

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 1662 OF 2018**

(Against the Order dated 14/06/2018 in Complaint No. 41/2014 of the State Commission  
Karnataka)

1. NIEL E. LOBO

REP BY HIS POWER OF ATTORNEY HOLDER MRS.  
MIRIAM ANGELO, C/O. MRS. MIRIAM ANGELO, 807,  
9THE MAIN KALYAN NAGAR, HRBR 1ST BLOCK  
BENGALURU 560 043

.....Appellant(s)

Versus

1. BANK OF BARODA  
41/2, M.G. ROAD,  
BANGALORE 560 001

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER  
HON'BLE DR. SADHNA SHANKER,MEMBER**

FOR THE APPELLANT :

**Dated : 02 September 2024**

**ORDER**

For the Appellant (s) : Ms. Sanjana Dua, Advocate

For the Respondent(s) : Mr. Som Raj Choudhury, Advocate

**ORDER**

**PER SUBHASH CHANDRA**

1. This appeal under Section 19 of the Consumer Protection Act, 1986 (in short, 'the Act') assails the order dated 14.06.2018 of the Karnataka State Consumer Disputes Redressal Commission in Complaint No.41 of 2014 disallowing the complaint.

2. We have heard the Learned Counsels for both Parties and perused the records.

3. The brief facts of this case are that the Appellant, who is an NRI resident in USA, had a bank account with the Respondent (erstwhile Vijaya Bank). The account was opened on 16.03.2006 for the purpose of transactions in India relating to investments. According to the Appellant, he learnt on 23.04.2013 from his investment advisor that a sum of 80,000 USD amounting to Rs.43,87,531/- had been transferred to the account of one Sheila Montgomer of North Carolina, USA. Upon enquiries with the Chief Manager of the Respondent Bank it came to the knowledge of the Appellant that 80,000 USD amounting to Rs.43,87,531/- had been transferred in two instalments of 30,000 and 50,000 USD on 5<sup>th</sup> and 12<sup>th</sup> April, 2013 respectively from the Complainant's NRE account with the respondent. Following inquiries with the respondent Bank, the Complainant suspected that his email had been hacked and instructions for transfer of funds had been sent by the hacker and therefore a complaint by way of email dated 24.04.2013 was filed with the Inspector of Police, Cyber Crime Branch, Bangalore to investigate the matter followed by a letter of his Portfolio Advisor to the Supdt. of Police, Cyber Crime Cell on 06.05.2013. An FIR was also lodged by the Appellant on 28.05.2013 with the Indiranagar Police Station, Bangalore. A complaint was thereafter filed with the Banking Ombudsman to investigate into the unauthorized transfer of funds on 22.05.2013. The Banking Ombudsman, vide reply dated 01.07.2013, conveyed that they were unable to proceed with the complaint as per Clause 13(c) of the Banking Ombudsman Scheme, 2006 since the complaint required consideration of an elaborate documentary and oral evidence and such proceedings for adjudication of complaints of this nature did not lie before it. Alleging that the Respondent had transferred large sums of money from the Complainant's NRE account without authorization, a complaint was filed before the State Commission by the Appellant. It was stated that the Respondent had processed the request for transfer of funds on the basis of email allegedly received without exercising diligence in obtaining the original Application-Cum-Declaration Form for the transfer of functions or verifying identity of the applicant. It was also alleged that the photocopies of the Application-Cum-Declaration Forms dated 04.04.2013 and 11.04.2013 clearly indicated that the signatures were forged. The State Commission decided the complaint on contest and held that the complaint was not maintainable in view of the fact that the matter was a criminal case for which an FIR had been issued by the Police and involved complicated facts. It also held that the Complainant had failed to implead the Financial Advisor in the array of parties and was therefore bad for non-joinder of necessary party. Giving opportunity to the Complainant to approach the competent Forum under the Information Technology Act, 2000, the complaint was dismissed by way of the impugned order which is appealed against in these proceedings praying to set aside the order dated 14.06.2018 and to allow the claim of the Petitioner with any other order deemed fit.

4. The Complainant's case is that the State Commission had erred in failing to appreciate that the Respondent Bank had acted upon instructions which had not been given by the appellant earlier for the wire transfer of his funds or any financial instructions via email. Therefore, the Petitioner alleged that the amount was negligently transferred by the Respondent. It was contended that the State Commission had erred in relying upon the decision of National Commission in *Santhosh Sharma & Ors. Vs. State Bank of India & Ors.*, II (1991) CPJ 262 and to hold the complaint as not being maintainable because a criminal case was pending. It was contended that the facts in *Santosh Sharma* (supra) were

entirely different and involved a case of alleged assault which was not the case in the present matter. It was contended that pendency of criminal proceedings was not a bar to proceedings under the Consumer Protection Act, 1986 since the Consumer Protection Act was not in derogation of any other laws. According to the Appellant, the complaint to the Cyber Police was an entirely different matter which related to the hacking of the Petitioner's account whereas the complaint before the State Commission pertained to deficiency in service on part of the Respondent Bank. It was also contended that the State Commission failed to appreciate that the Respondent had been negligent in verifying the signature of the account holder with the specimen signature available with it which it had failed to do at the time of clearing the two fund transfers. It also failed to notice that the signatures were forged as was apparent to the naked eye. Therefore, it was alleged that the Respondent transferred large sums of money without following its own guidelines. As a service provider under the Consumer Protection Act, the Bank was therefore liable for deficiency in service. Reliance was placed on the decisions of this Commission in ***Geeta Jethani & Ors. Vs. Airport Authority of India & Ors.***, Original Petition No.81 of 2001 dated 05.08.2004 and ***Sutlej Textile and Industries Ltd. Vs. Punjab National Bank***, First Appeal No.41 of 2008 dated 23.04.2009 in support of his contentions.

5. *Per contra*, it was contended on behalf of the Respondent that the appeal was based on law and facts since the transfer of funds had been done on the basis of authorization by the Appellant from his registered email ID. Therefore, the transfer of funds were as per instructions of the account holder. The Appellant's case that his email account had been hacked was a matter of enquiry before the Cyber Crime Branch under the provisions of the Information Technology Act, 2000 and since that enquiry involved detailed adjudication based on evidence relating to forgery and other criminal issues, the same could not be considered in summary proceedings under the Act. It was denied that the Respondent had acted arbitrarily or perversely since instructions to transfer the sums of money were received from an authorized email. Therefore, in view of the fact that issues of criminal nature were involved in the matter and were the subject matter of investigation before the Police, the State Commission had held that the liability could not be fastened on the Bank under the proceedings under this Act which only followed summary proceedings and did not get into detailed procedures of evidence as was done in a criminal case. It was submitted that the State Commission had rightly relied on the case of ***Santhosh Sharma*** (supra) since the case involved disputed facts and complex of issues for which, the Consumer Forum had no jurisdiction to entertain such complaints. It was further submitted that the present Appeal was not maintainable and deserved to be dismissed on the ground of maintainability. Reliance was placed on the judgement of the Hon'ble Supreme Court in ***Chairman & Managing Director, City Union Bank Ltd. & Anr. Vs. R. Chandramohan***, (2023) 7 SCC 775 which had held as follows:

*"14. The proceedings before the Commission being summary in nature, the complaints involving highly disputed questions of facts or the cases involving tortious acts or criminality like fraud or cheating, could not be decided by the Forum/Commission under the said Act. The "deficiency in service", as well settled, has to be distinguished from the criminal acts or tortious acts. There could not be any presumption with regard to the wilful fault, imperfection, shortcoming or inadequacy in the quality, nature and*

*manner of performance in service, as contemplated in Section 2(1)(g) of the Act. The burden of proving the deficiency in service would always be upon the person alleging it.*

*15. In the instant case, the respondent-complainant having miserably failed to discharge his burden to prove that there was a deficiency in service on the part of the employees of the appellat Bank within the meaning of Section 2(1)(g) of the Act, his complaint deserved to be dismissed, and is accordingly dismissed. The impugned orders passed by the State Commission and the National Commission [City Union Bank Ltd. v. R. Chandramohan, 2007 SCC OnLine NCDRC 5] are therefore quashed and set aside. The appeal stands allowed accordingly."*

6. From the foregoing it is apparent that the alleged transfer of funds from the account of the Appellant was due to the hacking of his email account from which instructions were issued to the Bank directing transfer of 80,000 USD amounting to Rs.43,87,531/- in two transactions of 50,000 USD and 30,000 USD each. The Appellant had approached the Banking Ombudsman which had held that since the matter involved a criminal aspect, the same be investigated by the appropriate investigation agency under the Information Technology Act, 2000 and that it was not competent to consider the complaint qua the Bank. The State Commission has also held that the complaint against the bank which was a consequence of hacking of the email of the Appellant as a result of which Rs.43,87,531/- was transferred to another account has to be treated as a criminal case. Liability under the Act would arise once deficiency on the part of the bank in making the transfers was established. The Hon'ble Supreme Court in the case of **Chairman and Managing Director, City Union Bank Limited and Anr.** (2023) 7 SCC 775 Decided on 27.03.2023 has held that:

There cannot be any presumption with regard to the willful fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in service, as contemplated in S.2 (1) (g) of the 1986 Act and the burden of proving the deficiency in service would always be upon the person alleging it.

8. In view of the discussion above, the State Commission's order that the complaint was not maintainable cannot be found fault with. We therefore do not find any reason to disturb the findings of the State Commission. The appeal is therefore dismissed as without merits. Parties shall bear their own costs.

9. Pending IAs, if any, stand disposed of with this order.

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**SUBHASH CHANDRA  
PRESIDING MEMBER**

.....  
**DR. SADHNA SHANKER**

