(2015) 12 NCDRC CK 0078

In the National Consumer Disputes Redressal Commission

Case No : 66 of 2013

ORIENTAL BANK OF COMMERCE — APPELLANT

Vs

DR. NANDKISHORE VISHWANATH SHIGNE — RESPONDENT

Date of Decision : 04-12-2015

Acts Referred:

Information Technology Act, 2000, Section 66 - Hacking with computer system

Citation : 2016 1 CPJ 477

Hon'ble Judges : K.S. Chaudhari

Advocate : Shiv Shankar Banerjee, A.K.Pandey

Judgement

1. This revision petition has been filed by the petitioner against the order dated 11.10.2012 passed by the Maharashtra State Consumer Disputes Redressal Commission, Mumbai (in short, ''the State Commission'') in Appeal No. 163 of 2011 ? Oriental Bank of Commerce Vs. Dr. Nandkishore Vishwan Singne by which, while dismissing appeal, order of District Forum allowing complaint was upheld.

2. Brief facts of the case are that Complainant/respondent had account with OP/ petitioner Bank since 2005. OP provided facility of internet banking and provided him internet ID and password for online transactions and he utilized this facility lastly on 7.11.2009. On 21.6.2010, he received call from Manager of OP. Then he went to OP bank and was intimated that someone has internet

transactions from his account and has withdrawn Rs.37,500/- on 17.6.2010 between 12.20 to 01.30 p.m. Manager further informed him that money was transferred firstly in Kamal Verma''s Account in OP''s Branch at Gurgaon, then transferred to the Account of Zia Mohd. Nazir and Rizwan Pawar in OP''s Mira Road Branch and amount was withdrawn through ATM at Vashi. It was further submitted that Manager assured him that money will be received back, but later on, refused to credit money in his account. It was further submitted that internet banking system used by OP is not full proof, so, money was withdrawn from his account. Alleging deficiency on the part of OP, complainant filed complaint before District forum. OP resisted complaint and submitted that OP offered service of net-banking to complainant after providing internet ID and password. Services provided by OP are certified Very Sign confirming and OP has secured internet banking as per international standards. It was further submitted that complainant was explained precautions to be taken in internet banking. Complainant was responsible for keeping ID and password secretly. Transactions could have been done either by the complainant himself or by the person to whom he provided password, etc. Denying any deficiency on their part, prayed for dismissal of complaint. Learned District forum after hearing both the parties allowed complaint and directed OP to pay Rs.37,500/- along with cost of Rs.5,000/-. Appeal filed by OP was dismissed by learned State Commission with cost of Rs.10,000/- vide impugned order against which, this revision petition has been filed.

3. None appeared for respondent even after service and he was proceeded ex-parte.

4. Heard learned Counsel for the petitioner and perused record.

5. Learned Counsel for the petitioner submitted that inspite of no proof of deficiency in net banking facility of petitioner and inspite of supplying necessary information to complainant, learned District Forum committed error in dismissing complaint and learned State Commission further committed error in allowing appeal with cost; hence, revision petition be allowed and impugned order be set aside and complaint be dismissed.

6. Perusal of complaint makes it crystal clear that in four transactions on 17.6.2010, Rs.37,500/- was transferred from complainant''s account by internet banking and Manager of OP intimated to the complainant and also provided name of the person and his account number in which money was transferred.

7. Learned Counsel for the petitioner submitted that there was no fault in their internet banking system and security was as per international standards. He further submitted that until and unless internet ID and password are shared by complainant with other person, other party could not have operated account of complainant by internet banking. Admittedly, complainant availed facility of on-line banking lastly on 7.11.2009 and it appears that later on complainant passed over his

internet ID and password to some other person, who transacted from complainant''s account through internet banking for which OP cannot be held responsible. Complainant has not placed any evidence on record to substantiate that there was any fault in O P''s internet banking system or faults in security system. Learned State Commission observed in its order that from the modus operandi of the transaction effected through hacking amounts to cyber-crime. Section 66 of the Information Technology Act, 2000 runs as under: 66. Hacking with computer system .

(1) Whoever with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hacking".

There is nothing on record to suggest that any person has destroyed or deleted or altered any information residing in a computer resource or diminished its value or utility or affected it injuriously by any means and in the absence of aforesaid acts, it does not come within purview of hacking with computer system and learned State Commission has wrongly observed that through hacking amount was cyphoned which amounted to cyber-crime.

8. Learned State Commission observed in its order that OP could have traced the person, who has withdrawn the amount whereas, perusal of complaint itself reveals that Manager of OP gave name of person as well his account number in which money was transferred from complainant''s account and thus, it becomes clear that learned State commission has wrongly observed that OP has not traced names of persons in whose account amount was credited. It was further observed by learned State Commission that OP has not taken any steps to find out culprits which is also wrong because OP had already supplied necessary information to the complainant.

9. It is to my utter surprise that complainant neither lodged FIR against person(s) in whose name amount from his account was transferred through internet banking, nor impleaded them as party in the complaint and without any deficiency on the part of OP, complainant filed complaint before District forum which was allowed without any cogent evidence and learned State Commission further committed error in dismissing appeal with cost.

10. In the light of aforesaid discussion, revision petition is to be allowed and impugned order is liable to set aside.

11. Consequently, revision petition filed by the petitioner is allowed and order dated 11.10.2012 passed by learned State Commission in Appeal No. 163 of 2011 ? Oriental Bank of Commerce Vs. Dr. Nandkishore Vishwan Singne and order of District Forum dated 7.2.2010 passed in Complaint No. 201/2010 - Dr. Nandkishore Vishwan Singne Vs. Oriental Bank of Commerce is set aside and complaint stands dismissed with no order as to costs.

