

## Legal Update: Bank Locker: Recent Supreme Court Judgment<sup>1</sup>

### Case Background

A bank had erroneously broken open a locker given to the customer and lost its contents. On the customer complaining, the bank denied liability for valuables in the locker since the same were not known to the bank.

### Supreme Court Decisions and Observations

#### **1. Cost and Expense payable to the customer for gross negligence and gross service deficiency:**

- Rs. 5 lacs: Recover from erring employee's salary if still in service and if retired then the bank to bear it; and
- Rs 1 lac as litigation expense.

#### **2. Customer open to approach civil court to recover the value of lost contents.**

#### **3. Bank's Liability in Locker arrangement:**

Banks cannot wash off their hands and claim that they bear no liability since it would not only violate the provisions under the Consumer Protection Act, but also damage investor confidence and harm our reputation as an emerging economy.

#### **4. Direction to RBI on Locker:**

Issue within 6 months comprehensive rules on the principles in the judgment

- The same should not give liberty to banks to impose unilateral and unfair terms on the consumers.
- The same may include banks responsibility for the loss of or damage to the locker contents.

#### **5. Direction to Banks:**

Until RBI issues the rules, follow the principles in the judgment in general and at para 13 in particular<sup>2</sup>.

### What is Safe Deposit Locker?

Before analysing the judgment, it would be worthwhile to take a look at what a locker facility is and the way it is typically offered by banks in India, which is as follows:

- It is a customary non funded facility provided to customers by banks in India.
- Under it, a customer hires locker from a bank to keep his things, without the bank knowing about the things.
- A locker is a box fitted in a cabinet called locker cabinet which has several such boxes in it.
- A locker has dual lock and opening of a locker requires 2 keys: the 1<sup>st</sup> key is provided by the bank to the customer and the 2<sup>nd</sup> key is the Master Key held by the bank with it.
- Locker is thus the arrangement of a customer hiring safe space within the bank premises to keep valuable things.
- Banks obtain Locker Agreement signed by the customer recording the arrangement and assuming no liability for the contents for not having any knowledge of it.

### Analysis

In the current case, the gross negligence and service deficiency of the concerned bank clearly appears in the light of the facts stated in the judgment and hence the bank has to face the consequences of it including by way paying compensation and damages.

However, it is respectfully submitted and pointed out in this regard that:

- Locker facility in India is more like licence and not bailment as is held elsewhere.
- The observation of absence/ want of uniformity among banks on locker rules appears to be out of misinformation.
- RBI Guidelines on Locker (as the present judgment itself mentions) are in place and are quite comprehensive.
- Banks do have definite rules and procedures on locker facility and the same are quite uniform across banks and already cover the principles in the judgment in general and under Para 13 in particular.
- While the banks have to assume liability on for their acts or omissions (including for negligence/ service deficiency etc) under the locker facility, exposing the banks without limitation may be inappropriate and lead to banks discontinuing offering the locker facility.
- The incident in question is not justifiable. However, it is fit to be viewed as stray and uncommon and not generic.
- Recovery of cost from an erring employee is inappropriate and undesirable practice. Proper remedy against erring employee is to take disciplinary action under the service rules. Furthermore, the erring employee having paid the cost may absolve such erring employee/ dilute such employee from liability under the service rules.

### Way Forward

- Banks should review their internal rules and procedures on locker operations to ensure that the same are in keeping with the requirements under the judgment and particularly its para 12 and 13 for now and later in keeping with the new rules which RBI may issue in the light of this judgment.
- Banks should review their Locker Agreement to ensure that the same record a licence arrangement (and not bailment nor lease) and provide limitation of liability<sup>3</sup>.
- Banks may review continuing to offer locker facility critically in view of this judgment.

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<sup>1</sup> In Amitabha Dasgupta Vs United Bank of India (Civil Appeal 3966 of 2010) decided on 19.2.2021

<sup>2</sup> It appears that Para 13 is referred to in the judgment indeed means Para 12 which lays down the relevant guidelines under (a) to (o).

<sup>3</sup> Limiting liability is common practice in service contracts and this judgment does not bar it.