IN THE COURT OF JUDGE SMALL CAUSES SRINAGAR.

Complaint no.2592320/2022 CNR NO. JKSG03-050131-2022
D.O.I:- 25-08-2022
D.O.O.:- 08.09.2023

In the case of:
HDFC Bank Ltd. Having its registered office At HDFC Bank House Senapati Bapat Marg. Lower Parel (West) Mumbai-400013 having one of its office at Kara Nagar Srinagar Kashmir Through its authorized attorney
Asif Majeed Shamsi
S/O Abdul Majeed Shamsi
R/O Kralpora, Srinagar

(Complainant)
Through: Counsel

V/S

Mohd Rashid
R/o Dhara Mandi Poonch 190102
Card No.000457262XXXXXX5006

(Accused)
Through: Adv. Abid Banday

In the matter of: Complaint u/s 25 of Payment and Settlement System Act 2007.

CORAM: Ms Tabasum (JO CODE: JK00173)

ORDER

The instant complaint U/S 25 of Payment and Settlement System Act 2007 has been presented before this court after the same has been assigned by LD. CJM Srinagar for its disposal under law. Office is directed to diarize the same.

The instant case has been presented on dated 25-08-2022 regarding Card No. 000457262XXXXXX5006 (AAN No.1012670002695009) for an amount of Rs.100136 bearing CASA A/C No.050100023202401. The memo has been issued by bank on dated 07-07-2022 whereby the funds have been found insufficient in the account of the accused and accordingly the complainant issued statutory demand notice on dated 19-07-2022 same was sent by virtue of speed post on 23-07-2022, however it is no where mentioned in the complaint as to when the receipt of notice has taken place in the instant matter.

It is important to reiterate the contents of **Section 25 in The Payment and Settlement Systems Act, 2007:**

25 Dishonour of Electronic Funds Transfer for insufficiency, etc, of funds in the account;

(1) Where an electronic funds transfer initiated by a person from an account maintained by him cannot be executed on the ground that the amount of money standing to the credit of that account is insufficient to honour the transfer instruction or that it exceeds the amount arranged to be paid from that account by an agreement made with a bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the electronic funds transfer, or with both: Provided that nothing contained in this section shall apply unless

(a) The electronic funds transfer was initiated for payment of any amount of money to another person for the discharge, in whole or in part, of any debt on other liability;

(b) The electronic funds transfer was initiated in accordance with the relevant procedural guidelines issued by the system provider;

(c) The beneficiary makes a demand for the payment of the said amount of money by giving a notice in writing to the person initiating the electronic funds transfer within thirty days of the receipt of information by him from the bank concerned regarding the dishonour of the electronic funds transfer; and

(d) The person initiating the electronic funds transfer fails to make the payment of the said money to the beneficiary within fifteen days of the receipt of the said notice.

(2) It shall be presumed, unless the contrary is proved, that the electronic funds transfer was initiated for the discharge, in whole or in part, of any debt or other liability.
(3) It shall not be a defence in a prosecution for an offence under sub-section (1) that the person, who initiated the electronic funds transfer through an instruction, authorization, order or agreement, did not have reason to believe at the time of such instruction, authorization, order or agreement that the credit of his account is insufficient to effect the electronic funds transfer.
(4) The Court shall, in respect of every proceeding under this section, on production of a communication from the bank denoting the dishonour of electronic funds transfer, presume the fact of dishonour of such electronic funds transfer, unless and until such fact is disproved.
(5) The provisions of Chapter XVII of the Negotiable Instruments Act, 1881 (26 of 1881) shall apply to the dishonour of electronic funds transfer to the extent the circumstances admit. Explanation. For the purpose of this section, debt or other liability means a legally enforceable debt or other liability, as the case may be.

The complainant has failed to mention as to how clause (d) of the above stated section is complied. The complainant stated that as per the Section 27 of General Clause Act services are to be deemed to have taken place. Failure on part of counsel for complainant to annex track record and failure to make mention as to when receipt of notice has been done does not give ground to rely on provision of section 27 of General Clauses Act, as it is to be specifically mentioned as to when service of notice has been done. The complainant has not filed the track record with the instant complaint as to when the service to summon has been effected upon the accused when the track record was available online. On the presentation of the complaint, complainant has sought only time to produce the track record on each and every adjournment. Accordingly, the provision of section has not been complied with. Further, when cause of action arisen is nowhere mentioned nor any relevant record has been annexed. Accordingly, no case is made out to proceed. Complaint is dismissed and is disposed off. Be consigned to records after due compilation under law.

TABASUM Digitally signed by TABASUM

Announced:
08.09.2023

Ms. Tabasum (UID No: JK-00173)
Judge Small Causes Srinagar