

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

Syed Muhammad Farid V/S A.B.N AMRO Bank

Order.

The Petitioner Syed Muhammad Farid has filed a Claim against the Respondent Bank for recovery of damages amounting to Rs. 60000/- under the Punjab Consumer Protection Act 2005.

2 Brief facts, according to the Complaint are that the Complainant is a Master Credit Card holder issued by the Respondent Bank with a maximum limit of Rs. 40000/- It is alleged that Respondent appointed Mr. Nadeem Chouhan for the collection of arrears and other dues. Later on Mr. Umair Mansoor and another employee was appointed for collection of arrears and other dues pertaining to Credit Card. On 07.07.2007 the Complainant paid Rs. 35000/- in cash and a Cross Cheque of Rs. 5000/- to Mr. Umair Mansoor the Collection Agent of the Respondent Bank. Who issued a Receipt No.406984. On 02.10.2007 a statement of arrears of Rs. 40248/- was received by the Complainant. On this the Complainant dispatched a Legal Notice dated 16.11.2007 under the Punjab Consumer Protection Act 2005 to the Respondent. The Respondent Bank did not give any reply to the Legal Notice. Hence this Complaint for recovery of damages amounting to Rs. 20000/- and Rs. 40000/- which he has paid against the Credit Card be adjusted.

3 The Respondent Bank was summoned who contested the claim of the Complainant through their Written Statement. The Petitioner in order to prove his case appeared

in the Witness Box as PW-1 and tendered in evidence his Affidavit Ex-P/1. On the other hand the Respondent Bank produced RW-1 Syed Hassan Askari Gillani (Manager) who tendered in evidence Affidavit Ex-R/1 and admitted Receipt Ex-C/1 during cross examination. Both the parties closed their evidences on 23.07.2008.

4 It is contended by the Counsel for the Complainant that the Complainant has been making regular payments to the Respondent Bank through their Collection Agent Mr. Nadeem Chouhan and Mr. Umair Mansoor. On 07.07.2007 he has paid a cash amount of Rs. 35000/- to Mr. Umair Mansoor the authorized Collection Agent of the Respondent Bank who issued a Receipt Ex-C/1 which is admitted by the Respondent during cross examination. He has further contended that he has also paid an amount of Rs. 5000/- through cross Cheque, the payment which was stopped by the Petitioner. He has further contended that according to the Bank Statement placed on record the Complainant has made no transaction after 22 March 2006 and has paid a sum of Rs. 35000/- in cash on 07.07.2007. He came to know from the Bank Statement of October 2007 that an amount of Rs. 40248/- is outstanding against him. He approached the Bank for adjustment of Rs. 35000/- but the Bank refused to do so. He has prayed that Rs. 35000/- which was received by the Collection Agent Umair Mansoor be adjusted in the outstanding amount of Rs. 40248/- as he had already cut the Credit Card in two pieces and handed over the same to the Collection Agent on 07.07.2007. He has prayed that his Petition be accepted.

5 On the other hand, Counsel for the Respondent has contended that this Court has no jurisdiction to adjudicate upon the matter as the Complainant is not a Consumer and the

Respondent Bank falls under the Financial Institution and only the Banking Court has jurisdiction to entertain and adjudicate upon the matter. He has further contended that the Collection Agent Mr. Umair Mansoor has resigned and the Complainant has paid no cash amount of Rs. 35000/- as claimed by him and the Bank has a right to recover the outstanding arrears from the Complainant. He has prayed that this Complaint be dismissed.

6 After hearing the arguments of learned counsel for the Parties and perusing the record. The Complainant who has appeared in the Witness Box as PW-1 had categorically stated that he had paid a cash amount of Rs. 35000/- to Mr. Umair Mansoor the authorized Collection Agent of the Respondent Bank ,who issued a Receipt Ex-C/1 which has been admitted by RW-1 Syed Hassan Askari Gillani (Manager) of Respondent Bank which proves that a cash amount of Rs. 35000/- was received by Mr. Umair Mansoor the Collection Agent of the Respondent Bank who had failed to deposit the same with the Respondent and resigned from the Respondent Bank on 03.08.2007 i.e. after about 26 days of receiving the cash of Rs. 35000/-from the Complainant. The Resignation Letter has been placed on record by the Respondent Bank. The signatures of Mr. Umair Mansoor are the same which are appended on the Receipt Ex-C/1 (Red circle is mine) through which Rs. 35000/- was received by Mr. Umair Mansoor .Now it has come in to the knowledge of the Respondent Bank that Mr. Umair Mansoor who received the amount of Rs. 35000/- had not deposited the same with them and has embezzled the said amount and has played fraud. It is for the Respondent Bank to proceed against him under the law. The Complainant is in possession of a duly issued Receipt of Rs. 35000/- and he should not suffer for the fraud played by the Collection Agent of the Respondent Bank. Affidavit tendered in evidence by the Complainant also proves that the Credit Card was cut in to two pieces and was handed

over to Mr. Umair Mansoor on 07.07.2007. The same was also not rebutted by the Respondent Bank during cross examination, which proves that the Respondent Bank was not entitled to charge any amount from the Complainant after 07.07.2007. The Bank Statement amount of Rs. 40248/- dated 02.10.2007 is admitted by the Complainant. Rs. 35000/- paid to the Respondent Bank through Ex-C/1 is to be deducted from the amount of Rs. 40248/-. The Complainant is now only liable to pay Rs. 5248/- to the Respondent Bank.

7 As far as the objection of the jurisdiction of this Court is concerned, the said question has already been decided by this Court vide Order dated 27.05.2008. The said Order was not assailed by the Respondent Bank and now they are estopped by their act and conduct to raise the plea of jurisdiction. Reliance is placed on 2003 CLD 1843 (Karachi)

In view of the aforesaid reasons the Complainant has proved his case. This Complaint is accepted and it is directed that Rs. 35000/- paid by the Complainant vide Receipt Ex-C/1 shall be adjusted in the arrears amounting to Rs. 40248/ and the Complainant is only liable to pay Rs. 5248/- to the Respondent Bank. The Complainant is not entitled to the damages as restriction has been imposed on the grant of damages in Section 15 of the Punjab Consumer Protection Act 2005. However the Respondent Bank is burdened with costs of Rs. 5000/- which shall be paid by the Respondent Bank within 10 days from the date of this Order.

File be consigned to record room after due completion.

Announced
30.08.2008

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.

Announced
30.08.2008

Presiding Officer
District Consumer Court
Lahore.