

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP 6582 of 2017

Date of Decision: March 30, 2017

HDFC Bank

.....Petitioner

Vs.

Permanent Lok Adalat and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Sunil Narang, Advocate
for the petitioner.

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M.M.S. BEDI, J. (ORAL)

The petitioner is HDFC Bank who is aggrieved by order annexure P-3 dated December 16, 2016 passed by Permanent Lok Adalat for Public Utility Services, Rupnagar, requiring the petitioner to pay a sum of Rs.20000/- to respondent No.2 as compensation and Rs.5000/- as litigation expenses.

Respondent No.2 had sought compensation for the unnecessary harassment caused to him on February 29, 2016. He along with his son Mukesh Kumar had gone to ATM of petitioner Bank as he was in urgent need of money on account of marriage of his sister's daughter regarding which an invitation card, annexure A-3, was proved before the Permanent

Lok Adalat. Grievance of respondent No.2 was that ATM machine being defective, his card got struck and he was required to get it released by establishing his identity by voters card, ration card and two passport size photographs alongwith an application for release of the ATM Card. The said documents were produced. Respondent No.2 claimed that he himself had gone to the Bank for the release of ATM card which was handed over to him.

The stand of the petitioner Bank is that respondent No.2 having not personally visited the bank, the card was not handed over to his son.

The Permanent Lok Adalat has objectively taken into consideration the material before it including photographs Ex.A5 and A-6 wherein it is indicated that respondent No.2 had himself on March 3, 2016 at 10.07 a.m. approached the Bank and disbelieved the claim of the petitioner that respondent No.1 did not himself come for collecting the card as the petitioner Bank did not produce any CCTV recording of March 3, 2016 on which date respondent No.2 as shown in photographs Ex.A-5 and A-6 is shown to have visited the bank and requested for the return of his ATM Card. An adverse inference has been drawn from the factum of non-production of CCTV recording by the petitioner Bank.

The main contention of learned counsel for the petitioner Bank is that CCTV recording of February 29, 2016 has been produced on the record that son of respondent No.2 had come on February 29, 2016 at around 5.00 p.m. to withdraw the amount.

A perusal of the award indicates that the recording of CCTV footage could not be played. Even if it is presumed that Mukesh Kumar, son of respondent No.2 had not accompanied respondent No.2 but had gone alone at ATM, this cannot be the reason for card being stuck in the machine.

After going through the award passed by the Permanent Lok Adalat it is established that the factum of card of respondent No.2 having got stuck up in the ATM machine is not disputed.

Counsel for the petitioner has tried to explain the reason stating that on account of repeated wrong password having been entered, in the interest of security, the card can automatically get stuck up in the machine. He has submitted that there are many other reasons in the interest of security for withholding the card in the machine.

I have heard counsel for the petitioner and considered all the contentions of the petitioner. It is not the case of the petitioner before the Permanent Lok Adalat as to for what particular reason the card of the petitioner got stuck up in the machine and he was not able to withdraw the amount despite the fact that there are instructions of the Head Office to the effect that HDFC Bank Credit Card holders and other Credit Card holders and Debit Card holders of the other banks are entitled to withdraw the amount from the ATM. No doubt, there are instructions that the cards can be returned on proper verification of the card holder on confirming the documents pertaining to identity. The petitioner Bank has not been able to

establish before the Permanent Lok Adalat that it was the son of respondent No.2 and not respondent No.2 who had approached the Bank authorities on March 3, 2016 for seeking the return of the card. The scope of interference and re-appreciation of the evidence being meager, I do not find any ground to interfere in the order by virtue of which only a meager compensation of Rs.20000/- with Rs.5000/- as litigation expenses has been awarded to respondent No.2.

Counsel for the petitioner has argued that the order passed by the Permanent Lok Adalat may not be treated as a precedent to enable the anti-social elements to misuse the judgment and lay false claims of damages.

I have considered the said contention and I am of the opinion that no straight jacket formula can be laid down as to under what circumstances compensation is to be awarded on account of card having been struck in the machine. The mere factum of an ATM card having been struck in the machine ipso facto will not confer any right on the card holder to claim compensation in all cases. The circumstances of each case are to be considered to see various factors relevant for the adjudication of the claim.

Counsel for the petitioner has submitted that the Permanent Lok Adalat in the present case is taking steps to execute the award by attaching the property of the petitioner Bank. In this context he has placed reliance on Section 22 (E) of the Legal Services Authority Act laying down that the award made by the Permanent Lok Adalat may be transmitted to the civil Court having local jurisdiction and said civil Court shall execute the orders

as if it were passed by the Court. He has submitted that in case any application is filed for implementation before the Permanent Lok Adalat it should be sent to the civil Court for execution as per the procedure prescribed in CPC.

I have considered the said contention but the mode of execution has not been challenged in the writ petition. It will be open to the petitioner to raise objections regarding the jurisdiction of the Permanent Lok Adalat to execute the decree. In case any such application is filed, the Permanent Lok Adalat shall consider the plea of jurisdiction and take necessary action for transmitting the execution application or the award to the civil Court for execution in accordance with law taking into consideration the provisions of Legal Services Authority Act. Even otherwise, it will be open to the petitioner to adopt the procedure provided under Order 21 Rule 1 (1) (a) of the CPC.

Dismissed with the above said observations.

March 30, 2017
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.