

**In The Court Of Syed Maruf Ahmedali Presiding Officer
District & Sessions Judge District Consumer Court
Lahore.**

Arshad Pervaiz V/S Citi Bank Etc.

Order.

The Petitioner has filed a claim for recovery of US \$ 64090.00 and Rs.50000/- under the Punjab Consumer Protection Act 2005 against the Respondents.

2 Brief facts, according to the Petition, are that the Petitioner opened a US \$ Account on 14.10.2006 with Citi Bank New Garden Town Branch Lahore. It is alleged that when the Petitioner received the Account Statement he was shocked to find that Citi Alert Service charges had been debited from his Bank Account amounting to US \$ 4.930. It is further alleged that the Petitioner never received any Citi Alert message on his Mobile No.0333.5189304. He approached the Respondent Bank and told them to stop the Citi Alert service and protested that the amount debited from his Account be credited. The Petitioner also gave written Application and the Respondent promised to reverse the Citi Alert charges. It is also alleged that he was made to sign the Account Opening Form and Citi Alert Form .It was later on filled by the Respondent Bank and a wrong Mobile Number has been mentioned which is not owned by him. The Respondent also issued a Legal Notice and a reply was also issued by the Respondent Bank which is not satisfactory. Hence this suit, in which he has prayed that he be granted compensation against the Respondent amounting to US \$ 4.9300.00 and costs amounting to Rs.50000/- and refund of US \$ 4.930.

3 The Respondent Bank was summoned. Who contested the claim of the Petitioner through their Written Statement. The Petitioner in order to prove his case, appeared in the witness box as PW-1 and got exhibited Account Opening Form Ex-C/1. On the other hand the

Respondent Bank produced RW-1 Muhammad Tayyab Raza (Personal Banker),and produced documents Ex-R/1 to Ex-R/5 Both the parties closed their evidences on 27.05.2008.

4 It is contended by the counsel for the Petitioner that he was never informed that he would be charged for Citi Alert Service and he was made to sign blank Application Forms which are Ex-C/1 and Ex-R/1 which are in my hand writing. He has further contended that the Cell Number on his Account Opening Form Ex-C/1and Application Form for Citi Bank Alert Service Ex-R/1 are different. His Cell Number mentioned on Ex-R/1is not in his hand writing .Nor he had received any Citi Alert Service message .Therefore he is not liable to pay the charges for Citi Alert Service. The Respondent Bank has wrongly debited from his Account US \$ 4.930 and the Respondent Bank is liable to refund the same along with compensation and damages. He has prayed that his Petition be accepted.

5 On the other hand the counsel for the Respondent Bank has argued that the Petitioner has admitted his signatures on the Account Opening Form Ex-C/1 and on the Application Form of Citi Alert Service Ex-R/1, and now he cannot resale. Documentary evidence would have precedent over oral evidence. He has further contended that this Court has no jurisdiction to adjudicate upon the matter as the Petitioner is not a Consumer as defined in the Punjab Consumer Protection Act 2005. The case of the Petitioner is barred by time. There is no fault in the service of the Respondent Bank. He has prayed that this Petition be dismissed.

6 After considering the arguments of both the learned counsel for the Parties and considering the evidence on record. . The Petitioner who has appeared as PW-1, admittedly opened a US \$ Account with the Respondent Bank bearing No. 9012809554 on 16.10.2006.Admittedly the signature on the Account Form Ex-C/1 and Application Form for Citi Alert Service From Ex-R/1 are his. But he has denied that the Form Ex-R/1 and the remaining

three pages of Account Opening Form Ex-C/1 not in his hand writing. He never received any SMS for December 2006 and January 2007. As the Cell Number given in Ex-R/1 the Application Form for Citi Alert Service is neither owned nor possessed by him. He has a U Fone connection. During cross examination it was not rebutted by the Respondent that the Cell Number given by the Respondent on Ex-R/1 is not owned by him, which proves that the Citi Alert message may have been sent on a wrong Cell Number mentioned on Ex-R/1 which is not owned by the Petitioner. The Cell Number owned by the Petitioner is correctly mentioned on the Account Opening Form Ex-C/1, on which the SMS was never sent.

7 According to RW-1 Muhammad Tayyab Raza (Personal Banker) appearing on behalf of the Respondent Bank, had stated that the Petitioner when visited him on 18.10.2006 refused to avail the Credit and Debit Account facility, but he agreed to avail the facility of Citi Alert which was signed by him and was activated. In January 2007, the Petitioner again visited him and the Bank Account Statement was provided to him. The Petitioner protested about the three months charges mentioned in the Bank Statement and told to discontinue the Citi Alert facility. During cross examination it has been admitted by RW-1 that page No.1 of Account Opening Form Ex-C/1 was filled by the Petitioner and the remaining three pages were filled by the Bank. He has also admitted that the Mobile Cell Number given on the Account Opening Form Ex-C/1 and Ex-R/1 are different. He has also admitted that the Petitioner requested them for a facility of which there are no charges, but again denied the same.

8 From the evidence on record it has been proved that the Citi Alert Service Message was never received by the Petitioner as the same would have been conveyed by the Respondent Bank on the Cell No. 0300.5189304 mentioned on Ex-R/1 which is neither owned or possessed by the Petitioner nor in his hand writing. The Cell Number owned and possessed by

the Petitioner is correctly mentioned on the Account Opening Form Ex-C/1 i.e. 0333.5189304. As the Petitioner had not received the Three Citi Alert Service Messages therefore, the Bank is not entitled to debit an amount of US \$ 4.930 from the Account of the Petitioner. As service was never provided by the Respondent Bank to the Petitioner.

9 As far as Limitation of filing this Petition is concerned, that has already been decided while treating the objection of limitation as a preliminary issue vide Order dated 24.05.2008. The said Order has not been assailed by the Respondent Bank. Now the Respondent Bank is estopped by its act and conduct to raise the plea of limitation.

10 As far as objection of jurisdiction of this Court is concerned. Reliance is placed on 2003 CLD 1843(Karachi). In this case it has been held that Banking Court in circumstances has no jurisdiction over the matters. The Petitioner has claimed compensation/damages based on a Tortious act which would fall under the Punjab Consumer Protection Act 2005. As one area of tort has been codified in the Act *ibid*. The Bank being a service provider has provided deficient service to the Petitioner. Section 3 of the Act *ibid* says “That this Act shall be in addition to and not in derogation of the Provisions of any other law for the time being in force”. Reliance is placed on “Bhandari Coop Bank Limited V/S Dilip Madhukar Kambli (1992) I CPJ 68 (MAH) (Indian) It was held that Banks making such unauthorized debit amounted to deficiency of service Hence this Court has jurisdiction to entertain and adjudicate upon the matter.

In view of the aforesaid reasons, the claim of the Petitioner is accepted and the Respondent Bank is directed to credit US \$ 4.930 in the Account of the Petitioner. The Respondent Bank is also burdened with costs including Counsel Fee of Rs. 5000/- which shall be paid within 10 days from the date of this Order. The Petitioner has failed to prove compensation/damages

File be consigned to record room after due completion.

**Announced
31.05.2008**

**Presiding Officer
District Consumer Court
Lahore.**

Certificate

Certified that this Order consist of Five (5) pages which have been dictated,read,corrected and signed by me.

31.05.2008

**Presiding Officer
District Consumer Court
Lahore.**