

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. 3
Neutral Citation No. 2025: AHC: 115460-DB

CORAM HON'BLE SHEKHAR B. SARAF, J.
HON'BLE PRAVEEN KUMAR GIRI, J.

WRIT-CNO. 24192 OF 2022

SURESH CHANDRA SINGH NEGI AND ANOTHER

V.

BANK OF BARODA AND OTHERS

For the Petitioners : Mr. Aniket Gupta and Mr. Prem Chandra,
Advocates

For the Respondents : Mr. Namit Srivastava, Advocate

Last heard on July 01, 2025
Pronounced on July 07, 2025

HON'BLE SHEKHAR B. SARAF, J. The present writ petition has been filed under Article 226 of the Constitution of India wherein the petitioners have prayed for the issuance of a writ of mandamus directing the Bank of Baroda (hereinafter referred to as Respondent No. 1) and Reserve Bank of India (hereinafter referred to as Respondent No. 2) to restore the illicitly embezzled fund of Rs. 38,78,000/- inclusive of penal interest at the rate of 24%.

FACTS

2. The actual matrix of the present writ petition is delineated below:

- a. The petitioner no.1 and petitioner no.2 are father and son respectively. Both of them are proprietors of their respective proprietorship firm engaged in the business of transformers fabrication.
- b. Petitioners have opened two accounts with respondent no.1 which was having cash credit facility with limit of Rs.1,20,00,000/- and Rs.1,30,00,000/-, respectively and active net banking facility.
- c. On June 19, 2022, petitioner no.1 transferred amount of Rs.37,85,000/- into account of petitioner no.2, and thereafter, the said amount was transferred to an unknown account. Aggrieved, the petitioner no.2 lodged an F.I.R dated June 21, 2022 in Cyber Crime Police Station, Civil Lines bearing no. 0012 of 2022 and the petitioner no.1 filed a complaint to respondent no.1 regarding the said embezzlement.
- d. Being aggrieved by the inaction of respondents, petitioners approached this Court by means of the present writ petition.

CONTENTIONS OF PETITIONERS

3. The learned counsel appearing on behalf of the petitioners has made the following submissions:
 - a. It is the case of the petitioners that despite being vigilant and paying all due diligence, such unsolicited transactions have been carried out in their bank accounts.
 - b. The sim card got blocked and no sms and calls can be received subsequent to transfer of money from the account of petitioner no.1 to the account of petitioner no. 2.
 - c. No action has been taken either by the Police or the Bank even after intimation to the police within 24 hours the petitioner received sms. The investigation is halted without any reason.
 - d. The petitioner has reported the unsolicited transaction within 3 days according to RBI Circular no. RBI/2017-2018/15, DBR.

NO. Leg. BC. 78/09.07.005/2017-2018 dated July 6, 2017 wherein it is provided that such fraudulent transaction should immediately be restored to customer without any liability and also the burden of proof in such scenario shall completely lie upon the bank.

- e. The I.P. Address for the alleged transaction was not the same as of immediate preceding transaction which demonstrate that some third person was involved for the embezzlement.
- f. To buttress his arguments, counsel has placed reliance on **State Bank of India v. Pallabh Bhowmick & Ors.** in S.L.P. No. 30677/2024 and a Bombay High Court Judgment in **Jaiprakash Kulkarni and others v. The Banking Ombudsman and others** (W.P. no. 1150 of 2023) reported in 2024 SCC Online Bombay 1666 wherein the court has held that amount withdrawn by fraudulent transaction, should be restored back, if reported.

CONTENTIONS OF RESPONDENTS

- 4. The learned counsel appearing on behalf of the respondents has rebutted the arguments of petitioner and made following submissions:
 - a. The alleged embezzled amount was transferred from the account of petitioner no.1 to the account of petitioner no.2 and subsequently has been utilised by transferring it to the accounts of beneficiaries that had already been added by the petitioner no.2 on June 18, 2022.
 - b. The alleged transaction has been done by petitioner no.1 via internet banking by logging into his account and sim card was never blocked and mobile number in the same device was used to generate one time password and also the password was changed by petitioner himself.
 - c. The device used by petitioner no.2 in transferring the amount to the different bank account was the same which was being used

by the petitioner no.2 in operating his internet banking. The counsel has placed I.P. Address details of the petitioner no.2.

- d. The petitioner no.2 himself changed his password after completing all the alleged transactions which requires verification process and the same can be modified only after the internet bank account holder is aware of his old password.

ANALYSIS

5. I have given my thoughtful consideration to the submissions advanced by the learned counsel for the parties and have also perused the relevant records of the case and the affidavits filed on behalf of both the parties.

6. After perusal of the Debit/Credit details as well as I.P Address details, evidently, the petitioners were not the victims of cyber fraud as the alleged transaction had been done diligently by the petitioners themselves subsequent to logging into the internet banking account on June 19, 2022 and transferring the amount of Rs.30,00,000/- at 19.08.00 and the amount of Rs.7,85,000/- at 19:11:28. The petitioners also generated one time password and also changed the password. The amount that has been alleged to be unauthorisedly transferred was originally transferred to the accounts which were added as a beneficiary by the petitioner no.2. It is the admitted case of the petitioners that they received sms on June 19, 2022 regarding withdrawal of amounts in two denominations of Rs.30,00,000/- and Rs.7,85,000/- at 12.44 pm but abstained from reporting the issue immediately and filed the complaint on cyber crime portal on June 20, 2022 and lodged an F.I.R on June 21, 2022. The delay in reporting the issue to bank instantly about the transaction intimation received via sms and lodging of F.I.R depict that it is an afterthought and a concocted story.

7. The petitioners take shelter of the RBI Circular dated June 6, 2017 titled “Customer Protection-Limiting Liability of Customers in Unauthorised Electronic Banking Transactions”, the relevant part of which is extracted below:

***“ Limited Liability of a Customer-
(a) Zero Liability of a Customer***

6. A customer's entitlement to zero liability shall arise where the unauthorised transaction occurs in the following events:

(i). Contributory fraud/negligence/deficiency on the part of the bank (irrespective of whether or not the transaction is reported by the customer).

(ii). Third party breach where the deficiency lies neither with the bank nor with the customer but lies elsewhere in the system, and the customer notifies the bank within three working days of receiving the communication from the bank regarding the unauthorised transaction.

(b) Limited Liability of a Customer

7. A customer shall be liable for the loss occurring due to unauthorised transactions in the following cases:

(i). In cases where the loss is due to negligence by a customer, such as where he has shared the payment credentials, the customer will bear the entire loss until he reports the unauthorised transaction to the bank. Any loss occurring after the reporting of the unauthorised transaction shall be borne by the bank.

(ii) In cases where the responsibility for the unauthorised electronic banking transaction lies neither with the bank nor with the customer, but lies elsewhere in the system and when there is a delay (of four to seven working days after receiving the communication from the bank) on the part of the customer in notifying the bank of such a transaction, the per transaction liability of the customer shall be limited to the transaction value or the amount mentioned in Table 1, whichever is lower.

Table 1
Maximum Liability of a Customer under paragraph 7 (ii)

Type of Account	Maximum liability (₹)
• BSBD Accounts	5,000
• All other SB accounts • Pre-paid Payment Instruments and Gift Cards • Current/ Cash Credit/ Overdraft Accounts of MSMEs • Current Accounts/ Cash Credit/ Overdraft Accounts of Individuals with annual average balance (during 365 days preceding the incidence of fraud)/ limit up to Rs.25 lakh • Credit cards with limit up to Rs.5 lakh	10,000
• All other Current/ Cash Credit/ Overdraft Accounts • Credit cards with limit above Rs.5 lakh	25,000

Further, if the delay in reporting is beyond seven working days, the customer liability shall be determined as per the bank's Board approved policy. Banks shall provide the

details of their policy in regard to customers' liability formulated in pursuance of these directions at the time of opening the accounts. Banks shall also display their approved policy in public domain for wider dissemination. The existing customers must also be individually informed about the bank's policy.

Burden of Proof

12. The burden of proving customer liability in case of unauthorised electronic banking transactions shall lie on the bank."

CONCLUSION

8. A careful perusal of the aforesaid circular would show that the burden of proving the customer's liability in case of unauthorized electronic banking, lies upon the bank. The petitioners invoked clause 6(ii) but then one has to understand whether the loss occurred due to negligence by the customer. The record shows that the transaction was deliberate and was done by the petitioners themselves.

9. The burden of proving customer liability lies upon the bank and the bank, in its counter affidavit has placed passbook, documents showing beneficiary addition by petitioner no. 2, I.P. Address details of petitioner no.2, time and debit transfer details from the internet bank account of the petitioner no.2, a document showing password modification by the petitioner no.2 to discharge its burden.

10. From the perusal of the aforesaid record, it can be discerned that there has been no embezzlement of funds as every transaction was within the knowledge of petitioners, therefore, the defence taken by the petitioners is not fathomable in the eye of law.

11. As far as the cases referred to by the learned counsel for the petitioners, the Supreme Court while dismissing the order passed by the Division Bench of Gauhati High Court has held that it is the duty of the Bank to employ advanced technology to prevent fraud. **Pallabh Bhowmick** (Supra) is distinct from the present case as in that case the amount was withdrawn fraudulently and unauthorisedly without being any negligence on the part of account holder who promptly reported to the bank. Therefore,

account holder was entitled to zero liability under RBI's circular.

12. The judgment of Bombay High Court in **Jaiprakash Kulkarni (Supra)** will also not apply to the present case as in that case petitioner did not receive any intimation with regard to the beneficiaries added to his account either through sms or email, therefore it was held that there was no negligence on the part of the petitioner in that case.

13. In summary, the aforesaid decisions do not help the petitioners in any manner. On the other hand, RBI circular also do not provide shelter to the petitioner for garbing personal transaction as cyber fraud. RBI circular is to cover aspects of customer protection, including the mechanism of creating customer awareness on the risks and responsibilities, and customer liability arising in specific scenarios of unauthorized electronic transactions. The purpose of this circular is to act as a shield for customers from fraudulent transactions and not as a sword in the garb of personal transactions.

14. In light of the above reasoning, this Court is of the view that neither the RBI circular nor the judgment cited by the petitioners apply to the present case. In fact, there appears to be gross negligence on the part of the petitioners and the case of a third party hacking into their accounts is not conclusively proved. Hence, this Court is of the view that the relief sought by the petitioners cannot be granted. Ergo, the writ petition is dismissed.

17.07.2025

Kuldeep

(Shekhar B. Saraf, J.)

I agree

(Praveen Kumar Giri, J.)