itself. It is case of gross deficiency in service on the part of the bank.

14. Thus, looking to the facts and circumstances of the case, we deem it appropriate to impose costs of Rs. 5,00,000/- on the Bank which should be paid to the Appellant as compensation. The amount of Rs. 5,00,000/- shall be deducted from the salary of the erring officers, if they are still in service. If the erring officers have already retired, the amount of costs should be paid by the Bank. Additionally, the Appellant shall be paid Rs. 1,00,000/- as litigation expense.

15. Before concluding, we would like to make a few observations on the importance of the subject matter of the present appeal. With the advent of globalization, banking institutions have acquired a very significant role in the life of the common man. Both domestic and international economic transactions within the country have increased multiple folds. Given that we are steadily moving towards a cashless economy, people are hesitant to keep their liquid assets at home as was the case earlier. Thus, as is evident from the rising demand for such services, lockers

have become an essential service provided by every banking institution. Such services may be availed of by citizens as well as by foreign nationals. Moreover, due to rapid gains in technology, we are now transitioning from dual key-operated lockers to electronically operated lockers. In the latter system, though the customer may have partial access to the locker through passwords or ATM pin, etc., they are unlikely to possess the technological know-how to control the operation of such lockers. On the other hand, there is the possibility that miscreants may manipulate the technologies used in these systems to gain access to the lockers without the customers' knowledge or consent. Thus the customer is completely at the mercy of the bank, which is the more resourceful party, for the protection of their assets.

In such a situation, the banks cannot wash off their hands and claim that they bear no liability towards their customers for the operation of the locker. The very purpose for which the customer avails of the locker hiring facility is so that they may rest assured that their assets are being properly taken care of. Such actions of the banks would not only violate the relevant provisions of the Consumer Protection Act, but also damage

investor confidence and harm our reputation as an emerging economy.

15.1 Thus it is necessary that the RBI lays down comprehensive directions mandating the steps to be taken by banks with respect to locker facility/safe deposit facility management. The banks should not have the liberty to impose unilateral and unfair terms on the consumers. In view of the same, we direct the RBI to issue suitable rules or regulations as aforesaid within six months from the date of this judgment. Until such Rules are issued, the principles stated in this judgment, in general and at para 13 in particular, shall remain binding upon the banks which are providing locker or safe deposit facilities. It is also left open to the RBI to issue suitable rules with respect to the responsibility owed by banks for any loss or damage to the contents of the lockers, so that the controversy on this issue is clarified as well.

16. The Appeal is disposed of accordingly.

.....J.
(MOHAN M. SHANTANAGOUDAR)

.....J.
(VINEET SARAN)

NEW DELHI
FEBRUARY 19, 2021