(1994) 08 AP CK 0023

In the Andhra Pradesh High Court

Case No : Appeal No. 2691 of 1982

Andhra Bank APPELLANT

Vs

Kurnool District Co-operative Central Bank Ltd. RESPONDENT

Date of Decision : 10-08-1994

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 131

Citation : (1994) 2 ALT 711 : (1995) 83 CompCas 257

Hon'ble Judges : B. Subhashan Reddy, J

Bench : Single Bench

Advocate : C.V. Narasimha Rao, for the Appellant; R.V. Prasad and R.V. Subba Rao, for the Respondent

Judgement

B. Subhashan Reddy, J.—This appeal is directed against the judgment and decree rendered by the Court of the First Subordinate Judge, Kurnool, in O.S. No. 8 of 1979. The defendant is the appellant. The Andhra Bank-defendant is the appellant herein and assails the judgment and decree rendered by the court below mulcting it with the liability of payment of Rs. 1,60,400 together with interest at 12 per cent. per annum from June 14, 1979, till payment and also costs. The parties are referred to as arrayed in the suit.

2. The Kurnool District Co-operative Central Bank is the plaintiff. It has instituted a suit claiming a sum of Rs. 1,60,400 with interest thereon from the date of suit on the ground that the defendant was negligent in discharge of functions as collecting bank for its customer. The imputation against the defendant was that the defendant had not verified the antecedents of its customer, Mr. A. Rama Rao, at the time of opening his account, that when he presented the drafts for conversion, the defendant had failed to exercise due care and caution, that even after the said conversion after the transfer of amount from the plaintiff''s bank to the defendant''s bank into the account of the said customer, Mr. A. Rama Rao, the defendant had negligently honoured the cheques issued and presented by the said customer, even though the said action of withdrawal was in a short span

of time, that too, of heavy amounts. The protection pleaded by the defendant u/s 131 of the Negotiable Instruments Act, 1881, was negatived by the court below and the decree as sought for by the plaintiff was granted.

3. Mr. C. V. Narasimha Rao, learned counsel for the defendant, contends that the defendant-bank has taken all precautions as a commercial bank normally takes and that absolutely there are no lapses on its part and that while opening the account of Mr. A. Rama Rao in the name of Raja Traders, the defendant has taken due and proper care and relied on the introduction by another valued customer, namely, Mr. Polimera Bakthavasthalam, a well known cloth merchant with a turnover in lakhs who runs a cloth mill under the name and style of Polimera Cloth Stores at Kurnool; that the drafts when presented by its customer Mr. A. Rama Rao were scrutinised and on being satisfied that they were presentable, they were sent to the plaintiff-bank for conversion; that after conversion, when the amount was credited into the account of Mr. A. Rama Rao and the latter''s presentation of cheques for encashment, the same was made as duty bound being a banker and that the plaintiff-bank is negligent and it ought to have verified and ought to have informed the defendant not to honour the cheques presented by Mr. A. Rama Rao and that the plaintiff not only failed to take such action at the first instance, but also failed to take action even when the second set of drafts were presented and were encashed and when the first set of drafts were honoured by the plaintiff''s bank, there was no reason for the defendant to doubt and that all such steps, care and caution which were to be taken by the collecting bank, had in fact been taken by the defendant bank and the action of the defendant squarely comes within the protection of section 131 of the Negotiable Instruments Act and negativing the same to the defendant and imposing a liability to pay the amount under impugned decree is uncalled for and unwarranted and that the decree is liable to be set aside.

4. Mr. Prasad, appearing for Mr. R. V. Subba Rao, counsel for the respondent-plaintiff-bank, contends otherwise and submits that Mr. Rama Rao was not a genuine person and that his address was Fake and fictitious and his plea for opening an account with the defendant bank ought to have been rejected by the latter and that the defendant-bank did not properly verify the antecedents of Mr. A. Rama Rao before opening his account, that the drafts were not properly perused and that had they been properly perused with ordinary care and caution it would not have resulted in the divestment of the money from the plaintiff-bank, that the drafts were forged and fabricated and that the defendant was negligent in performing his functions as the collecting bank and that the protection u/s 131 of the Negotiable Instruments Act is not applicable, that the lower court had validly passed the decree, that there are no grounds to reverse the same in this appeal and that the appeal should be dismissed with costs.

5. There are three triable issues framed by the court below :

(i) Whether the defendant-bank took all precautions while allowing Raja Traders to open an account with it;

(ii) Whether there are no bona fides on the part of the defendant-bank in presenting the drafts of Raja Traders for collection ? and

(iii) Whether the defendant-bank is liable to reimburse the suit amount to the plaintiff-bank.

6. Although, they are framed as three issues, but in effect, only one aspect has to be considered and that is whether the defendant-bank who is the appellant in this appeal is entitled to protection u/s 131 of the Negotiable Instruments Act and its liability or otherwise impinges on the said protection being applicable or not.

7. It may be relevant to extract section 131 of the Negotiable Instruments Act, as the same is the statutory exception to the common law liability. It reads :

"131. Non-liability of banker receiving payment of cheque. - A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment."

8. The Explanation is not relevant here. A reading of the said statutory provision makes it clear that it is incumbent on the collecting bank to prove good faith and absence of negligence. It is no doubt true that the i initial burden always lies on the plaintiff and the moment the plaintiff pleads and states in evidence that the collecting banker did not act in good faith and acted negligently, the burden of proof shifts upon the collecting bank to prove that it had acted in good faith and there is no negligence on its part.

9. So far as the evidence aspect is concerned, P.W. - 1 was examined on behalf of the plaintiff and D.W. - 1 on behalf of the defendant. P.W. - 1 is the assistant general manager (administration) in the plaintiff-bank while D.W. - 1 was the manager of the Andhra Bank in the Kurnool branch of the defendant-bank at the relevant point of time. The plaintiff has marked exhibits A-1 to A-11 while the defendant has marked exhibits B-1 to B-12. Out of the exhibits marked, exhibits A-3, A-4, A-7 and A-8 are relevant and pertinent. While exhibits A-3, A-4 are dated June 3, 1977, exhibit A-7 is dated June 8, 1977 and exhibit A-8 is dated June 7, 1977. Exhibit A-3 is a bank draft bearing No. 3617 for Rs. 40,500, exhibit A-4 is a bank draft bearing No. 3618 for Rs. 35,200, exhibit A-7 is a bank draft No. 2429 for Rs. 23,500 and exhibit A-8 is a bank draft No. 2428 for Rs. 50,000 presented by the customer, Mr. A. Rama Rao, to the defendant-bank for collecting the said amounts from the plaintiff-bank and to be credited to his account after conversion. The said drafts were in the name of Raja Traders of which Mr. A. Rama Rao was the proprietor. The defendant-bank had verified the same and sent it for collection and the plaintiff bank had honoured the same and after the said amount w s remitted into the account of Raja Traders, its proprietor, Mr. A. Rama Rao, had withdrawn the amounts either self or by issuance of cheques to two others. The clear facts which emerged after the

adduction of evidence, both oral and documentary by the parties are as mentioned below. The defendant is a commercial bank. It allows opening of accounts by its customers. Before allowing the customers to open their accounts, it is the practice in banking business to demand the introduction by another customer. This is to know about the genuineness of the proposed customer. If there is no such introducer, the bank may have to probe itself into the antecedents of the proposed customer, but that is a question apart in this case. In the instant case, the customer, Mr. A. Rama Rao, representing Raja Traders as its proprietor was duly introduced by a respectable leading cloth merchant, Mr. Polimera Bakthavasthalam, the partner of Polimera Cloth Stores, Kurnool Town, who had been a valued customer of the defendant. Further, Mr. A. Rama Rao did not open the account in the name of Raja Traders with the drafts itself so as to cast any doubt. Firstly, he filed an application along with the declaration form and signed on the specimen signature card with the due introduction by the person named supra by remitting the amount of Rs. 150 and they were marked as exhibits B-1 to B-4. Exhibits B-5 and B-6 are the credit challans pertaining to the drafts for Rs. 40,500, Rs. 35,200 deposited on June 4, 1977, while exhibits B-9 and B-10 are credit challans pertaining to the drafts for Rs. 23, 500 and Rs. 50.000 deposited on June 9, 1977, and sent for clearing on June 10, 1977. All the said four drafts were purchased in favour of Laxmi Traders, Nandyal. The drafts dated June 3, 1977, worth Rs. 50 each were purchased by one Mr. Ramesh at the Adoni Branch of the plaintiff-bank payable at the Nandyal branch of the plaintiff. The counter-foils are exhibits A-1 and A-2 and the related drafts are exhibits A-3 and A-4. It is alleged that the amount of Rs. 50 each of the crossed bank drafts under exhibits A-3 and A-4 were altered to Rs. 40,500 and Rs. 35,200 and the name of the payee was altered from T. Venkataiah of Laxmi Traders, Nandyal to that of Raja Traders and the payee bank was altered as the plaintiff''s bank at Kurnool. The same were presented by Mr. A. Rama Rao to the defendant bank for collection on June 4, 1977. The defendant after scrutinising the same, had sent the same for collection to the plaintiff-bank and the plaintiff-bank honoured the same. After the same was credited into the account of Raja Traders. Mr. A. Rama Rao had withdrawn the same from the defendant-bank under exhibits B-7 and B-8 dated June 6, 1977. While Exhibit B-7 was the cheque for Rs. 1,000 in favour of B. Viswanadham who had withdrawn the same, under exhibit B-8 the cheque was self and was withdrawn by Mr. A. Rama Rao as the proprietor of Raja Traders. Again, Mr. Ramesh had on June 9, 1977, applied to the branch of plaintiff-bank at Pathikonda for issuance, of a draft for Rs. 50 drawn on the Nandyal branch of the plaintiff-bank in favour of the same Laxmi Traders, Nandyal. One B. Venkataiah has purchased another draft dated June 9, 1977, drawn on the Nandyal branch of the plaintiff in favour of Laxmi Traders. The challans in that regard are exhibits A-5 and A-6. The related drafts are exhibits A-7 and A-8. The draft under exhibit A-7 altered to the amount of Rs. 23,500 and the date of the draft as June 8, 1977, payee as Raja Traders and the payee-bank as the plaintiff-bank at Kurnool. On exhibit A-8, the date was changed to June 7, 1977, and the amount to Rs. 50,000 and the payee as Raja

Traders and the payee bank as the plaintiff-bank at Kurnool. Of course, there is no doubt that the drafts under exhibits A-3, A-4, A-7 and A-8 are at variance as compared to the counter-foils under exhibits A-1, A-2, A-5 and A-6. But the fact is as to whether the defendant-bank has acted negligently and not in good faith. In so far as allowing Mr. A. Rama Rao to open an account in the name of Raja Traders is concerned; no doubt can be cast on the action and conduct of the defendant. As is done ordinarily and as is the practice in bank business, particularly, of opening the accounts and as a prudent banker, the defendant has rightly relied upon the introduction made by another customer who is a respectable and a leading cloth merchant of Kurnool town. Mr. A. Rama Rao also did not show any hurry on June 3, 1977, when he had opened the account, as on that date, he did not open the account with the drafts themselves. He had remitted cash amount of Rs. 150 on that day and opened a current account. On the next day, he had presented exhibits A-3 and A-4 for collection and the counter foils in that regard are exhibits B-5 and B-6. They were scrutinized by the defendant and they'' did not find anything unusual or abnormal and in the ordinary course of banking business, they have sent it for collection and the plaintiff-bank honoured the same and after the remittance of the said amount into the account of its customer, it had honoured two cheques under exhibits B-7 and B-8, one issued in favour of B. Viswanadham and another self cheque of Raja Traders through its proprietor, Mr. A. Rama Rao. There was neither intimation nor complaint made by the plaintiff with regard to tampering of the drafts. Then again two drafts were credited by Raja Traders through Mr. A. Ram Rao and the counter foils in that regard are exhibits B-9 and B-10. They have been sent for collection to the plaintiff-bank and the latter had honoured the same after remittance of the said amount. Mr. A. Rama Rao issued cheque, exhibit B-11, for Rs. 2,000 in favour of Laxminarayana, dated June 18, 1977, and withdrawn himself an amount of Rs. 71,000 under exhibit B-12. Even on the second occasion, there was no information or objection by the plaintiff and there was on occasion for the defendant to entertain any doubt with regard to the genuineness of either Mr. A. Rama Rao or of the four crossed demand drafts mentioned supra. In fact, it is admitted by PW-1 on behalf of the plaintiff that he did not find any erasures on exhibits A-3, A-4, A-7 and A-8. It is apt to extract the finding of the court below on this aspect :

"No doubt, alteration of exhibits A-3, A-4, A-5 and A-8 are done very ingeniously. Neither the plaintiff-bank nor the defendant bank was able to suspect that the drafts, exhibits A-3, A-4, A-7 and A-8 are forged, fabricated or altered drafts. Thus, it is the admitted case that even by careful perusal and examination both the parties are not able to suspect the bona fides of exhibits A-3, A-4, A-7 and A-8."

10. The lower court also found that the plaintiff-bank was negligent in paying huge amounts to the defendant hank without advice from the issuing bank. But, yet, held that protection u/s 131 of the Negotiable Instruments Act was not available to the defendant. I contract that part of the finding :

"No doubt, the plaintiff-bank was negligent in paying huge amounts to the defendant-bank without advice from the issuing bank. But in view of the above decision, the negligence of the plaintiff will not entitle the defendant to seek protection u/s 131 of the Negotiable Instruments Act."

11. I fail to understand as to why the protection u/s 131 often Negotiable Instruments Act is not applicable to the defendant-bank in view of what is stated supra. Judicial precedents on this aspect of protection are based upon the facts of each case. Analysing the judicial precedents on this aspect, what is deducible is;

(1) Whether the person for whom the banker acts is its customer;

(2) Whether the bank had in the process of collection, acted in good faith and without negligence in receiving payment.

(3) Whether the banker received the payment for its customer; and

(4) Whether the cheque/draft has been crossed generally or specially to the said customer.

12. If the collecting bank satisfies all the above ingredients, then as a necessary corollary, the protection u/s 131 of the Negotiable Instruments Act is applicable, otherwise, it is not. The lower court has unduly laid stress on the non-examination of Mr. Bakthavasthalam who introduced Mr. A. Rama Rao while opening the account. That is not a material factor as it is not the case of the plaintiff that the said signature of the introducer is forged or that Mr. Bakthavasthalam is a fictitious person. So far as the bona fides of the defendant are concerned, as a reasonable and prudent banker and as is done in banking business, the defendant has taken care of proper introduction of the person opening the account and absolutely there cannot be any doubt in that regard. In so far as the collection of the amounts under crossed demand drafts under exhibits A-3, A-4, A-7 and A-8 is concerned, the lower court itself found that even with due care and caution, forgery could not have been detected. As such, the defendant cannot be found fault with.

13. In the case of demand drafts, the issuing bank sends a letter of advice to the drawee bank. It is pertinent to mention that the plaintiff-bank is a district-wise bank operating within the District of Kurnool. It has got branches at Nandyal, Adoni, Pathikonda, Dhone, etc., within the Kurnool District and at short distances from Kurnool town where its head office is located. The issuing banks of the drafts in question are the branches of the plaintiffs itself and are located at Pathikonda and Adoni. In fact, PW-1 admits that letter of advice with regard to exhibits A-1 and A-2 relatable to exhibits A-3 and A-4 were received by the plaintiff on June 11, 1977. Why there was such a delay in issuing letter of advice is not at all explained by the plaintiff even though such intimations were to be made soon after the closure of the day''s work. That apart, even after receiving the said intimation dated June 7, 1977, under exhibit A-11, the plaintiff has not

taken care at all to note the discrepancy in the amounts and other material particulars like the name of the payee and payee-bank. The explanation of PW-1 is "on seeing exhibit A-11, it did not strike me that under draft Nos. 3617 and 3618, huge amounts were paid than the amounts shown in exhibit A-11." He also admitted that all the transactions of a branch shall be written in a separate folio as and when intimation is received about the transactions and that the ledger clerk maintains the entries each and every, day. Apart from not acting diligently in the matter of sending the letter of advice, and not acting promptly even as an ordinary man is expected to act and more so a banker and a payee banker, negligence has got to be imputed on the plaintiff while such negligence cannot be attributed to the defendant. The defendant while acting bona fide and in the ordinary course of banking business sent the drafts under exhibits A-3 and A-4 for clearing and at least had the intimation been given to the defendant soon after the receipt of exhibit A-11, the drafts under exhibit A-7 and A-8 would not have been sent for collection and the real culprits could have been booked. Further, there is no evidence on record as to what is the follow-up action taken by the plaintiff to book the offenders. The presumption is that no such action was taken, except issuing notice to the defendant bank and then filing the suit, that too without any basis or justification and just as an act of escapism. The defendant cannot be found fault with for having allowed Mr. A. Rama Rao to withdrawn the amounts either by himself or by bearer cheques as the concern was a business concern and the account was opened in the name of the business concern, Raja Traders, and further more, it was not a savings account, but was a current account and it is needless to mention that current accounts are opened for business purpose and there are no restrictions on either the number of withdrawals or the quantum or amount thereof. The opening of an account is different from collecting amounts under drafts or cheques from the payee bank. These two stages have to be considered separately and not as a single act while dealing with the aspect of good faith or lack of it and negligence or absence of the same. The lower court fell into gross error in mixing up these two stages and treating the some as one stage or transaction and laid undue stress on the opening of the account and consequently rendered a fallacious judgment. If a customer opens an account with cash and there is nothing suspicious about the manner in which the account is opened, the fact that the bank made no enquiries about the customer and his address would not disentitle the bank to protection u/s 131 of the Negotiable Instruments Act. On the facts of this case, it cannot be said that there are circumstances warranting the collecting bank (defendant) to suspect that his customer Mr. Rama Rao as proprietor of Raja Traders) was not the true owner of the crossed demand drafts. The defendant had taken all precautions as are taken by banks in the normal course of banking business and I do not find any negligence on the part of the defendant and as such, I hold that the defendant had acted in good faith and there is no negligence on its part. In fact, I find negligence on the part of the plaintiff.

14. In view of what is stated supra, the judgment and decree of the lower court

are set aside and the suit is dismissed. The appeal is allowed. In the circumstances, the parties shall bear their own costs.

