



2026:KER:76636

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

MONDAY, THE 5TH DAY OF OCTOBER 2026 / 13TH ASWINA, 1948

WP(C) NO.28970 OF 2021

PETITIONER:

REMADEVI T.L.,
AGED 57 YEARS, W/O.P.SURENDRAN,
RETIRED PRINCIPAL, PAZHASSI RAJA NSS COLLEGE,
NOW RESIDING AT "NIRANJANA", THANA P.O.,
MATTANUR, KANNUR DISTRICT - 670 012.

BY ADVS.
SRI.KANDAMPULLY RAHUL
SMT.RAAGA R.RAMALAKSHMI
SRI.BALAMURALI KRISHNA M.

RESPONDENTS:

- 1 RESERVE BANK OF INDIA,
BAKERY JUNCTION SERVICE ROAD,
NANDAVANAM, VAZHUTHACAUD,
THIRUVANANTHAPURAM, KERALA - 695 033,
REPRESENTED BY ITS REGIONAL DIRECTOR.
- 2 THE STATE BANK OF INDIA,
PLAZA, 2ND FLOOR, NEAR MUNICIPAL BUS STAND,
MATTANUR, KERALA - 670 702,
REPRESENTED BY ITS CHIEF MANAGER.
- 3 THE BANKING OMBUDSMAN,
RESERVE BANK OF INDIA, BAKERY JUNCTION,
THIRUVANANTHAPURAM - 695 033.

W.P.(C) No.28970 of 2021



2026:KER:76636

BY ADVS.
SMT.DEEPA NARAYANAN
SRI.T.SETHUMADHAVAN (SR.)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
05.10.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



J U D G M E N T

The petitioner is stated to be a retired teacher. The petitioner has filed the captioned writ petition complaining about the unauthorised debiting of various amounts from her savings bank account, which requires to be compensated by the 2nd respondent Bank with reference to certain circulars issued by the Reserve Bank of India (RBI).

2. The short facts necessary for the disposal of the writ petition are noticed as under;

The petitioner is holding a bank account with the 2nd respondent herein. She was also holding an ATM card. The petitioner states that, she came to know that, from April 29, 2019 onwards, non-chip based debit cards were proposed to be blocked by the State Bank of India. The petitioner states that, on 13.07.2019, at around 9.40 a.m., she received an SMS, informing that her debit card is proposed to be blocked. She was also informed that she could reactivate the same online. In this regard, the petitioner seeks to place reliance on Ext.P2 SMS received by her. The petitioner further states that, followed by the afore, she received a call from the same telephone number from which the



SMS was received, informing that her ATM card is blocked and the same requires to be reactivated, for which, the petitioner's participation is also required. On the basis of the afore, the petitioner was directed to provide the required details like the OTP for registration of the "State Bank Secure App". Unfortunately, the petitioner states that, though the SMS did contain a further note to the effect that the same does not require to be shared with anyone, the petitioner shared the same with the person who called her earlier. Immediately, the petitioner points out that an amount to the extent of Rs.3,73,000/- was debited from her account, on account of which, she straightaway informed the Bank through its customer care service, on the basis of which, the petitioner's internet banking account was blocked. The petitioner also refers to the registration of the complaint as evidenced by Ext.P8. Later, the petitioner submitted Ext.P10 complaint before the Manager of the branch, with whom the petitioner was holding the account, followed by a complaint before the police authorities of the Mattannur Police Station. On the basis of the complaint filed before the police authorities, necessary enquiries were conducted in that regard, as is evidenced by Ext.P16 investigation report filed



before the Judicial First Class Magistrate Court, Mattannur, wherein it was pointed out that the details provided by the petitioner had been used by one Sandip Bauri from West Bengal, who created as many as four Spice Digital wallets using four separate telephone numbers and siphoned off the amounts. Ultimately, since the amount of the petitioner was not refunded to her, she approached the Banking Ombudsman, and the complaint came to be disposed of pursuant to Ext.P14, a non-speaking order. The afore order of the Banking Ombudsman was challenged by filing W.P.(C) No.1904 of 2020, which came to be disposed of pursuant to Ext.P18 judgment dated 17.09.2021, setting aside the order of the Banking Ombudsman, directing the matter to be considered afresh. On the basis of the directions issued as above, the Banking Ombudsman has now issued Ext.P23 order, on the basis of the hearing note at Ext.P22, seeking to reject the complaint filed by the petitioner. It is seeking to challenge Ext.P23 issued as above that the petitioner is before this Court through the captioned writ petition.

3. I have heard Smt.Raaga R.Ramalakshmi, the learned counsel for the petitioner, as well as Smt.Deepa Narayanan, the



learned counsel for the 2nd respondent Bank.

4. The short issue arising for consideration in this writ petition is as to whether Ext.P23 issued by the Banking Ombudsman requires to be interfered with or not.

5. A reading of Ext.P23 would show that, according to the Banking Ombudsman, the petitioner was also privy to the entire transaction and, hence, going by the circular at Ext.P15, the petitioner's case would fall under clause 7(i) and, hence, the claim raised by the petitioner does not require to be entertained.

6. For ease of reference, clause Nos.6 and 7 of Ext.P15 are extracted as under;

"Limited Liability of a Customer

(a) Zero Liability of a Customer

6. A customer's entitlement to zero liability shall arise where the unauthorised transaction occurs in the following events:

- (i) Contributory fraud/ negligence/ deficiency on the part of the bank (irrespective of whether or not the transaction is reported by the customer).
- (ii) Third party breach where the deficiency lies neither with the bank nor with the customer but lies elsewhere in the system, and the customer notifies the bank within **three working days** of receiving



the communication from the bank regarding the unauthorised transaction.

(b) Limited Liability of a Customer

7. A customer shall be liable for the loss occurring due to unauthorised transactions in the following cases:

- (i) In cases where the loss is due to negligence by a customer, such as where he has shared the payment credentials, the customer will bear the entire loss until he reports the unauthorised transaction to the bank. Any loss occurring after the reporting of the unauthorised transaction shall be borne by the bank.
- (ii) In cases where the responsibility for the unauthorised electronic banking transaction lies neither with the bank nor with the customer, but lies elsewhere in the system and when there is a delay (of **four to seven working days** after receiving the communication from the bank) on the part of the customer in notifying the bank of such a transaction, the per transaction liability of the customer shall be limited to the transaction value or the amount mentioned in Table 1, whichever is lower.

Table 1

Maximum Liability of a Customer under paragraph 7 (ii)

Type of Account	Maximum liability (₹)
• BSBD Accounts	5,000
• All other SB accounts • Pre-paid Payment Instruments and Gift	10,000



Cards • Current/ Cash Credit/Overdraft Accounts of MSMEs • Current Accounts/ Cash Credit/Overdraft Accounts of Individuals with annual average balance (during 365 days preceding the incidence of fraud)/ limit up to Rs.25 lakh • Credit cards with limit up to Rs.5 lakh	
• All other Current/ Cash Credit/ Overdraft Accounts • Credit cards with limit above Rs.5 lakh	25,000

Further, if the delay in reporting is beyond **seven working days**, the customer liability shall be determined as per the bank's Board approved policy. Banks shall provide the details of their policy in regard to customers' liability formulated in pursuance of these directions at the time of opening the accounts. Banks shall also display their approved policy in public domain for wider dissemination. The existing customers must also be individually informed about the bank's policy."

7. The learned counsel for the petitioner would contend that the case at hand would fall under the provisions of clause 6(ii), whereas the learned counsel for the respondent Bank would contend that the case would fall under clause 7(i), on account of which, the petitioner cannot raise any claim from the respondent Bank.

8. In this connection, this Court notices the judgment of a Division Bench of the Gauhati High Court in W.A. No.364 of 2022



dated 13.09.2024, wherein an almost similar situation, where the account holder was compelled to download an app, was considered, as specifically pointed out in paragraph No.3 of the judgment. Considering the situation, also with specific reference to the various clauses under the RBI circular (Ext.P15 in this case), the Division Bench of the Gauhati High Court has found as under;

"34. The appellant and the respondent No. 1/petitioner have placed reliance on the Standing Circular of the RBI dated 06.07.2017 in support of their respective claims which lays down certain guidelines for Customer protection- limiting liability of the customers in case of Unauthorized Electronic Banking Transactions. The said circular is made applicable to all Commercial Banks, Small Finance Banks and Payments Banks. The respondent no. 1/petitioner has relied upon Clauses 9 and 10 of the RBI Circular to project that it was the Appellant's responsibility to resolve the controversy in a time bound manner and having failed to do so, they would now have to compensate the respondent no. 1/petitioner. On the other hand, the appellant has relied upon clause-7 of the Circular to submit that the incident took place due to the negligence of the customer and, therefore, the appellant Bank has no liability.

35. In view of the above, we would examine the relevant Clauses 7 to 10 of the RBI Circular dated 06.07.2017. On perusal of the provisions of the RBI circular, we find that



Clause 8 deals with third party breaches where the deficiency lies neither with the Bank nor with the customer but lies elsewhere in the system. As held by the learned Single Judge to which we are in agreement with that "Third party breach" is not a defined expression under the RBI circular dated 06.07.2017. However, on reading of Chapter-8 it appears that in case of un-authorized electronic banking transaction occurring due to third party breaches i.e., where the deficiency neither lies with the customer or the bank, the customer liability will be "zero" if the fraudulent transaction is reported within 3 (three) working days from the date on which the customer receives the communication. In the present case, even if it is assumed that the fraudulent transaction had taken place due to "third party breach" i.e. breach in the customer data base of the respondent No. 3, even then, the fraud/un-authorized transaction was reported to the Bank on 19.10.2021 i.e., within one working day. Therefore, as per clause -8 of the RBI circular, the liability of the customer/writ petitioner in this case ought to be "zero".

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38. Learned single Judge has rightly observed that regardless of whether it was a UPI or PG transaction, it is not believable that the respondent no. 1/petitioner would deliberately share his OTP, password and MPIN so as to allow his hard-earned money to be siphoned off from the bank account by a fraudster, that too, on three consecutive occasions, in quick successions. Rather, the incident appears to be pure and simple case of cybercrime whereby,



the fraudster had hacked the database of respondent No. 3 and thereafter, got access to sensitive information pertaining to various customers of Respondent No. 3 including the respondent no. 1/petitioner which information was used for completing the fraudulent transactions. The participation on the part of the petitioner appears to be only to the extent of downloading the mobile app. Although the appellant has contended that the petitioner had shared OTP, password and MPIN with the fraudster, yet, the said claim could not be substantiated by the Bank. No material particulars of the complicity on the part of the respondent no. 1/petitioner have been placed on record. Therefore, we are of the view that the appellant has failed to establish any negligence on the part of the respondent no. 1/petitioner.

39. It is the contention of the appellant that on receipt of the complaint dated 19.10.2021, the appellant Bank had taken necessary action. However, there is nothing on record to substantiate the same. Even after receipt of written complaint of fraudulent electronic transaction from the account of the respondent no. 1/petitioner, no complaint was lodged by the appellant Bank before the appropriate authority. It is noticed that the appellant Bank did not make any 'charge back' request to the beneficiary bank soon after receipt of the intimation about the fraud from the respondent no. 1/petitioner on 18.10.2021 or even on receipt of the complaint dated 19.10.2021. It appears that after receipt of the complaint from the respondent no. 1/petitioner on 19.10.2021 the appellant



has not taken any action in the matter to protect the interest of its customer. Not even a complaint was lodged by the appellant Bank with the cybercrime cell. However, bald claim has been made by the appellant alleging negligence against the respondent no. 1/petitioner by denying any liability.

40. Undoubtedly, it is correct that if a customer is negligent in handling his or her account and discloses sensitive information such as, password, OTP, MPIN, Card Number etc., resulting into fraudulent transaction, the Bank cannot be held liable for loss, if any suffered by the customer. However, in such cases, negligence on the part of the customers must be cogently established by the Bank by bringing reliable materials on record. The Banks cannot absolve themselves of the liability towards losses suffered by the customers on account of unauthorized electronic transactions based on perceived negligence of the customers. In the present case, having considered the facts and circumstances of case and the materials available on record, we concur with the view of the learned Single Judge, that the appellant has failed to establish negligence on the part of the respondent no. 1/petitioner leading to the fraudulent transactions. Thus, the learned Single Judge has rightly directed the appellant to deposit an amount of Rs. 94, 204.80/- (Rupees Ninety-four thousand two hundred four and Eighty Paisa) only, in the bank account of the respondent no.1/petitioner."

9. Thus, an almost similar situation has been considered



by the Division Bench of the Gauhati High Court, holding that it is unbelievable that a person will deliberately share the password/OTP, etc., so that his hard-earned money could be siphoned off from the bank account by a fraudster.

10. It is brought to the notice of this Court that the afore judgment has been challenged by presenting a Special Leave Petition before the Apex Court, which came to be rejected pursuant to an order dated 03.01.2025.

11. A reference to the order passed by the Apex Court in Petition for Special Leave to Appeal (C) No.30677 of 2024 would also show that the rival contentions have been taken into account with specific reference to the relevant clauses of the circular issued by the RBI, holding as under;

"2. We are in complete agreement with the observations as contained in Para 42 of the impugned judgment referred to above.

3. All that the High Court has said is that the original petitioner who suffered the loss was not negligent in any manner. All transactions relating to the account of the respondent No.1 – herein maintained with the petitioner – Bank were found to be unauthorized and fraudulent. It is the responsibility of the bank so far as such unauthorized and fraudulent transactions are concerned. The Bank



should remain vigilant. The Bank has the best of the technology available today to detect and prevent such unauthorized and fraudulent transaction. Further, clauses 8 and 9 respectively of the RBI's Circular dated 6-7-2017 make the position further clear.

4. We also take notice of the fact that within 24 hours of the fraudulent transaction, the customer, i.e., the respondent No.1 herein brought it to the notice of the Bank.

5. We expect the customers, i.e., the account holders also to remain extremely vigilant and see to it that the O.T.Ps. generated are not shared with any third party. In a given situation and in the facts and circumstances of some case, it is the customer also who could be held responsible for being negligent in some way or the other."

12. True, in paragraph No.5 of the afore order, the Apex Court has held that, account holders are required to be extremely vigilant and see to it that the OTPs generated are not shared with any third party.

13. In the case at hand, the petitioner has specifically pointed out that the floating of the application – State Bank Secure App – was not given wide publicity, on account of which, the petitioner was under the belief that, even if the OTP was shared, ultimately for debiting various amounts, a further OTP was required to be generated, which had to be obtained by the



petitioner. It is the case of the petitioner that, using the OTP provided by the petitioner, the fraudster has joined the app and, using the same, amounts have been siphoned off.

14. This Court is of the opinion that the contention raised as above does not require to be disbelieved, especially since the facts as pointed out in the writ petition have not been specifically denied in the counter affidavit.

15. This Court also notices that, as soon as the fraudster siphoned off the amount from the petitioner's savings bank account, a complaint was also lodged by the petitioner, as is clear from the SMS at Ext.P8. Though the complaint was lodged on the very same day, the bank has not taken any steps for ensuring that the amounts debited are reccredited to the petitioner's account. Similarly, even after the police identified the fraudster, the bank has not taken any further steps in the matter. The fact that the petitioner was not privy to the fraud is also clear from the report filed by the police authorities.

16. When that be so, the petitioner's case would definitely fall under the provisions of clause 6(ii) of Ext.P15 circular of the RBI. That being the position, the petitioner's case is covered by



the judgment of the Division Bench of the Gauhati High Court, as has been confirmed in the order dated 03.01.2025 passed by the Apex Court in the Special Leave Petition referred to above.

Resultantly, this writ petition would stand disposed of as under;

- (i) Ext.P23 order issued by the Ombudsman is *set aside*.
- (ii) The 2nd respondent Bank is directed to make good the loss of Rs.3,73,000/- as stipulated under Ext.P15 Circular, as expeditiously as possible, at any rate, within a period of four weeks.

Sd/-

HARISANKAR V. MENON
JUDGE

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APPENDIX OF WP(C) NO. 28970 OF 2021

PETITIONER'S EXHIBITS

- | | |
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| Exhibit P1 | A TRUE COPY OF THE PETITIONER'S ACCOUNT STATEMENT FROM 01/07/2019 TO 15/07/2019. |
| Exhibit P2 | A TRUE EXTRACT OF THE MESSAGE RECEIVED ON THE PETITIONER'S PHONE DATED 13/07/2019. |
| Exhibit P3 | A TRUE COPY OF THE NEWS REPORT PUBLISHED IN INDIA TODAY DATED 18/04/2019. |
| Exhibit P4 | A TRUE COPY OF THE NEWS REPORT PUBLISHED IN LIVE MINT DATED 31/12/2018. |
| Exhibit P5 | A TRUE EXTRACT OF THE STATE BANK SECURE MESSAGE RECEIVED TO THE PETITIONER'S PHONE. |
| Exhibit P6 | A TRUE COPY OF THE DEBIT MESSAGES RECEIVED TO THE PETITIONER'S MOBILE PHONE DATED 13/07/2019. |
| Exhibit P7 | TRUE EXTRACT OF THE FORWARD SENT BY THE PETITIONER TO THE 2ND RESPONDENT BANK. |
| Exhibit P8 | A TRUE COPY OF THE COMPLAINT REGISTRATION MESSAGE RECEIVED BY THE CUSTOMER ON 13/07/2019 AT 10.31 A.M. |
| Exhibit P9 | TRUE COPY OF THE EXTRACT OF MSGS SENT TO CYBER CELL FROM THE PETITIONER'S PHONE. |
| Exhibit P10 | TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT BANK ON 15/07/2019. |
| Exhibit P11 | A TRUE COPY OF THE COMPLAINT LODGED BY THE PETITIONER WITH THE MATTANUR POLICE STATION, KANNUR DATED 15/07/2019. |
| Exhibit P12 | A TRUE COPY OF THE FIR BEARING NO.0526 DATED 17/07/2019. |
| Exhibit P13 | A TRUE COPY OF THE LETTER DATED 02/11/2019 ISSUED BY THE 2ND RESPONDENT BANK. |
| Exhibit P14 | A TRUE COPY OF THE ORDER OF THE LEARNED BANKING OMBUDSMAN DATED 20/11/2019. |



Exhibit P15 A TRUE COPY OF THE MASTER CIRCULAR BEARING DBR.NO.LEG.BC.78/09.07/005/2017-18 DATED 06/07/2019.

Exhibit P16 A TRUE COPY OF THE INVESTIGATION REPORT FILED BEFORE THE LEARNED JUDICIAL FIRST CLASS MAGISTRATE, MATTANUR, IN CA 1020/19 IN CRIME NO.526/19.

Exhibit P17 A TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 2ND RESPONDENT BANK IN WP(C) NO.1904/2020.

Exhibit P18 A TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C) NO.1904 OF 2020 DATED 17/09/2021.

Exhibit P19 A TRUE COPY OF THE EMAIL ISSUED BY THE 3RD RESPONDENT DATED 22/10/2021.

Exhibit P20 A TRUE COPY OF THE EMAIL FROM THE 3RD RESPONDENT FORWARDING THE 2ND RESPONDENT'S REPLY TO THE COMPLAINT AS ATTACHMENT ON 26/10/2021.

Exhibit P21 A TRUE COPY OF THE REPLY ISSUED TO THE 3RD RESPONDENT DATED 22/10/2021.

Exhibit P22 A TRUE COPY HEARING NOTE ISSUED BY THE 3RD RESPONDENT DATED 01/11/2021.

Exhibit P23 A TRUE COPY OF THE ORDER OF THE LEARNED 3RD RESPONDENT DATED 03/11/2021.

Exhibit P24 A TRUE COPY OF THE RBI CIRCULAR DATED NOVEMBER 24, 2009.

RESPONDENTS' EXHIBIT

EXHIBIT R2(a) OTP/SMS DELIVERY LOG PROVIDED BY THE DIGITAL TRANSACTION DEPARTMENT.