

Date of Filing : 18-09-2017
Date of Order : 26-09-2019

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM-III,
HYDERABAD**

Present

**SRI NIMMA NARAYANA, B.A., LL.B., PRESIDENT
SMT. MEENA RAMANATHAN, MEMBER**

Thursday, the 26th Day of September' 2019

CC.No. 409 of 2017

Between:

Udaru Sarvotama Reddy,
S/o. Late U. Rami Reddy,
Aged 48 years, Occupation: Cultivation,
H.No. 202, SVS Apartment, II Floor,
Reddy Colony, Champapet, Hyderabad.

....Complainant

AND

1. State Bank of India,
Rep. by its Chief/General Manager,
LHC/Regional Office, Bank Street, Hyderabad.
2. State Bank of India,
Rep. by its Branch Manager,
Gadivemula Mandal & Village, Kurnool District, A.P.
3. Reserve Bank of India,
Rep. by its Manager,
Secretariat Road, Saifabad, Hyderabad.

....Opposite Parties

Counsel for the Complainant : Sri K.C. Venkata Reddy, Advocate.

Counsel for the Opposite Parties No: 1 & 2 : M/s. Vamaraju Sri Krishnudu,
Advocates.

Counsel for the Opposite Part No: 3 : Party-in-Person.

ORDER

**(PER HON'BLE SRI NIMMA NARAYANA, B.A., LL.B., PRESIDENT,
ON BEHALF OF THE BENCH)**

1. The complainant filed this complaint Under Section 12 of Consumer Protection Act 1986, claiming compensation of Rs. 90,000/- (Rupees Ninety Thousand only) from opposite parties No.1 to 3 for mental agony suffered by him and also costs of Rs. 10,000/- (Rupees Ten Thousand only).

2. The averments of the Complainant in brief are as follows:-

The case of the complainant as set out in the complaint, in brief, is that he is a savings bank account holder bearing No. 31421971746 of opposite party No.2 Bank. On 26-01-2017 and 27-07-2017 he went to SBI ATM, Hyderabad, for withdrawal of an amount of Rs. 10,000/- (Rupees Ten Thousand only) by using his ATM card. The transaction was declined due to fault of ATM and no cash was disbursed but on 15-02-2017 an amount of Rs. 10,000/- (Rupees Ten Thousand only) was debited to his account. Therefore he approached opposite party No.1 for redressal of grievance. Opposite party No.1 advised him to approach opposite party No.2 instead. Accordingly he approached opposite party No.2 and after the verification of his account, gave a copy of statement of accounts pertaining to his pass book. They also informed him that an amount of Rs. 10,000/- (Rupees Ten Thousand only) was set hold on 26-01-2017 and 27-01-2017 and subsequently the endorsement was shown as delete and "ATM CASH DISBUR AMOUNT NOT DR REV". They also stated that the complainant withdrew Rs. 10,000/- (Rupees Ten Thousand only). Subsequently the complainant approached the Banking Ombudsman, Hyderabad for redressal of his grievance. On 07-06-2017 the Ombudsman closed the proceedings without enquiring the complainant on the grounds that Rs.10,000/- (Rupees Ten Thousand only) was withdrawn from ATM by the complainant.

The complainant has not received Rs. 10,000/- (Rupees Ten Thousand only) even though he processed the ATM card for withdrawing the amount on 26-01-2017 & 27-01-2017. There is therefore deficiency in service on part of the opposite parties. The complainant got issued legal notice dated 24-7-2017. The opposite parties No.1 & 2 did not respond to the said legal notice. The opposite party No.3 however gave a vague reply. The complainant not only suffered monetary loss but also valuable time an account of deficiency of service of the opposite parties.

Hence this complaint.

3. The Opposite Party No.1 & 2 filed their written version resisting the complaint filed by the complainant mainly contending that the transaction dated 26-01-2017 and 27-01-2017 done by the complainant for withdrawal of Rs. 10,000/- (Rupees Ten Thousand only) from SBI ATM, was successful. The complainant received the said amount and no deficiency in service on their part. The opposite parties No.1 & 2 admitted that the complainant made complaint to opposite party No.1 & 2 banks and also to ombudsman. However subsequently they stated that the complainant never approached them at any point of time. They further contended that the transaction having been successful the Ombudsman closed the proceedings. As regards the transaction dated 15-02-2107, it is stated that due to technical problem the amount of Rs. 10,000/- (Rupees Ten Thousand only) with drawn by the complainant could not be debited to the account of the complainant immediately. However it is debited on 15-02-2017. It is admitted that the complainant was present in the ATM at the time of transaction. It is also contended that there is no negligence on the part of opposite party No.1 & 2 and no excess amount was also found in the ATM after the transaction. It also contended that the complainant has not filed transaction slip dated 26-6-2017 to show the status of the transaction. It is also the case of the opposite party No.1 & 2 that the disputes cannot be adjudicated by this Forum as it involves complicated questions of facts and law which requires adjudication by a competent Civil Court. The dispute in question is also stated to be not a Consumer dispute.

Lastly it is stated that this complaint is frivolous, vexatious and therefore liable to be dismissed with exemplary costs.

The opposite party No.3 filed separate written version resisting the complaint filed by the complainant mainly contending that the opposite party No.3 is not necessary party to this complaint in as much as no service is provided by opposite party No.3 to the complainant and complainant is not a consumer at all. It is also contended that the opposite party No.3 is discharging its statutory functions and not a service provider and this complaint is therefore not maintainable.

It is further contended that the grievance of the complainant was adjudicated by opposite party No.3 by taking in to consideration the withdrawal of Rs. 10,000/- (Rupees Ten Thousand only) by the complainant from SBI ATM. Lastly it is urged to dismiss the complainant.

4. The points that arise for consideration are:

- (1) Whether there is deficiency of service on the part of opposite parties No.1 to 3?
- (2) Whether the complainant is entitled for compensation of Rs. 90,000/- (Rupees Ninety Thousand only) and costs of Rs, 10,000/- (Rupees Ten Thousand only)?
- 3) To what relief?

5. During the course of trial, the complainant got himself examined as PW1 and got marked Ex A1 to A8. The Branch Manager of opposite party No.2 is examined as DW2 on behalf of opposite parties No.1 & 2. The Assistant Manager of Banking Ombudsman is examined as DW2 on behalf of opposite party No.3. ExB1 to Ex.B9 are got marked on behalf of the opposite parties. Written Arguments filed by the complainant and opposite parties No.1 & 2 and opposite party No.3.
Heard both sides.

6. Point No.1:-

Admittedly the complainant is the customer of opposite party No.2 bank and his having a savings bank account bearing No. 314217946. The complainant admittedly went to SBI ATM for withdrawing Rs. 10,000/- (Rupees Ten Thousand only) on 26-01-2017 & 27-01-2017 by using his ATM card. Opposite Party No.1 & 2 are therefore service providers of the complainant.

It is the case of the complainant that the said transaction was declined due to fault of ATM and no cash was disbursed to him but on 15-02-2017 an amount of Rs. 10,000/- (Rupees Ten Thousand only) was debited to his account even though he did not receive the amount. The complainant as PW1 substantiated his case by deposing the above fact. He further deposed that

after verifying the balance in his account, he approached opposite parties No.1 & 2 and that statement of account of his pass book was furnished to him. DW1 categorically admitted in his evidence that the complainant made a complaint to opposite party Bank. DW1 in his evidence deposed that the amount of Rs. 10,000/- (Rupees Ten Thousand only) withdrawn by the complainant on 26-01-2017 from SBI ATM was not debited to the account of the complainant immediately due to technical problem. He also deposed that the switch centre kept an amount of Rs. 10,000/- (Rupees Ten Thousand only) as hold and similarly an amount of Rs. 10,000/- (Rupees Ten Thousand only) was kept on hold automatically in core banking system as the said amount was debited to the branch account. But subsequently the bank debited the said amount to the account of the complainant on 15-02-2017.

Though it is the contention of the opposite parties that an amount of Rs. 10,000/- (Rupees Ten Thousand only) was received by the complainant under the transaction dated 26-01-2017 which the complainant denied, the opposite parties 1 & 2 failed to file CC TV footage in support of their contention. DW2 in his evidence stated that since there was no proof of having made complaint with SBI after the incident, the obligation on part of SBI to produce CC TV footage was ruled out due to expiry of maximum preservation period of 90 days. As already pointed out opposite party No.1 & 2 in categorical terms admitted that the complainant made complaint to the opposite party No.2 bank and also filed complaint before Banking Ombudsman. PW1 in fact deposed in his evidence that after verification of balance amount in his account he approached op 1 & 2 for redressal of his grievance and a copy of the statement of his pass book covering the transaction dated 26-01-2017 and 27-01-2017 was given to him. The opposite parties in their written version have not denied the filing of complaint by the complainant. Perusal of Ex.B4 shows that the complainant made complaint to Bank Ombudsman on 18-04-2017. It therefore appears that the complainant also lodged complaint to opposite party No.2 at the same time. DW1 also in his evidence deposed that the complainant made the complaint to the Banking Ombudsman. The evidence of PW1 that after verification of the balance amount through ATM he

immediately approached the opposite parties No.1 & 2 and a copy of a statement account in respect of pass book was given to him remained rebutted. The complaint to the Banking Ombudsman having been made on 18-04-2017 it can be inferred that the complainant made complaint to opposite party No.2 either on 18-04-2017 or earlier thereto. It therefore follows that the complainant made complaint to opposite party No.2 and Banking Ombudsman within 90 days from the dates of the transactions i.e. 26-01-2017 & 27-01-2017.

The evidence of DW2 that since there is no proof of having made complaint with the SBI from the date of the incident the obligation on the part of SBI to produce CC TV footage was ruled out due to expiry of maximum preservation period of 90 days from the date of the incident, is nothing but false. In view of the aforesaid discussions. Non production of CC TV footage by the opposite party No.1 & 2 even though complainant made complaint to them within 90 days preservation period from 26-01-2017 leads to an adverse inference that the complainant did not receive Rs. 10,000/- (Rupees Ten Thousand only) from SBI ATM on 26-01-2017 at all. Admittedly there was technical problem on 26-01-2017. The evidence of PW1 that he has not received Rs. 10,000/- (Rupees Ten Thousand only) after he processed his ATM card for withdrawal of Rs. 10,000/- (Rupees Ten Thousand only) is credible. The very fact that Rs. 10,000/- (Rupees Ten Thousand only) was debited to the account of the complainant on 15-02-2017 shows that there was technical problems with the SBI ATM. The complainant not getting cash of Rs. 10,000/- (Rupees Ten Thousand only) from SBI ATM on 26-01-2017 is quite probable. There is therefore deficiency of service on part of opposite parties No.1 & 2 in providing service to the complainant.

Opposite Party No.3 is not a service provider to the complainant in view of evidence of DW2. It is the evidence of DW2 that there is no contract between the complainant and the opposite party No.3 and that it is only performing statutory functions. The National Commission in Virendra Prasad V/s. Reserve Bank of India, reported in 1 (1991) CPR 661 is relied upon by opposite party No.3.

The Hon'ble National Consumer Redressal Commission in aforesaid decision held as follows:-

“On the other hand the first Respondent – Reserve Bank of India was merely exercising its statutory function as the statutory authority charged with the task of enforcing the provisions relating to foreign exchange control contained in the Foreign Exchange Regulation Act. While acting in the said capacity, the Reserve Bank of India cannot be said to be rendering any banking service to the complainant nor was there any element of hiring of “service”, which is the sine qua non for attracting the definition of the expression “consumer” contained in section 2(i) (d) (1) of the Act”.

There is nothing in the evidence of DW1 and DW2 to show that opposite party No.3 is providing service to the complainant. In view of the decision of National Commission referred to above and the evidence of DW1 and DW2, the conclusion that follows is that opposite party No.3 is not service provider to the complainant and as such the question of deficiency of service on the part of opposite party No.3 does not arise. However it is reiterated that there is deficiency in service on the part of opposite parties No. 1 & 2 as already pointed out.

This point is accordingly decided in favour of complainant and against the opposite parties No.1 & 2.

7. Point No.2:-

In view of finding on point No.1 that there is deficiency of service on the part of opposite parties No. 1 & 2 and in view of the evidence of PW1 that the complainant suffered mental agony, waste of valuable time by travelling to Hyderabad many times and having been made to approach various police stations for lodging complainants, he is entitled for compensation. This Forum is of the considered view that ends of Justice would be met if compensation of Rs. 90,0000/- (Rupees Ninety Thousand only) is paid to the complainant apart from paying costs of Rs. 10,000/- (Rupees Ten Thousand only).

In view of the above the complainant is entitled for compensation of Rs. 90,000/- (Rupees Ninety Thousand only) and costs of Rs. 10,000/- (Ten Thousand only).

This point is accordingly decided in favour of the complainant and against the opposite parties No.1 & 2.

8. Point No.3:-

In view of the findings on points 1 & 2, the complaint is allowed against the opposite parties 1 & 2 on the following terms:-

- (1) The opposite party No.1 & 2 shall jointly and severally pay Rs. 90,000/- (Rupees Ninety Thousand only) to the complainant towards compensation.
- (2) The opposite party No.1 & 2 shall jointly and severally pay Rs. 10,000/- (Rupees Ten Thousand only) to the complainant towards costs.

Time for the compliance is thirty (30) days only, failing which the complainant is entitled for interest @ 8 % per annum on the above amount till realization.

Dictated to steno transcribed and typed by her pronounced by us on this the 26th Day of September' 2019.

PRESIDENT

MEMBER

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

For Complainant:

PW1: Sri Udaru Sarvotama Reddy

For Opposite Parties No.1 & 2:

DW1 & 2: Sri Mylavaram Shakti Swaroop Reddy

For Opposite Party No.3

DW3: Shri Madiki Vijayakumar

Documents Marked:-

For Complainant:

Ex.A1: is the Xerox copy of ATM receipt of SBI, dated: 03-04-2017.

Ex.A2: is the Xerox copy of ATM receipt of SBI, dated: 02-05-2017.

Ex.A3: is the Xerox copy of Bank Statement of SB Account No. 31421971746,
dated: 17-10-2015.

Ex.A4: is the Xerox copy of Acknowledgement of Office of the Banking
Ombudsman, dated: 18-04-2017.

Ex.A5: is the Xerox copy of Rejection order of Ombudsman, dated: 07-06-2017.

Ex.A6: is the Xerox copy of Legal Notice, dated: 24-07-2017.

Ex.A7: is the Xerox copy of Reserve Bank of India, dated: 31-07-2017.

Ex.A8: is the Xerox copy of two Acknowledgements cards of Legal Notice.

For Opposite Parties:

Ex.B1: is the Xerox copy of ATM Log Report.

Ex.B2: is the Xerox copy of ATM Statement, dated: 26-01-2017.

Ex.B3: is the Xerox copy of ATM Admin sheet.

Ex.B4: is the Xerox copy of Office of the Banking Ombudsman,
dated: 07-06-2017.

Ex.B5: is the Xerox copy of Statement of Account, dated: 21-04-2018.

Ex.B6: is the Xerox copy of EJ Log Report.

Ex.B7: is the Xerox copy of JP Log, dated: 26-01-2017.

Ex.B8: is the Xerox copy of ATM, dated: 26-01-2017.

PRESIDENT

MEMBER

