IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No. 198/2021

Sunder Namkeen
..VS..
Reserve Bank of India and ors.

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Shri M.B. Limaye, Advocate for the petitioner
Shri S.A. Dutonde, Advocate for respondent no. 2
None for respondent nos. 1 and 3.

CORAM : SUNIL B. SHUKRE AND AVINASH G. GHAROTE, JJ.

DATED : 15/03/2021

Hearing was conducted through Video Conferencing and all the learned Advocates agreed that the audio and visual quality was proper.

2. Heard learned Counsel for the petitioner and learned Counsel for respondent no. 2. None present for respondent nos. 1 and 3.

3. We have gone through reply filed on behalf of respondent no. 2. In this case, grievance is of unauthorized transaction in the account of the petitioner under which, according to the petitioner an amount of Rs.12,75,000/- came to be withdrawn illegally and unauthorizedly by some unknown person. The petitioner, therefore, relying upon the Circular of the Reserve Bank of India dated 06.07.2017 (Page No. 35), claims that this

amount be permitted to be refunded to the petitioner by respondent no. 2-Bank.

4. The petition is opposed by respondent no. 2. Respondent no. 2 also relies upon the Circular of the Reserve Bank of India dated 06.07.2017 in particular upon Clause 7 thereof. He submits that the petitioner admitted during the course of internal inquiry that he has shared Login credentials of the account in question with his brother and Accountant, which being the breach of terms and conditions subject to which the Net Banking facility is granted, the petitioner is not entitled to recovery of alleged loss.

5. Clause 7 of the Circular of the Reserve Bank of India dated 06.07.2017 (Page no. 35) reads thus;

> *"7. A customer shall be liable for the loss occurring due to unauthorised transactions in the following cases:*
>
> *(i) In cases where the loss is due to negligence by a customer, such as where he has shared the payment credentials, the customer will bear the entire loss until he reports the unauthorised transaction to the bank. Any loss occurring after the reporting of the unauthorised transaction shall be borne by the Bank.*
>
> *(ii) In case where the responsibility for the unauthorised electronic banking transaction lies neither with the bank nor with the customer, but lies elsewhere in the system and when there is a delay (of* ***four to seven***

***working days** after receiving the communication from the bank) on the part of the customer in notifying the bank of such a transaction, the per transaction liability of the customer shall be limited to the transaction value or the amount mentioned in Table 1, whichever is lower.*

Table 1

Maximum Liability of a customer under paragraph 7 (ii)

Types of Account	***Maximum liability (₹)***
• *BSBD Accounts*	*5,000*
• *All other SB accounts* • *Pre-paid payment Instruments and Gift Cards* • *Current/ Cash Credit/ Overdraft Accounts of MSMEs* • *Current Accounts/ Cash Credit/ Overdraft Accounts of Individuals with annual average balance (during 365 days preceding the incidence of fraud)/ limit up to Rs.25 lakh* • *Credit cards with limit up to Rs.5 lakh*	*10,000*
• *All other Current/ Cash Credit/ Overdraft Accounts* • *Credit cards with limit above Rs.5 lakh*	*25,000*

> *Further, if the delay in reporting is beyond seven* ***working days,*** *the customer liability shall be determined as per the bank's Board approved policy. Banks shall provide the details of their policy in regard to customers' liability formulated in pursuance of these directions at the time of opening the accounts. Banks shall also display their approved policy in public domain for wider dissemination. The existing customers must also be individually informed about the bank's policy."*

It would be clear that under sub-clauses (i) and (ii) of Clause 7 of the Circular, whenever there is a loss, as a result of the negligence on the part of customer, as for example, customer sharing payment credentials, the customer has to bear the entire loss until he reports unauthorized transaction to the Bank. It also clarifies that any loss occurring after reporting of the unauthorized transaction shall be borne by the Bank. In the present case, as seen from the communication dated 30.10.2020, alleged loss of the amount of Rs.12,75,000/- was before the reporting of the unauthorized transaction was made by the petitioner to the Bank. Then, this communication also shows that there was an admission given by the petitioner regarding his sharing of the Login credential with his brother and the Accountant.

6. In these circumstances, we are of the view that Clause 7 (i) of the Circular of the Reserve Bank of India dated 06.07.2017 would be applicable to the present

case and, therefore, at this stage, we do not think that the petitioner could agitate this issue by invoking extra-ordinary writ jurisdiction under Article 226 of the Constitution of India, 1950.

7. If, it is the contention of the petitioner that he had not shared any Login credentials with his brother and Accountant and that he has also reported loss well in time, same would have to be proved by the petitioner by resorting to appropriate civil law remedy, where such issues could be adjudicated on appreciation of evidence.

8. Then, it is also the contention of the petitioner that this case is covered by Clause 6 of the aforesaid Circular whereby the customer is declared to be entitled to zero liability. In that case also civil law remedy would be an appropriate remedy for the petitioner.

9. Accordingly, the writ petition stands dismissed with liberty to approach the Civil Court to take recourse to civil law remedy, if he so desires, keeping all questions open. No costs.

JUDGE **JUDGE**

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