
(2016) 04 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

Case No : 3044 of 2013

STATE BANK OF INDIA

APPELLANT

Vs

MANGILAL MANGAL & ANR.

RESPONDENT

Date of Decision : 11-04-2016

Acts Referred:

Citation : 2016 2 CPR 548

Hon'ble Judges : K.S. Chaudhari

Advocate : Vaishali Kakra, Anish Chawla, Navin Kumar

Judgement

1. This revision petition has been filed by petitioner against order dated 23.05.2013 passed by the State Commission in Appeal No. 52/2011 Mangi Lal Mangal Vs. State Bank of India & Ors. by which, while allowing appeal order of District Forum dismissing complaint was set aside.

2. Brief facts of the case are that complainant-respondent no. 1 was maintaining Saving Bank Account with Opposite Party No. 1 ? petitioner and complainant also got issued ATM card. On 22.03.2009, complainant-Respondent No. 1 swiped his ATM card in ATM of Opposite Party No. 2/Respondent No.2 to withdraw Rs.15,000/-, but no cash was dispensed and only slip was received with remarks "unable to process". On next day, when complainant again went to withdraw amount from his account, he found debit entry of Rs.40,000/- as withdrawn on 22.03.2009 whereas he has not withdrawn this amount from ATM. Complainant approached Manager of Opposite Party No. 2, who wrote a letter to Opposite Party No. 1 intimating that amount has not been received by complainant so amount may be credited in his account. Later on matter was reported to Mumbai office of Opposite Party No. 1 from where Rs.40,000/- along with interest was credited in complainant's account, but later on Rs. 40,000/- were debited from his account. Alleging deficiency on the part of the Opposite Parties complainant filed complaint before the District Forum. The Opposite Party No. 1 resisted complaint and submitted that as per bank record Rs.40,000/- were withdrawn by complainant from ATM of Opposite Party No. 2. It was further submitted that as

per instructions from ATM Service Centre Mumbai, Rs.40,000/- along with Rs. 1870/- as interest was credited in complainant's account, but later on Rs.40,000/- was kept on hold. It was further submitted that on 23.03.2009, no balance was found in ATM. Denying any deficiency on their part, prayed for dismissal of complaint. Opposite Party No. 2 resisted complaint and submitted that complainant has withdrawn Rs.40,000/- from their ATM and transaction was successful and letter dated 22.03.2009 was written on the basis of allegations of complainant and prayed for dismissal of complaint.

3. Ld. District Forum after hearing both the parties dismissed the complaint. Appeal filed by the complainant was allowed by the Ld. State Commission vide impugned order and Opposite Party No. 1 was directed to refund Rs.40,000/- with 6% per annum interest and further directed to pay Rs.20,000/- towards mental agony and Rs.5,000/- towards damages, against which this revision petition has been filed.

4. None appeared for Respondent No. 2 even after service of notice and he was proceeded ex-parte.

5. Heard Id. Counsel for the petitioner, Id. Counsel for Respondent No.1 and perused original record.

6. Learned Counsel for petitioner submitted that as complainant had successfully withdrawn Rs.40,000/- from ATM of Opposite Party No. 2, Id. District Forum rightly dismissed the complaint but Ld. State Commission committed error in allowing appeal, hence, revision petition be allowed and impugned order be set aside. On the other hand, Id. Counsel for Respondent No. 1 submitted that order passed by the Ld. State Commission is in accordance with law, hence, revision petition be dismissed.

7. Perusal of photocopy of ATM slip placed at Page 49 of the District Forum record reveals that firstly at 5.56 p.m on 22.3.2009 complainant swapped his ATM card and transaction No. 3094 has shown "unable to process". Below this, it appears that on the same day at 5.59 p.m. again ATM card was swapped and Rs.40,000/- were stood withdrawn by transaction No. 3094. In such circumstances, it cannot be said that Rs.40,000/- were not withdrawn by use of ATM card on 22.3.2009. Learned Counsel for the Respondent No. 1 submitted that this amount was not withdrawn by complainant which argument is devoid of force because ATM slip containing both transactions have been filed by complainant in one page and had it not been withdrawn by complainant at 5.59 p.m. he would not have received ATM slip. Even if it is presumed that some person other than the complainant has withdrawn Rs.40,000/- by transaction No. 3094 at 5.59 p.m. by using complainant's ATM card, OP cannot be held responsible because it has nowhere been mentioned in the complaint that he lost his ATM card which was used by some third person. On the contrary, complainant has mentioned in the complaint that on next day he went to withdraw amount from his account which reveals that ATM card was continuing with him.

8. Learned State Commission has wrongly observed in the order that OP Bank in exchange of letters admitted that no such amount was withdrawn from the account which finding is contrary to record. Nowhere bank admitted that amount has not been withdrawn whereas by letter dated 23.3.2009, OP No. 2 referred contents of complaint of the complainant to OP No. 1 and has nowhere admitted that this amount was not withdrawn from their ATM. On the contrary, as per report dated 14.5.2009, ATM Centre, Mumbai confirmed that transaction for Rs.40,000/- was successful and money was delivered by ATM machine. In such circumstances, it cannot be presumed that Rs.40,000/- were not withdrawn by use of complainant's ATM card on 22.3.2009 vide transaction No.3094. There was no necessity on the part of OP to lead any evidence regarding how much amount was put in ATM machine on that day and how much was withdrawn and what was the balance as OP submitted in written statement that no balance was found in ATM.

9. Learned Counsel for the respondent submitted that Rs.40,000/- cannot be withdrawn in one go from ATM machine. In support of this argument, Learned Counsel for respondent has not placed any circular, rule, etc. to show that Rs. 40,000/- cannot be withdrawn in one go from ATM and in the absence of any circular, etc. it can be presumed that Rs. 40,000/- can be withdrawn in one go from ATM which has been done in the case in hand.

10. In the light of aforesaid discussion, it becomes clear that Learned State Commission has committed error in allowing appeal and revision petition is to be allowed.

11. Consequently, revision petition filed by petitioner is allowed and impugned order dated 23.5.2013 passed by Learned State Commission in Appeal No. 52/2011- Mangi Lal Mangal Vs. State Bank of India & Ors.; is set aside and order of District Forum dated 8.12.2010 passed in Complaint No. 123/2010- Mangilal Mangal Vs. State Bank of India & Anr. dismissing complaint is affirmed.

12. Parties to bear their costs.