

**IN THE DELHI STATE CONSUMER DISPUTES  
REDRESSAL COMMISSION**

(Constituted under section 9 of the Consumer Protection Act, 1986)

**JUDGMENT RESERVED ON: 06.07.2020**

**JUDGMENT PRONOUNCED ON: 14.07.2020**

**FIRST APPEAL No.204/2018**

**IN THE MATTER OF**

**SH. RAM KUMAR BHARDWAJ**

S/o Sh. Ratan Singh  
R/o 209, Roshan Vihar,  
East Sadatpur, Karawal Nagar  
Delhi-110094

..... APPELLANT

**VERSUS**

**THE BRANCH MANAGER**

Union Bank of India,  
Sherpur Chowk,  
Delhi - 110094

..... OPPOSITE PARTY NO. 1

**ATM HANDLING BRANCH,**

Branch: Ashok Vihar, Delhi  
24 Community Centre,  
Ashok Vihar,  
New Delhi -110052

..... OPPOSITE PARTY NO. 2

**CORAM:**

**HON'BLE DR. JUSTICE SANGITA DHINGRA SEHGAL  
(PRESIDENT)**

**HON'BLE SH. ANIL SRIVASTAVA, (MEMBER)**

Present: Mr. Sachin Kaushik, Counsel for Appellant  
Mr. Anil Singh, Counsel for Respondents.

**PER: Hon'ble Dr. Justice Sangita Dhingra Sehgal, President**

## JUDGMENT

### **[Via Video Conferencing]**

1. Brief facts of the case as per the pleadings of the parties, necessary for the proper adjudication of the present appeal are that the complainant is an account holder with the OP Bank having savings bank account No. 645802010004608 and having ATM card vide No. 4213XXXXXXXXXXXX. On 27.10.2015 complainant went to withdraw Rs. 20,000/- from the ATM machine of OP-2 situated at Ashok Vihar, Sawan Park, Delhi. However, on insertion of his ATM card into the machine and given command of Rs. 20,000/-, the ATM counted the money but did not release the same. The screen of ATM displayed "Contact Branch of Bank, your card has been blocked" and the withdrawal could not be done.
2. Further, the complainant contacted the OP Branch on the next day, where he was told by the executive of the OP Branch that Rs. 20,000/- had been withdrawn on the given date from his account and duly entered therein.
3. On 28.10.2015, the complainant lodged a complaint vide Complaint No. 13233983 to the customer care of OP Bank and subsequently wrote several emails to get the refund of Rs. 20,000/-. However, it is of no avail. Lastly, the complainant sent a legal notice dated 02.03.2016 to the OP through his counsel which was served on the OP on 04.03.2016 but the OP failed to reply.
4. After hearing final arguments, District Consumer Dispute Redressal Forum (North East), D.C Complex, Nand Nagri, Delhi passed the impugned order dated 29.01.2018 wherein it has been held as under:



*"We are of the considered opinion that the complainant has failed to establish any deficiency in service against the OP and the present complaint is devoid of merits as the OP has been successful in defending itself qua the disputed transaction in light of the documentary evidence placed on record in support of the same being that of successful withdrawal transaction by the complainant."*

5. During the course of proceedings, notice was duly served on the OP and he had filed the reply on 12.11.2018.

6. The order of the District forum has been challenged in the present appeal on the ground that the District forum failed to consider the fact that the appellant/complainant has made complaint to the OP Bank on 28.10.2015 and had several time requested the OP to provide the Video footage of the concerned date to the appellant, to which the OP only provided illegible photographs.
7. The counsel for the appellant further contended that the Ld. District Forum erroneously came to the conclusion that there is no documents filed by the appellant.
8. We have heard learned counsels for both the parties.

### **REASONING**

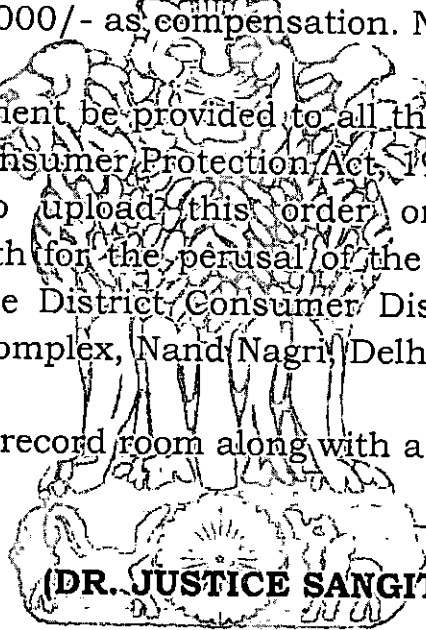
9. As per the contention of the appellant, the only issue to be decided by this bench is whether there is any deficiency of service on the part of OP.
10. In order to give effect to the objective of this Act, i.e. to provide for better protection of the interests of the consumers, if the complainant is able to create a reasonable degree of probability that there was deficiency on the part of the OP, the onus would shift to the OP to discharge the onus to prove its denial.
11. On perusal of the records filed by the appellant, it is evident that the appellant immediately registered the complaint on 28.10.2015 with the customer care of the Bank and thereafter wrote several emails to the Bank asking for refund of money wrongly debited. The appellant also requested the Bank to provide the Video footage of the concerned transaction, to which the OP provided illegible photographs through which no one can ascertain that the appellant was receiving the money.
12. As per the National Payments Corporation of India (NPCI) circular NPCI/2012-13/NFS/2737 dated 26.03.2013, all banks has to facilitate providing CCTV recording of failed ATM transactions to bank customers when they ask for it. However, in the present case, the OP had failed to provide the CCTV footage of the ATM concerned to the appellant and had only provided illegible photographs from which no inference can be drawn that the money has been collected by the appellant on the subject date.

### **CONCLUSION**

13. To conclude, this bench is of the view that the OP has failed to discharge his duty as he did not provide any CCTV footage of the concerned ATM to the appellant and had not even filed any evidence

to show to this Hon'ble Forum that the money has been collected by the appellant on the subject date.

14. In that view of the matter the inevitable conclusion is that there was gross deficiency as defined in Section 2(1)(g) of the Act on the part of the OP in its failure to provide the Video footage of the transaction concerned on 27.1.2015.
15. On the basis of above observations, the appellant is an aggrieved person and the appeal filed by the appellant is maintainable. Consequently, the appeal filed by the appellant is hereby allowed. The impugned order dated 29.01.2018 passed by the District Consumer Dispute Redressal Forum (North East), D. C Complex, Nand Nagri, Delhi is hereby set aside, with a direction that the OP shall pay to the appellant Rs. 20,000/- alongwith 6% p.a interest from 27.10.2015 till the date of payment. Further, the OP is also liable to pay Rs. 25,000/- as compensation. No orders as to litigation cost.
16. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986. The IT Department is also directed to upload this order on the website of the commission forthwith for the perusal of the parties. A copy of this order be sent to the District Consumer Dispute Redressal Forum (North East), D. C Complex, Nand Nagri, Delhi
17. No orders as to cost.
18. File be consigned to record room along with a copy of this Judgment.



— Sd —

**(DR. JUSTICE SANGITA DHINGRA SEHGAL)**  
**PRESIDENT**



— Sd —

**(ANIL SRIVASTAVA)**  
**MEMBER**

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*GA*  
Registrar

Delhi State Consumer Dispute  
Redressed Commission  
New Delhi-110002

Pronounced On:  
**14.07.2020**