(2019) 11 SHI CK 0071

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 304 Of 2019

Amarjeet Sen APPELLANT

Vs

State Bank Of Patiala RESPONDENT

Date of Decision : 05-11-2019

Acts Referred:
Indian Contract Act, 1872 — Section 72

Citation : (2019) 11 SHI CK 0071

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Naresh K. Sharma, Arvind Sharma

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J

1. By way of this appeal, appellant has prayed for the following reliefs:-

"It is, therefore, most respectfully prayed that this appeal may kindly be allowed and the impugned judgment and decree dated 15.03.2019 passed by learned Additional District Judge, Ghumarwin, District Bilaspur, H.P. in Civil Appeal No.66-13 of 2018, whereby the judgment and decree dated 29.06.2018 passed by the learned Civil Judge (Senior Division), Court No.1, Ghumarwin, District Bilaspur, H.P. in Civil Suit No.82/01 of 2012, titled as State Bank of Patiala Versus Amarjeet Sen has been affirmed, may kindly be set aside and suit filed by the respondent/ plaintiff may kindly be dismissed with costs throughout, in the interest of justice".

2. Brief facts necessary for the adjudication of the present appeal are that a suit for recovery was filed by respondent/State Bank of Patiala, against the present appellant. The case of the plaintiff was that the appellant/ defendant (hereinafter to be referred as 'defendant') was a customer of the plaintiff-bank and having Savings Account No.65009425738 with the plaintiff-bank. Defendant presented a cheque bearing No.940308 drawn at State Bank of India, branch Chamba by Shri

Roshan Lal for the purpose of collection. Plaintiff-bank sent this cheque vide DBSC No.3247130 for collection to the concerned branch of its at Chamba on 16.06.2011. Through its branch at Chamba, the cheque was presented with the drawee bank and the same was dishonoured vide memo dated 26.06.2011 on account of reasons No.6 and 16 that "drawer's signature different" and "insufficient funds".

3. As per the plaintiff-bank, this fact was informed to the defendant vide registered letter dated 04.08.2011 itself. It was further the case of the plaintiff-bank that on account of clerical error and due to an inadvertent mistake, a sum of Rs. 5,00,000/- was wrongly credited in the account of defendant on 30.06.2011. He withdrew the said amount from the branch of the plaintiff-bank on 02.07.2011. As per the plaintiff-bank, when the factum of said wrong entry and withdrawal of amount came to the notice of the plaintiff-bank immediately, defendant was called upon to return the said money by intimating him of the amount having been wrongly credited in his account because the amount did not belong to the defendant as proceed of his cheque was still awaited. Defendant assured the plaintiff-bank that he would return the money, however, despite intimation by the plaintiff-bank and repeated requests made, defendant did not deposit the money with the plaintiff-bank, which was public money and which did not belong to the defendant and was credited to his account due to clerical mistake. In these circumstances, after service of legal notice, suit was filed by the plaintiff-bank for recovery of Rs. 5,00,000/- alongwith interest @ 18.50% per annum with monthly rests.

4. The suit was resisted by the defendant, who took the stand that he had rightly collected the amount from his bank account as it was incorrect that the cheque which he deposited with the plaintiff-bank for an amount of Rs. 5,00,000/- was dishonoured as alleged by the plaintiff. Defendant denied that plaintiff ever informed him about dishonour of the cheque. It was further his case that record prepared to this effect by the plaintiff-bank was false and dishonouring of the cheque was procured and engineered by the plaintiff-bank in connivance with Roshan Lal and the record of the bank was not binding upon the defendant.

5. On the basis of the pleadings of the parties, learned trial Court framed the following issues:-

"1.) Whether the plaintiff is entitled for recovery of Rs.5,00,000/- alongwith interest as prayed? OPP.

2.) Whether the suit is not maintainable? OPD.

3.) Whether the plaintiff has no cause of action to file the present suit, as alleged? OPD.

4.) Whether the plaintiff has no locus-standi to file the present suit, as alleged? OPD.

5.) Whether the plaintiff is estopped to file the present suit by its own acts, conduct, omissions and commissions, as alleged? OPD.

6.) Whether the suit has not properly valued for the purpose of Court fee and jurisdiction, as alleged? OPD.

7.) Relief.

6. On the basis of evidence led by the parties in support of their respective contentions, learned Trial Court returned the following findings on the issues so framed:-

"Issue No.1: Yes.

Issue No.2: No.

Issue No.3: No.

Issue No.4: No.

Issue No.5: No.

Issue No.6: No.

Relief. Suit of the plaintiff is decreed as per part of this judgment".

7. Vide judgment dated 29.06.2018, learned trial Court decreed the suit filed by the plaintiff-bank by holding that the plaintiff-bank was entitled to recover an amount of Rs. 5,00,000/- alongwith pending and future interest @ 11.25% per annum with monthly rests from the date of institution of the suit with costs.

8. On the appreciation of evidence which was led by the plaintiff-bank, learned trial Court held that it stood proved on record that the cheque which was presented by the defendant was in fact dishonoured and it was on account of a clerical error that an amount of Rs. 5,00,000/- stood deposited in the bank account of the defendant erroneously which was got released by him from his account. Learned trial Court further held that in contrast to the stand which defendant had taken in the written statement while appearing as DW-1, he had volunteered that he was telephonically informed by the plaintiff-bank with regard to the cheque being dishonourned and amount being mistakenly credited in his account. Learned trial Court also held that as the defendant in his deposition in a way had admitted the contention and claim of the plaintiff-bank and as the defence taken by the defendant was not inspiring confidence as there was a substantive variance of incoherence in the pleadings and deposition of the defendant, therefore, the plaintiff-bank was entitled for the decree as was prayed for.

9. In appeal, the findings so returned by the learned trial Court were upheld. Learned Appellate Court while dismissing the appeal, reiterated that it stood established from the record that the cheque which was deposited by the defendant for the purposes of clearance to the plaintiff-bank, was indeed dishonoured and the amount stood wrongly credited in the account of the

defendant on 30.06.2011, who withdrew said amount from the plaintiff-bank on 02.07.2011. Learned Appellate Court further held that it was clearly borne out from the record that when the fact of wrong entry and withdrawal of the amount came to the knowledge of the plaintiff-bank, defendant was duly informed and he was called upon to return the amount in issue by intimating him that said amount was wrongly credited in his account, yet he failed to do so. Learned Appellate Court held that onus to prove its case as well as issue No.1 framed by the learned trial Court was upon the plaintiff-bank and by leading cogent and reliable evidence, plaintiff-bank had discharged said onus. It further held that in the course of cross-examination of Pws by learned counsel for the defendant, nothing useful and fruitful emerged in favour of the defendant. Learned Appellate Court also relied upon a judgment of High Court of Andhra Pradesh in a case titled as S. Kortrabasappa Versus The India Bank AIR 1987 Karnataka 236, wherein it has held that while interpreting the scope of Section 72 of the Indian Contract Act, when there was a mistaken credit in the account of a person by the bank, then said person was bound to pay and return the said amount and he was also liable to pay interest under the Interest Act on such amount which stood retained by him. On the strength of said findings, learned Appellate Court upheld the findings returned by the learned trial Court and dismissed the appeal filed by the defendant.

10. Feeling aggrieved, defendant has filed this appeal.

11. I have heard learned counsel for the parties and have also gone through the judgments and decrees passed by the learned Courts below.

12. A perusal of the judgments passed by the learned Courts below demonstrates that four witnesses were examined by the plaintiff-bank to prove its case and 25 docu- ments were exhibited on record to demonstrate the factum of the cheque presented by defendant being dishonoured and not being credited in the account of the defendant. It is on the strength of said evidence which was produced on record by the plaintiff-bank that the concurrent findings stand returned by both the learned Courts below that the cheque so presented by the defendant with the plaintiff-bank was dishonoured and it was on account of clerical mistake that an amount of Rs. 5,00,000/- stood erroneously deposited into the account of the defendant which he withdrew from the plaintiff-bank.

13. During the course of arguments, learned counsel for the defendant could not demonstrate that the findings so returned by the learned Courts below were perverse findings and not borne out from the record.

14. As the plaintiff-bank proved on the strength of evidence led by it that the amount which was withdrawn by the defendant was public money and the same was not deposited into the account of the defendant in lieu of the cheque presented by him being honoured, now the onus to prove his case that the record of the bank to the effect that the cheque presented by the defendant was dishonoured, was forged etc. or was a false record, was upon the defendant.

However, defendant failed to led any evidence, leave aside cogent evidence to prove the said stand so taken by him.

15. In my considered view, because the cheque in issue was issued by Roshan Lal, said Roshan Lal was the best evidence as far as defendant is concerned, who could have had deposed before the Court on behalf of defendant and stated by placing on record the statement of account etc. that the cheque which he had issued in favour of appellant Amarjeet Sen was indeed honoured. This also the defendant has not done.

16. Therefore, as the concurrent findings which stand returned by the learned Courts below, while decreeing the suit filed by the plaintiff-bank, are duly borne out from the record of the case and the present appeal does not involves any substantial question of law, the same is dismissed. No order as to costs. Pending miscellaneous applications, if any, stand disposed of. Interim order, if any, also stand vacated.