

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 3333 OF 2013

(Against the Order dated 09/04/2013 in Appeal No. 99/2011 of the State Commission
Maharashtra)

1. HDFC BANK LIMITED

HAVING ITS REGISTERED OFFICE AT HDFC BANK
HOUSE, SENAPATI BAPAT MARG, LOWER PAREL
(WEST)

MUMBAI - 400013

MAHARASTRA

2. THE MANAGER, HDFC BANK LTD.

VASANT VIHAR BRANCH , SHOP NO- 16/17,
GROUND FLOOR, SIDDHANCHAL PHASE-IV,
POKHRAN ROAD, NO-2,

THANE - 400601

MAHARASTRA

.....Petitioner(s)

Versus

1. JESNA JOSE

W/O MR.ASHOK ,D/O MR.P.M JOSE, R/AT FLAT
NO-6/101 SHUBHAM COOPERATIVE HOUSING
SOCIETY LTD. TIKUNJIWADI ROAD,
CHITSALSAR,MANPADA, THROUGH MR.P.M
JOISE , THE CONSTITUTED ATTORNEY,

THANE - 400610

MAHARASTRA

.....Respondent(s)

BEFORE:

HON'BLE MR. C. VISWANATH,PRESIDING MEMBER

For the Petitioner : Mr. Rishab Jain, Advocate

For the Respondent : Mr. Jose Parackal, A.R. of Respondent

Dated : 21 Dec 2020

ORDER

1. The present Revision Petition, under Section 21 (b) of the Consumer Protection Act, 1986 (for short "the Act") has been filed by the Petitioner against order dated 09.04.2013 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai (for short "State Commission") in First Appeal No. A/11/99 wherein the Appeal filed by the Petitioner was dismissed.

2. The case of the Complainant is that in the year 2007, Complainant purchased a Pre-paid Forex Plus Debit Card bearing no. 4123310000407245 having a limit of US\$ 10,000/-, from Opposite Party No. 2. The card account was opened on 11.08.2007. Sometime in the afternoon of 19.12.2008, Complainant's father received a call from one Mrs. K. Pradeepa claiming to be from the Credit Cards Division of the Opposite Party Bank at Chennai, seeking confirmation in respect of a US\$310 transaction attempted on the aforesaid Forex Card. The Complainant's father verified the same with the Complainant, who denied having transacted on the card at all. Thereafter, Complainant's father contacted the Opposite Party and requested for a statement. The Complainant stated that on 20.12.2008, the executives of the Opposite Party Bank informed her father via telephonic conversation that transactions to the tune of US\$ 6,000/- had taken place on the aforesaid Forex Card in the past few days. On 24.12.2008, the Complainant registered a Criminal Case on Burbank Police Station, Los Angeles. On 04.03.2009, the Complainant received charge slips for the disputed transactions, however, the said charge slips were in respect of 27 out of 29 transactions. The covering letter which was received along with the charge slips stated that "Transaction monitoring are done in batch mode, hence transactions was alerted only on day 1". As per the Complainant, the statement indicated that the Opposite Party was aware of the fraudulent transactions on 14.12.2008 itself, in spite of which no action was taken by the Opposite Party. Complainant further stated that the signatures on the charge slips and her signatures did not match. The Complainant, thereafter, made several representations to the Opposite Party requesting them to address her grievances and take appropriate action, The Opposite Party, however, did not heed to her requests. The Complainant, thereafter, filed a Complaint before the District Forum with the following prayer: -

"(a). "The Opposite Parties be jointly and severally directed to pay Rs. 4,18,000/- to Complainant with future interest at the rate of 12% per annum from the date of filing this complaint till realization.

(b). Cost of this complaint be awarded to the Complainant

(c). Any other relief as would deem just, fit and proper be awarded to the Complainant."

3. The case of the Complainant was contested by the Opposite Parties who stated that the Complainant had already filed a complaint before the Banking Ombudsman and the same being pending, Complaint before the District Forum was non maintainable. It was further stated that though the Opposite Party tried to contact her after a large volume of transactions had taken place on the Complainant's Forex Card. As they were unable to contact her, father of the Complainant was informed of the transactions and thereafter the Card was put on the "Hot List". They also stated that the Complainant had not opted for SMS alerts and therefore messages of her transactions could not be received by the Complainant. They further stated that it was the duty of the Complainant to keep the card safely and the Opposite Party from their end had taken all requisite steps. Opposite Parties thereby denied all allegations of deficiency in service.

4. The District Forum, after hearing the Counsel for both the Parties and perusing the record passed the following order: -

"01. Complaint number 457/2009 is allowed.

02. From the date of the Order within 45 days the Opposite Party Nos. 1 and 2 jointly and severally shall give the complainant amount as follows.

a) As per existing exchange rate on the date of Order the amount of \$6110 Six Thousand One Hundred American Dollar) in Indian Rupees shall be given from 16.12.2009 to date of Order along with 12% interest per annum.

b) For mental harassment compensation of Rs. 40,000/- (Rupees Forty Thousand Only) and litigation cost of Rs. 5,000/- (Rupees Five Thousand Only)

03. If the Opposite Parties do not comply order in prescribed period the complainant is entitled to recover aforesaid entire amount from the date of Order till the date of realization of entire amount from the Opposite Parties 1 and 2 with additional interest of 3% per annum.”

5. Aggrieved by the order of the District Forum, Appeal was filed by the Opposite Parties before the State Commission, which dismissed the Appeal as under: -

“(1) The appeal stands dismissed.

(2) The impugned order dated 25/11/2010 passed by the District Forum, Thane in Consumer Complaint No. 457/2009 is hereby confirmed.

(3) Under the circumstances, parties to bear their own costs.

(4) Inform the parties accordingly.”

6. Aggrieved by the order of the State Commission, the Opposite Parties preferred the present Revision Petition. Heard the Learned Counsels for all the Parties and carefully perused the record. The brief facts of the case are that in the year 2007, the Complainant purchased a Pre-paid Forex Plus Debit Card bearing no. 4123310000407245 having a limit of US\$ 10,000/-, from Opposite Party No. 2. The card account was opened on 11.08.2007. Soon thereafter it was observed that there were large volume of transactions on the Complainant's Forex Card. On failing to contact the Complainant, her father was informed of the same. The Complainant's father verified the same with the Complainant, who denied having transacted on the card at all. Thereafter, he contacted the Opposite Party and requested for a statement of the transactions. On 20.12.2008, the executives of Opposite Party informed the Complainant's father via telephonic conversation that transactions to the tune of US\$ 6,000/- had taken place on the aforesaid Forex Card in the past few days. On 24.12.2008, the Complainant registered a Criminal Case at Burbank Police Station, Los Angeles. On 04.03.2009, the Complainant received charge slips for the disputed transactions, however, the said charge slips were in respect of 27 out of 29 transactions. Complainant noticed that the signatures on the charge slips did not match with her signature. The Complainant, thereafter, made several representations to the Opposite Party requesting them to address her grievances and take appropriate action. The Opposite Party, however, did not heed to her requests, compelling the Complainant to file a Complaint before the District Forum.

7. The Counsel for the Petitioner stated that the Respondent had willfully not opted for SMS alert facility and in view of this the computer generated auto responses could not be sent to the Complainant. He stated that in case of suspicious or fraudulent activity, the Bank is not liable to intimate card-holders. It was further stated that the responsibility of tallying the signatures on the transaction slips with the specimen available with the Bank does not rest with the Bank since the chargeslips are not required to be furnished to the Bank as the entire process is automated without any human intervention. The Fora below erred in not considering the terms and conditions governing the issuance and use of the Forex card before arriving at their decisions. Condition 36 of the said terms and conditions stated that “transactions are deemed authorized and complete once EDC terminal generates a sales slip”. As per the Counsel for the Petitioner, the production of 27 chargeslips in itself is evidence that the transactions were authorized. He also relied on Condition 22 of the said terms and conditions which read as follows: “The cardholder shall at all time ensure that the card is kept at a safe place. The cardholder shall under no circumstances whatsoever allow the card to be used by the other individual”. In addition, the Counsel for the Petitioner also contended that the Complaint being filed by the Power of Attorney holder was not maintainable and that the Fora below have erred by not appreciating the same.

8. The Counsel for the Respondent, however, contended that as per the letter sent along with the charge slips, the Opposite Party was aware of the fraudulent transactions on 14.12.2008 itself, in spite of which no action was taken by the Opposite Party. Complainant further stated that the signatures on the charge slips and her signatures did not match. It was also contended that the card was in her possession at the time of the transactions and therefore, her card could have been hacked or forged by some third party for which the Bank is liable.

9. In **Consumer Education & Research Society and Anr v New India Assurance Co . Ltd. And Ors I (2008) CPJ 317 (NC)** , this Commission has held that under the Consumer Protection Act, 1986 technicalities are not encouraged and the only procedure is to follow the principles of natural justice. In **Shankar Finance and Investments vs. State of Andhra Pradesh and Ors. Criminal Appeal No. 1449 of 2003** the Hon’ble Supreme Court has held, in the context of the Negotiable Instruments Act, 1938, that a Complaint may be filed by the Power of Attorney Holder and in doing so the Power of Attorney Holder is acting not in a personal capacity but as an agent on whose behalf the Power of Attorney has been executed. I am, therefore, of the considered view that a Complaint filed by the power of attorney holder is maintainable.

10. In the present case, the Complainant stated that the credit card was in her possession when the disputed transactions had taken place. She has further stated that the transactions had taken place remotely, several miles away from her actual location and therefore, the reason for the fraudulent transactions must be forgery/hacking of the card or some other technical and/or security lapse in the electronic banking system through which the transactions had taken place. The Bank has merely stated that the Credit Card must have been stolen and that it is due to the Card Holder’s negligence that she lost safe custody of her card. The Petitioner, however, has produced no evidence to substantiate its averment that the credit card was stolen or that the Complainant has resorted to any fraud/forgery. In today’s digital age, the possibility that the credit card was hacked or forged cannot be ruled out. In the absence of any evidence that the credit card was stolen, I hold the Bank liable for the unauthorized transactions.

11. Furthermore, the Petitioner-Bank cannot rely on arbitrary terms and conditions to wriggle out of its liability towards customers and any such terms and conditions must be in conformity

with the directions issued by the RBI which is responsible for safekeeping of the Banking Systems and maintaining checks and balances in the same. As per the RBI circular, zero liability will rest with the customer, where the deficiency lies in the banking system. The first unauthorized transaction took place on the 15.12.2008. Admittedly, the said transactions were observed by the Bank on 15.12.2008 itself. The Complainant's father was contacted only on 18.12.2008. Thereafter, on 20.12.2008, within three days of receiving information from the Bank the Complainant's father notified the Bank that the transactions were unauthorized. In such circumstances, therefore, even if the deficiency was not with the Bank, but elsewhere in the system, the Bank will be held liable for all the 29 unauthorized transactions which were effected from 15.12.2008 till the card was hotlisted, i.e. till 20.12.2008. The aforesaid RBI circular as well decision of this Commission in **Punjab National Bank and Anr. V Leader Valves II (2020) CPJ 92 (NC)**, are both squarely applicable in the present matter. In **Punjab National Bank and Anr. V Leader Valves II (2020) CPJ 92 (NC)**, this Commission while addressing the question of liability of a Bank in case of unauthorized and fraudulent electronic banking transactions, has observed as under:

“11. The first fundamental question that arises is whether the Bank is responsible for an unauthorized transfer occasioned by an act of malfeasance on the part of functionaries of the Bank or by an act of malfeasance by any other person (except the Complainant/account-holder). The answer, straightaway, is in the affirmative. If an account is maintained by the Bank, the Bank itself is responsible for its safety and security. Any systemic failure, whether by malfeasance on the part of its functionaries or by any other person (except the consumer/account-holder), is its responsibility, and not of the consumer.”

1. Reference is also drawn to circular bearing No. DBR.No.Leg.BC.78/09.07.005/2017-18 dated 6th July 2017, issued by the Reserve Bank of India to all commercial banks, wherein it is stated as under: -

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

2. *Contributory fraud/ negligence/ deficiency on the part of the bank (irrespective of whether or not the transaction is reported by the customer).*
3. *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.”*

4. Both the Fora below have rightly held the Bank liable for the unauthorized transactions.

14. Jurisdiction of this Commission under Section 21 (b) is very limited. This Commission is not required to re-appreciate and reassess the evidences and reach to its own conclusion. The Court can intervene only when the petitioner succeeds in showing that the

Fora below has wrongly exercised its jurisdiction or there is a miscarriage of justice. It was so held by the Hon'ble Supreme Court in the case of **Mrs. Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd .** (2011) 11 SCC 269 has held as under: -

“13. Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora.”

15. Same principle has been reiterated by Hon'ble Supreme Court in the case of **Lourdes Society Snehanjali Girls Hostel and Ors. Vs. H & R Johnson (India) Ltd. and Ors.** (2016 8 SCC 286 wherein Hon'ble Supreme Court has held as under:-

“23. The National Commission has to exercise the jurisdiction vested in it only if the State Commission or the District Forum has failed to exercise their jurisdiction or exercised when the same was not vested in their or exceeded their jurisdiction by acting illegally or with material irregularity. In the instant case, the National Commission has certainly exceeded its jurisdiction by setting aside the concurrent finding of fact recorded in the order passed by the State Commission which is based upon valid and cogent reasons.”

16. I see no reason to disagree with the concurrent findings of both the Fora below. There is no infirmity or illegality in the impugned order, warranting interference under Section 21 (b) of the Consumer Protection Act, 1986. Revision Petition is dismissed with no order as to costs

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C. VISWANATH
PRESIDING MEMBER