

**BEFORE THE DISTRICT CONSUMER DISPUTES
REDRESSAL COMMISSION, VIJAYAPUR**

COMPLAINT NO: 99/2022

Date of Filing :12/10/2022

Date of Disposal : 27/07/2023

P r e s e n t

- 1) SHRI AMBADAS KULKARNI. G., B.A., LLB (Spl)**
President
- 3) SMT V. B. MUTALIK DESAI, B.Sc., LLM (Spl)**
Lady Member

Complainant/s :

Raghuveer S/o ShankrappaVijapur
Age: 30 years, Occ: Indian Army
R/o: Tamba Tq:Indi Dist:Vijayapur.

(By Shri. R.G.Deshpande, Adv.)

Opposite Party/ies

- 1) The Manager,
The State Bank of India
Branch Indi.
R/o Indi Dist:Vijayapur.
- 2) The Regional Manager,
The State Bank of India
Meenaxi Chouck, Vijayapur.

(Op No.1 & 2 by Shri. S.K.Hakki, Adv.)

JUDGEMENT DELIVERED BY**HON'BLE SHRI AMBADAS KULKARNI G., PRESIDENT**

This complaint filed the complainant U/Sec. 35 of Consumer Protection Act, 2019 seeking direction against Opposite Parties (hereinafter referred to as "OPs") to pay Rs.16,00,000/- towards negligence and deficiency of service.

Brief facts of the case are as under;

2) The complainant is permanent resident of Tamba village of Indi taluka. Now the complainant is serving the Indian Regiment. The complainant has made S.B. Account in the Op No.1 Bank and it's account No.30391069133 (IFSC CODE SBIN 002214). The complainant had two ATM Cards. One for the complainant and another for the complainant wife.

It is further stated that, on 31.10.2021 the complainant went to the SBI, Branch Indi for withdrawal of the amount. At that time comes to the complainant knowledge the ATM Card is misplaced. Thereafter, the complainant withdraw the amount from the OP No.1's bank a sum of Rs.10,000/- + 10,000/- + total Rs.20,000/-. The complainant traces out of the ATM Card in his house, but it not trace out. Thereafter, the complainant called to the customer care No.7001262725 of the SBI. The said mobile was disconnected, thereafter the one phone call from it's No.7718965316 received by the complainant and enquired

about the calling of the customer care at that time the complainant informed about the miss place of ATM Card and wanted to block the same. At that time who called the above said Mobile number intimated to the complainant to install the any desk app. we will block the ATM Card. As per the instructions the complainant installed any desk app. Thereafter, it is intimated to the complainant your ATM Cards are blocked. The complainant believed the same.

On 04.11.2021 it is an engagement of the complainant sister. The said complainant went to the Op bank and gave cheque for Rs.50,000/-. At that time, the Op No.1 official intimated to the complainant that in the account of the complainant account only Rs.27,000/- is balance and impossible to pay Rs.50,000/-. The complainant shocked and surprised enquired about the amount, the Op No.1 official intimated that complainant has taken loan of Rs.8,00,000/- on 31.10.2021. But the complainant not gets any loan amount the Op No.1 bank nor field any application for the loan. It is mandatory duty of the OPs to verify the records of the complainant and phone number and so also signature of the complainant. Without verifying these aspects by the Ops, it show the negligence and deficiency of service committed by the Ops. Therefore, the complainant is constrained to file this complaint against OPs.

3) After the service of the notice, Ops appeared through his counsel and filed W.V. denying the contention of the claim petition.

Ops submitted that, the complainant has withdrawn Rs.10,000/- + Rs.10,000/- in two transactions, through Yono App. It is further submitted that, in the month of November the complainant approached the OP No.1 Bank and for sanction of a loan. The officer of the bank verified the Cibil Report, at that time he came to know that the complainant had availed a loan of Rs.8,00,000/- from Op No.1 bank. On informing about the same by the bank officer to the complainant he was shocked and informed that he has not availed any loan.

It is further submitted that, the complainant had lost the ATM Card and in order to block the same he had traced customer care number 7001262725 from the Google and informed customer care number to block his card, as per advice of the person, who had received the call on 7001262725. He has furnished all the information i.e. user Name, Password, Profile Password & OTP to them in order to block the card and has acted according to their instructions. But, the said information has been misused and the said unknown person have accepted the offer of personal loan offered by the S.B.I. through S.B.I Yono App. by agreeing the terms and conditions. Then, the amount of Rs.8,00,000/- has credited automatically to the S.B.account

to the complainant and the said unknown persons have withdrawn and also transferred the same to the different accounts, by doing so they have cheated the complainant to the extent of Rs.8,00,000/-. After the verification of his account statement the bank staff came to know regarding the sanction and availment of PAPL of Rs.8,00,000/-. The complainant not having availed the said loan has filed a complaint to the Police that he has been cheated by some unknown person to the extent of Rs.8,00,000/-. The said complaint was registered under Crime No.0023/2021, on 05.11.2021 the Vijayapur CEN. In the said complaint he has furnished two mobile numbers 70012622725 and 7718965316 through which the unknown persons interacted with him and cheated him. The said complaint is pending investigation. The allegations made against the Op No.1 regarding negligence or deficiency of service is false and baseless. Therefore, there is no negligence and deficiency of service committed by the OPs and prays to dismissal of the complaint.

4) In order to prove the case, the complainant examined as PW-1 and Ex.P-1 to Ex.P-6 are marked. In turn the Op No.1 examined as Ex.RW-1 and Ex.R-1 & Ex.R-2 are marked. Both the parties have filed the written arguments perused the same.

- 5) The material points arise for our consideration.
 - 1) Whether the complainant proves the deficiency of service on the part of Ops?
 - 2) Whether the complainant is entitled for the compensation as prayed in the complaint?
 - 3) What order?
- 6) Our answer to the above points are;
 - 1) Point No.1 :In the affirmative.
 - 2) Point No.2 :In the partly affirmative.
 - 3) Point No.3 :As per the final order for the following.

R E A S O N S

7) **Point No. 1 & 2 :-** The facts of the case is already stated above. Looking to the evidence of the PW-1 of this case in the evidence, the witness reiterated the same facts whatever he has stated in the complaint.

8) Looking to the evidence of the RW-1 he has reiterated the same facts whatever, he has stated in the W.V. and produced two documents as per Ex.R-1 & Ex.R-2.

9) After careful consideration of the case on hand, it is not disputed that, the complainant is having account in the Op Bank and on 31.10.2021 the complainant directly withdrawn Rs.20,000/- from his account, as his ATM Card was misplace The contention of the complainant that, on

04.11.2021 he approached the Op Bank and gave a cheque of Rs.50,000/- Op informed that, the balance is only Rs.27,000/- and cheque cannot be passed and further the Op informed the complainant that Rs.8,00,000/- loan is taken by the complainant on 31.10.2021, but the complainant not taken the said loan. The Op further stated that, Rs.8,00,000/- is credited to the complainant account. According to the complainant, some unknown persons withdrawn the amount and cheated to the complainant. Therefore, the complainant claims compensation from the Ops.

10) The contention of the Op that, they have sanctioned the loan amount and credited to the complainant account, when the complainant contacted the Yono App. for blocking his ATM Card at the time, the complainant furnished his Aadhaar card number, account number, Pan Card number etc., and some unknown person withdrawn the amount for that, the Ops are not responsible. The Ops further contended that, the complainant lodged the complaint against unknown person and the investigated in progress and Ops are ready to give Co-Operation to the Police agency for the investigation.

11) It is pertinent to note that, whatever the amount in the complainant account is withdrawn by the unknown persons i.e. fraudest nowadays the fraud cases are register for the similar incidents, inspite of active participation of the Cyber Crime. Mere saying that, we Co-Operate with the instigation agency is not sufficient. It is pertinent to note that, the Ops are the responsible authorities and the complainants open his account in the Op branch for the safety of his money. It is the duty of the Ops to keep the watch on not only complainant account, but all the accounts. The Ops are having a computer system facility and they can trace out with the help of Cyber Crime who has withdrawn the complainant amount in which place etc., the Ops cannot escape from the liability and it is the duty of the Ops to trace out the fraudest with the help of Police and search the complainant amount.

12) Father of the Nation Sri. Mahatma Gandhiji told that "The Customer is a God". But, in the present case the acts of the Op is not a friendly customer. In **reported decision in III (2018 CPJ 193 (State Bank of India Vs. Dr. J.C. Katakya)**, in which the Hon'ble National Commission has held that when fraudulent transaction in respect of ATM Card holder is taken place from his account, it is the duty of the bank to look into the matter and investigate the same and once a specific POS number had been given in message received from bank itself to the

complainant, the bank could have verify the genuineness of transaction, failing which bank is liable to make good the loss.

In another decision reported **III (2017) CPJ 370 in case of HDFC, Bank Ltd., Vs. Hemant Narayan Devande**, The Hon'ble National Commission has held that the bank has been deficient in its service to the consumer when it did not enquire into the question of fraudulent transaction.

13) In this case also OP never made any efforts to enquire or investigate about the fraudulent transactions, it clearly shows that, it is bounded duty of the Op to see that, the customer is valuable one and service should be provided with due care and caution. But in this present case, the OP has failed to provide proper service to the complainant, Hence, there is clear that deficiency in service on the part the Op in providing service to the complainant.

14) The say of the Op that they are not responsible for the said incident is amounts to the deficiency of service. Therefore, the Ops are liable to pay the compensation of Rs.8,00,000/- i.e alleged loan amount to the complainant with interest @ 6% p.a. from the date of complaint till its realization and further the Ops are directed to pay the compensation of Rs.5,000/- in the heads of mental agony and Rs.2,000/- towards cost of litigation. With this Opinion

we answer point No.1 is in the affirmative and point No.2 is in the partly affirmative.

15) Point No. 3:- In view of our answer on point No. 1 & 2 and for the reasons stated above, we proceed to pass the following;

O R D E R

- 1) The complaint filed U/Sec. 35 of C. P. Act 2019 is partly allowed.
- 2) The OPs are directed to pay a sum of Rs.8,00,000/- **(Rs.Eight Lakhs Only)** to the complainant with interest @ 6% p.a. from the date of complaint till realization.
- 3) The OPs are directed to pay a sum of Rs.5,000/- towards mental agony and Rs.2,000/- towards cost of litigation.
- 4) The order shall be complied within 60 days from the date of Judgment, failing which carrying interest at the rate of 9% p.a. on Rs.8,00,000/- **(Rs.Eight Lakhs Only)**
- 5) Send free copy of order to all parties.

(Order dictated on online, corrected and then pronounced in the open Commission on **27th day of July, 2023**)

**(SHRI AMBADAS
KULKARNI. G.)
President.**

**(SMT. V.B. MUTALIK
DESAI)
Lady Member.**

\\ANNEXURE//**Witness examined on Behalf of the complainant****PW-1 – Raghuv eer S/o ShankrappaVijapur****Documents marked on behalf of the complainant**

Ex. P-1	Copy of police complaint (Station House officer, CEN Crime Police station, Vijaypur.
Ex. P-2	Copy of FIR.
Ex. P-3	Copy of Pass book.
Ex. P-4	Copy of Pan card.
Ex. P-5	Copy of letter written by complainant to S.B.I.Branch, Indi. Dtd:05.07.2022.
Ex. P-6	Copy of statement of account.

Witness examined on Behalf of the OPs**RW-1 – Shir. Ramaswami B.G. The Branch Manager, SBI, Branch, Indi.****Documents marked on behalf of the Ops**

Ex. R-1	Copy of statement of account of S.B. account No.30391069133 for the month of October and November 2021.
Ex. R-2	Copy of the statement of loan account.

**(SHRI AMBADAS
KULKARNI. G.)
President.**

**(SMT. V.B. MUTALIK
DESAI)
Lady Member.**
