BEFORE THE GOA STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
PANAJI-GOA

In the matter of First Appeal 27 of 2024 in Consumer Complaint 70 of 2023.

Before: Adv. Mrs. Varsha R. Bale, Officiating President
Adv. Ms. Rachna Anna Maria Gonsalves, Member

HDFC Bank Ltd.,
A BANKING Company incorporated,
Under the Companies Act, 1956,
Having its registered office at HDFC
Bank Housa, Senapati Bapat Marg,
Lower Parel, Mumbai-400013,
Through its Vasco Branch, represented
By its Branch Operations Manager Bonita Barreto,
w/o Mr. Alexius Mario Pereira,
Indian National, aged about 49 years,
Branch office having its address at Ground floor,
Damodar Building,
Swatantrapath,
Vasco da Gama, Goa-403802. .....Appellant

V.

Fawia Menezes Mesquita,
w/o Tarun Albuquerque,
Major in age,
Indian National, resident of 58/3C,
Alto Chicalim,
Mormugao, Goa-403711. .....Respondent

Adv. Shri. Bhargav Khandeparkar present for Appellant.

Respondent present in person.

DATE: 28/11/2024

JUDGEMENT

[per Adv. Ms. Rachna Anna Maria Gonsalves, Member]

1. This Judgment and Order shall finally dispose off First Appeal filed by Appellant challenging the Judgment and Order dated 10/06/2024 passed by District Consumer Disputes Redressal Commission, South-Goa at Margao in CC/70/2023, wherein the Complaint was partly allowed.

2. The Appellant herein, was Opposite Party-1 & 2 before District Commission South and the Respondent was the Original Complainant. For sake of convenience, the parties shall be hereinafter referred to as per their original statuses before the District commission.

3. **The brief facts are:**

A. The Case of the Complainant:

i. That the Complainant is an Account holder with Opposite Party Bank having savings account No. 03741930002079 at Chicalim bank and the account is in operation for about at least 15 years, and was due for a reimbursement from MAKE MY TRIP against cancellation Invoice no. M06AI23Coo167763 dated 13/10/2022. Despite the passage of almost three weeks the said reimbursement was not being processed and hence on 04/11/2022, at about 10.30 am. the Complainant found the number 9163431574 on one of the websites stating to be customer case number MAKEMYTRIP for guidance on retrieval of the reimbursement.

ii. Thereafter the Complainant dialed the number which was answered by someone representing MAKEMYTRIP and heard the grievance of the Complainant and further requested the Complainant to answer an incoming call from another number 9827426974, while the Complainant was still speaking to the said individual. The Complainant on the instructions of the said individual downloaded the “Anydesk” mobile application and then shared details of a code which led to the said account being fraudulently debited of amount of Rs.20,000/-(Rupees twenty thousand only) via two separate transactions of Rs.10,000/-(Rupees ten thousand only) each and then fraudulently initiated third debit for Rs.15,000/-(Rupees fifteen thousand only) which was unsuccessful as the Complainant had lost WIFI internet connectivity while rushing to the Opposite Party Branch which was 200 mtrs. away from the office of the Complainant to seek help in the matter as the said amount was credited to a PAYTM wallet via HDFC net Banking by virtue of two transactions by remote access fraud.

iii. Thereafter on reaching the branch, the Complainant informed the staff member Manguesh and then received a call from HDFC Bangalore informing her that her account appears to be hacked and further to fill a Proforma/Form for such frauds which were available at the Bank.

iv. That the Complainant thereafter made a quick handwritten letter to the Opposite Party Bank, instructing that the accounts be blocked and based on the letter, a Complaint was registered immediately on the Customer Relationship Management (CRM) Portal of the Opposite and another Complaint was registered in the CRM Portal by the Phone Banking Centre on the basis of a telephonic Complaint made by the Complainant.

v. That the account Operation of Complainant's account was blocked immediately on 04/11/2022 based on the letter of the Complainant and the Customer was advised by Mr. Mangesh Sabnis to immediately lodge a police Complaint and provide a copy of the same to the branch as per the standard banking procedure, which the Complainant provided on the same day, along with a covering letter.

vi. On 11/11/2022, the Complainant addressed a letter requesting to unblock her bank account which the Opposite Party-1 did so, immediately on the same day. Thereafter the back end technical team of the Opposite Party, duly investigated the Complaint made by the Complainant and after thorough investigation by the internal OMBUDSMAN, on 14/11/2022, the Complaint was finally closed with the remark "*For the Bank this is a transaction duly authenticated by the way of 2FA OTP/Challenge Question IO's view also taken for denial and response sent to Customer accordingly*" and thereafter the Technical Team duly communicated by an email provided by the Complainant in her KYC documentation, that there is no defect in the Net Banking or OTP verification procedure of the Opposite Party and advised the Complainant to follow up with the Police for purpose of investigation and detection of the alleged fraudulent transferees.

vii. That the Complainant further inquired with the Branch operations Manager regarding RBI Insurance cover and was apprised that fraudulent net banking transactions are not covered under any RBI Insurance cover, due to disclosure of credentials by a customer.

viii. Thereafter on 14/01/2023 the Complainant sent a Legal notice to the Opposite Party and to its Head Office in Mumbai seeking action in the matter and redressal of the grievances of the Complainant, to which Opposite-1 has neither replied to, nor conducted any investigation and the Legal Notice sent to Head office was returned unserved with the remark “Left”.

ix. The Complainant further reiterated that the Opposite Party has by it’s acts and conduct of negligence and omission caused financial and mental loss and injury to the Complainant and has deliberately with held crucial and relevant information from the Complainant, with their complete casual approach, lack of communication and lack of knowledge in the matter. That the Opposite Party acted in a malafide manner and the Complainant is therefore entitled to the reliefs prayed for:

- Direct the Opposite Party to pay to the Complainant the sum of Rs.20,000/-(Rupees twenty thousand only) which is the principal amount of the unauthorized electronic transaction alongwith interest thereon at the rate of 12% per annum for delayed payment from 04/11/2022 upto the date of actual payment.
- Direct the Opposite Party to pay a sum of Rs.100,000/-(Rupees one lakh only) to the Complainant toward mental agony and harassment;
- Direct the Opposite Party to pay to the Complainant costs towards the filing and prosecuting the present litigation.

x. The District Commission, South by its Order dated 10/06/2024 was pleased to partly allow the Complaint and allowed certain reliefs.

B. The contention of the Opposite Parties:

i. On the other hand Opposite Parties filed their Written Version and denied the various allegations made against them.

ii. It is the case of the Opposite Party that the Opposite Party is a Banking Company incorporated under Companies Act 1956, and engaged in the business of banking, regulated by the Reserve Bank of India.

iii. That the Complainant had carried out certain transactions on MAKEMYTRIP via her PAYTM wallet and in doing so authorized a third party to carry out the transaction on her behalf via the ANYDESK App.

iv. That the Opposite Party stated that the Opposite Party as well as the RBI educates all customers through different modes in order not to share OTPs or private net banking information with any third party and that there is no deficiency in the Banking system and that the grievances of the Complainant are entirely misdirected against the Opposite Party and ought to have been raised against MAKEMYTRIP or PAYTM or the third party beneficiary.

v. Further that, it is pertinent to note that the entire transaction was carried out by the Complainant through the "ANYDESK" Mobile phone application, which authorizes a third party to take control and allows to operate the mobile phone of the user and thus enabling third party to access the OTP as well as other private net banking information. Hence the Complainant flouted all the safeguards provided for net banking by sharing/authorized the sharing of the OTP and in doing so the Complainant was negligent and a banking institution is not liable for such acts of negligence by a customer.

vi. That the mobile number of the Complainant was duly registered and SMS alerts of transactions was received by the Complainant and that the two alleged unauthorized transactions occurred before the Opposite Party was intimated about the same by the Complainant. The Opposite party on being alerted, immediately suspended the operation of the account and that no unauthorized transactions have occurred thereafter, and the Bank took all precautionary measures within its ability and followed all safeguards as per the RBI.

vii. That the Complainant was attended to by Mr. Mangesh Sabnis Relationship Manager at the Branch and further advised the Complainant to block the account operations immediately and that tendering a signed letter would suffice. Thereafter, based on the letter Complaint, the account operation of the account of the Complainant was blocked and the Complainant was advised by Mr. Sabnis to immediately lodge a police Complaint and provide a copy of the same to the branch as per standard banking procedure.

viii. In furtherance to their contention, the Opposite Parties stated that the Complaint of the Complainant was duly investigated by the back end technical team of the Opposite Party and that the Complaint was finally closed on 14/11/2022 after thorough investigation by the Internal OMBUDSMAN.

ix. That the Opposite Party had blocked the account operations of the Complainant upon receiving the written letter from Complainant and that the Opposite Party has no authority to block the accounts of the transferee Bank and so the Opposite Party has no access to PAYTM Wallets and also has no powers or authority to trace mobile phone numbers and such powers are vested with investigating agencies and the Complainant was duly apprised of the same.

x. That the Bank has no locus standi to get in touch with the Police in terms of Complaint lodged by the Complainant and instead the Bank can only provide registered assistance and information in the event the Bank is contacted by an investigating agency.

xi. Also in terms of the RBI Insurance Cover, the Complainant was duly apprised by Opposite Party, that fraudulent net banking transactions are not covered under any RBI Insurance cover, due to the disclosure of credentials by a customer.

xii. That the Complainant had addressed a Legal notice dated 14/01/2023 to the Opposite Party and the Opposite Party had already undertaken all measures to block and unblock the account as per the instructions of the Complainant and had already verified and communicated to the Complainant that there was no defect in the net banking or OTP verification procedure and under such circumstances the Opposite Party considered it redundant to reiterate its stand on the matter and hence chose not to reply to the Legal Notice.

xiii. That the Opposite Party provided all the information within its power to the Complainant and undertook immediate action of blocking the account of the Complainant and has complied with the contents of the RBI circular in its Letter and spirit and that there is no deficiency on the part of the Opposite party.

The Opposite Party prayed that the Complaint is liable to be dismissed with costs. The Opposite Party being aggrieved by the Judgment and Order dated 10/06/2024 passed by District Commission, South, challenged the Judgment and Order on the following grounds:

- That the Complainant had failed to establish deficiency in the internet banking service or the system of the Opposite Party and the approach of a District Commission, South is entirely devoid of logic or reason.

- That the District Commission, South has expressed expectations which are beyond the scope of service and powers of the Opposite Party.

- That the affidavit in Evidence of Branch operations Manger was not considered by the District Commission in its Order. Also that the Complainant has failed to implead MAKEMYTRIP, PAYTM and the transaction benefit and therefore the Complaint is liable to be dismissed and prayed that the appeal be allowed and the Judgment and Order dated 10/06/2024 passed by District Commission, South be quashed and set aside.

4. Documents relied upon by the Complainant and Opposite Party before this Commission were the same as relied upon before District Commission.

- The Opposite Party filed the Written Version.

- Affidavit-in-Evidence were filed by both parties before District Commission.
- Both the parties filed Written Arguments before this Commission.

5. Arguments were heard on behalf of Adv. Shri. Bhargav Khandeparkar for Appellant and Respondent in person.

Adv. Shri. Bhargav Khandeparkar enumerated the brief facts before this Commission and highlighted that on 04/11/2022 an amount of Rs.20,000/-(Rupees twenty thousand only) by way of two unauthorized transactions of Rs.10,000/-(Rupees ten thousand only) each was deducted from the Respondent's/Complainant's account and on the same day informed the Bank regarding the said fraudulent transactions.

He further submitted that the Respondent's account was blocked immediately upon a written request to do so, and on the same day itself 04/11/2022 the customer was advised by Bank representative Mr. Sabnis to lodge a Police Complaint as per the standard banking procedure and provide a copy of the same to the Bank which was done on the very same day. On 11/11/2022 the Complainant requested the bank to unblock her Bank account which the bank immediately did.

Adv. Shri. Khandeparkar, further submitted that the Complaint was duly investigated by the back-end technical team of the Opposite Party and on 14/11/2022 the Complaint was finally closed after thorough investigation by the Internal OMBUDSMAN.

He further reiterated that the Opposite Parties have taken prompt action and that there was no deficiency in service.

The Advocate further drew the attention of this Bench to the Impugned Judgment and Order dated 10/06/2024 passed by District Commission, South Margao-Goa and specifically to paragraph 38 wherein the observations made by District Commission are rather questionable in terms of the Bank not finding it necessary to lodge a police Complaint to investigate into the matter and the Advocate reiterated to this Commission that the Bank neither has Locus nor is there any veracity in the allegations.

He pointed out the Anydesk app was downloaded by the customer and then further drew the attention of this bench to paragraphs 37 & 38 of the Impugned Judgment, where the observation of the District Commission reads as 'the Complainant had downloaded the "Anydesk" App. To facilitate her refund from MAKEMYTRIP, but this does not mean that she shared her confidential banking details or OTP with the 'fraudsters' and he added that the Complainant herself admitted that she had downloaded the Anydesk app, And in doing so the access was given to the App.

The Advocate touched upon the RBI circular bearing no. DBR no. Leg. BC 78/09/07005/2017-18 dated 06/07/2017 and read the relevant portions with respect to Limited liability of Customer i.e. Zero Liability of a Customer Limited liability of a Customer. Reversal Timeline for Zero Liability, Limited liability of Customer.

The Advocate further submitted that what is required to be proved is what is not admitted and the admitted position is clearly visible at paragraph 38 of the Judgment.

Adv. Shri. Khandeparkar submitted that the District Commission was in error in passing the Impugned

Judgment and Order and prayed that the Judgment and Order be quashed and set aside.

The Respondent on the other hand submitted that the Bank has done nothing to show negligence on the part of the Complainant/Respondent and to that effect she pointed the stereo typical email dated 14/11/2022 from Opposite Party to Complainant.

She also brought to the notice of this Commission that there was no application of mind all through the entire investigation.

Also that the Bank has nothing to report except for freezing the account of the Complainant. She further posed the following questions to the Bank is to what are the combat mechanism for malwares; and what prevented the Bank from giving Benefit of RBI circular under Clause 9.

6. On hearing arguments canvassed by both parties and going through the pleadings we observed:

i. That the Complainant had herself authorized the access to her device by third parties through Anydesk mobile application thus giving complete access and control of her device and this included internet banking credential and the OTPS on her phone.

ii. Also on perusing the RBI circular at clause-7 wherein a Customer shall be liable for loss occurring due to unauthorized transactions in the following cases:

- *In case 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 unauthorized transactions to the Bank any loss occurring after the reporting of the unauthorized transaction shall be borne by the Bank,* and according to the circular the Complainant had clearly shared the payments credentials and gave access and control of her device.

iii. Also as per the RBI circular Banks must require the Customer to registered for SMS alerts, and send SMS alerts for electronic banking transactions and report any unauthorized transactions and further take immediate steps to prevent further unauthorized transactions and when the Opposite Party was alerted by the Complainant they suspended the operation of the account and no further unauthorized transactions have occurred thereafter and we find that the bank took the precautionary measures and followed all safeguards as registered by the RBI.

iv. Further on perusing the RBI circular bearing ref. no. RBI/2017-18/15 DBR no. Leg.B.C.78/09.07.005/2017-18 dated 06/07/2017 it specifies that banks must require the customer to register for SMS alerts and bank must send SMS alerts for electronic banking transactions and in case on receiving any report of unauthorized transactions, the bank must take immediate steps to prevent further unauthorized transactions, which has been undertaken.

v. In the pleadings and also the arguments the Complainant/Respondent emphasized on limited liability on Customers in unauthorized Electronic banking transactions but on carefully reading the file what comes to mind is who authorized permissions on the Anydesk App? It is the Complainant and without giving access, the unauthorized transactions could not have taken place.

vi. The Bank indeed has a role and responsibility in safeguarding the interests of its Consumers but downloading apps wherein Consumers are not familiar with the terms of permissions granted or controls given to, cannot then be the responsibility of the bank and therefore the contention of the Complainant that the bank has failed in terms of limited liability of Customers in unauthorized Electronic banking transaction does not hold any water.

vii. Also the bank cannot be held deficient in their services because they not only attended to the requests of the Complainant immediately in terms of blocking the account operations but also conducted an investigation by internal OMBUDSMAN.

viii. What surprises us more, is that the District Commission, South in its Order has expressed that it was the Opposite Party to lodge a police Complaint and to track down the miscreants on the basis of their mobile phones. The Opposite Party does not have the locus standi to follow up with the police in terms of the Complaints lodged by Customers and can in fact only assist the investigating agencies in the process of investigation as per procedures laid down by the Law and the Opposite Party has provided all assistance within the scope and power.

ix. Also another observation made, which we find hard to comprehend is that the Opposite Party could have traced the alleged miscreants based on KYC documentation. This only demonstrates a clear non-application of mind by the District Commission.

x. We further observed that it is an admitted position that the transfer was made to a PAYTM wallet and not to any accounts held by Opposite Party, and it was necessary to have impleaded MAKEMYTRIP, PAYTM and the transaction-beneficiary which the Complainant has failed to implead the necessary parties.

xi. Another point which is worth taking note is that the District Commission, South failed to take into consideration the Affidavit-in-Evidence of Branch operations Manager Bonita Barreto in terms of the relevant paragraph 18, wherein, the entire transaction was carried out by the Complainant through the "Anydesk" mobile phone application, which authorized third party to take control and allows to operate the mobile phone of the user, thus enabling such third party to access the OTP as well as other private net banking information and that the Complainant had flouted all the safeguards provided for net banking and that the banking instructions is not liable for such acts of negligence on part of the customer, and we are taken a back at how the District Commission, South has failed to make a mention of the Affidavit-in-Evidence, which clearly is devoid of any application of mind.

xii. The District Commission has in its order mentioned that fraud by parties has been established and has clearly failed to appreciate that it is not yet established that the fraud is indeed fraudulent.

xiii. Also we cannot understand how the District Commission, South arrived at reliefs granted in terms of compensation which will only up the floodgates of Consumer Complaints if such compensation is awarded without having determined whether the transactions are fraudulent or not.

xiv. The Judgments relied upon by the Complainant cannot be considered because the Complainant herself gave access for the unauthorized transactions through the App.

We live in an age where elaborate cyber frauds are taking shape and alert bank staff is the need of the hour to protect Customers.

Cyber frauds have become the biggest challenge for both the public as well as the Law enforcement authorities and Banks have to play a very critical role.

In every cyber fraud the money actually passes through a bank account and therefore the bank is a very important stage at which a cyber fraud can be stopped and it can happen either with Human intervention or by using technology and in this particular case before us, the Customer authorized the access to the app and in doing so exposed all her credentials which paved way for the unauthorized transactions and although the Bank did their part through SMS etc., the money had already been deducted into the PAYTM wallet.

It is imperative that Digital and Cyber Infrastructure have to be strategically organized in order to detect these cyber frauds and crimes so that Customer protection is authorized and operational continuity is maintained.

Hence in light of the above discussion we find that the Appellant is neither deficient nor negligent in their services.

Therefore in the result we pass the following:

ORDER

1. The Appeal is hereby allowed with no order as to cost.
2. The Order of District Commission, South dated 10/06/2024 is hereby quashed and set aside.

[Adv. Mrs. Varsha R. Bale]
Officiating President

[Adv. Ms. Rachna Anna Maria Gonsalves]
Member

VS