



2026 INSC 363

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 2587 OF 2025**

**CANARA BANK**

**APPELLANT(S)**

**VERSUS**

**KAVITA CHOWDHARY**

**RESPONDENT(S)**

With

**CIVIL APPEAL NO. 2588 of 2025**

**J U D G M E N T**

**UJJAL BHUYAN, J.**

Facts and issue in both the civil appeals being identical, those were heard together and are being disposed of by this common judgment and order.

2. The two appeals have been preferred by the Canara Bank ('appellant or bank' hereinafter) under Section 23 of the Consumer Protection Act, 1986/Section 67 of the Consumer Protection Act, 2019 assailing the judgment and order dated 24.09.2024 passed by the National Consumer Disputes

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CHANDRESH  
Date: 2024.09.24, 15:49:56 IST  
Reason: ?

Redressal Commission, New Delhi (briefly 'the Commission' hereinafter) allowing Consumer Complaint No. 123 of 2019 (*Kavita Chowdhary Vs. Canara Bank*) and Consumer Complaint No. 124 of 2019 (*Priya Chowdhary Vs. Canara Bank*).

3. It may be mentioned that *vide* the impugned judgment and order dated 24.09.2024, the Commission has allowed the aforesaid two complaints by directing the appellant bank to pay 10 percent of the total cheque amount alongwith interest at the rate of 8 percent per annum from the date of filing of the complaints within two months, further imposing litigation cost of Rs. 50,000.00 in favour of each of the complainants. The Commission has clarified that any delay in making the payment by the appellant bank would result in enhanced interest at the rate of 10 percent per annum till the date of final realisation.

4. For the sake of easy reference, we may refer to the facts of the first appeal i.e. Civil Appeal No. 2587/2025 (*Canara Bank Vs. Kavita Chowdhary*). This appeal arises out of Consumer Complaint No. 123 of 2019 (*Kavita Chowdhary Vs. Canara Bank*).

5. Respondent Kavita Chowdhary had filed Consumer Complaint No. 123 of 2019 before the Commission under Section 21(a)(i) of the Consumer Protection Act, 1986 alleging deficiency in service on the part of the appellant and seeking compensation alongwith interest. Prayer made in the complaint was as under:

(i) To pass necessary order directing the opposite party to pay Rs. 1,06,10,768.00 (Rupees one crore six lakhs ten thousand seven hundred sixty eight) to the complainant alongwith interest at the rate of 18 percent per annum.

(ii) To direct the opposite party to pay Rs. 25,00,000.00 (Rupees twenty five lakh) to the complainant towards interest/compensation/damages.

6. Complainant i.e. Kavita Chowdhary holds a savings bank account with the appellant at its Maharani Bagh (Ashram Chowk) Branch, New Delhi, the account number being 0349101015565. On 29.05.2018, she (respondent-complainant) had deposited two CTS cheques into this savings bank account, the details of which are as under:

(i) Cheque No. 46382 dated 03.03.2018 for Rs. 11,36,868.00; and

(ii) Cheque No. 46381 dated 03.03.2018 for Rs. 94,73,900.00.

7. Both the aforesaid cheques were issued in favour of the respondent by Assotech Limited and drawn on Vijaya Bank, S.S.I. Branch, Noida.

8. Appellant credited the two cheque amounts into the aforesaid savings bank account of the respondent on 01.06.2018. The transactions were recorded at 13.01.34 and 14.55.06 hours respectively as indicated by the accounts clearing section of Vijaya Bank. However, on the same day, both the cheque amounts were debited from the account of the respondent with the caption 'online cheque return'.

9. Later in the day, respondent received SMS notifications on her registered mobile number stating that the two cheque amounts were debited from her account. There was another SMS thereafter stating that the cheque No. 46381 for Rs. 94,73,900.00 which was deposited on 29.05.2018 was returned due to 'connectivity failure'.

10. On 05.06.2018, appellant deposited cheque No. 46381 into the account of the respondent deducting certain

amount on account of collection charges. However, the said cheque amount was debited once again with the caption 'online cheque return'. Subsequently, the said cheque was returned to the respondent on 05.06.2018 itself alongwith a return memo dated 05.06.2018 with the endorsement 'instrument out dated/stale'.

11. Likewise, on 11.06.2018, cheque No. 43682 for Rs. 11,36,868.00 was credited into the account of the respondent. Once again, the said amount was debited from the account of the respondent on that day itself with the description 'online cheque return' after deducting a certain amount as collection charges. This cheque was returned to the respondent alongwith a return memo dated 11.06.2018 citing the reason 'instrument out dated/stale'.

12. On both the occasions, collection charges at the rate of Rs. 177.00 were debited by the appellant from the account of the respondent.

13. According to the respondent, appellant had failed to present the cheques for clearing or collection to the drawee bank within the validity period causing the cheques to expire.

Because of such negligence leading to deficiency in service, respondent had incurred a loss amounting to Rs. 1,06,10,768.00. This also deprived the respondent from availing the legal remedies against the drawer of the cheques, Assotech Limited, including the remedy under Section 138 of the Negotiable Instruments Act, 1881 as Assotech Limited was undergoing corporate insolvency resolution process but continued to remain liable for criminal liability under Section 138 of the Negotiable Instruments Act, 1881.

14. Respondent sent a legal notice on 26.07.2018 to the appellant seeking compensation for the loss of Rs. 1,06,10,768.00 i.e. sum of both the cheque amounts. Due to a typographical error in the said notice, where the date of deposit was wrongly mentioned as 29.06.2018 instead of 29.05.2018, a subsequent legal notice was issued to the appellant on 02.08.2018. However, despite receipt of such legal notice, appellant failed to make the payment.

15. Aggrieved thereby, respondent preferred a consumer complaint under Section 21(a)(i) of the Consumer Protection Act, 1986 before the Commission seeking the

aforementioned reliefs, which came to be registered as Consumer Complaint No. 123 of 2019.

16. Appellant, which was arrayed as the opposite party in the aforesaid consumer complaint, responded to the notice issued by the Commission and submitted its reply. Stand taken by the appellant was as under:

(i) Complainant is having savings bank account No. 0349010115565 with the appellant bank.

(ii) On 29.05.2018, complainant had deposited two cheques i.e. cheque No. 46382 dated 03.03.2018 for Rs. 11,36,868.00 and cheque No. 46381 dated 03.03.2018 for Rs. 94,73,900.00, both payable at Vijaya Bank, SSI Branch, Noida where Assotech Limited had account No. 71320030100505.

(iii) Appellant had lodged the two cheques on the same day which got reflected in the paying bank on the next date i.e. 30.05.2018. However, there was a bank strike on 30.05.2018 and 31.05.2018. Therefore, the payee bank returned the cheques which were shown to the presenting bank on 01.06.2018 in the evening.

(iv) On the request of the complainant, the two cheques were again punched for clearing on 04.06.2018 and uploaded to clearing on 05.06.2018. Since 03.06.2018 was a Sunday, a holiday, tenability of the cheques had expired on 02.06.2018.

(v) Denying any loss to the complainant, appellant stated that complainant could recover the cheque amounts from the drawer of the cheques in case there was a legally recoverable debt. Appellant denied any negligence or deficiency of service on its part. When the banks were on strike on 30.05.2018 and 31.05.2018, appellant cannot be held liable for any damage or loss to the respondent.

16.1. In the circumstances, appellant sought for dismissal of the complaint and to hold that appellant bank was not liable for any deficiency in service *qua* the complainant.

17. Respondent filed rejoinder to the reply of the appellant. Respondent pointed out that cheques were presented for clearing on 29.05.2018. After the cheques were returned, on instructions, one cheque for the amount of Rs. 94,73,900.00 was sent for clearing only on 04.06.2018 whereas the other

cheque was presented for clearing on 08.06.2018. Appellant was fully aware of the fact that the cheques were due for expiration but still neglected to send the two cheques for clearance in proper time.

18. The complaint was adjudicated by the Commission. *Vide* the impugned judgment and order dated 24.09.2024, the Commission allowed the complaint by holding that there was deficiency in service on the part of the appellant and directing the appellant bank to pay 10 percent of the total amount of Rs. 1,06,10,768.00 to the complainant alongwith interest at the rate of 8 percent per annum from the date of filing of the complaint within two months. In addition, litigation costs of Rs. 50,000.00 in favour of the complainant (respondent herein) was also awarded. Commission clarified that any delay in making the aforesaid payments by the appellant would result in enhanced interest at the rate of 10 percent per annum till the date of final realization.

19. Aggrieved thereby, the two related civil appeals came to be filed by the appellant.

20. On 14.02.2025, this Court had issued notice both on the civil appeals as well as on the interim prayer. Finally, the two civil appeals were heard on 20.02.2026.

21. Learned counsel for the appellant at the outset has referred to Section 75A of the Negotiable Instruments Act, 1881 which says that the delay in the presentment for acceptance or payment of a cheque would be excused if such delay is caused by circumstances beyond the control of the holder of the cheque and not imputable to his default, misconduct and negligence; though the section provides that as soon as the cause of delay ceases to operate, presentment should be made within a reasonable time. Insofar as the present case is concerned, the delay in presentment of the cheques was caused because of the strike in the bank which was beyond the control of the appellant. There was no default or negligence on the part of the appellant. In such a case, Section 75A of the Negotiable Instruments Act, 1881 would be attracted. Commission has completely overlooked the mandate of Section 75A while passing the impugned judgment and order.

21.1. Learned counsel for the appellant thereafter has narrated the factual background of the case in detail and submits that appellant would be liable only in the event of default, misconduct or negligence. There was no default, misconduct or negligence on the part of the appellant. While the cheques could not be presented for clearing immediately because of the strike in the bank, those were presented thereafter within the prescribed timeline.

21.2. Learned counsel has referred to Section 105 of the Negotiable Instruments Act, 1881 to explain the concept of 'reasonable time' as defined in the said Act. As per Section 105, to determine what could be a reasonable time for presentment of a cheque for acceptance for payment, for giving notice of dishonour etc., regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; while calculating such time, public holiday shall be excluded. Thus, learned counsel submits that respondent had failed to make out any case to show that the appellant did not take the requisite steps within 'reasonable time' because of which actual loss was caused to her for which she was entitled to compensation from the appellant.

21.3. Learned counsel submits that it is evident from the record that the cheques were re-presented for clearing on 02.06.2018. Therefore, the view taken by the Commission that those should have been forwarded on the very same date, is beyond the mandate of law and established banking practice. Appellant cannot be fastened with any liability in the absence of any lapse or wrongdoing.

21.4. Learned counsel has also referred to and relied upon the RBI Master Circular dated 04.11.2011 which says that cheques presented beyond validity period are liable to be rejected.

21.5. Regarding the quantum of compensation, learned counsel has placed reliance on Section 73 of the Indian Contract Act, 1872 to contend that the compensation awarded is much beyond reasonable compensation. The impugned judgment and order do not discuss any parameters or precedent for arriving at the awarded amount determined as reasonable compensation. In these circumstances, it is submitted that Commission has awarded compensation to the respondent on mere surmises and conjectures.

21.6. In this connection, it is submitted that the issuer of the cheques, M/s. Assotech Limited, was already under liquidation on the date of presentation of the cheques. Thus, there could not have been any recovery outside the liquidation mechanism as provided under the Insolvency and Bankruptcy Code, 2016.

21.7. That being the position, learned counsel for the appellant submits that there was no merit in the complaint lodged by the respondent against the appellant. Commission has fallen in grave error in allowing the complaint by awarding compensation to the respondent and against the appellant. Therefore, the impugned judgment and order is liable to be set aside and the complaint dismissed.

22. *Per contra*, learned counsel for the respondent submits that there is no error or infirmity in the impugned judgment and order and, therefore, no interference is called for.

22.1. Referring to the facts of the case, learned counsel submits that on 29.05.2018, respondent had deposited the two CTS cheques, both dated 03.03.2018, amounting to Rs. 1,06,10,768.00, in total, into her savings bank account with the appellant in its Maharani Bagh (Ashram Chowk) Branch, New

Delhi within the validity period. Those cheques were presented for clearing on the same day i.e. 29.05.2018.

22.2. Having failed to elicit any response as to the fate of the two cheques, respondent took recourse to the provisions of the Right to Information Act, 2005. Only in terms of the directions issued by the Information Commissioner, Central Information Commission in the second appeal, appellant furnished to the respondent the cheque return memos which showed that the cheques were returned on 30.05.2018 for the reason 'bank on strike'.

22.3. Though the cheques were returned on 30.05.2018, appellant made a false statement that the cheques were returned on the evening of 01.06.2018. Since the cheques were returned on 30.05.2018, appellant should have presented the cheques again on the date of opening of the bank after the strike i.e. on 01.06.2018. In this connection, learned counsel for the respondent has placed reliance on a circular dated 07.05.2013 of the Reserve Bank of India which says that if the cheques are returned for technical reasons, those should be re-presented in

the next immediate clearing not later than 24 hours without having recourse to the payee.

22.4. Moreover, physical presentation of cheques for clearing has been done away with. Now the cheques are presented digitally. Since the appellant had already captured the relevant data from the cheques on 29.05.2018 and had uploaded the same on its computer, it only needed to punch a few keys on its computer to re-present it.

22.5. Since the company Assotech Limited which had issued the two cheques in favour of the respondent is under liquidation, proceedings under Section 138 of the Negotiable Instruments Act, 1881 were the only remedy available to the respondent for realisation of the cheque amount. But the respondent has been deprived of the said remedy due to the negligent conduct of the appellant.

22.6. In these circumstances, the Commission has rightly held that there was deficiency of service on the part of the appellant for which respondent had suffered loss of the cheque amount. Therefore, Commission has rightly awarded compensation against the appellant to be paid to the respondent.

He submits that there is no merit in the two appeals. As such, the appeals should be dismissed.

23. Submissions made by learned counsel for the parties have received the due consideration of the Court.

24. Though we have already narrated the facts, it would be apposite to see as to how the Commission dealt with the same. Commission noted that it found discrepancies regarding the date of stamping on the back of the cheques by the appellant. To clarify such discrepancies, appellant was directed to file an affidavit. In the compliance affidavit, appellant stated in para 5 that the cheques were returned on the evening of 01.06.2018. Commission found that this statement contradicted the return memo dated 30.05.2018. Though this statement was incorrect, Commission proceeded on the basis that the cheques were returned on the evening of 01.06.2018; appellant had not provided any specific reason for such return, like insufficient funds, signature mismatch etc., despite the bank being open that day i.e. 01.06.2018. This part of the impugned judgment is extracted hereunder:

11. During the course of hearing on 07.02.2023, this Commission noted discrepancies regarding the date of

stamping on the back of the cheques by the Opposite Party and directed its clarification on affidavit. On 13.03.2023, the Opposite Party filed an affidavit in compliance with this Commission's order. In paragraph 5, the Opposite Party stated under oath that the cheques were returned on the evening of 01.06.2018, which contradicts the Return Memo dated 30.05.2018. This false statement made under oath warrants penalization; that even assuming, for argument's sake, that the cheques were returned on the evening of 01.06.2018, the Opposite Party has not provided a specific reason for this return, such as, insufficient funds, a signature mismatch, or outdated cheques, despite the Bank being open that day. The issuer of the cheque, Assotech Ltd., had issued post-dated cheques to secure the repayment of money borrowed from the complainants.

24.1. After recording so, the Commission further examined the compliance affidavit filed by the appellant and highlighted the material statements in the said affidavit as under:

6. That again on the request of the complainant, these cheques were punched for clearing on 04.06.2018 after cheque being returned on 01.06.2018.

7. That any stamp to the contrary may have been put inadvertently on 04.06.2018.

8. That it is also a matter of record that even if the cheques were scanned and sent to paying Bank by OP on 02.06.2016, the same could have been presented to the Paying Bank only on 04.06.2018 as 03.06.2018 was Sunday. The validity of the cheque was only till 02.06.2018 by which date, the said cheque could not have been honoured by the Payer Bank. Thus even then the cheques on being scanned and sent on 02.06.2018, would have returned as stale.

24.2. After extracting the material statements as above, Commission posed a question to itself as to whether the clearing report was received by the appellant in the late hours of 01.06.2018 and if that is so, why the cheques were not submitted again on 02.06.2018 which was a working day? Commission found that there was no satisfactory explanation for this, further noting that a fresh affidavit was filed by the manager of the appellant Ms. Supriya Dogra on 04.04.2024 in purported compliance of the order of the Commission dated 07.02.2023 notwithstanding the fact that already an affidavit was filed. On a careful reading of the entire written statement and the affidavits filed, Commission noted that there was no explanation by the appellant as to why the cheques were not re-forwarded/endorsed to the payee bank on 02.06.2018 which

was a working day. Rather in a subtle way, the blame was sought to be shifted to the complainant by saying that the cheques in question were re-forwarded to the payee bank on her instructions on 04.06.2018 and 08.06.2018 though the same is not supported by the record. Strangely enough during the oral hearing, a submission was made that because of a technical failure, on 02.06.2018, the cheques could not be endorsed to the payee bank. Commission rejected this submission as it was beyond the pleadings and contrary to the statements already on record. The Commission held as under:

16. From a careful reading of the entire written statement, the affidavit in evidence filed by the earlier Manager Ms. Richa Amrita and the two affidavits filed by the subsequent Manager Ms. Supriya Dogra it is seen that no explanation whatsoever has been forthcoming from the side of the Opposite Party as to why the cheques in question were not re-forwarded/endorsed to the payee Bank on 02.06.2018 which was a working day. In this regard, in a rather disguised manner, the blame has been sought to be passed on to the complainant herself by contending that the cheques in question were re-forwarded to the payee Bank on her instructions on 04.06.2018 and 08.06.2018, which is not at all a convincing excuse as there is nothing on record to show that any of the complainants had given

any such instructions. To top it at all, it is remarkable that no written synopsis/arguments have been filed at all on behalf of the Opposite Party in both these complaints in spite of clear directions to do so. But at the stage of final hearing, learned counsel for Opposite Party orally raised a contention that it was the incidence of a 'technical failure' on 02.06.2018 on account of which the cheques could not be endorsed to the payee Bank. But this oral submission is palpably beyond the own pleadings of the Opposite Party, and even the statements made by its Managers in their three affidavits on record. The learned counsel for Opposite Party, however, in seeking to substantiate this contention regarding 'technical failure' sought to draw attention to document No. 4 filed along with the second affidavit of Ms. Supriya Dogra which contains a list of some of 55 cheques with the stamp of 02.06.2018, which were 'not cleared due to technical issue'. But as already noted earlier, this contention is palpably beyond the pleadings and no reference to such technical failure whatsoever was made even in the affidavit dated 04.04.2024 along with which this particular document had been filed.

24.3. On the aforesaid basis, Commission concluded that there was manifest deficiency in service on the part of the appellant in dealing with the cheques delivered by the complainant which could not be

encashed as the same had become stale by the date on which those were passed on to the payee bank.

25. After holding that there was deficiency of service on the part of the appellant, Commission went on to hold that respondent would be entitled to a reasonable compensation on account of such deficiency in service.

25.1. According to the Commission, had the cheques been endorsed to the payee bank on 02.06.2018, the payee bank would have become liable to compensate the complainant instead of the appellant but the fact that the cheques were not endorsed at all to the payee bank on 02.06.2018 rendered the appellant liable for the consequences. Dealing with the contention of the appellant that the drawer of the bank i.e. M/s. Assotech Limited was a company under liquidation and, therefore, no withdrawal from its account would be possible, Commission held that even if a company is under liquidation, Directors of the company would continue to be liable in the event of the cheques being dishonoured due to insufficiency of funds. Thus, the valuable rights of the complainant to initiate proceedings under Section 138 of the Negotiable Instruments Act against the Directors of the

drawer company got extinguished because of deficiency on the part of the appellant. Having noted the same, Commission was however of the view that what would be the final outcome of such a proceeding if initiated by the complainant would be difficult to hazard. In such circumstances, a token compensation of an amount assessed at the rate of 10 percent of the face value of the cheques would be a reasonable amount of compensation. Accordingly, the complaints were allowed in the following manner:

22. The complaints are, therefore, allowed with a direction upon Opposite Party/Bank to pay 10% of the total amount of Rs. 1,06,10,768/- .(Rs. One Crore Six Lacs Ten Thousand Seven Hundred Sixty Eight) to each of the complainants along with interest, @ 8% p.a. from the date of filing these complaints within two months from the date of this Order. In addition, litigation costs assessed at Rs. 50,000/- in favour of each of the two complainants are also awarded to them. Any delay in making the aforesaid payments by the Opposite Party shall result in enhanced interest @ 10% p.a. till the date of final realization.

26. From the above, what is noticeable is that there are two issues here. First, the correctness or otherwise of the finding of the Commission that there was deficiency in service on the part of the appellant. Second, which is a corollary to the

first issue, is whether the compensation awarded is reasonable or excessive.

27. Before we deal with these two issues, it would be appropriate to briefly refer to the relevant statutory provisions.

28. First, we deal with the Negotiable Instruments Act, 1881 (for short 'the NI Act' hereinafter).

29. NI Act is an Act to define and amend the law relating to promissory notes, bills of exchange and cheques. As per Section 6, a 'cheque' is a 'bill of exchange' drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form. We may mention herein that 'bill of exchange' is a defined expression. It is defined in Section 5 which says that a 'bill of exchange' is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

29.1. As per Section 7, the maker of a 'bill of exchange' or cheque is called the 'drawer'; and the person thereby directed to pay is called the 'drawee'.

30. Section 25 says that when the day on which a 'promissory note' or 'bill of exchange' is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day. As per the Explanation, the expression 'public holiday' would include a Sunday. A 'promissory note' is again a defined expression in terms of Section 4 which means an instrument in writing (not being a bank-note or a currency note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

31. Liability of a drawer is provided for in Section 30 of the NI Act. It says that the drawer of a 'bill of exchange' or cheque is bound in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by the drawer as provided in the NI Act.

32. Section 64 deals with presentment for payment. As per sub-section (1), promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as provided in the NI Act. In default of such presentment, the other parties thereto are not liable thereon to such holder.

32.1. Section 72 deals with presentment of cheque to charge drawer. This provision is subject to Section 84 which deals with a situation when a cheque is not duly presented and the drawer is damaged thereby. What Section 72 says is that, subject to Section 84, a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

33. On the other hand, Section 75A deals with excuse for delay in presentment for acceptance or payment. This section says that delay in presentment for acceptance or payment is excused if the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. However, as and when the

cause of delay ceases to operate, presentment must be made within a reasonable time.

34. Section 84 of the NI Act deals with a situation when a cheque is not duly presented and the drawer suffers damage thereby. As per sub-section (1), where a cheque is not presented for payment within a reasonable time of its issue and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a large amount than he would have been if such cheque had been paid.

34.1. What is a reasonable time is dealt with in sub-section (2) of Section 84 thereof which says that in determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

35. As per Section 85(1), where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course. Be it stated that as per Section 15, when the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or signs for the same purpose, a stamped paper intended to be completed as a negotiable instrument, he is said to endorse the same and is called the 'endorser'. We may also mention that in terms of Section 14, when a 'promissory note', 'bill of exchange' or cheque is transferred to any person, so as to constitute the person the holder thereof, the instrument is said to be negotiated.

36. Reasonable time is provided for in Section 105 which says that in determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and in calculating such time, public holidays shall be excluded.

37. This brings us to Section 138 of the NI Act which deals with dishonour of a cheque for insufficiency of funds etc in the account of the drawer. This section provides for the procedure to be followed for prosecuting the drawer of a cheque in the event of dishonour of cheque for insufficiency of funds etc in its account. While the procedure may not be relevant insofar as the present case is concerned, the proviso is important. As per proviso (a), the cheque has to be presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier.

38. We may now turn to a few of the provisions contained in the Consumer Protection Act, 1986, as well as in the Consumer Protection Act, 2019.

39. In spite of various provisions providing protection to the consumer and providing for stringent action against adulterated and sub-standard articles in different enactments like the Code of Civil Procedure, 1908, the Indian Contract Act, 1872 and the Sale of Goods Act, 1930, etc., very little could be achieved in the field of consumer protection. In order to provide for better protection

of the interest of the consumers and for that purpose to make provision for the establishment of various authorities for the settlement of consumer disputes etc., the Consumer Protection Act, 1986 came to be enacted. What would be of immediate relevance to us is the definition of 'service' and 'deficiency'. Though 'deficiency' is placed ahead of 'service' in the expressions used in the Consumer Protection Act, 1986 and defined, it would be appropriate however to first examine the definition of 'service'.

40. As per Section 2(o), 'service' means service of any description which is made available to potential users and includes but not limited to the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information but does not include the rendering of any service free of charge or under a contract of personal service.

41. The expression 'deficiency' has been defined in Section 2(g) to mean any fault, imperfection, shortcoming or

inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

42. While administering the Consumer Protection Act, 1986 over the years, many shortcomings came to be noticed. Therefore, a new Consumer Protection Act, 2019 came to be enacted incorporating, *inter alia*, many innovative features while addressing the shortcomings of the previous enactment.

43. Again, confining to the definitions of 'service' and 'deficiency', we find that in Section 2(42), 'service' has been defined to mean service of any description which is made available to potential users and includes, but is not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information but does not include the rendering

of any service free of charge or under a contract of personal service.

43.1. From a comparison of the definition of 'service' in the previous Consumer Protection Act, 1986 and the present Consumer Protection Act, 2019, we find that the definition of 'service' has been retained; however, in the present Act, it has been made more specific by including facilities in connection with telecom.

44. Section 2(11) defines 'deficiency' to mean any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes:

- i. any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and
- ii. deliberate withholding of relevant information by such person to the consumer.

44.1. Thus, the definition of the expression 'deficiency' in the Consumer Protection Act, 2019 has been made more specific. While retaining the broad elements constituting deficiency, fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance required to be maintained or undertaken under a statute or a contract in relation to a service as provided in the previous enactment, the definition of 'deficiency' has been made more inclusive by confining such fault, imperfection etc. to any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and including deliberate withholding of relevant information by such person from the consumer.

45. Let us also deal with Section 73 of the Indian Contract Act, 1872. It has got two parts. The first part deals with compensation for loss or damage caused by breach of contract. As per the first part, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the

breach of it. However, by way of clarification, it is stated that such compensation is not to be given for any remote or indirect loss or damage sustained by reason of the breach.

45.1. The second part of Section 73 provides for compensation for failure to discharge obligation resembling those created by contract. It says, when an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default as if such person had contracted to discharge it and had broken his contract.

45.2. The Explanation to Section 73 clarifies that in estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

46. The scope and ambit of the definition of 'service' as defined under the Consumer Protection Act, 1986 was examined by this Court in *Lucknow Development Authority Vs. M.K. Gupta*<sup>1</sup>. After extracting the definition, it was observed that the definition is in three parts; the main part is followed by

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<sup>1</sup> (1994) 1 SCC 243

inclusive clause and ends by exclusionary clause. This Court opined that the main clause is itself very wide. It applies to any service made available to potential users. The words 'any' and 'potential' are significant. Both are of wide amplitude. After referring to the dictionary meaning of the word 'any' which means one or some or all, it has been opined that the use of the word 'any' in the context in which it has been used in clause (o) indicates that it has been used in a wider sense extending from one to all. Similarly, the word 'potential' is also very wide; the dictionary meaning being 'capable of coming into being, possibility'. In other words, service which is not only extended to actual users but those who are capable of using it are covered in the definition. The clause is thus very wide and extends to all or any actual or potential users. The statute has expanded the meaning of the word 'further' by extending it to consumer in connection with banking, financing etc.

46.1. On the question as to whether the statutory or public authorities are amenable to jurisdiction under the Consumer Protection Act, 1986, this Court observed that in the absence of any indication, express or implied, there is no reason to hold that authorities created by the statute are beyond the

purview of the Consumer Protection Act. A nationalised bank renders as much service as a private bank. The legislative intention is thus clear: to protect a consumer against services rendered even by statutory bodies. The Bench concluded that a government or a semi-government body or a legal authority is as much amenable to the Consumer Protection Act as any other private body rendering similar service. The test is not if a person against whom the complaint is made is a statutory body but whether the nature of the duty and function performed by it is a service.

46.2. Proceeding further, this Court held that a consumer forum is entitled to award not only the value of the goods or services but also to compensate the consumer for the injustice suffered by him. Compensation includes both the just equivalent for loss of goods or services and also for sufferance of injustice. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the consumer forum finds it duly proved, then it has a statutory obligation to award compensation.

47. In *Managing Director, Maharashtra State Financial Corporation Vs. Sanjay Shankarsa Mamarde*<sup>2</sup>, the question which arose for consideration was whether the Commission was correct in holding that there was deficiency in service provided by the Maharashtra State Financial Corporation to the complainant on account of their failure to release the balance loan amount? After advertng to the definition of ‘service’ in the Consumer Protection Act, 1986, this Court held as follows:

**18.** The use of the words “any” and “potential” in the context these have been used in clause (o) indicates that the width of the clause is very wide and extends to any or all actual or potential users. The legislature has expanded the meaning of the word further by extending it to every such facilities as are available to a consumer in connection with banking, financing, etc. Undoubtedly, when the bank or financial institutions advance loans, they do render “service” within the meaning of the clause. In that behalf, there is no dispute.

47.1. This Court held that the width of the words ‘any’ and ‘potential’ were very wide and the definition of ‘service’ extends to all or any actual or potential users. The legislature has expanded the meaning of the word ‘service’ by extending it

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<sup>2</sup> (2010) 7 SCC 489

to every such facility as are available to a consumer in connection with banking, financing etc.

47.2. After adverting to the definition of 'deficiency' in clause (g) of Section 2(1) of the Consumer Protection Act, 1986, this Court observed that the scope of the clause is also very wide but there is no single decisive test to determine the extent of fault, imperfection, nature and manner of performance etc. required to be maintained. It must depend on the facts of a particular case. Having regard to the nature of the 'service' provided or to be provided, this Court held thus:

**20.** It is manifest from the language employed in the clause that its scope is also very wide but no single test as decisive in the determination of the extent of fault, imperfection, nature and manner of performance, etc. required to be maintained can be laid down. It must depend on the facts of the particular case, having regard to the nature of the "service" to be provided. Therefore, insofar as the present case is concerned, in order to examine whether there was a deficiency in service by the Corporation, it has to be seen if there was any inadequacy in the quality, nature and manner of performance which was required to be maintained by the Corporation in terms of their letter dated 2-7-1992, conveying the sanction of loan to the complainant.

48. This Court in *Arun Bhatia Vs. HDFC Bank*<sup>3</sup> again examined the definition of ‘deficiency’ in terms of the Consumer Protection Act, 1986. Referring to the earlier decision in *Sanjay Shankarsa Mamarde*, this Court observed that the scope of ‘deficiency’ as defined under Section 2(1)(g) of the Consumer Protection Act, 1986 is wide and has to be determined on the basis of the facts and circumstances of a particular case.

48.1. After referring to the definition of ‘service’ in the said enactment, this Court observed that service of every description will fall within the ambit of the definition of ‘services’ under Section 2(1)(o) of the Consumer Protection Act, 1986.

49. A three-Judge Bench of this Court in *Chief Administrator, Haryana Urban Development Authority Vs. Shakuntla Devi*<sup>4</sup> has held that the *sine qua non* for entitlement of compensation is proof of loss or injury suffered by the consumer due to the negligence of the opposite party. Once the said conditions are satisfied, the consumer forum would have to decide the quantum of compensation to which the consumer is entitled.

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<sup>3</sup> (2022) 17 SCC 229

<sup>4</sup> (2017) 2 SCC 301

The computation of compensation has to be fair, reasonable and commensurate to the loss or injury. This Court held thus:

**13.** The sine qua non for entitlement of compensation is proof of loss or injury suffered by the consumer due to the negligence of the opposite party. Once the said conditions are satisfied, the Consumer Forum would have to decide the quantum of compensation to which the consumer is entitled. There cannot be any dispute that the computation of compensation has to be fair, reasonable and commensurate to the loss or injury. There is a duty cast on the Consumer Forum to take into account all relevant factors for arriving at the compensation to be paid.

49.1. Referring to an earlier decision of this Court in *Charan Singh Vs. Healing Touch Hospital*<sup>5</sup>, this Court observed that calculation of damages depends on the facts and circumstances of each case; no hard and fast rule can be laid down for universal application; while awarding compensation, a consumer forum has to take into account all relevant factors and assess compensation on the basis of accepted legal principles on moderation. The compensation has to be reasonable, fair and proper in the facts and circumstances of a

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<sup>5</sup> (2000) 7 SCC 668

given case according to the established judicial standards where the claimant is able to establish his charge.

50. Now turning to the NI Act, more particularly, Section 138 thereof, a three-Judge Bench of this Court in *MSR Leathers Vs. S. Palaniappan*<sup>6</sup> held thus:

**12.** The proviso to Section 138, however, is all important and stipulates three distinct conditions precedent, which must be satisfied before the dishonour of a cheque can constitute an offence and become punishable. The *first condition* is that the cheque ought to have been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. The *second condition* is that the payee or the holder in due course of the cheque, as the case may be, ought to make a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. The *third condition* is that the drawer of such a cheque should have failed to make payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice. It is only upon the satisfaction of all the three conditions mentioned above and enumerated under the proviso to Section 138 as clauses (a), (b) and (c) thereof that an offence

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<sup>6</sup> (2013) 1 SCC 177

under Section 138 can be said to have been committed by the person issuing the cheque.

50.1. After referring to Section 138 and Section 142 of the NI Act, this Court observed that the aforesaid sections do not forbid the holder or payee of the cheque from presenting the cheque for encashment on any number of occasions within a period of six months of its issue or within the validity period of the cheque, whichever is earlier. The holder or the payee of the cheque has the right to present the same any number of times for encashment during the period of its validity.

50.2. This Court explained that presentation of the cheque and dishonour thereof within the period of its validity is just one of the three requirements that constitute the 'cause of action' within the meaning of Sections 138 and 142(b) of the NI Act. For a dishonour to culminate into the commission of an offence of which a court may take cognizance, two other requirements should be fulfilled. This Court explained thus:

**16.** The presentation of the cheque and dishonour thereof within the period of its validity or a period of six months is just one of the three requirements that constitutes "cause of action" within the meaning of Sections 138 and 142(b) of the Act, an expression that is more commonly used in civil law

than in penal statutes. For a dishonour to culminate into the commission of an offence of which a court may take cognizance, there are two other requirements, namely, (a) service of a notice upon the drawer of the cheque to make payment of the amount covered by the cheque, and (b) failure of the drawer to make any such payment within the stipulated period of 15 days of the receipt of such a notice. It is only when the said two conditions are superadded to the dishonour of the cheque that the holder/payee of the cheque acquires the right to institute proceedings for prosecution under Section 138 of the Act, which right remains legally enforceable for a period of 30 days counted from the date on which the cause of action accrued to him.....

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51. A three-Judge Bench of this Court in *Ajay Kumar Radheyshyam Goenka Vs. Tourism Finance Corporation of India Limited*<sup>7</sup> was concerned with the issue as to whether during the pendency of the proceedings under the Insolvency and Bankruptcy Code, which have been admitted, proceedings under the NI Act can continue simultaneously or not. The three-Judge Bench answered this question in the following manner:

**17.** We have no hesitation in coming to the conclusion that the scope of nature of proceedings under the two Acts is quite different and would not intercede each other. In fact, a bare

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<sup>7</sup> (2023) 10 SCC 545

reading of Section 14 IBC would make it clear that the nature of proceedings which have to be kept in abeyance do not include criminal proceedings, which is the nature of proceedings under Section 138 of the NI Act. We are unable to appreciate the plea of the learned counsel for the appellant that because Section 138 of the NI Act proceedings arise from a default in financial debt, the proceedings under Section 138 should be taken as akin to civil proceedings rather than criminal proceedings. We cannot lose sight of the fact that Section 138 of the NI Act are not recovery proceedings. They are penal in character. A person may face imprisonment or fine or both under Section 138 of the NI Act. It is not a recovery of the amount with interest as a debt recovery proceedings would be. They are not akin to suit proceedings.

**18.** It cannot be said that the process under IBC whether under Section 31 or Sections 38 to 41 which can extinguish the debt would ipso facto apply to the extinguishment of the criminal proceedings. No doubt in terms of the scheme under IBC there are sacrifices to be made by parties to settle the debts, the company being liquidated or revitalised. The appellant before us has been roped in as a signatory of the cheque as well as the Promoter and Managing Director of the accused Company, which availed of the loan. The loan agreement was also signed by him on behalf of the Company. What the appellant seeks is escape out of criminal liability having defaulted in payment of the amount at a very early stage of the loan. In fact, the loan account itself was closed. So much for the bona fides of the appellant.

**19.** We are unable to accept the plea that if proceedings against the Company come to an end then the appellant as the Managing Director cannot be proceeded against. We are unable to accept the plea that Section 138 of the NI Act proceedings are primarily compensatory in nature and that the punitive element is incorporated only at enforcing the compensatory proceedings. The criminal liability and the fines are built on the principle of not honouring a negotiable instrument, which affects trade. This is apart from the principle of financial liability per se. To say that under a scheme which may be approved, a part amount will be recovered or if there is no scheme a person may stand in a queue to recover debt would absolve the consequences under Section 138 of the NI Act, is unacceptable.

52. Explaining the position from a different perspective, a two-Judge Bench of this Court in *Vishnoo Mittal Vs. M/s Shakti Trading Company*<sup>8</sup>, observed that a return of cheque dishonoured simpliciter does not create an offence under Section 138 of the NI Act. The 'cause of action' would arise only when the demand notice is served and payment is not made pursuant to such demand notice within the stipulated fifteen day period. In other words, the 'cause of action' arises only when the amount remains unpaid even after

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<sup>8</sup> (2025) 9 SCC 417

the expiry of 15 days from the date of receipt of the demand notice.

52.1. After adverting to Section 17 of the Insolvency and Bankruptcy Code, the Bench observed that once the Interim Resolution Professional is appointed, the powers vested with the Board of Directors of the company facing insolvency were to be exercised by the Interim Resolution Professional in accordance with the provisions of the Insolvency and Bankruptcy Code.

53. This Court in *Consolidated Construction Consortium Limited Vs. Software Technology Parks of India*<sup>9</sup>, examined Section 73 of the Indian Contract Act, 1872 conjointly with Sections 55 and 74 thereof and held that in a contract whether time is of the essence or not, if the contractor fails to execute the contract within the specified time, the contract becomes voidable at the option of the promisee and the promisee would be entitled to compensation from the promisor for any loss occasioned to him by such failure. However, in case of a contract where time is of the essence, the contract become

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<sup>9</sup> 2025 INSC 574

voidable on account of the contractor's failure to execute the contract within the agreed time. The promisee cannot claim compensation for any loss occasioned by such breach of the contract unless he gives notice to the promisor of his intention to claim compensation. This is made more specific in Section 73. Section 74 on the other hand contemplates a situation where penalty is provided for and quantified as compensation for breach of contract. In such a case, the party complaining of the breach is entitled to compensation whether or not actual damage or loss is proved to have been caused thereby but such compensation shall not exceed the quantum of penalty stipulated.

54. Reverting back to the facts of the present case, we find that the two cheques in question were dated 03.03.2018, cheque No. 46382 for Rs. 11,36,868.00 and cheque No. 46381 for Rs. 44,73,900.00. Both the cheques were deposited by the respondent into her savings bank account bearing No. 0349101015565 in the Maharani Bagh (Ashram Chowk) Branch of the appellant on 29.05.2018. On the basis of the directions issued by the Central Information Commission, appellant furnished to the respondent the cheque return memos

which showed that the cheques were returned on 30.05.2018 for the reason 'bank on strike'. It is true that the employees of the bank were on strike on 30.05.2018 and 31.05.2018. Commission noted from the affidavit filed on behalf of the appellant on 13.03.2023 wherein in paragraph 5, it was stated that the cheques were returned on the evening of 01.06.2018 which clearly contradicted what was stated in the return memos dated 30.05.2018. Commission opined that even if for arguments sake, this contradiction was overlooked and it was taken that the cheques were returned on the evening of 01.06.2018, then also there is no explanation provided by the appellant as to why no specific reason was provided for this return. It may be mentioned that the validity of the cheques was only till the working hours of 02.06.2018 which was a working day (03.06.2018 being a holiday on account of Sunday). Appellant failed to provide any satisfactory explanation as to why the cheques could not be re-presented before the bank of the drawer again on 02.06.2018 which was a working day. However, if we accept the return memos (and there is no reason why we should not), the cheques were returned on 30.05.2018. In that event, there were two full working days for the appellant

to resubmit the two cheques i.e. on 01.06.2018 and 02.06.2018. Considering the fact that the validity of the cheques would have expired by the close of the working hours on 02.06.2018, appellant was required to resubmit the two cheques on 01.06.2018 or latest by 02.06.2018 which it failed to do.

55. As per Section 64(1) of the NI Act, promissory notes, bills of exchange and cheques are required to be presented to the maker, acceptor or drawee thereof respectively for payment by or on behalf of the holder which would exonerate the holder from any liability. In other words, in default of such presentment, the drawer would not be liable. This is explained more in detail in Section 72 as per which the cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

56. If there is a delay in presentment for acceptance or payment of the cheque, such a delay would be excused under Section 75A if it is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. But the moment the cause of delay ceases to

operate, presentment must be made within a reasonable time. What is a reasonable time for the purpose of presentment for acceptance or payment of a cheque is provided for in Section 84(2) as well as Section 105 which say that for determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers and the facts of the particular case.

57. This Court in *Lucknow Development Authority, Sanjay Shankarsa Mamarde* and in *Arun Bhatia* has held that the words 'service' and 'deficiency' have a wide meaning in the context of the consumer protection law. 'Service' which is not only extended to actual users but to those who are capable of using it are covered by the definition of 'service'. It is of a very wide import and extends to all or any actual or potential users. 'Service' rendered by banks, public sector as well as private sector, is covered by the Consumer Protection Act. The test to be applied, as has been held by this Court, is whether the nature of the duty and function performed by an authority is a service. It does not matter whether that authority is a statutory one or not. The legislature has expanded the meaning of the word 'service' by extending it to every facility as is available to a

consumer in connection with banking. Insofar as 'deficiency' is concerned, while the scope of the expression is also very wide, there is no single decisive test to determine the extent of fault, imperfection etc. It all depends on the facts of a particular case.

58. Insofar as the present case is concerned, we have already noted that there is no explanation at all, not to speak of any reasonable explanation, as to why the two cheques of the respondent were not represented by the appellant before the drawer's bank on 01.06.2018 and 02.06.2018, knowing fully well that the validity of the two cheques was only till 02.06.2018.

59. A bank receiving cheques for collection acts as an agent of the customer and is under an obligation to exercise due diligence in presenting the instruments within the prescribed validity period. Failure to do so resulting in the instrument becoming stale, in the absence of any reasonable explanation, would result in negligence in the discharge of banking duties which would constitute deficiency in rendering service within the meaning of the consumer protection law.

60. Moreover, the finding recorded by the Commission that there was deficiency in service on the part of the appellant in dealing with the two cheques deposited by the respondent is a finding of fact based on pleadings and evidence. Appellant has not been able to demonstrate that such a finding suffers from any patent error or perversity. We, therefore, see no good ground to interfere with such a finding of fact.

61. That being the position, we are in agreement with the view taken by the Commission that there was negligence on the part of the appellant in presentation of the two cheques of the respondent within the validity period of the cheques leading to deficiency in service on the part of the appellant *qua* the respondent.

62. Consequently, the first issue framed by us for consideration as to the correctness or otherwise of the finding of the Commission that there was deficiency in service on the part of the appellant is answered in the affirmative and against the appellant.

63. Having held that there was deficiency in service on the part of the appellant *qua* the respondent, the next

question is what should be the quantum of compensation that may be awarded for such deficiency in service. As we have noticed, Commission has awarded 10 percent of the total cheque amount of Rs. 1,06,10,768.00 to each of the complainants alongwith interest at the rate of 8 percent per annum from the date of filing the complaint within two months from the date of the impugned order. The question is whether such compensation awarded is just, fair and reasonable.

64. In *Lucknow Development Authority*, this Court has held that a consumer forum is entitled to award compensation to a consumer who has suffered deficiency in service, which will be not only for the value of the goods or services but also to compensate the consumer for the injustice suffered by him. The compensation awarded would have two components: just equivalent for loss of goods or services and for sufferance of injustice. When a consumer forum finds the claim of deficiency in service duly proved which has led to loss or injury suffered by a consumer, then it has a statutory obligation to award compensation.

65. This Court in *Charan Singh* had observed that calculation of damages depends on the facts and circumstances of each case; no hard and fast rule can be laid down for universal application. However, while awarding compensation, a consumer forum has to take all relevant factors into consideration and assess the compensation on the basis of accepted legal principles on moderation. The compensation has to be reasonable, fair and proper in the given facts and circumstances of a case by applying the established judicial standards.

66. The aforesaid decision was referred to with approval by a three-Judge Bench of this Court in *Shakuntla Devi*. However, the Bench held that the *sine qua non* for entitlement of compensation is proof of loss or injury suffered by the consumer due to negligence of the service provider. The computation of compensation has to be fair, reasonable and commensurate to the loss or injury.

67. In *MSR Leathers*, a three-Judge Bench of this Court categorically held that three distinct conditions must be satisfied before the dishonour of a cheque can constitute an

offence. The first condition is that the cheque ought to have been presented to the bank within the validity period. Secondly, the payee or the holder in due course of the cheque ought to make a demand for payment of the cheque amount by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding return of the cheque. The third condition is that the drawer of such a cheque should have failed to make the payment of the cheque amount to the payee or to the holder of the cheque within 15 days of the receipt of the said notice. It has been held that only upon satisfaction of all the above three conditions that an offence under Section 138 of the NI Act can be said to have been committed by the person issuing the cheque.

68. This position has been reiterated in *Vishnoo Mittal* which says that return of a cheque dishonoured simpliciter would not by itself create an offence under Section 138 of the NI Act. The cause of action would arise only when the demand notice is served and payment is not made pursuant to such demand notice within the stipulated period.

69. Insofar as the present case is concerned, the Commission itself has noted that it is difficult to fathom as to what would be the outcome of any proceeding that the respondent may have drawn up against the drawer of the cheques under Section 138 of the NI Act, though the possibility of such an action being initiated by the respondent has been nipped in the bud because of the deficiency in service on the part of the appellant. Even if the cheques were presented within time and would have been dishonoured, that would not have *ipso facto* led to commission of an offence under Section 138 of the NI Act. Respondent would have had to complete the other two conditions before an offence could be said to have been committed. It is only thereafter that a complaint could have been filed under Section 138 of the NI Act. Even if a complaint would have been filed, it would be difficult to foretell with any degree of certainty the outcome of such a proceeding. All these are within the realm of imponderability. The Commission has also accepted this position and opined that only a token compensation would suffice.

70. Question is whether 10 percent of the face value of the cheque amount awarded as token compensation would constitute reasonable compensation?

71. While the approach adopted by the Commission cannot be said to be wholly erroneous, in our considered opinion, the compensation fixed by the Commission appears to be on the higher side by applying the standard of reasonable compensation having regard to the peculiar facts of the present case. 10 percent of the face value of the cheque amount as a token compensation would not accurately reflect the nature of the loss suffered by the complainant because the loss itself is indeterminate despite the finding of deficiency in service.

72. In our view, having regard to the totality of the facts and circumstances of the case, compensation assessed at 6 percent of the total amount of Rs, 1,06,10,768.00 to each of the complainants alongwith interest at the rate of 6 percent per annum from the date of filing the complaints would be a reasonable compensation and thereby meet the ends of justice.

73. It is ordered accordingly.

74. Rest of the impugned judgment and order dated 24.09.2024 is not interfered with.

75. With the aforesaid modification of the impugned judgment and order dated 24.09.2024, the civil appeals are accordingly disposed of. However, there shall be no order as to cost.

.....**J.**  
**[B.V. NAGARATHNA]**

.....**J.**  
**[UJJAL BHUYAN]**

**NEW DELHI;**  
**APRIL 15, 2026.**