IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5151 of 2023

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Akanksha Rai Wife of Shri Himanshu Kumar Akela, Advocate, Road No. 6A, S.K. Vihar Colony, Beur, Anishabad, P.S. - Beur, District- Patna ... Petitioner

Versus

1. The Reserve Bank of India through its Regional Director, South Gandhi Maidan, Patna, Bihar.
2. The Regional Director, Reserve Bank of India, South Gandhi Maidan, Patna, Bihar.
3. The Punjab National Bank through its Managing Director, Plot No 4, Sector - 10, Dwarka New Delhi - 110075.
4. The Zonal Manager, Punjab National Bank 2nd Floor, Chanakya Towers, R Block, Patna.
5. The Branch Manager, Punjab National Bank, Patna Anisabad Branch, By-Pass Road, Anishabad, Patna. ... Respondents

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Appearance :

For the Petitioner	:	Mr.Mayank Rukhaiyar, Adv.
For the PNB	:	M/sMritunjay Kumar & Vibhuti Kumar, Advs.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

CAV JUDGMENT

Date : 17-10-2023

Heard the learned counsel for the parties.

2. The present writ petition has been filed for the following relief(s) :

> *“……..for issuance of an appropriate Writ, preferably a Writ in the nature of Writ of Mandamus, commanding the respondents to forthwith credit the amount of Rs.46241.00p which had been fraudulently debited from the savings bank account by different authorised transactions carried out without the consent of the petitioner.*

3. Learned counsel for the petitioner has stated that an amount of Rs.46,241/- has been fraudulently withdrawn from the

Saving Bank accounts of the petitioner under different transactions which were not done by the petitioner. Learned counsel has stated that on 24.08.2021 the petitioner received a message on a registered mobile number about the ATM withdrawal of Rs.3,000/- has been carried out and immediately thereafter the petitioner approached the Home Branch, i.e., the Punjab National Bank, Anisabad Branch, Patna, on 25.08.2021 and informed about the fraudulent withdrawal of money from her account. Thereafter her account was blocked. The petitioner has later found out that during the period 23.07.2021 to 24.08.2021 nearly 12 transactions have taken place in which a total amount of Rs.46,241.10 has been withdrawn from her account unauthorisedly. Further, it is stated that the petitioner did not receive any communication or alert from the Bank by way of SMS on her registered mobile or on her registered e-mail. Therefore, the petitioner seeks the indulgence of this Court to direct the authorities to reimburse the amount of Rs.46,241.10 which has admittedly being withdrawn from her account either through ATM or through online transactions. That though the petitioner has filed a First Information Report (FIR), the same did not fructify. Learned counsel has stated that after the complaint made by the petitioner, an amount of Rs.36,600/- was credited to the account of the petitioner on 03.09.2021 but the said amount was again debited from her account on 02.11.2021. Learned counsel has stated that the Circular issued by the Reserve Bank of India vide letter no. DBR No. Leg.BC.78/09.07.005/2017-18, dated 06.07.2017, the Banks are obligated to reimburse the amount which has being fraudulently withdrawn from the customer account.

4. Per contra the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that the remedy available to the petitioner is either to approach the Civil Court or before the Consumer Forum for redressal of her grievance and not by way of Writ Petition. That the present Writ Petition is not maintainable as there are disputed questions of fact which cannot be gone into by this Hon'ble Court under Article 226 of the Constitution of India. Learned counsel has further stated that during the period 23.07.2021 to 24.08.2021 about twenty-one transactions have taken place and on all occasions the petitioner was given SMS alert on her registered mobile no. 9430600694. That the petitioner till 24.08.2023 never objected to or reported to toll free number about the illegal transactions being made. Learned counsel has stated that in so far

as the transactions which have taken place through e-commerce sites are concerned, the said transactions cannot be completed unless and until One Time Password (OTP) number sent to the registered mobile number of the petitioner has been entered. That in so far as the amounts which are withdrawn from the ATM are concerned the customers are given a "M Pin" which is confidential and known only to the customer unless and until the "M Pin" is entered, the amounts from the ATM cannot be withdrawn. Further it is stated that this particular case is not a case of cloning or that of a duplicate card being used but clearly a case of negligence of the petitioner. That as per the Bank's Customer Compensation Policy, dated 28.07.2021, the Bank will not pay for the loss, if any, due to the negligence of the customer for when he has shared the Pin himself and the customer will have to bear the entire loss till he reports the unauthorised transaction and any loss after the reporting of the customer will be borne by the Bank. Learned counsel has therefore prayed this Hon'ble Court to dismiss the present Writ Petition.

5. Along with the counter affidavit filed by the respondents, the respondents have included the copy of the SMS alerts sent to the petitioner on her registered mobile number.

6. A perusal of the SMS shows that the petitioner was informed on her registered mobile number, i.e., 9430600694 on different dates on which the transactions have taken place. It is specifically mentioned that the alerts on the registered mobile has been delivered successfully and as rightly pointed out by the Respondent-Bank unless and until the details of the card are shared by the customer herself, no person can withdraw the amounts from ATM or purchase merchandise from an on-line site. The transaction cannot be completed unless and until the OTP sent to the registered mobile of the customer is entered or "M Pin" known only to the petitioner is entered. More over, as rightly pointed out by the counsel for the Respondent-Bank these are all disputed questions of fact which cannot be gone into by this Court adjudicating under Article 226 of the Constitution of India. When there are serious disputed questions of fact with regard to the transactions being made, where the petitioner is claiming that the same were done fraudulently and strongly denied by the Bank and stating that the transactions were done with the knowledge of the petitioner, this Court cannot adjudicate these disputed questions of facts.

7. This Court does not find any merit in the present Writ Petition which warrants any interference or for granting the relief

sought by the petitioner. The Writ Petition is **dismissed** accordingly. However, this order does not preclude the petitioner from approaching either the Civil Court or the Consumer Forum, if she is so advised. Any observation made by this Court are only for the purpose of disposing this case and should not be construed as deciding the issue involved.

(A. Abhishek Reddy , J)

Shamshad/-

AFR/NAFR	NAFR
CAV DATE	10.10.2023
Uploading Date	18.10.2023
Transmission Date	NA