

Banks cannot be absolved of liability for unauthorised withdrawals: Kerala HC

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The Kerala High Court has said banks cannot be absolved of liability for unauthorised withdrawals from their customers' accounts.

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SMS alerts cannot be the basis to determine the liability of a customer, for there would be account holders who may not be in the habit of checking SMS alerts regularly, the court said.

It stated this while dismissing an appeal filed by the State Bank of India recently against a lower court order asking it to compensate a customer who lost Rs 2.4 lakh due to unauthorised withdrawals. The customer had sought a refund of the amount with interest.

The bank had submitted that SMS alerts were sent to the customer about the disputed withdrawals and he should have requested that his account be blocked immediately.

It contended that since the customer did not respond to the SMS alerts, the bank was not liable for the loss caused to him.

"...one thing is certain that where a bank is providing service to its customer, it owes a duty to exercise reasonable care to protect the interests of the customer," the court said.

"(It is) needless to say that a bank owes a duty to its customers to take necessary steps to prevent unauthorised withdrawals from their accounts," it added.

"As a corollary, there is no difficulty in holding that if a customer suffers loss on account of the transactions not authorised by him, the bank is liable to the customer for the said loss," the court said.

It also said it is the banks' obligation to create a safe electronic banking environment to combat all forms of malicious conduct resulting in losses to their customers.

Referring to a Reserve Bank of India circular which stated that unauthorised transactions shall be brought to the notice of the bank forthwith to enable it to block the account, the court said it only reminds banks of their obligations and responsibilities and does not create any new rights or obligations.

In short, there is also no difficulty in holding that if a customer suffers loss in connection with transactions made by fraudsters, it has to be presumed that it is due to the bank's failure to put in place a system which prevents such withdrawals, and the banks are, therefore, liable for the loss caused to their customers, the court said.

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