

Heading1

Heading2

Complaint Case No. CC/203/2013

(Date of Filing : 13 Mar 2013)

1. SHRI JAI NARAIN

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.....Complainant(s)

Versus

1. PUNJAB NATIONAL BANK

.

.....Opp.Party(s)

BEFORE:

HON'BLE MR. SH,SURESH KUMAR GUPTA PRESIDENT

HON'BLE MR. RAMESH CHAND YADAV MEMBER

PRESENT: None

.....for the Complainant

Dated : 15 Mar 2024

Final Order / Judgement

CONSUMER DISPUTES REDRESSAL COMMISSION-VII

DISTRICT: SOUTH-WEST

GOVERNMENT OF NCT OF DELHI

FIRST FLOOR, PANDIT DEEP CHAND SHARMA SAHKAR BHAWAN

SECTOR-20, DWARKA, NEW DELHI-110077

CASE NO.CC/203/13

Date of Institution:- 17.04.2013

Order Reserved on:- 23.01.2024

Date of Decision:- 15.03.2024

IN THE MATTER OF:

Shri Jai Narain

Son of Shri Meer Singh

R/o 106, Krishna Vihar,

West Gopal Nagar,

Najafgarh, New Delhi - 110043

..... Complainant

VERSUS

Punjab National Bank

Through its Manager

Chhawla Stand, Najafgarh

New Delhi

.....Opposite Party

ORDER

Suresh Kumar Gupta, President

1. The complainant has filed the complaint under section 12 of Consumer Protection Act, 1986 (hereinafter referred to as Act) with the allegations that he is having a bank account no.15190001053742 with OP. One ATM card facility was provided to him with the daily withdrawal limit of Rs.25000/-. On 20.09.2012, a sum of Rs.25,000/-, on 23.09.2012 a sum of Rs.50,000/- and 26.09.2012 a sum of RS.25,000/- were shown to have withdrawn from his account. The statement of account shows that transaction of Rs.25,000/- dated 23.09.2012 were shown two different ATMs situated at SR International School, Najafgarh and BO, Najafgarh. The said withdrawal has not been made by him. He came to know about the said withdrawals and thereafter on 16.10.2012 and 31.12.2012 made a complaint to the OP to credit the same amount in his account but bank officials refused to take any action. The complaints dated 16.10.2012

and 31.12.2012 were given to Police Station, Baba Haridas Nagar but in vain. He has also made a complaint to Banking Ombudsman but no action was taken. Hence, this complaint.

2. The OP has filed the reply to the effect that complainant has withdrawn a sum of Rs.25,000/- each from two different ATM. The amount has either been withdrawn by the complainant or through another person with whom complainant has shared the PIN Number on the intervening night of 22-23.09.2012 i.e. the first withdrawal was of Rs.10,000/- and second withdrawal was of Rs.15,000/- from ATM, Shri Ram International School, Najafgarh. The complainant in a similar fashion has withdrawn Rs.10,000/- and Rs.15,000/- at 00:05:52 hrs and 00:6:33 hrs at Thana Road Najafgarh which is at a distance of 1 Km of Shri Ram International School. The ATM card in possession of the complainant so complainant has himself done the withdrawals. The allegations of the complainant are false and frivolous. The OP is not liable to compensate to the complainant for any damage.
3. The complainant has filed the rejoinder wherein he has reiterated the version of complaint and denied the averments of the OP.
4. The parties are directed to lead the evidence.
5. The complainant has filed his own evidence and corroborated the version of complaint and placed reliance on the documents. Ex.CW-1/1 is copy of passbook, Ex.CW1/2 & 3 are the complaint to Banking Ombudsman, Ex.CW-1/4 & 5 are complaints dated 16.10.2012 and 31.12.2012 to Manager PNB Najafgarh, Ex.CW-1/6 & 7 are complaints dated 10.10.2012 and 02.01.2013 to SHO, PS Najafgarh, Ex.CW1/8 & 9 are complaints to SHO PS, Baba Haridas Nagar and Ex.CW1/10 is the bank statement of the complainant.
6. The OP has filed the affidavit of Sh. Om Prakash Senior Manager in evidence

and corroborated the version of written statement.

7. No one appeared on 23.01.2024 so the case was reserved for orders.
8. We have perused the entire material placed on record.
9. It is clear from the evidence on record that complainant is having bank account with OP and ATM card facility has been given to the complainant by OP.
10. The bank statement Ex.CW1/10 (Exhibit not put on the document) shows that a sum of Rs.1 lakh in all has been withdrawn through ATM from 20.09.2012 till 26.09.2012 from different ATMs.
11. The complainant brought the matter to the notice of the OP after getting the knowledge about withdrawals. The complaints dated 16.10.2012 and 31.12.2012 were given to the OP as well as to the SHO, PS-Najafgarh but no action was taken. The complaints were even given to SHO, PS, Baba Haridas Nagar as well as to Banking Ombudsman but in vain.
12. The perusal of the bank statement shows that nine withdrawals have taken place from 20.09.2012 till 26.09.2012. The account of the complainant has been debited nine times.
13. The perusal of the reply of the OP shows that four transactions were taken place on 23.09.2012 from different ATMs during the night time. The OP has failed to explain why the complainant will go to different ATMs that too during night hours to withdraw the money four times. Such kind of transactions show that complainant has not allegedly withdrawn the amount by ATM.

14. The CCTV footage/video clipping would have been the best evidence to show whether complainant has used the ATM or not. The OP has failed to produce the video footage/video clipping of the ATMs from which withdrawal has taken place. The OP should have supplied the CCTV footage/video footage to the complainant which was not done. The video footage of the withdrawals should have been produced by the OP before the Commission. The OP should have taken the timely action on the complaint of the complainant. The timely action on the part of OP would have resulted into preservation of the video footage. The inaction on the complaint of complainant is writ large. There is no explanation from the OP why timely action was not taken on the complaint of complainant.
15. The OP has nowhere pleaded that SMS alert were sent on the registered mobile number of the complainant. There is no explanation why SMS were not sent on the registered mobile number of the complainant.
16. The operating system of the ATM is secured where possibility of manipulation is very minimum but irregularity in the system cannot be ruled out.
17. The OP will be responsible even if a third party has withdrawn the amount without using the actual ATM Card.
18. The net result of aforesaid discussion is that it is not possible to believe the version of OP that complainant has himself withdrawn the amount. The OP has not properly investigated the matter as a result CCTV footage was not preserved. There is deficiency of service on the part of OP.
19. Hence, in view of our discussion, the complaint of the complainant is allowed to the effect that OP shall refund the amount i.e. Rs.1,00,000/- along with interest @7% p.a. from the date of filing the complaint i.e. 17.04.2013 till its realization. The complainant has undergone mental agony so he is entitled for compensation

on this score also. The OP shall also pay Rs.15,000/- towards compensation on account of mental agony and harassment. The OP shall comply with the order within 45 days from the date of receipt of order failing which complainant is also entitled for interest @7% p.a. on compensation from the date of order till its realization.

- A copy of this order is to be sent to all the parties as per rule.
- File be consigned to record room.
- Announced in the open court on 15.03.2024.

**[HON'BLE MR. SH,SURESH KUMAR GUPTA]
PRESIDENT**

**[HON'BLE MR. RAMESH CHAND YADAV]
MEMBER**