

**JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

Date	Judgment with signature of the Judge
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Present:

Mr. Justice Muhammad Iqbal Kalhor.

Mr. Justice Muhammad Abdul Rehman.

I. Appeal No.25 of 2023

Standard Chattered Bank Ltd. & others	Appellants
	Vs.	
Waqar Ahmed Chandio	Respondent.

09.10.2025.

Mr. Ghulam Rasool Koari, advocate for appellants.
Respondent Waqar Ahmed Chandio, in person.

J U D G M E N T

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MUHAMMAD IQBAL KALHORO J: This appeal impugns judgment dated 05.211.2022 and Decree dated 10.12.2022 passed by the Banking Court at Karachi in Suit No.476/2013 filed by respondent Waqar Ahmed Chandio for declaration, damages and permanent injunction.

2. In the suit, he has stated that he is a business man holding two credit cards issued by the appellant Bank. Out of two credit cards, one card bearing No.45816400151950407 was cancelled on his request through an application. Subsequently in the year 2013, he found an amount of Rs.114,681/- deducted from his account maintained by him with the said bank. He filed a complaint with the bank and came to know that another credit card No.376294674962505 was issued in his name showing execution of certain transactions by him and the amount deducted from his account was done partly on account of such transactions. He pleaded with the bank that he never applied for the second card, nor was delivered one with the number as above but in vain.

3. Subsequently on 05.08.2013 he received a notice from the bank for recovery of Rs.455782.68 and in addition reminding him that he had not replied various notices sent earlier in this regard. Respondent, faced with such situation, served a legal notice to the bank denying applying for or receiving any second credit card or carrying out the alleged transactions but the bank did not pay any heed and kept on demanding such amount from him. He attempted to explain to the bank that the said card was purportedly issued against forged and fabricated documents with his forged signature, perhaps it was done by the officials of the bank, who used it surreptitiously but the bank did not accept his plea and kept on harassing him through its officials and demanding the aforesaid amount from him, hence he filed the suit with following prayers:-

- A. To declare that credit card No.376294634962505 has been fraudulently issued on forged documents. Plaintiff who never applied for the same and it be further declared that the plaintiff never used the said credit card as alleged is not liable to pay amount shown in the letter against the said credit card:
- B. Permanent injunction may kindly be issues restraining the defendant bank, its servants, officers, persons from demanding any amount towards the said credit card and from recovery the same from the plaintiff:
- C. To direct the defendant No.1 to return the amount of Rs.114681/- to the plaintiff which was illegally deducted by the bank and further to direct the defendant No.1 / Bank to pay markup @ 14% to the plaintiff on the actual amount Rs.114681/- w.e.f. August 2013, during pendency of the case and to pay the same till realization of actual amount of Rs.114681/-.
- D. To direct the defendants to pay to the plaintiff, jointly as well as severally a sum of Rs.20,00,000/- as damages.
- E. Cost of the suit:
- F. Any other relief is deemed fit and proper be granted:

4. On a notice, the appellant bank filed application for leave to defend the suit denying the contents of the plaint and affirming that the said card No. 37629463492505 was in fact replacement of earlier credit card No.376294677755577 which at the request of respondent/plaintiff had been cancelled and the new card with aforesaid number was issued to him, he conducted transactions from the said new card. The details of which have been given in para No.10 as under:-

“In compliance with section 10 of the Financial Institutions (Recovery of Finance) Ordinance, 2001 the required information is appended below:-

1. Credit Card No.3762-9463-4962-505

a) The amount of finance availed by the Plaintiff from the financial institution	Rs.461,491.68.
b) The amounts paid by the Plaintiff to the financial institution	Rs.120,390.00
c) The amount of fiancé & other amounts relating to the finance payable by the plaintiff to the financial institution upto the date of institution of the suit	
PRINCIPAL AMOUNT	Rs.461,491.68
PAYMENT MADE	Rs.120,390.00
TOTAL RECOVERABLE	Rs.341,101.68.

5. The application was allowed and the bank was permitted to defend the suit unconditionally, as a result following issues were framed:-

- i. Whether credit card No.376294677755577 had been issued in replacement credit card No.376294674962505. The plaintiff had been incurring expenses and making payments against the said credit card No. 376294674962505 which is attempting to disown now?
- ii. What should decree be?

6. In the trial, respondent/plaintiff examined himself as P.W.1 and was cross-examined at length by the counsel for appellant. On its part, the bank filed affidavit in evidence of its authorized officer namely Mr. Aijaz Hussain Tewino alongwith certain documents including application of respondent dated 20.11.2005 applying for credit card, process of online request dated 10.06.2006 to 06.07.2008. However, the said witness failed to adduce evidence despite various chances given to him. The record reflects that due to failure of appellant's witness to adduce evidence, the case was adjourned at its request but only with imposition of cost, yet the bank failed to lead its evidence in support of its case. Finally, through an order dated 07.04.2021, the side of the bank was closed with the following order:-

"07.04.2021

Earlier matter remained pending for filing of affidavit in evidence of the defendants' side from 23.10.2017 to 23.01.2019. Since then it is pending for recording of evidence of defendant witness. During this period of over two years, many a times, strict directions were given to the defendants' side to produce and examine their witness. On 11.12.2020 matter was adjourned giving the last chance. On 20.01.2021 matter was again adjourned on the request of learned counsel for the defendant on token cost of Rs. 1000/- for 23.02.2021. On the said date it was again adjourned (for today) on pleading some personal problem of the witness, but on cost of Rs.1500/-. Today again, though witness is in attendance but this adjournment application is submitted on the ground that the documents required to be produced by defendant witness could not be had from the bank vault. The same is not found to be a sufficient ground as defendant had ample time of about one and a half months since the last date, to collect the required documents. While plaintiff is suffering for the slackness of defendant bank in proceeding with this over seven years old case.

Foregoing in view, the defendants side is hereby closed. Put off to 21.05.2021 for final arguments."

7. Thereafter the parties were invited to submit their argument. Respondent supported his case as set out by him in the plaint, whereas the arguments of learned counsel appearing for the bank were confined to his grievance that a fair chance was not given to the bank to support its claim and rebut the case of the respondent. However, these arguments did not persuade learned banking court and vide impugned judgment has decreed the suit as prayed. However, at the time of passing judgment, the issue No.1 was reframed as under:-

"Whether credit card No.376294674962505 had not been issued in replacement of credit card No.376294677755577 and the plaintiff had not been incurring expenses and is not liable to pay an outstanding amount of Rs.4,55,783/- against the said credit card No. 376294674962505?."

8. We have heard learned counsel for appellant and respondent in person. Learned counsel has submitted that a fair chance was not given to the bank to prove its case; the witness was present on the date but the banking court closed side of the

bank in haste through order dated 07.04.2021, as reproduced above; the judgment is not sustainable in law being *exparte* in essence, hence the same may be set-aside and the bank may be allowed to lead its defence before the banking court.

9. On the other hand, respondent has supported the impugned judgment and decree.

10. We have considered submissions of the parties and are not persuaded by the arguments of the bank's counsel. The impugned order dated 07.04.2021 closing side of the bank shows that initially the matter remained pending before the banking court for filing of affidavit in evidence of appellant's witness from 23.10.2017 to 23.01.2019 for about more than one year. But even after filing of affidavit on latter date, the bank's witness failed to come in the witness box and adduce evidence. On a number of occasions strict directions were given to the bank to produce him and lead his evidence but to no avail. Finally, on 11.12.2020, a last chance in this regard was given to the bank but then again on 20.1.2021 the case was adjourned at the request of bank but this time a cost of Rs.1000/- was imposed and the matter was adjourned to 23.02.2021. Even then the bank failed to lead evidence of its witness on that date citing some problem and this time against a cost of Rs.1500/-, indulgence was shown by the banking court and the matter was adjourned.

11. On 07.04.2021 the bank finally produced its witness but the witness demanded adjournment saying that he was not ready to give evidence for want of documents. The court then called it a day and closed the side. Learned counsel for the bank has failed to explain such a long delay on the part of the bank to lead its evidence. The case actually kept pending from 23.10.2017 till 07.04.2021 for about 3 ½ years for evidence of the bank but the bank on one excuse or the other succeeded in dragging the matter and when finally the witness of the bank appeared before the court, he refused to lead evidence and sought time by citing an un-excusable excuse. We find the order passed by the banking court closing the side of the bank well-reasoned and in accordance with law. No exception could be taken to it. The delay on the part of the bank was apparently hurting interest of respondent to expeditious conclusion of the case.

12. Notwithstanding, the banking court heard the arguments of the bank's counsel, there also he could not refer to any evidence showing an application submitted by the respondent for issuance of new credit card to him in the year 2008, or evidence showing its delivery to him or the evidence establishing the fact that transactions were carried out by him. On this point the relevant discussion, the banking court has held in para 12 of the impugned order as under:-

“Then very interestingly:

- i) On 03.01.2008 mobile number of the plaintiff was changed and card was marked lost for replacement.
- ii) On 04.01.2008 (i.e. very next day the card was replaced with new card-505)
- iii) Yet strangely by the very next day i.e. 05.01.2008 not only card was delivered) but the same was activated and its Pin was generated

The same is found to be too strange to be comprehended. The fact shows that there was manipulation either by the bank staff handling online, or at least a strong connivance by the bank staff handling on line operation, for the subject fraud. The defendants being bank should themselves have found it suspicious that in four consecutive dates from 03.01.2008 to 06.01.2008, on one date the address details were changed and on the same date mobile phone number was updated (changed) and previous card was reported lost. On the very next day card was replaced with new subject credit card-505, which was not only processed, prepared and printed in one day but was also delivered, and on the same day pin was generated and on the very next day the work address was also changed on request."

13. It is clear that the issuance of disputed credit card, its delivery, activation of its pin were dubious from the very start, yet the bank pressed on its position instead of holding an internal enquiry and determining the real facts. The trial court, like us, has also found it very strange that the said card was kept activated for a number of months although no payment against the transactions made through it were made by the plaintiff. It is noted that usually credit card is blocked after a month on nonpayment of outstanding amount. But in this case, despite nonpayment for months together, the card holder was being allowed to carry on transactions without any hindrance. It is also on record that the bank could not produce any documentary evidence showing copies of monthly bills or notices given to respondent on his failure to make good of the monthly payments against the transactions. The transactions purportedly were carried on in the year 2008 and the respondent did not make any payment towards those transactions but the bank kept quiet for 5 years and only in the year 2013 deducted aforesaid amount of Rs.144,681/- from his account and gave him notices for recovery of the remaining amount.

14. The bank was permitted to defend the suit and in lieu thereof, an affidavit in evidence by the witness of the bank was filed by the bank but the necessary documents showing request by the respondent to issue him a second card etc. were not produced. The witness did not offer himself for cross examination either to validate his affidavit-in-evidence. The trial court after holding lengthy discussion has rightly, therefore, decreed the suit of the respondent/plaintiff. Learned counsel for the bank has not been able to point out any document showing that the conclusion drawn by the banking court in decreeing the suit is based on any extraneous material. Barring repeatedly saying that fair opportunity was not given to the bank to prove its

case. Learned counsel has not referred to any material burnishing his case as articulated by him. We do not find his arguments persuasive in view of the facts and circumstances, discussed above. We do not find, therefore, any merit in this appeal and accordingly dismiss it.

The Appeal stands disposed of alongwith pending applications.

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