2024:PHHC:067333

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH.

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CWP-21201-2016 (O&M).
Date of Decision: 14.05.2024.

MANAGER, HDFC BANK

... Petitioner

Versus

THE PERMANENT LOK ADALAT (PUBLIC UTILITY SERVICES), KARNAL AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

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

Mr. Manoj Kumar Taya, Advocate, for respondent No.2.

Mr. H.S. Gharoo, Advocate, for
Mr. Amit Kumar Goyal, Advocate, for respondent No.3.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present writ petition is to the award dated 18.04.2016 passed by the Permanent Lok Adalat (Public Utility Services), Karnal, whereby the application filed by the respondent No.2-applicant under Section 22-C of the Legal Services Authorities Act, 1987 had been allowed.

2 Briefly summarised, the facts of the present case are that the respondent No.2-applicant filed an application in the Permanent Lok Adalat

(Public Utility Services), Karnal, under Section 22-C of the Legal Services Authorities Act, 1987, wherein it was averred that he is having Saving Bank Account No.50100007653451 and the same is being used regularly. An ATM Card No.4854460222105087D5025900 in his name by the petitioner-Bank. He used his ATM card on 04.08.2013 from the ATM of respondent No.3-Punjab National Bank for a withdrawal of Rs.10,000/-. A receipt of Rs.10,000/- was released, however, the cash was not released to him. A complaint was immediately sent by the respondent No.2-applicant to the petitioner-Bank, however, no fruitful result came out as a result whereof, the application was preferred before the Permanent Lok Adalat (Public Utility Services), Karnal. The petitioner-HDFC bank appeared before the Permanent Lok Adalat (Public Utility Services), Karnal and filed its reply alleging that the application was not maintainable and that there was suppression of material facts. The letter dated 19.08.2013 issued by the respondent No.3-Punjab National Bank was also placed on record as per which the transaction was successful and no excess cash was found in the ATM on that date.

3 Similar stand was also taken by respondent No.3-Punjab National Bank. It was submitted that the withdrawal was successful and that information of the said fact can be verified from the Journal Printer Log (JP Log).

4 Efforts for an amicable resolution of the dispute as mandated under Section 22-C (4) to (7) of the Legal Services Authorities Act, 1987 were undertaken by the Permanent Lok Adalat (Public Utility Services),

Karnal, however, on failure of the reconciliation, adjudication under Section 22 C (8) of the Legal Services Authorities Act, 1987 was initiated by the Permanent Lok Adalat (Public Utility Services), Karnal.

5 Parties led their respective evidence and upon consideration of the said evidence, the Permanent Lok Adalat (Public Utility Services), Karnal, held as under:-

> *"9. The moment the petitioner found that the amount of Rs. 10,000/- was not disbursed by the ATM machine though a receipt of that amount was issued by it, he immediately filed a complaint with respondent no.1 and subsequently after 10 days, he again sent a complaint to respondent no.1 as well as to the Reserve Bank of India. Ex.P2 is another application moved by the petitioner before the police disclosing all the facts and requesting that the CCTV footage of the relevant date be obtained to arrive at a correct conclusion. As a result, police wrote letter Ex.P1 on 10.10.2013 to respondent no.1 for providing the copy of CCTV footage. There are different reports on the record to show that the transaction was successful as per record but strangely, respondent no.1 did not take any step to obtain CCTV footage of the transaction thought it had received the request in this respect from the petitioner as well as from the police. One fails to understand the apathy on the part of respondent no.1 in the matter. It was a valuable piece of evidence and could bring the actual facts on record. It could easily be ascertained from viewing the CCTV footage whether the transaction was successful or not. Failure of respondent no.1 to obtain the CCTV footage of the incident speaks volumes about its conduct and in such circumstance, we are of the considered view that respondent*

no. 1 has failed to collect material piece of evidence and hence, finding merit in the claim of the petitioner we allow the application moved by him under Section 22 C of the Act and pass an award directing respondent No.1 to deposit the amount of Rs.10,000/- in his account. It would carry interest as if this amount was never withdrawn from the account and hence would carry interest which was admissible in the account. The petitioner is also entitled to a sum of Rs. 5500/- as litigation expenses to be paid by respondent no.1 within a period of one month from the date of award, failing which it would carry interest @ 9% per annum from the date of award till payment.

10. Under the provisions of the Act contained in Section 22 E (1) and (4), the award made by this court is final and shall not be called in question in any original suit, application or execution proceedings. Further, as per clauses (2) and (5) of that provision, this award shall be deemed to be a decree of a civil court and thus shall be executable as if it were a decree made by that Court."

6 Aggrieved thereof, the present writ petition has been filed.

7 Respondent No.2-applicant as well as respondent No.3-Punjab National Bank filed their respective replies. The stand adopted by the respondent No.3-Punjab National Bank is the same and it has been averred that as per the record of the respondent No.3-Bank, a withdrawal of Rs.10,000/- had successfully taken place on 04.08.2013. It is further submitted that the CCTV footage could be saved only for three months and

that in the absence of any application within three months of the transaction, the CCTV record was not preserved.

8 In the reply filed by the respondent No.2-applicant, he has reiterated his grievance as averred in the application filed before the Permanent Lok Adalat (Public Utility Services), Karnal and relied upon the judgment passed by the Permanent Lok Adalat (Public Utility Services), Karnal, to contend that the complaint was submitted by the respondent-applicant to the HDFC bank on the same day and that no effective steps were taken by the petitioner –HDFC Bank to verify the said claim or to resolve the said issue. The primary evidence had not been produced by the petitioner-HDFC Bank and as such, an adverse inference is required to be drawn against it and liability has been rightly fastened by the Permanent Lok Adalat (Public Utility Services), Karnal.

9 No other argument has been raised.

10 I have heard learned counsel appearing for the respective parties and have also gone through the documents available on record with their able assistance.

11 The primary reliance of the petitioner-HDFC Bank is on the certificate dated 19.08.2013 issued by the respondent No.3-Punjab National Bank as per which the impugned transaction dated 04.08.2013 was successful. It is thus evident that petitioner-HDFC Bank as well as respondent No.3-Punjab National Bank were aware of the complaint submitted by the respondent No.2-applicant even though a period of only two weeks had elapsed. Any prudent bank would have taken appropriate

steps to secure the CCTV footage once the said complaint had come to their notice. Further, as per the mandate of Reserve Bank of India circulated vide RBI/2008-2009/380, DPSS No.1424/02.10.02/2008-2009 dated 11.02.2009, a decision on any complaint submitted by a complainant/account holder in relation to ATMs is required to be decided within a period of 12 days, however, notwithstanding such a mandate having been issued by the Reserve Bank of India, the Banks chose to maintain their own respective stand and did not take appropriate steps to redress the grievance that had been espoused and to look into the allegations leveled in the complaint submitted by the respondent No.2-applicant. Any prudent Bank would have immediately looked into the CCTV footage and would have relied upon the same or preserved the same and/or showed it to the consumer so as to confront him with the claim so raised, however, the procedure of ordinary prudence has not been followed. No satisfactory explanation has been given as to why the necessary exercise has not been undertaken.

12 The counsel for the petitioner-HDFC bank raises a parting argument that entire liability has been fastened on the petitioner-HDFC Bank whereas the ATM did not belong to the petitioner-bank and in fact belonged to respondent No.3-Punjab National Bank. He contends that any failure on the part of the ATM of respondent No.3-Punjab National Bank should not culminate into fastening the entire liability on the petitioner-HDFC Bank. It is further submitted that the petitioner-HDFC bank had duly forwarded the complaint to respondent No.3-Punjab National Bank and was supplied with the information/certificate dated 19.08.2013 and that there

was no further reason for the petitioner-Bank to proceed any further. I find that the above said stand of the petitioner-Bank has some merit as far as the extent of fastening the entire liability on the petitioner-bank is concerned. It is evident that appropriate and adequate steps have not been taken by the petitioner-Bank to safeguard the interests of its customer and that it did not ask for the CCTV footage once it was already in receipt of the complaint. Further, respondent No.3-Punjab National Bank is also negligent in not preserving the CCTV footage once said aspect had been brought to its notice and rather it chose to submit a response on the basis of the Journal Printer Log (JP Log) instead of direct and primary evidence which was then available and in possession of the respondent No.3-Punjab National Bank. While finding that the Permanent Lok Adalat (Public Utility Services), Karnal had been guided by the principles culled out under Section 22-D of the Legal Services Authorities Act, 1987 and adjudicating the complaint, I find that the discretion so exercised in awarding compensation to the consumer is not misplaced. However, in the present case both the Banks have been negligent and contributed in escalating the harassment of the respondent No.2-applicant.

13 Under the given circumstances, the award passed by the Permanent Lok Adalat (Public Utility Services), Karnal, is accordingly apportioned equally amongst the banks i.e. the petitioner-HDFC Bank as well as respondent No.3-Punjab National Bank who shall be jointly and severally liable to pay the compensation to the respondent No.2-applicant.

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14 The present writ petition is accordingly allowed partly and the award passed by the Permanent Lok Adalat (Public Utility Services), Karnal is modified in the aforesaid terms.

May 14, 2024 **(VINOD S. BHARDWAJ**
raj arora **JUDGE**

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