

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 2082 OF 2017

(Against the Order dated 29/05/2017 in Appeal No. 176/2017 of the State Commission Delhi)

1. PARVEEN KUMAR JAIN

F-100, WEST JAWAHAR PARK, LAXMI NAGAR

NEW DELHI-110092

.....Petitioner(s)

Versus

1. HDFC BANK LTD.

1-3, LAXMI DEEP BUILDING DISTRICT CENTER, LAXMI
NAGAR,

DELHI-110092

.....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE PETITIONER : MR. PARVEEN KUMAR JAIN, IN PERSON

FOR THE RESPONDENT : MS. NIMISHA SHARMA, ADVOCATE

Dated : 28 December 2023

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondent as detailed above, under section 21(b) of Consumer Protection Act 1986, against the order dated 29.05.2017 of the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 176/2017 in which order dated 27.02.2017 of District Consumer Disputes Redressal Forum (East), Delhi (hereinafter referred to as District Forum) in Consumer Complaint (CC) No. 407/14 was challenged, inter alia praying for – (a) setting aside/modifying the order of the State Commission, (b) reversing all the misused transactions with Rs.0/- outstanding as on date, (c) getting the CIBIL upgraded.

2. While the Revision Petitioner (hereinafter also referred to Complainant) was Appellant and the Respondent (hereinafter also referred to as Opposite Party) was Respondent in the said FA/176/2017 before the State Commission, the Revision Petitioner was Complainant and Respondent was Opposite Party before the District Forum in the CC No. 407/2014. Notice was issued to the Respondent on 26.10.2017. Parties filed Written Arguments/Synopsis on 18.04.2018 (Petitioner) and 17.04.2018 (Respondent) respectively.

3. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Forum and other case records are that: -

The complainant had credit card of OP/HDFC Bank, which was fraudulently used by someone on 30.03.2014 between 12:42 AM to 12:56 AM for multiple transactions worth Rs.24,000/-. The complainant got confirmation call from HDFC team regarding the said transactions. The complainant gave answer in negative. The complainant contacted the customer care next day to know the status of the disputed transactions. The complainant was requested to send dispute form, then the transaction will be reversed. The complainant received another call from OP Bank and he was asked to send police complaint. The complainant sent the same. After three days he was again asked to send progressive dispute form, the complainant sent the same. In spite of completing all the formality, HDFC Bank has not yet reversed the transaction, but asking for money from the complainant, for which the complainant is not liable. The Bank always says that the card is the property of the Bank even it is damaged or deactivate and liable to take care of their property. The complainant paid lacs of rupees timely in the last 10 years. Hence, filed complaint before the District Forum.

4. Vide Order dated 27.02.2017, in the CC No. 407/2014 the District Forum dismissed the complaint with the following observations:-

“7. We have heard the arguments on behalf of the complainant and Ld. Counsel for OP. Perusal of the material placed on record reveals, that the complainant has alleged that his credit card had been fraudulently used by someone, even in the police complaint, the complainant has alleged fraud transaction on his credit card. When the complainant has alleged fraud, the disputed question of facts needs proper investigation and trial which cannot be tried in the summary proceedings on the basis of affidavit under Consumer Protection Act.

Hence, the present complaint is dismissed as it needs proper investigation and criminal trial.”

5. Aggrieved by the said Order dated 27.02.2017 of District Forum, Petitioner appealed in State Commission and the State Commission vide order dated 29.05.2017 in FA No. 176/2017 upheld the order passed by the District Forum and observed :-

“We have heard the complainant in person and perused the record. We are completely in agreement with the order passed by the District Forum that issues involving disputes of a criminal nature cannot be gone into under the provisions of Consumer Protection Act, 1986 under summary trial.

Hon’ble NCDRC in the matters of Bright Transport Co. Vs Sangli Sahakari Bank Ltd. II [2012] CPJ 151 (NC) decided on 12.01.2012 and in Prempreet Textiles Industries Ltd. Vs. Bank of Baroda III [2006] CPJ 218 (NC) decided on 15.05.2016 and Hon’ble Apex Court in the matter of Synco Industries Vs. State Bank of India AIR 2002 SC 568 have held that complicated question of law involved cannot be decided in summary proceedings under the Consumer Protection Act, 1986.

Having regard to the case we are of the considered view that there is no infirmity in the order passed by District Forum and uphold that.”

6. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

6.1 It is contended that the Petitioner was using HDFC Bank Credit Card for 10 years till 2014, with the excellent track record. The card was misused for Rs.24,000/- by someone on 30.03.2014 between 12:42 to 12:56 night, when the petitioner was sleeping at home & card was with him. When the HDFC Team called the petitioner at the same time for verification of the said transaction, the petitioner completely denied and told them, that he was not using the card someone is misusing his card. He requested for blocking the card and reversing all the transaction and in answer the caller said ok. Despite providing the dispute form, police complaint and progressive dispute form, the HDFC Bank has not yet reversed the transaction. The Bank is asking for money, which the petitioner has not used. It is further submitted that Bank always said that card is the property of the bank even it is damaged or deactivated, why they do not take care of their property. The petitioner contended that he has paid Lacs of rupees timely in the last 10 years. As stated by the Respondent in para 7 of their synopsis that they sent the MSC password on the mobile and email of the Petitioner, it is denied and petitioner has not received any OTP on his mobile and email and as alleged by the Respondent that Police complaint, if filed later that is malafide intention of the petitioner. Petitioner contended that the petitioner has taken continuous follow-ups with the Respondent, they asked for police complaint on 03.04.2014, which the petitioner filed with the Police Station Shakarpur and the same was dropped in HDFC Drop Box, but it was misplaced by them, as usual as they misplace the cheques of the

customers. It happened twice with the petitioner. The Petitioner has referred article of RBI where it is mentioned very clearly, if the online misuse/fraud transactions intimated within 10 days by the customer, then the customer is not liable to pay that amount. The Bank was intimated within 10 minutes instead of 10 days, so the petitioner is not liable to pay the misused transaction amount. The amount used by the petitioner has already been paid timely.

6.2 On the other hand it is contended by the Respondent that the Petitioner applied to the Respondent Bank for issuance of Credit Card and the same was issued to him. The said credit card was subsequently upgraded time and again and finally card was generated on which all the outstanding dues were transferred. The card upgradation is for the benefit of user and is usual process followed to support security of Card users. The credit card facility availed by the Petitioner was subject to the terms and conditions of the Card Member/holder Agreement which was issued to him along with the credit card. That by entering into the Card Member/holder Agreement and subsequently by using credit card issued by the Respondent, the Petitioner agreed to be bound by such terms and conditions contained in the said agreement. The Respondent further contended that a document named 'Most Important Terms and Conditions' (MITC) was also provided to the petitioner. This document contained complete information on the charges referred to in the Card Member Agreement. The said document was sent to the Petitioner along with Card Member Agreement and Credit Card. Hence, the Petitioner was fully aware of the charges appended with the credit card facility availed by him. When the Petitioner raised the dispute regarding transactions incurred with respect to the said credit card on 30.03.2014, the Bank conducted detailed investigation on the said dispute. On investigation it was found out that the said transactions were online transactions using Master Secure Code (MSC). As per Regulatory Guidelines, all online credit card transactions are to be carried out through an additional authentication method called Master card Secure Code (MSC) service. For completion of any online transaction using HDFC Bank Credit Card, the above authentication mechanism is required. The Petitioner had registered his credit card account for MSC and there was no password reset along with change in mobile number or email address identified on the said card account. Further while registering for the above facility, customer has to enter numerous details such as credit card number, expiry date, CVV and DOB/ATM PIN and mobile number. Thus multiple level checking and maximum levels of validations are done before MSC password is generated. It is contended by the Respondent that the above mentioned details are expected to be solely within the knowledge of the customer. The MSC password was sent on the Petitioner's registered mobile number and email address and the password was only within the knowledge of the Petitioner. The said disputed online transaction would not have taken place without using that MSC password which was only within the knowledge of the Petitioner. The usage of the card was not possible without the Petitioner's sharing/divulging the confidential details of the card with someone. Hence the liability of such transaction rests on Petitioner and the same had been time and again intimated to him by the Respondent Bank, which the Petitioner willfully defaulted in payment of the outstanding amount till date despite several reminders and

requests. It is also contended by the Respondent that on 28.02.2015, an amount of Rs.37,222.48 was due and payable by the Petitioner to the Bank with respect to the above said credit card. The Bank is also entitled to all charges and interest applicable on the said amount from 28.02.2015 till the date of realization of the same. Despite repeated request from the Bank, Petitioner did not provide any copy of FIR/complaint if any filed by the later with the police, which clearly shows the malafide intention of the Petitioner. The case of the petitioner suffers from non-joinder of necessary parties and the Petitioner failed to make “Free Charge” and “Sujav Business Pvt. Ltd.” as party to the present dispute. Since the disputed transactions were incurred with them and the Respondent Bank had duly made payment to them on behalf of Petitioner as the transaction involved the Petitioner’s credit card, hence both these entities are necessary parties for just and proper adjudication of the present dispute. The Respondent Bank was merely made a medium of payment. The State Commission as well as the District Forum were of the view that since the present matter involves question of fraud i.e. the case is of criminal nature, hence it requires proper investigation and the summary proceedings under the Consumer Protection Act, 1986 will not suffice the purpose of solving the matter in dispute. The present petitioner is filed by the petitioner to escape his liability to pay outstanding amount due with respect to credit card facility availed by him. The Respondent Bank rightfully demanded the payment from petitioner and such act of Bank does not amount to deficiency in service.

7. In this case, the District Forum has dismissed the complaint observing that the complainant has alleged that his credit card had been fraudulently used by someone, even in the police complaint, the complainant has alleged fraud, the disputed question of facts needs proper investigation and trial which cannot be tried in the summary proceedings on the basis of affidavit under Consumer Protection Act. The State Commission in Appeal has upheld the order of the District Forum. However, we are not in agreement with the observations/ findings of the District forum/State Commission. The Consumer Fora under the Consumer Protection Act has jurisdiction to look into the matters if there is deficiency in service by the service provider and not the criminal aspects of any transaction. Banking is included as one of the “service” under Section 2 (1)(o) of the Consumer Protection Act. Hence the main question to be seen is not with respect to fraud/criminal trial per se but whether the Respondent Bank was deficient in service or whether the Respondent Bank has committed any unfair trade practice while providing such service. The complainant is a user of the credit card issued by the Respondent Bank, hence falls under the definition of Consumer and has a right to file complaint under the Consumer Protection Act.

Hon’ble Supreme Court in **J.J. Merchant and Ors. Vs. Shrinath Chaturvedi**

(2002) 6SC 635 observed that *“under the Act, for summary or speedy trial,*

exhaustive procedure in conformity with the principles of natural justice is

provided..... the legislature has provided alternative, efficacious, simple, inexpensive and speedy remedy to the consumers and that should not be curtailed on such ground. It would also be totally wrong assumption that because summary trial is provided, justice cannot be

done when some questions of facts are required to be dealt with or decided. [The Act](#) provides sufficient safeguards.”

8. In view of the above, we are of the considered view that both the District Forum and State Commission went wrong in dismissing the complaint/appeal. Reserve Bank of India has issued various guidelines from time to time to deal with such situations and listed the respective liabilities of the customers and Bank in case of internet/online frauds etc. As per these instructions, there will be zero liability of a customer, where the unauthorized transaction occurs in the events of Contributory fraud/ deficiency on the part of the bank. The instructions also take care of third party breach where the deficiency lies neither with the bank nor with the customer but lies elsewhere in the system. If customer notifies the Bank of such transaction within three working days, then zero liability lies with the customer. However, a customer shall be liable for the loss occurring due to unauthorized transactions in the cases where the loss is due to negligence of a customer, such as where he has shared the payment credentials. Further, as per circular dated Feb. 28, 2013, Reserved Bank of India has issued certain instructions with respect to Security and Risk Mitigation Measures for Electronic Payment Transactions, which also cover securing card payment transactions. In this case, the credit card of the complainant was fraudulently used by someone on 30.03.2014 between 12-42 A.M. to 12-56 AM for transactions worth Rs.24,000/-. The complainant got conformation call from HDFC Bank team regarding said transactions and he gave the answer in negative. He contacted the customer care next day to know the status of the disputed transactions. He also supplied all the documents to the Bank, including police complaint. Hence, in the instant case, the complainant took all reasonable measures as were expected from him and there was no contributory negligence on his part with respect to credit card used by someone else fraudulently and he reported such transactions immediately to the Bank. Notwithstanding that such fraudulent transactions committed by someone else constitute a criminal offence, which is an independent matter to be taken to the criminal courts, the complainant has his remedies open under the Consumer Protection Act with respect to deficiency in service/unfair trade practice against the Bank.

9. In view of the foregoing, we hereby set aside the order so the State Commission as well as the District Forum and allow the complaint with directions to the Respondent/HDFC Bank to reverse the transactions with respect to the fraudulent transactions, which took place on 30.03.2014 for a total amount of Rs.24,000/-. In case this amount has already been recovered from the complainant, the Bank is liable to refund the same along with interest/penalty charged on such amount. Such refund shall be payable to the Complainant along with interest @7% p.a. from the date it was received from the complainant till the date of refund by Respondent Bank. Respondent Bank shall also pay Rs.10,000/- towards litigation costs to the Petitioner herein.

10. The pending IAs in the case, if any, also stand disposed off.

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DR. INDER JIT SINGH
PRESIDING MEMBER