

# IN THE HIGH COURT OF SINDH, KARACHI

## **Suit No.1012 of 2007**

Dates of hearing	30.9.2014
Plaintiffs	Sharafat Ali In person.
Defendant No1.	M/s. Citibank N.A. Incorporated in the USA, Mr. M. A. Khan, Advocate (absent)
Defendant No.2.	Inquiry Management & Problem Resolution Unit, Citybank.

## **JUDGMENT**

**NAZAR AKBAR, J.**, This is a suit for damages filed by the Plaintiff against the Defendant bank for illegally claiming refund of credit facility allegedly availed by the Plaintiff, though the Plaintiff was never customer/account holder in the said bank.

2. Briefly stated the facts of the case are that the plaintiff received a telephonic call of one Mr. Ali of Defendants Bank i.e M/s.Citibank at Karachi from phone No.021-2464007 who informed the Plaintiff that an amount of R.45,000/- is outstanding against the Plaintiff against an alleged credit card No.5471752046737008 and threatened that in case of non-payment, the Plaintiff be ready to face dire consequences. Plaintiff immediately sent a letter dated **04.11.2006** requesting Defendant No.2 to probe into this fraudulent act and institute an enquiry for remedial action, but the said letter remained unresponded. Plaintiff thereafter personally met the supervisor Fraud Operation Karachi Region of the Defendant who promised and assured that after inquiry the issue shall

be resolved but the said representative (Mr. Ali) of the bank constantly pressed demand of the said amount and continued to extend threats of dire consequences in case of non-payment and as such the Plaintiff remained under immense mental agony and harassment.

3. Defendant No.2 in response to the Plaintiff's aforesaid letter/reminder forwarded the alleged relevant papers/documents to the Plaintiff on the basis of which the alleged credit card No.5471752046737008 was issued by the Defendant Bank and consequently a fraudulent transaction was created against the Plaintiff.

4. The Plaintiff, therefore filed a complaint before Banking Mohtasib Pakistan Secretariat, Camp office, and Banking Mohtasib conducted an investigation and held that the Personal Identification Details of the Plaintiff were misused for the issuance of Citibank Credit Card and later this Credit Card was used fraudulently resulting in creation of dues against the Plaintiff. Plaintiff accordingly informed the Defendant about the decision of the Mohtasib through a legal notice that the Plaintiff had not applied for the facility of alleged Credit Card. The Defendant in **June 2007** admitted their fault and apologized. The Plaintiff filed this suit against defendants' after legal notice for damages / compensation with the following prayers:-

- A) That in the light of the decision communicated by the Hon'ble Mohtasib Pakistan Secretariat, Camp Office Karachi vide letter bearing Ref.No.2007-271 dated May 15, 2007 this Hon'ble Court be graciously pleased to hold that the Defendants Bank have committed Fraudulent act by misusing the Personal Identification Details of the Plaintiff for issuance of alleged Credit Card bearing No.5471752046737008 by the Citibank and later on this Credit Card was misused fraudulently resulting the creation of the alleged dues against the Plaintiff.
- B) That this Hon'ble Court be further pleased to hold that the Defendants Bank by dint of aforesaid fraudulent acts have caused

immense mental agony, torture and damaged the established repute, honour and status of the Plaintiff in the Society and amongst the friends, office colleagues and family members and so the Defendants Bank is morally and legally responsible to pay the sum of Rs.5,00,00,000/- as being damages to the Plaintiff and for this purpose award judgment and decree in the sum of Rs.5,00,00,000/- in favour of the Plaintiff and against the Defendants in pursuit of justice, equity and law.

C) Any relief/s which this Hon'ble Court deems fit and appropriate under the circumstances.

5. The Defendant No.1 is represented by Mr. Mehmood Ahmed Khan, advocate who filed written statement on behalf Defendant No.1 on **15.12.2007** and Defendant No.2 chose not to appear and was declared exparte on **22.1.2008**. The Court from the pleading on **16.3.2009** adopted the following issues;

1. Whether the defendant bank had issued alleged credit card bearing No.5471752046737008 in the name of the plaintiff by misusing his personal identification details?
2. Whether due to misusing the personal identification details of the plaintiff by the defendants, the plaintiff has suffered mental agony, torture, wastage of time and money and damaged the reputation and honour of the plaintiff as a whole?
3. Whether the plaintiff is entitled for the relief claimed?
4. What should he decree be?

6. Evidence of the parties was recorded through the Commissioner for recording of evidence in terms of order dated 11.5.2009. On 6.6.2009 the Plaintiff filed his affidavit-in-evidence and appeared as his own witness and produced all the documents mentioned in plaint as Ex-P/1 to P/9. His cross-examination was treated "nil" as non-appeared before the commissioner for his cross-examination. The commissioner, however, recorded cross-examination of Plaintiff on **12.9.2009** on the orders of

this Court dated **17.8.2009**. One Mr. Amin Nayab appeared as witness of Defendant and he was cross-examined by Plaintiff on **4.10.2009**. The commissioner filed evidence of the parties with his report on **27.10.2009** and it was taken on record on **21.12.2009**. Since then the case was listed for final arguments.

The perusal of the order sheets reveals that on 26.11.2007, 22.01.2008, 17.11.2008, 16.02.2009, 02.03.2009, 16.03.2009, 06.04.2009, 30.03.2010, 27.04.2010, 21.09.2010, 06.10.2010, 26.11.2010, 16.08.2012, 28.11.2012, 31.01.2013, 15.02.2013, 05.03.2013, 28.03.2013, 11.04.2013, 10.09.2013, 19.02.2014, he remained absent or sought adjournment on one or the other ground.

On **05.3.2014**, Mr. Mehmood Ahmed Khan, learned counsel for the Defendant was directed to file their written arguments by referring to the evidence recorded. Unfortunately he has not filed even written synopsis of his arguments. I have perused the record and the evidence and examined written argument filed by the Plaintiff. My issue-wise findings are as follows:-

#### **ISSUE NO. 1 & 2.**

Issue No. 1 & 2 can conveniently be decided jointly. The burden of proof of both the issues was initially on the plaintiff. The plaintiff has examined himself and he was cross-examined. He reiterated his claim as set out in the plaint and each and every document which was filed with the plaint and produced in evidence has been admitted by the defendant. The phone number from where the plaintiff has received threats and information that he has utilized a credit card issued by the defendant

has not been denied by the defendant that such call was not made from their office. The person who called is also employee of Citi Bank. The plaintiff requested the defendant bank to check black sheeps of criminal mind working in their establishment since he has never applied for credit card from defendant bank nor he has account in the said bank. He sent (Ex. P/1) letter addressed to Mr. Haseeb Ejaz, Inquiry Management & Problem Resolution Unit. But instead of looking into the transaction in the fraudulent account, the Citi Bank / Defendant through letter dated 09-01-2007 (Ex. P/3) informed that the credit card was issued to the plaintiff by the bank on the application for credit card filed and signed by Plaintiff on **24.9.2005** and to assert that Plaintiff is card-holder copies of documents were provided to the Plaintiff meaning thereby they did not accept that Plaintiff was not the beneficiary of the credit card in issue. The plaintiff was therefore constrained to approach State Bank of Pakistan and Banking Mohtasib of Pakistan. The Plaintiff in his complaint provided details of his particulars and the discrepancies in the record of the defendant Bank (Ex.P/4). The defendant Bank did not held inquiry at the request of Plaintiff and insisted that the plaintiff is liable for the payment reflected in Citi Bank Master Card No. 5471752046737008. It was only after the inquiry initiated by the Banking Mohtasib that the Citi Bank in **April 2007** reversed the entire outstanding dues against the Plaintiff and the credit card account was closed and reflected a zero outstanding balance. In the cross-examination despite the fact that defendant bank has conceded that as per finding of the bank inquiry the personal data of the plaintiff was misused while issuing Citi Bank Credit Card in the name of plaintiff, however, an attempt was made to show that the Credit Card was issued

after due verification. The plaintiff categorically stated in cross examination that all this process has caused mental torture to him and he had spent time and money in getting himself cleared from alleged credit liability. Even his reputation, honour and status in the eyes of his colleagues and family members was tarnished during the period he was facing the threats from the defendant bank. The evidence of the plaintiff was not shaken in cross-examination. The Plaintiff has successfully discharged his burden of proof of both the issues. Then the burden was shifted on the defendant to show that they have not misused personal data of the plaintiff. The very fact that the Defendant before the Banking Mohtasib (Ex-P/7 and Ex.P/9) had admitted that even in their own inquiry they found that the personal data of the plaintiff was misused in their bank. Therefore, issue No. 1 was almost admitted by the defendant. The Defendant did not produce any evidence in rebuttal that mis-use of personal data of Plaintiff followed by threatening phone calls to him and insistence of the Defendant that the Plaintiff was the beneficiary of the said credit card has not resulted in any mental torture for him. It cannot be said that the plaintiff did not suffer any mental stress from the time he has received threats from the defendant bank that the plaintiff is liable to pay certain amount as loan/credit for having utilized their credit card though he had never been an account holder and the credit card holder. The Defendant should have made a proper inquiry on receiving complaint from the Plaintiff before involvement of the State Bank of Pakistan and Banking Mohtasib by the plaintiff. The Plaintiff was forced to approach the State Bank as well as Banking Mohtasib to deter the Defendant bank from forcing recovery of fraudulently raised liability. The efforts made by the Plaintiff in clarifying his position cannot be treated as

routine effort to survive without any extra hussle or it was not unpleasant act for the plaintiff. It cannot be said that in the process plaintiff has not spent any money in proving fraud committed by defendant Bank in raising the claim against the plaintiff. Therefore, both the issues are answered in affirmative.

### **ISSUE No. 3.**

The Plaintiff has claimed general damages for mental torture and agony suffered by him on account of action of the Defendants. The Plaintiffs generally exaggerate the quantum of damages for compensation of such sufferings as at the time of filing of the suit the Plaintiffs are emotionally charged. Therefore the plaintiff can neither correctly quantify nor prove such damages by means of cogent/tangible evidence as true and exact loss suffered by him. However, the consequences of wrong actions of the Defendants always compel the Plaintiffs to do certain things / acts which they could have never done in the normal circumstances of their life, it is an abstract claim and plaintiff is always emotionally charged, even then it is settled law that once the Court comes to the conclusion that yes the Plaintiff has suffered torture or agony and he has to be compensated for the wrong done to him, then the court is under statutory obligation to compensate the plaintiff for his suffering/torture he has undergone. However, the Court in absence of any yardstick to determine quantum of damages has to apply the Rule of Thumb. Thus burden of this issue is in fact on the conscience of court. To satisfy its conscience in awarding a particular amount as compensation of damages, the Court is required to examine evidence from the point of view of the nature of the wrong action complained of,

the duration of the sufferings and the status of the man. In the present case no doubt the Plaintiff had suffered mental torture from the date he was informed that he was guilty of using credit card and is under an obligation to make payment of certain amount of money to the Defendant bank. The life of the issue between the Plaintiff and the Defendant is six month from November **2006** to **May 2007**. Therefore, the suffering on account of the threat of consequence of nonpayment of the amount due on credit card which he has never utilized was for a short period of six months. However, during this period the issue was not only between the bank and the Plaintiff. The Plaintiff had to approach State Bank of Pakistan to persuade the Defendant to hold an inquiry at their level and exonerate the Plaintiff from the liability under the credit card. He had to approach one more agency namely Banking Mohtasib to ensure that the Defendant bank refrain from initiating recovery of dues on the credit card from the Plaintiff. It was most probably the fear of possible stigma on the Defendant bank in case of adverse findings of the State Bank and the Banking Mohtasib that persuaded the Defendant bank to hold an internal inquiry which should have been held by the bank in first place on the complaint received from the Plaintiff in November 2006. The inaction on the part of the bank until State Bank and Banking Mohtasib were involved by the Plaintiff has aggravated mental agony of the Plaintiff, therefore, keeping in view the above facts, which have definitely gone unrebutted in evidence, I am of the view that an amount of Rs.300,000/- with markup @ 14% per annum from the date of filing of suit till realization should be sufficient amount as compensation for the torture suffered by the Plaintiff.



**ISSUE No.4**

In view of the above discussion and the facts the suit is decreed with cost and the Defendant are jointly and severally liable to pay an amount of Rs.300,000/- with mark up at the rate of 14% per annum as compensation to the Plaintiff from the date of filing of the suit till realization.

Karachi:  
Dated:12.01.2015

**JUDGE**