

**OFFICE OF THE ADJUDICATING OFFICER,  
GOVERNMENT OF GUJARAT,  
DEPARTMENT OF SCIENCE & TECHNOLOGY,  
Block No: 7, 5th Floor, Sardar Bhavan,  
Sachivalaya, Gandhinagar.**

**SPECIAL CIVIL APPLICATION NO. 13**

**DATE OF DECISION: 31<sup>st</sup> January, 2017.**

**IN THE MATTER OF:**

Shri Anant Ganesh Jog  
Through Shri Manan Thakker, Advocate for Petitioner  
Advocate & Cyber Law Consultant, 2nd floor, Asha Complex,  
Bh. Navrangpura Police Station, Navrangpura,  
Ahmedabad – 380 009, Gujarat.

...PETITIONER

Vs

The Branch Manager,  
State Bank of India,  
Branch: Bhattar Road, Upper Ground, Indralok Apartment,  
Bhattar Road, Surat-395002, Gujarat

...RESPONDENT

The Branch Manager, State Bank of India, Bhattar Road, Surat  
Through Ms. Sona Sagar, Advocate for Respondent,  
Plot no:150, Sector8/C, Gandhinagar-382008, Gujarat.  
.....RESPONDENT

Shri UdainathRajnarayan Yadav  
Gaurav Sankalp Complex, Phase-1, Ravigroup Building No. 7,  
Chintan Flat no-303, 3rd Floor, Mira Road (East), Thana,  
Maharashtra.

...RESPONDENT

Shri MaheshbhaiRajnikant Shah,  
8, Shramsiddhi Apartment, Stadium Road,  
Navrangpura, Ahmedabad, Gujarat.

...RESPONDENT

The Legal Head, M/s Vodafone Limited (West), Ahmedabad  
Through Shri Rajesh V. Soni, Advocate for Respondent,  
4/A, Second Floor, Agrawal Chamber, Town Hall, Elisbridge,  
Ahmedabad, Gujarat.

...RESPONDENT

Shri. Tejas Santosh Nandvikar  
Chintamani Niwas, Room No-4, Kopargan, Dombivali West,  
Thane-400601

...RESPONDENT



Shri.SomanathMuduli  
At-Katuru, Post-Bipulingi, Chatrapur-761020 ...RESPONDENT

Shri.BhimabhaiKanabhaiBhadarka  
Kukawada, Chorwad, Maliyahatina,  
Junagadh-362250, Gujarat ...RESPONDENT

Shri.PradeepKannoujia, S/O-Ramraj  
Vill& P.O.-Bhagvanpur, Gorakhpur, Gorakhpur-273401 ...RESPONDENT

Shri.Ikhlaque Ahmed Shaikh  
1/H/OmkarChs, Geetanagar Fly Over Bridge, Mira Road,  
Thane-401107 ...RESPONDENT

Shri.NitinMitabhai Chauhan  
Behind Navrang Soap Industry, Near Bedeshwar's  
New Railway Crossing,  
Edeshwar, Jamnagar-361002, Gujarat ...RESPONDENT

Shri.RajuBaburaoNaik  
Tarun Bharat, Co-Op HSG Society, Plot-29-D-1,  
Chakala, Andheri East,  
Mumbai-400099 ...RESPONDENT

Smt.Jayshree Hasan Ansari  
203/A, Shakti Apt, Vijay Nagar, Nallasopara East,  
Thane-401209 ...RESPONDENT

Shri.Arshad Khan, S/O-Ishaq Ahmed  
306/5, Zakir Colony, Hapur Road, Meerut, Merrut-250001 ...RESPONDENT

Shri.Subir Roy  
6A, Bangur Avenue, Old Post Office Bangur, Kolkata,  
West Bangal-700055 ...RESPONDENT

Shri.Surya Narayan Shukla, S/O-Mr. GajendraNath Shukla  
Vill-Majhigaon, Post-Kanail, TEH-Bansgaon, Gorakhpur,  
Gorakhpur-273413 ...RESPONDENT

**HON'BLE MR. DHNANJAY DWIVEDI  
ADJUDICATING OFFICER UNDER  
INFORMATION TECHNOLOGY ACT, 2000**

This matter has been filed by the petitioner under sections 43 a, 43 h, 43-A of the Information Technology Act, 2000. The complainant is a resident of Surat. The complainant was maintaining an account with the SBI, Bhattar Road Branch, Upper

ground, Indralok Apartment, Bhattar Road, Surat-395002, Gujarat. The complainant was maintaining a savings account with No. \*\*\*\*1605 with the Respondent Bank. At the time of making complaint, the complainant was using internet banking facility for the account for which the Cell Number of the complainant bearing No. \*\*\*\*5750, was used for the purposes of receiving alerts from the bank.

2. The complainant has alleged that on 2nd July, 2011, twelve transactions were made on-line without authorization from the complainant. The complainant has alleged that the complete amount of twelve transactions was transferred into different accounts of different branches of Respondent Bank only. The complainant has further alleged that police investigation records revealed that some unknown fraudster has exchanged his SIM card from Vodafone store (Address- 1, ground floor, 21 century business center, ring road, Surat) without his request to do so. Subsequent thereto, the complainant sent various emails and letter to SBI but he alleges that has not received any satisfactory response. Further, complainant issued legal notice to SBI but he alleges that he has not received satisfactory response.

3. The complainant has alleged that in grave contravention and deficiency in service of following reasonable security practices under the provisions of the Information Technology Act, 2000 by the Respondent Bank, the complainant has suffered huge financial loss of Rs. 5,00,000/- due to fraudulent transfer of money to beneficiary holding accounts with different branches of Respondent Bank only. He has repeatedly alleged that Bank has allowed to fraudsters to open accounts without KYC compliance which is a clear failure of operational and managerial security practices. He further alleged that he has requested many times for information of said beneficiary account but Bank has never provided the same.

4. The complainant has alleged that the Respondent Vodafone Ltd. issued a duplicate sim card without proper authorization and without following reasonable security practices and got it activated with the same mobile number as was owned by the complainant immediately before the fraudulent transactions took place. The complainant has alleged that the beneficiaries of such unauthorized transactions are some different persons than the bank and Vodafone but it is due to the negligence

and lack of adherence to the Know Your Client (KYC) as well as reasonable security practices norms that has caused the happening of unauthorized transactions causing loss to the complainant.

5. The complainant has prayed for a direction against the respondents to pay to complainant full amount towards damages incurred of Rs. 5,00,000/- with the interest at the rate of 24% p.a. from the date of happening of the unauthorized transactions, to pass order directing respondents to pay compensation to complainant for the legal charges and court fees amounting to Rs. 65,050/- with interest at the rate of 24% p.a. from the date of referenced transactions.

6. Before this complaint was filed, police authorities undertook investigation at their end in the process for finding out the trail for the transactions money. The matter forming part of the police complaint and subsequent criminal proceedings are separate proceedings under the Criminal Procedure Code and various penal codes. The current matter being brought under the provisions of the Information Technology Act falls within the jurisdiction of the Adjudicating Authority.

7. Pursuant to the receipt of the complaints, notices were issued to the Branch Manager, SBI as well as to M/s Vodafone Ltd. Subsequently, during the course of the proceedings, Shri Uadinath Yadav, Shri Mahesh Shah, Shri Tejas Nandvikar, Shri Somanath Muduli, Shri BhimabhaiBhadarka, Shri Pradeep Kannoujia, Shri Ikhlague Shaikh, Shri Nitin Chauhan, Shri Raju Naik, Shri Jayshree Ansari, Shri Arshad Khan, Shri Subir Roy and Shri Surya Shukla who are alleged to have account to which the transaction trail in relation to withdrawals was tracked. Notices were served to all of them.

8. Respondent Bank SBI has submitted that there is no deficiency of services on its part as they have not disclosed the password or any sensitive information of complainant. It has clearly denied regarding complainant's argument that fraudsters and hackers are part of respondent's system and the respondent has not used the KYC properly. Further, it has submitted that it helped complainant to recover



Rs.1,30,000/- and also cooperated police in investigation process. It also submitted that all reasonable security practices and procedures have been followed.

9. Complainant argued that notices which were issued to various above various persons were returned except Shri Surya Shukla. Complainant further argued that this proves clear KYC violation on the part of bank. Complainant requested to have interim relief of recovering some of his stolen funds from below accounts

SR. NO.	BRANCH ACCOUNT	BRANCH CODE	AMOUNT
1.	31149801285	11672	Rs. 931/-
2.	66019893447	60168	Rs. 43,498/-
3.	30888113657	08347	Rs. 7,434/-

10. The Complaint Shri Anant Ganesh Jog is having its bank account and internet banking facility with Respondent State Bank of India, Bhattar Road, Surat. On 02nd July, 2011 Complaint came to know 12 unauthorized transactions through net-banking for the amount of Rs. 5,00,000/-. During the course of inquiry, it is found that transactions were made to multiple accounts. During the course of proceedings, Complaint has repeatedly asked Respondent to provide details of bank accounts wherein Complaint's money has been illegally transferred. The office has issued notices to the account holders provided by the bank, but except for one account holder, no other account holder has come forward either to repudiate claim in the petition or to provide any contrary claim. Prima-facie it is seen that accounts indicated in the schedule indicated herein are fronts operated by individuals other than the one's shown as account holder by banks.

11. The matter was heard on 08th July, 2016. The Petitioner made a request to release the funds lying with the State Bank, the Respondents have no objection to such release. The matter was further heard on 23rd September, 2016 where the Petitioner's Advocate and M/s Vodafone's Advocate remained present, however State Bank's Advocate was not present.

12. In hearing on 28.01.2016, SBI Bank was directed by a notice to clarify if the funds available in accounts are under any seizure or not. The bank has not responded and thereafter has not remained present in hearing on 23.09.2016. In the absence of any clarification on status by SBI, given the duration it has taken of, pursuant to the receipt of such a request from the complainant, interim order was passed on 27/9/2016, as amended on 27-1-2017 to correct typographical mistake.

13. By this Interim Order as amended, the Respondent State Bank of India was directed to return the Petitioner's amount which is in accounts as follows within 7 days of issues of the interim order under intimation to the undersigned.

Sr. No.	Branch Account	Branch Code	Amount
1.	31149801285	11672	Rs.931/-
2.	66019893447	60168	Rs.43,498/-
3.	30888113657	08347	Rs.7,434/-
No refund from Shri Surya Narayan Shukla's account.			



14. During the course of proceedings on 18th November, 2016, complainant informed that he has not received said amount in his account from the Bank.

15. Respondent mobile service provider Vodafone submitted that they deny all claims and arguments made by the complainant. Further it has submitted that it cannot be held responsible for any online money transfer fraud if user id and password of the complainant is compromised in some way or another. Further, it has submitted that it has verified documents before issuing new SIM to some Mr. Kaustubh Das who has appeared as authorize person of the complainant. Further, it has submitted that it has no knowledge of the said documents to be fake and forged.

16. Complainant submitted allegedly fake documents including application and PAN card and argued that Vodafone has not performed even a small verification to verify his full name, photograph and PAN card number into its database before replacement of his sim card. He has further requested to add sections 43(d), 43(f), 43(g) and 43A of I.T.Act,2000 against Vodafone.

17. Based on the papers submitted, it appears that 12 on-line transactions were effected on 2<sup>nd</sup> July, 2011, of amounts Rs. 70,000 - one transaction, Rs. 40,000 - ten transactions, Rs. 30,000 – one transaction, effectively totaling to an amount of Rs. 5.00 lac. It also appears that amounts were moved to different bank accounts maintained in the name of individuals and with different branches of State Bank of India. Notices were issued to the State Bank of India (SBI), Vodafone and the persons who were shown as account holders of different account to whom the funds have been transferred. The petitioner has also filed with its complaint, a copy of the papers from the police investigation whereupon the named individuals in the police investigation report were also issued notices. However, none of the person actually responded except for one Mr. Surya Narayan Shukla. It appears that the said individual Shri Suraya Narayan was also one of the account holders in whose account a sum of Rs. 70,000/- was credited which was thereafter refunded back to the complainant's account. In respect of other money transferred in tranches of Rs. 40,000/- and Rs. 30,000/-, from Bank Statements that the respondent SBI has provided it comes out that majority accounts are dormant accounts and in majority of the cases the amounts which were transferred were withdrawn through ATM transactions on 2<sup>nd</sup> July, 2012 itself.

18. During the proceedings, based on the money trail and looking to the available balance which was seen in three accounts as per the following schedule, as an interim relief, a total of Rs. 51,863/- amount was ordered to be refunded back to the petitioner.

SR. NO.	BRANCH ACCOUNT	BRANCH CODE	AMOUNT
1.	31149801285	11672	Rs. 931/-
2.	66019893447	60168	Rs. 43,498/-
3.	30888113657	08347	Rs. 7,434/-
No refund from Shri Surya Narayan Shukla's account.			

19. Other than the amounts which have been ordered to be refunded through the interim order, no other amount seems to be available in any of the accounts to which the funds were moved and without finding either the person who has facilitated this transaction or the beneficiary of such transfer of funds it is not possible to bring back to the applicant any additional money out of the transferred money.

20. Looking into what would constitute right compensation for the applicant in view of the fraudulent transactions committed from his account and was there any liability on the part of SBI or the Vodafone in accordance with the Section 43-A of the I.T. Act for not following reasonable security practices, I find that insofar as on-line banking facility transactions for the applicant's account are concerned, the SBI cannot be faulted for any laxity or any failure as the user ID and password are to be kept confidential by the account holder himself. However, it has come out that of the 12 accounts where the money was actually transferred, but for Mr. Suraya Narayan Shukla, no other person is traceable. In that context, for the KYC norms that the SBI is supposed to adhere to, it comes out that it has not actually adhered to. Had the persons who had maintained those accounts were known to SBI through the KYC norms; it would have been possible to trace those individuals and retrieve the money back, which was unauthorizedly transferred. That said, the failure of SBI in maintaining KYC norms cannot be treated as the sole cause for occurrence of the unauthorized transactions and, therefore, without linking to the actual loss that has been caused to the applicant, I deem it fit to impose a penalty of Rs. 15,000/- with the hope that said penalty amount will cause the management of SBI to look at a systemic response to the regulatory requirement for adhering to KYC norms. The SBI should transfer Rs. 15,000/- to the petitioner under intimation to the undersigned within a period of 30 days.

21. Besides the banks, the Cellular Service Providers have also been mandated to adhere to the KYC norms. In the instant case involving 12 unauthorized transactions even after assuming that user ID and password were breached, the unauthorized transaction would not have taken place if the Sim card was not issued by the Vodafone company upon request to the undescribed user. However, the

accompanying documents that have been submitted by the petitioner's advocate bring out that PAN card was submitted by the person who had actually turned up for the duplicate Sim card which also bears the name of the person as Ananat Ganesh Jog, son of Ganesh Jog – a name strikingly similar but for an extra 'a'. Only mistake that the representative person from Vodafone made was not to take authentication credentials of the person namely 'Kaustubh Das' who came for collection of SIM. If the credentials of Mr. Das were taken by Vodafone, it would have been still possible to get to the person who caused the unauthorized transactions. But in the face of evidence presented, it is difficult to hold that the concerned person from Vodafone failed in following reasonable security practices to the extent of his satisfaction and, therefore, no penalty is levied on M/s Vodafone.

## ORDER

A. In view of the discussion as above, by virtue of the powers conferred on the Adjudicating Officer under Section 46 of the I.T. Act, I order as follows :

- (1) The interim order directing the State Bank of India to return to the petitioner amounts which were in three different accounts as per the table mentioned below is made permanent. The State Bank of India is directed to submit compliance within a period of 7 days.

SR. NO.	BRANCH ACCOUNT	BRANCH CODE	AMOUNT
1.	31149801285	11672	Rs. 931/-
2.	66019893447	60168	Rs. 43,498/-
3.	30888113657	08347	Rs. 7,434/-
No refund from Shri Surya Narayan Shukla's account.			

(2) For not following KYC norms with 10 different account which were maintained by the State Bank of India in different branches, a penalty of Rs. 15,000/- is levied on the State Bank of India and it is directed that by way of compensation to Mr. Anant Jog said amount be paid to Mr. Anand Jog, the applicant herein within a period of 30 days.

B. Of late, the society is seeing a rise in the number of fraudulent transactions over on-line platform. The criminal intent and crime against property etc. is being taken care of through the criminal justice system. In all such cases, State being the prosecutor, the cases are taken through the criminal jurisprudence with police helping the criminal justice system. However, there seems to be a lack of awareness for the civil remedy available to the citizens in terms of penalty as well as compensation under provisions of the Information Technology Act. To ensure that citizens become aware of the provisions of the law and also become more vigilant in guarding personal information that is sensitive in nature and become aware about security practices to safeguard one's on-line space, there is a general need to increase awareness about the new legal framework introduced through the mechanism of Information Technology Act and Rules thereunder. Accordingly, it is ordered that decision in this case be put in public domain and be widely publicized.



**(Dhananjay Dwivedi)**

Adjudicating Officer under  
Information Technology Act, 2000,  
for the State of Gujarat.