

## SMS Alerts From Bank Cannot Be The Basis For Determining The Liability Of The Customer, In Case of Fraudulent Transactions

written by Akshay Ramesh | May 15, 2019

Previously, the nationalised and commercial banks would 'get away' from the liability of a fraudulent transaction in a customer's account by sending an alert to the customer on text messages. As a result of which many customers who were unable to check their cell phones during a particular time period when the bank sent the text message alert, has suffered huge losses, with no co-operation from the bank. One such case of bank willing to take rescue of customer not making a reaction on sms alerts from bank as a ground to escape liability arising by unauthorized transaction.

Facts:

In this case, there was a withdrawal of INR 2, 40,910.36 from the Non Resident External Account in the State Bank of India ("SBI NRE") of one Mr. PV George ("Customer") between March 22, 2012 and March 26, 2012 through the ATMs at different places in Brazil.

The Customer filed a suit against the SBI seeking refund of the amount along with interest, which was dismissed by the trial court. The Customer appealed to the Kerala High Court and Justice Suresh Kumar of the Kerala High Court considered the following substantial questions of law:

- Whether the banks permitting withdrawal of cash from the accounts of their customers through ATM-cum-debit cards are liable for the loss caused to the customers in connection with the transactions made without their involvement in the fraudsters?
- Could a bank be relieved from the liability of the loss caused to its customer on account of the unauthorised withdrawals made from his account merely on the ground that the customer has not responded promptly to the text message alerts given by the bank?

Decision of the Kerala High Court - "SMS Alerts from Bank not a basis to determine customer's liability"

The Kerala High Court held that, since the disputed withdrawals were unauthorized and made by third parties without using the debit card issued to the Customer, through the ATMs in a foreign country, the bank was liable for the loss caused to the plaintiff. The

Court further held the following:

- Bank's duty to take necessary steps to prevent unauthorised withdrawals: The High Court stated that if a customer suffers loss on account of the transactions not authorised by him, the bank is liable to the customer for the damages caused to him. It further observed, "Where a bank is providing service to its customer, it owes a duty to exercise reasonable care to protect the interests of the customer. Needless to say that a bank owes a duty to its customers to take necessary steps to prevent unauthorised withdrawals from their accounts"

- **Safe electronic banking environment:** The High Court also indicated that it is the obligation of the banks to provide such services, to create a safe electronic banking environment to combat all forms of malicious conducts resulting in loss to their customers. The Court also referred to the statutes which are put in place in countries like United States and Canada to protect the interests of the customers of the bank by defining the liabilities and providing enforcement mechanism. Referring to the Reserve Bank of India Notification[1], the court said that if a customer suffers loss in connection with the transactions made without his junction by fraudsters, it has to be presumed that it is on account of the failure on the part of the bank to put in place a system which prevents such withdrawals, and the banks are, therefore, liable for the loss caused to their customers.
- **Customer not responding to SMS alerts will not exonerate bank's liability:** The Court also rejected bank's contention that it had no liability in connection with the unauthorised transactions as the customer did not respond to the SMS alerts it had sent to him. Dismissing the appeal, the Judge said: "SMS alerts is one of the facility extended by most of the banks to their customers in connection with the savings bank accounts having electronic banking facilities including ATM cum-Debit Card facilities. Such facilities are provided not only to those who specifically request for the same, but also to those who do not ask for such facilities. Could such a facility voluntarily given by banks to their customers determine the rights of parties, is the question. According to me, only if there exists a specific term in the contract between a bank and its customer to the effect that the bank would be exonerated from the liability in connection with the unauthorised transactions if the customer does not respond to the SMS alerts, SMS alerts cannot be the basis for determining the liability of the customer, for, there would be account holders who may not be in the habit of checking SMS alerts at regular intervals and account holders like the plaintiff in the instant case who is working in an offshore oil rig, who may not be able to access their mobile phones for several days having regard to the peculiarity of their avocation." The Court further added that, in this case, there was no such contract between the bank and the Customer, and thus the bank would be liable to refund the amount as ordered by the First Appellate court. Emphasizing the need to create a safe electronic banking environment, the Kerala High Court observed

that a bank cannot be exonerated from the liability for the loss caused to its

customer on account of the unauthorised withdrawals made from his account merely on the ground that the customer has not responded promptly to the SMS alerts given by the bank.

Justice PB Suresh Kumar

also made it clear that banks are liable for unauthorised withdrawals even if customers did not respond to SMS alerts and it cannot be the source to determine the liability of a customer, for there would be account holders who may not be in the habit of checking SMS alerts regularly,

Conclusion

The High Court of

Kerala in the present case has resolved legal issues in cases relating to contract

between the bank and the Customer. Referring to a Reserve Bank of India notification[2]

which stated that unauthorised transactions shall be brought to the notice of the bank forthwith to enable it to block the account, the court said it only reminds banks of their obligations and responsibilities and does not create any

new rights or obligations.

In the light of the above, there is also no difficulty in holding that if a Customer suffers loss in connection with transactions made by cheats, it has to be assumed that it is because of the bank's failure to put in place a system which checks such withdrawals, and the banks are, therefore, liable for the loss caused to their customers, the Court said. The High Court further expressly prevents the banks to shift their burden of the liability to protect their Customers' bank accounts by sending a text message alerts and recaps the responsibilities of the bank, towards its Customers.

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[1] <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11040&Mode=0>

[2] Supra note 1

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