IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.28273 of 2016
and
W.M.P.No.24396 of 2016

Bhushan Goyal ... Petitioner

Vs

1. Indian Bank,
Rep. by its Branch Manager,
Ethiraj Salai Branch,
Ethiraj Salai,
Egmore,
Chennai - 600 008.

2. The Governor,
Reserve Bank of India,
New Delhi.

3. Secretary to Government,
Department of Finance,
Government of India,
New Delhi. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to consider the petitioner's representation dated 24.02.2016 strictly in accordance with the Code of Banker's Commitment to Customers notified by the Banking Codes and Standards Board of India (BCSBI) and refund an amount of Rs.7,40,085/-.

For Petitioner : Mr.R.Parthasarathy

For Respondents : Mr.V.Kalyana Raman
for M/s.Aiyar & Dolia for R1
Mr.T.Poornam for R2- No appearance
R3 - No appearance

ORDER

This writ petition has been filed for a Mandamus to direct the first respondent to consider the petitioner's representation dated 24.02.2016 strictly in accordance with the Code of Banker's Commitment to Customers notified by the Banking Codes and Standards Board of India (BCSBI) and refund an amount of Rs.7,40,085/- to the petitioner, which was wrongly debited from his Current A/c. No.859708801 standing in the name of "M/s.Chanda Softy Ice creams", in which the petitioner is the Proprietor.

2. It is the case of the petitioner that he is the Customer of the first respondent bank holding a Current A/c. in the name of "M/s.Chanda Softy Ice creams" bearing A/c. No.859708801 and is being maintained for his business purposes. According to him, he is holding a mobile No.9841069000 with the Mobile network viz., M/s.Aircel Limited. According to him, the said number is also registered with the first respondent bank for the purpose of communication. It is the case of the petitioner that on 23.02.2016 at around 4.00 p.m., his mobile phone lost connectivity abruptly and he was unable to send or receive any message or make or receive any phone calls from the said mobile number. It is his case that he did not suspect anything untoward and hoped that the issue would be rectified during the course of the day. Since it was not rectified immediately, he called his network provider viz., M/s.Aircel Limited to register a complaint. In response to which, he was issued a new SIM card at around 2.00p.m. and the mobile connectivity was restored. According to the petitioner after the restoration of his mobile connectivity, he was shocked to know that the following amounts have been fraudulently transferred from the petitioner's bank account No.859708801 maintained with the first respondent bank to some unknown persons bank accounts. The details of the amounts transferred are as follows :

SNo.	Date	Beneficiary Name	Beneficiary A/c. No.	Amount	UTR No.
A	23.02.2016	Abdul Sardar	SBI Baruipur 10400323579	1,25,000/-	IDIBH16054139266
B.	23.02.2016	Laltu singh	Union Bank of India Lake Town 390702010102689	1,25,000/-	IDIBH16054139065

SNo.	Date	Beneficiary Name	Beneficiary A/c. No.	Amount	UTR No.
C.	23.02.2016	Chandra Halder	Canara Bank Barasat 2689108007482	1,25,000/-	IDIBH16054139158
D.	23.02.2016	Amit singh	Karur Vysya Bank Garia	1,25,000/-	IDIBH16054139206
E.	24.02.2016	Laitu Bhar	ICICI Bank Madhyagram West Benga 161401503389	2,50,000/-	IDBIR52016022412381036

3. Immediately, the petitioner approached the first respondent bank and gave a complaint with regard to the wrongful debits. According to the petitioner, till date, no action has been taken by the first respondent bank with regard to the representation given by the petitioner on 24.02.2016.

4. It is the case of the petitioner that for no fault of his, the amount has been wrongly debited from his account and therefore, as per the Code of Banker's Commitment to Customers notified by the Banking Codes and Standards Board of India (BCSBI) and as per the Reserve Bank of India (RBI) circulars, he is entitled for refund of the amount of Rs.7,40,085/- which was wrongly debited from his account number on 23.02.2016 as well on 24.02.2016. In such circumstances, this writ petition has been filed for a Mandamus.

5. A counter affidavit has been filed by the first respondent bank stating that for the negligence of the petitioner, the first respondent bank cannot be found fault with and they are not liable to refund the amount to the petitioner. It is the contention of the first respondent, as seen from the counter affidavit that the petitioner has shared his one time password details with beneficiaries / third parties and hence, for the negligence of the petitioner, the first respondent bank cannot be found fault with.

6. Heard Mr.R.Parthasarathy, learned counsel for the petitioner and Mr.V.Kalyana Raman, learned counsel for the first respondent. Despite service of notice on second and third respondents and their names having been printed in the cause list today, none appears on their side.

Submissions of the learned counsels :

7. The learned counsel for the petitioner drew the attention of this Court to the latest RBI Circular in DBR No.Leg.BC.78/09.07.005/2017-18, dated 06.07.2017 and in particular, he referred to Clause 6(ii) and submitted that the bank is liable when the customer is notified with the bank about the fraudulent debit in his account within three working days of receiving the communication from the bank regarding theunauthorised transactions. According to him, in the instant case immediately, on the same day i.e. on 24.02.2016 when the unauthorised debits was noticed, the petitioner had intimated the first respondent bank and hence, as per Clause 6(ii) read with Clause 8 of the Circular dated 06.07.2017 of the Reserve Bank of India, the first respondent bank is liable to refund the unauthorised debits in the petitioner's bank account.

8. The learned counsel for the petitioner also drew the attention of this Court to Clause 12 of the same circular and pointed out that the burden of proving customer liability in case of unauthorised electronic banking transactions shall lie on the bank.

9. The learned counsel for the petitioner also drew the attention of this Court to a single Bench judgment of the Kerala High Court in the case of Tony Enterprises vs. Reserve Bank of India, reported in 2019 SCC Online Ker 5366 and submitted that in an identical matter, Kerala High Court had directed the bank to refund the amount to the customer for unauthorised transactions.

10. Per contra, the learned counsel for the first respondent would submit that the petitioner would have shared the One time Password details with third parties and for the negligence of the petitioner, the first respondent bank cannot be found fault with.

11. The learned counsel for the respondent also drew the attention of this Court to an RBI Circular in DPSS.Co.PD No.1417/02.14.006/2018-19, dated 04.01.2019 and in particular, referred to Clause 6(c) found therein and submitted that the bank is not liable to compensate the petitioner for the negligence committed by him in the maintenance of his bank account.

Discussion :

12. Admittedly, the representation has been given by the petitioner as early as on 24.02.2016 with regard to the wrongful debits totally amounting to Rs.7,40,085/- from his bank account No.859708801 on 23.02.2016 as well as on 24.02.2016.

13. It is also an admitted fact that the aforesaid complaint dated 24.02.2016 given by the petitioner has not been considered by the first respondent bank. It is also not in dispute that the beneficiaries / third parties mentioned in paragraph No.8 of the affidavit filed in support of this writ petition are the beneficiaries of the wrongful debits found in the petitioner's bank account. The wrongful debits are dated 23.02.2016 and 24.02.2016 The complaint has been given by the petitioner on 24.02.2016, i.e. within three days from the date of knowledge of the wrongful debits. A complaint has also been lodged by the petitioner with the police and pursuant to directions given by this Court in Crl. OP. No.7116 of 2006 on 04.04.2016, FIR has also been registered. In both the Circulars referred by the respective learned counsels i.e. 06.07.2017 on petitioner's side and 04.01.2019 on first respondent's side, the burden of proving the customer liability in case of unauthorised electronic payment transactions shall lie on the bank.

14. It is the case of the petitioner that if the complaint has been given within three days from the date of wrongful debit, there is zero liability on the part of the customer, which is disputed by the first respondent. It is the case of the first respondent bank that for the negligence of the customer, who had shared the details of his One Time Password with third parties, the bank cannot be held responsible. All these factors will have to be considered by the first respondent bank after holding an enquiry and after considering the relevant materials, which are necessary for coming to a conclusion as to who is at fault.

15. For the foregoing reasons, this Court directs the first respondent bank to consider the complaint dated 24.02.2016 given by the petitioner with regard to the wrongful debits in his bank account bearing A/c. No.859708801, on 23.02.2016 and 24.02.2016 totally amounting to Rs.7,40,085/- and pass final orders on merits and in accordance with law, in the light of the RBI circulars issued on 06.07.2017 as well as on 04.01.2019 as well as in the light of the Single Bench judgment of the Kerala High Court relied upon by the learned counsel for the petitioner reported in 2019 SCC Online Ker 5366, within a period of eight weeks from the date of receipt of a copy of this order, after affording personal hearing to the petitioner.

16. With the aforesaid directions, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To
1.
The Branch Manager,
Indian Bank,
Ethiraj Salai Branch,
Ethiraj Salai,
Egmore, Chennai - 600 008.

2. The Governor,
Reserve Bank of India,
New Delhi.

3. Secretary to Government,
Department of Finance,
Government of India,
New Delhi.

+1 CC to M/s.Aiyar & Dolia, Advocate sr 13131
+1 CC to Mr.R.Parthasarathy, Advocate sr 13019

SSD(CO)
AT (20/05/2020)