

BEFORE THE ADJUDICATING OFFICER
UNDER THE INFORMATION TECHNOLOGY ACT, 2000

Principal Secretary to Government,
Department of Information Technology, Government of Karnataka
6th Floor, 5th Stage, M S Building, Dr. B R Ambedkar Road, Bangalore 560 001
Ph: 080-22280562/22032434 Fax: 22288340 email: itbtsec@gmail.com

No. ITD 02 PRM 2011

Date: 17th January, 2012

Complaint u/s 43 of the IT Act 2000

Complaint No.015/2011

Between:

Complainant:

Shri Rajendra Prasad Yadav
No. 19P, Lake City Layout,
Kodichikkanahalli,
Bangalore - 560 076.

And

Respondent:

1. Branch Manager,
ICICI Bank,
No. 80/7,
Elephant Rock Road, Block - III,
Jayanagar,
Bangalore - 560 011
2. AGM, Information Security,
ICICI Bank Head Office,
ICICI Bank Towers,
Bandra Kurla Complex,
Mumbai - 400 051.
3. Head ICICI Bank
Credit Card Division,
C/o. ICICI Bank, Jayanagar Branch,
No. 80/7, Elephant Rock Road,
Block - III, Jayanagar,
Bangalore - 560 011



4. Head ICICI Bank Ltd,
Credit Card Division,
Empire Complex, 2nd Floor,
No. 414, SB Marg, Lower Parel,
Mumbai - 400 013.
5. Chairman and Managing Director,
ICICI Bank Limited,
ICICI Bank Towers,
Bandra Kurla Complex,
Mumbai - 400 051.
6. Account Holder of ICICI Bank
(With nick name of Mr. Erfan,
Holding Credit Card No. 4477479034463010)
C/o. ICICI Bank, No. 80/7, Block - III,
Elephant Rock Road, Jayanagar,
Bangalore - 560 011.
7. Account Holder of ICICI Bank
(With nick name of Mr. Siddapa,
Holding Credit Card No. 4477479505000002)
C/o. ICICI Bank, No. 80/7, Block - III,
Elephant Rock Road, Jayanagar,
Bangalore - 560 011.

This Complaint has been filed for adjudication under Section 46 of IT Act, seeking compensation by way of damages from the Respondents on the ground that there is a contravention of Section 43 of IT Act, causing loss to an extent of Rs.4,14,122/-. The Complainant has claimed damages to the tune of Rs. 9,37,510/-, which includes interest and out of pocket expenditure etc,. The Complainant has deposited the requisite fee before this Authority, as required under Rule 8 of the IT (Qualification and experience of adjudicating officers and manner of holding enquiry) Rules 2003.

The averments of the Complainant are that he is a Senior IT professional working in Bangalore. He maintains SB Account No.. 00501039553 at ICICI Bank, No. 80/7, Elephant Rock Road, Block-III, Jayanagar, Bangalore - 560 011 and the Bank has an Internet Banking facility for the account. For a few days prior to 30/6/2010, the Complainant observed that he was unable to log on to his account and thought it was due to some technical



problem but later he realized that his password was not working. On 30th June, 2010, the Complainant learnt that certain unauthorized transactions had been reflected in respect of his account. The Complainant learnt that 36 unauthorized transactions took place which lead to fraudulent and wrongful withdrawal of Rs. 4,14,122/- from his account. The Complainant filed a complaint with the Respondent Bank and also followed it with a police complaint. The Respondent Bank stated that the investigation was on. The police are investigating into the fraudulent transactions.

The contention of the Complainant is that the electronic space which was accessed for inflicting loss to the Complainant was owned and controlled by the Respondent – ICICI Bank, which had powers to grant access to any person. The Respondent Bank should, therefore, own up the responsibility for any unauthorized access to the account of the client.

In their objections, the Respondent Bank has questioned the maintainability and jurisdiction of the Adjudicating officer to entertain the complaint. The contention of the Respondent is that the provisions of Section 43 of IT Act were not applicable to the Respondent Bank. Further, the contention of the Respondent is that the Adjudicating Officer under the IT Act is neither a recovery machinery nor can prosecute the culprits for the criminal offence under the IT Act. Their contention is that this Authority can only pass an order for damages by way of compensation, after it is proven that the Respondent is responsible for the fraudulent transactions. The Respondents state that their internal investigation reveals that the Complainant customer was himself responsible for revealing his login ID, Password etc, which were apparently obtained through phishing. The onus is upon the Complainant to prove that he did not reveal login ID and password.



BEFORE THE ADJUDICATING OFFICER
UNDER THE INFORMATION TECHNOLOGY ACT, 2000

The contention of both the Respondents and Complainant have been taken into consideration. The complaint is not maintainable, as made out by the Respondent. Section 43 of IT Act is not applicable to a body corporate such as the Respondent Bank, after the IT Amendment Act, 2008, came into force. The provisions of Section 43 of IT Act are not applicable to the Respondent Bank. The contention of the Respondent Bank that the complaint is not maintainable is therefore upheld. Date: 17th January, 2012

Complainant: S/s 43 of the IT Act 2000

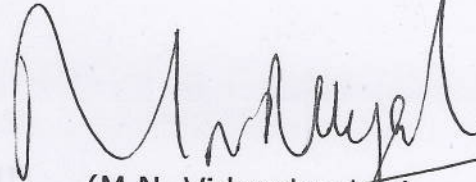
ORDER

In view of the facts and circumstances explained above, the Complainant is, therefore, not sustainable and not adjudicable, invoking provisions of section 43 of IT Act.

Hence, the Complaint is not maintainable.

Dictated to Stenographer and postscript edited.

Order pronounced in the open Court on this day, the 17th January, 2012.



(M.N. Vidyashankar)

Adjudicating Officer

17/01/12

1. Branch Manager,
ICICI Bank,
No. 80/7,
Elephant Rock Road, Block - III,
Jayanagar,
Bangalore - 560 011

2. ACM, Information Security,
ICICI Bank Head Office,
ICICI Bank Towers,
Bandra Kurla Complex,
Mumbai - 400 051.

3. Head ICICI Bank
Credit Card Division,
C/o. ICICI Bank, Jayanagar Branch,
No. 80/7, Elephant Rock Road,
Block - III, Jayanagar,
Bangalore - 560 011

