

**Branch Manager Vs. Hemant and Another**

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**Court :** Haryana State Consumer Disputes Redressal Commission SCDRC  
Panchkula

**Decided On :** Apr-07-2014

**Judge :** Nawab Singh, President, the Honourable Mr. B.M. Bedi, Judicial Member  
& the Honourable Mrs. Urvashi Agnihotri, Member

**Appeal No. :** First Appeal No. 758 of 2013

**Appellant :** Branch Manager

**Respondent :** Hemant and Another

**Judgement :**

B.M. Bedi, Judicial Member:

1. This appeal has been preferred by State Bank of Patiala, Palwal “opposite party No.1 (appellant herein) against the order dated September 17<sup>th</sup>, 2013, passed by the District Consumer Disputes Redressal Forum (for short District Forum), Palwal, whereby, the complaint filed by Hemant-complainant (respondent No.1 herein) was allowed. The operative part of impugned order is as under:-

œAdmittedly, complainant is a ATM holder issued by opposite party No.1 and he had paid for the same as such he is a œConsumer?. Moreover, in spite of making complaint by the complainant in time opposite party No.1 failed to redress the grievance of complainant. Hence, the complaint is allowed. Opposite party no.1 is directed to credit Rs.5,000/- with interest @ 9% per annum from the date of filing

of this complaint till the amount is credited in the account of the complainant. However, both the opposite parties are directed to pay Rs.5,000/- as compensation towards mental agony and harassment alongwith Rs.2200/- as litigation expenses. Compensation as well as litigation expenses amount shall be equally shared by opposite parties No.1 and 2.?

2. That the complainant was maintaining his Saving Bank Account No.00000065102957041 with State Bank of Patiala, Palwal. On February 18<sup>th</sup>, 2011, at about 7:00 P.M, the complainant had withdrawn an amount of Rs.100/- from the ATM of AXIS Bank, Palwal. On February 20<sup>th</sup>, 2011, when he checked his balance, he found that a sum of Rs.5000/- was debited from his account which he had not withdrawn. He had given written complaint in State Bank of Patiala on February 26<sup>th</sup>, 2011 but he did not get any reply.

3. The appellant and respondent No.2 appeared and filed their separate reply. The appellant in its reply took the plea that the transaction was duly verified from the AXIS Bank, i.e. respondent No.2 being ATM Holder and the respondent No.2 clarified the transaction of Rs.5000/- on February 18<sup>th</sup>, 2011 as successful and the complaint of the complainant was found to be false and fabricated.

4. The respondent No.2 in its reply took the plea that as per the understanding between the respondent No.2 and appellant, the customers of appellant can use the ATM service of the respondent No.2. The respondent No.1 was not a customer of the respondent No.2, although the complainant was using his ATM card at the ATM Center of the respondent No.2 for withdrawing money. There was no privity of contract between the respondent No.2 and the complainant, therefore, the respondent No.1 would not come under the definition of Consumer?. As per the records on February 18<sup>th</sup>, 2011 at 7:19 PM the respondent No.1 operated his ATM card at the respondent No.2 Banks ATM Center located at Minar Gate for withdrawing cash of Rs.100/-. As per the records, cash of Rs.5000/- was successfully dispensed by the ATM Machine. As per the intimation received from the ATM Cell, on February 18<sup>th</sup>, 2011, the complainant had used the ATM of respondent No.2 on February 18<sup>th</sup>, 2011 at 7.19 P.M. The said transaction being No.3695 was successful and amount of Rs.5000/- was dispensed to the

complainant. The ATM Cell had also confirmed that there was no overage available in the said ATM. The respondent No.1 had also not given the details of his ATM Card Number and copy of ATM Slip and its contents in the complaint. The Journal Printer Log revealed that the respondent No.1 had done the transaction being No.3695 and the transaction was successful and Rs.5000/- was dispensed to the complainant.

5. Arguments heard. File perused.

6. It is own case of the appellant that both the transactions are from different ATMs. He has referred to ATM mentioned in the transaction slip. The time of transaction of Rs.100 is 19:18 hours and time of transaction No.3695 for Rs.5000/- is 19:20 hours. It is humanly improbable that a person would operate one ATM and after closing of his operations would go to the next ATM and complete his transaction within one minute. There would certainly be some distance between two ATM machines of same bank. The appellant has withheld the record of both the ATM machines. Not only that, they have also withheld the record of transactions of both the ATMs. Hence, the order passed by the District Forum does not require any interference.

7. Finding no merit in this appeal, it is dismissed.

8. The statutory amount of Rs.6100/- deposited at the time of filing the appeal be refunded to the respondent-complainant against proper receipt and identification in accordance with rules, after the expiry of period of appeal/revision, if any in this case.

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