

# Bank, cell co can't shrug off onus, HC backs order to pay e-fraud victims

## Refuses To Stay Babu's ₹4.75L Payout Direction

Swati Deshpande | TNN

The Bombay high court has come to the aid of two victims of online banking fraud by refusing to stay a government order directing a private bank to pay Rs 4.5 lakh to them and a cell phone service provider Rs 25,000 to one of them. It is scheduled to hear a third case on Wednesday.

ICICI Bank had sought a stay on the orders of state IT secretary Rajesh Aggarwal, who was acting as an adjudicating officer under the IT Act. Holding the bank responsible for "wilful negligence", he had ordered the damages to two Pune-based victims from whose savings accounts money had been transferred fraudulently to other fake accounts.

Aggarwal also directed Idea Cellular to pay up for issuing a duplicate SIM card without verifying documents. A spokesperson for the company declined to comment without reading the order first.

Earlier this month, Justice Vasanti Naik disposed of the petitions, saying "no case is made out for grant of stay". But in another case where ICICI Bank had challenged a similar order to pay Rs 1 lakh to a Navi Mumbai resident, another judge had ordered that no coercive steps be taken against the bank till further hearing. The HC is expected to take up the matter on July 17.

The bank said it could not be held liable for violating the July 2010 RBI or KYC norms of 2012 since the complaints came before. It added that the alleged victims had divulged their account details to phishing mails.

Ramdas Pawar, 37, held a savings account in Pune's Bund Garden branch. His lawyer Rahul Totala said after Rs 3.39 lakh was "transferred through six transactions" from his account to two other "fake" ones in the bank's other branches, the police could not trace the holders and filed for closure (see box). Pawar approached the adjudicating officer in 2011 when the bank refused to revert the money into his account.

In the other case, Saurabh Jain filed a criminal complaint with the Shivaji Nagar police station after Rs 2 lakh was transferred from his account in October 2010 into other accounts at the bank.

In his order in Pawar's case, Aggarwal said: "Criminals used accounts of ICICI Bank opened on fake papers to defraud the complainant. This indicates ICICI has been very lax with KYC norms... The bank has fallen short on many counts of the RBI circular of July 2010 for 'guidelines on information security electronic banking and cyber frauds'."

In Jain's case, Aggarwal came down heavily on Idea Cellular, saying Jain's SIM card was deactivated when a duplicate was issued by it to another person based on a fake licence and police FIR.

## HOW THREE CASES WENT, WHAT THE COURT SAID

**1** Between Sept 27 and Oct 1, 2010, unknown to Ramdas Pawar, a 37-year-old Pune resident, almost Rs 3.4 lakh is transferred through 6 online transactions from his savings account in ICICI Bund Garden Road branch to other accounts within the same bank

Pawar complains to cyber crime cell at Bund Garden police station on Oct 4. Case of cheating under IPC and section 66C (identity theft) and section 66D (cheating by personation by using computer resource) of the IT Act is registered against unknown persons and the ICICI branch

**2** Pune resident Saurabh Jain finds Rs 2 lakh transferred from his ICICI bank account to unknown accounts through 15 transactions on October 15-16, 2010

Complaints to Shivaji Nagar police station that the money was transferred using internet banking ID and password. Police find all addresses of the accounts into which the money went false, files a summary to close the case as 'true but undetected'

**Bank's Stand** | "Contributory negligence" on Jain's part as he had revealed his a/c details to a phishing mail

**Bank's Stand** | All KYC norms were complied with and it had no role to play in the fraud. Pawar had responded to a phishing mail and provided his personal details, including password, to the fraudster

**Adjudicating officer's order in Feb 2013** | Rajesh Aggarwal, secretary (IT), Maharashtra, asked ICICI Bank to pay Rs 3 lakh as damages to Pawar to cover his loss and costs for "failing to prevent the offence... by its wilful negligence on multiple counts"

### WHAT THE HC SAID

In both cases, the HC refused to stay the officer's order on petitions filed by the bank. "I have perused the order of the adjudicating officer. There is no reason to stay it," said Justice Vasanti Naik

**Adjudicating officer's order in Feb 2013** | Rajesh Aggarwal, secretary (IT), asked the bank to pay Rs 1.5 lakh. Held it liable for "wilful negligence on multiple counts", including failing to abide by KYC norms. Pointed out criminals used accounts of ICICI Bank opened on fake papers to defraud Pawar — an indication of lax KYC norms

He also ordered Idea Cellular, Jain's cell phone service provider, to pay Rs 25,000 holding that Jain's SIM card was deactivated when a duplicate was issued by it to another person based on a fake licence and police FIR



**3** Navi Mumbai resident Raju Raut complains in June 2010 and seeks recovery of Rs 1.5 lakh moved by online transactions from his ICICI Bank savings account on May 5-6 to four other accounts allegedly opened with fake documents. A duplicate cell phone SIM card was issued on false complaint of loss of mobile phone. Reliance Communication says on the day of the alleged fraudulent transaction, Raut's original SIM card was active and in use

**Bank's Stand** | Raut received a phishing mail a day before the transactions and may have divulged his account details. Hence only he can be held responsible and liable for negligence and not the bank. Raut refused to produce the phishing email.

**Adjudicating officer's order in Feb 2013** | Rajesh Aggarwal, secretary (IT), Maharashtra, held the bank liable for negligence and failing to follow KYC norms and RBI guidelines and imposed cost of around Rs 1 lakh on it

**Order of the Bombay HC** | Justice N M Jamdar on April 29, 2013, directed that "no coercive action" be taken against the bank till further hearing. The HC will hear the bank's petition on July 17

### CONSUMERS ARE NOT LIABLE FOR FRAUD WHEN:

- ▶ They inform credit/debit card provider of any security breach and reclaim fraudulent transactions immediately
- ▶ Inform about loss of card before fraud takes place
- ▶ Card details are stolen without the cardholder's knowledge

### KNOW YOUR RIGHTS

- ▶ When card provider has an 'internet shopping guarantee'
- ▶ Thieves steal your debit card data and you notify the bank of the suspected

### data theft within 60 days

- ▶ Under the Information Technology Act, a victim can approach an adjudicating officer. The officer holds an inquiry to find out if any person

has contravened a provision of the Act, and can impose a penalty

- ▶ The order of the adjudicating officer can be challenged before a cyber appellate tribunal within 45 days

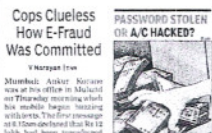
## 'Banks, investigating agencies must pool resources to help fraud victims'

V Narayan | TNN

**Mumbai:** The road is all uphill for victims of banking and credit or debit card e-frauds. First they have to contend with stonewalling by banks and cops, who make them run around to file a complaint, and finally, a bitter struggle to get their own money reverted to their respective accounts.

Joy Kutty, associate professor of SNDT Women's University, had to battle to get back Rs 88 thousand that was siphoned from his savings account on February 27 this year. "It took three and a half months for the bank to put the money back in my account, but even then it was about Rs 500-odd less. It was a tough fight. When I approached them with the complaint, they made me run around. Then they put the blame on the customer instead of accepting their mistakes," said Kutty.

**Gone in 45 mins: ₹1cr stolen from exec's bank a/c**



A TOI report on Feb 2, 2013

The police were no better. When he went to Azad Maidan police station, they registered only a case of cheating. Only later did they add the sections meant for banking e-fraud, he said.

Ankur Korani, the director of a Mulund cosmetics company, lost over Rs 1 crore from his firm's current account on Janu-

### CARD E-FRAUD IN MUMBAI

Jan to Jun, 2013	Jan to Jun, 2012
11	4

ary 31. Six months later, he has got back only about 60% of the amount. "The bank hasn't bothered to revert back on the rest of the sum. It has washed its hands," said Korani. "We are waiting for our legal team to give us clearance to take further legal steps against the bank."

Several victims are contrasting these experiences with that of a bank's 37 customers, including 15 cops in Mumbai, whose funds were promptly reversed into their accounts after being withdrawn in Greece. "It took over 60 days for the same bank to revert the fraud transactions of over Rs 1 lakh on my credit

card in the US," said Soumen Majumdar, director of a city-based shipping company.

A private bank spokesperson said the money is reversed after a probe. "Various aspects have to be considered. If the PIN or the 3D secure code is compromised, it is the customer's responsibility."

Investigative agencies have powers but little resources, like sufficient staff, while banks have the funds but no statutory power. "It's necessary to integrate resources with powers. All banks must come together and embark on this venture by pooling in their expertise and financial resources," said Y P Singh, a lawyer who used to be an IPS officer.

IT expert Vijay Mukhi agreed. Banks should come out with advanced technology to tackle the menace of banking and card frauds that have moved to a different level.