

(1988) 01 CAL CK 0008
In the Calcutta High Court
Case No : Suit No. 39 of 1981

Babulal Agarwalla

APPELLANT

Vs

State Bank of Bikaner and Jaipur

RESPONDENT

Date of Decision : 29-01-1988

Acts Referred:

Evidence Act, 1872 — Section 115

Negotiable Instruments Act, 1881 (NI) — Section 85

Citation : AIR 1989 Cal 92 : (1988) 64 CompCas 461

Hon'ble Judges : Monoranjan Mallick, J

Bench : Single Bench

Advocate : Utpal Bose, for the Appellant; P.N. Hore, for the Respondent

Judgement

Monoranjan Mallick, J.—The plaintiff has filed this suit against the State Bank of India Bikaner and Jaipur, Brabourne Road Branch for recovery of Rs. 5,716.60p and for interim and further interest under the following circumstances.

2. The plaintiff carries on the business under name and style of H. B. Transport Co. at 72/73, Old China Bazar Street, Calcutta as the sole proprietor of the said business and has opened and maintained a current account with the defendant bank at its Brabourne Road Branch at 4, Synagogue Street, Calcutta and used to operate the said account by drawing cheque duly signed by the plaintiff under the seal of the said H. B. Transport Co. On or about 14th Aug. 1978 the plaintiff found to his utter surprise that one cheque bearing serial number 998385 was missing from the cheque book of the plaintiff kept in his custody and upon enquiry it was found out that a sum of Rs. 5,000/- was drawn on the 12th Aug. 1978 from the said account by virtue of that cheque. Upon further enquiry it was also found that the said cheque was self drawn and the signature of the plaintiff was forged thereon. The defendant passed the said cheque for payment for a sum of Rs. 5000/- without actually and diligently verifying the signature of the plaintiff and/or the genuineness thereof. But due to the said act of negligence and/or misconduct on the part of the defendant and/or its employees the plaintiff

suffered loss and damages to the extent of Rs. 5,000/-. The plaintiff immediately i.e. on 16th Aug. 1978 duly intimated the defendant about the said fraud and lodged a diary with Burra Bazar Police Station. The defendant is bound to make good the loss. The defendant is also liable to pay interest at the rate of 6% per annum on and from 12th Aug. 1978. So the total claim of the plaintiff is Rs. 5,716.60 p.

The defendant in its written statement denies that cheque bearing serial number 998385 was missing from the relevant cheque book or the signature of the plaintiff was forged on the said cheque as alleged or at all. It is contended that the said cheque was passed for payment as usual in due course of business according to its apparent tenor and after due and proper scrutiny and verification thereof including the signature appearing thereon. The officers concerned of the defendant bank duly checked and compared the signature appearing on the said cheque and found it tallying with the specimen signature of the plaintiff kept in the records of the defendant bank. Further and in any event there were no circumstances giving rise to any suspicion in the mind of the Officers of the bank that the said cheque or the signature thereon was not genuine but forged as alleged or at all. Even assuming though not admitting that signature on the said cheque was forged as alleged the defendant states that the signature appearing on the said cheque tallied so closely with the specimen signature of the plaintiff kept on the records of the defendant bank that the employees of the bank could not detect such forgery by due exercise of care and caution as they actually did. The defendant Bank did not receive any intimation from the plaintiff as to the alleged forgery on the said cheque nor did the plaintiff raise any claim upon the Bank with regard thereto until the institution of the present suit.

The defendant, however, admits that three or four days after the said cheque was duly honoured by the defendant by payment at the counter according to its apparent tenor the plaintiff called at the defendant bank and made enquiries whether the said cheque was presented by anybody and if so far what amount but the defendant adds that at that point of time it was alleged and admitted by the plaintiff to the defendant Bank that the cheque after his signature thereon was missing, that upon ascertaining the position from the bank that the said cheque was presented at the counter for payment on or about 12th Aug. 1978 for Rs. 5,000/- and that the defendant Bank paid out the said sum to the person presenting the said cheque, the plaintiff left the defendant bank without making any further enquiry. It is therefore submitted that the plaintiff was under a duty and obligation to take due and proper care of the said cheque and/or the relevant cheque book and in facts of the case, the alleged forgery, if any, is, due to carelessness and/or gross negligence on the part of the plaintiff by not keeping the said cheque and/or the cheque book in a place safe and secure, and in that view of the matter the plaintiff is responsible for and should bear the alleged loss. It is further the case of the defendant that subsequently the defendant bank duly forwarded a statement of account to the plaintiff in due course of business showing entries up to Sept. 1978 including the debit entry in

respect of the said disputed cheque but the plaintiff did never raise any dispute regarding any of the said entries and as a matter of fact the plaintiff subsequently regularly operated the relevant account with the defendant Bank up to Nov. 1979, that the plaintiff at all material times acquiesced in the position of the said accounts as per the aforesaid statement of account and is now estopped from challenging the validity or the correctness thereof. Then the defendants thus denies the plaintiff's claim in the suit. From file pleadings the following issues have been framed :--

1. Is the signature of the plaintiff forged on the cheque No. 998385 as pleaded in para 3 of the plaint?
2. Did the defendant pass the cheque No. 998385 for payment and paid Rs. 5,000/- without actually and diligently verifying the signature of the plaintiff or the genuineness thereof as pleaded in para 4 of the plaint?
3. Is the defendant guilty of any negligence or misconduct as pleaded in para 5 of the plaint?
4. Is the plaintiff entitled to interest at 6% per annum from the date of the cheque dt. Aug. 12, 1978 until realisation as pleaded in para 8 of the plaint?
5. Was the alleged forgery occasioned due to any carelessness or negligence on the part of the plaintiff as pleaded in para 2 of the written statement and if so, what is the effect thereof?
6. What relief or reliefs is the plaintiff entitled to?

I would First take up the issue Nos. 1 and 5. It is the Plaintiff's case that on or about 14th Aug. 1978 the plaintiff found that one cheque bearing serial No. 998385 was missing from the cheque book of the plaintiff kept in his custody and that he approached the defendant bank on that date and was informed that Rs. 5,000/- was drawn from the defendant bank from his current account on the strength of that cheque. The plaintiff has made out the clear case that the said cheque was neither signed by him nor did he encash the cheque, that the signature on that cheque was forged and the defendant bank and/or its officers without properly verifying the signature in that cheque passed that cheque and that the plaintiff having suffered loss and damage the defendant bank is not entitled to debit the same from his account and must pay the said amount of cheque together with interest at the rate of 6% per annum from the date of encashment of that forged cheque till the date of filing of the suit.

The defence case is that the cheque was not a forged one, that the defendant and its officers bona fide passed that cheque in due course according to its apparent tenor and after due and proper enquiry and verification thereof including the signature appearing thereon. It is the further defence that even assuming that the cheque was a forged one the plaintiff was guilty of utter negligence in not keeping the cheque and/or cheque book in safe custody and alleged forgery, if any, committed is due to the carelessness and utter negligence

of the plaintiff and the plaintiff should bear the responsibility and the loss. It is also the case of the defendant that Bank's Officers properly verified the signature in the cheque with the specimen signature kept in the bank and as the said tallied no suspicion arose in the mind of its officers and the bank is not responsible for the loss.

The Ld. Advocate for the defendant has drawn my attention to Sub-section (2) of Section 85 of the Negotiable Instruments Act and has urged that in respect of payment of bearer cheque of the customer the drawee bank is discharged by payment in due course of business according to its apparent tenor and after due and proper scrutiny and verification thereof including the signature appearing thereon. In support, the decision of the Ld. single Judge of the Calcutta High Court reported in Prananda Mohan Das Vs. Central Bank of India, has been cited. The Ld. Advocate for the defendant has drawn my attention to the evidence of Mr. P. M. Bhowmick the then passing Officer of the defendant Bank who has produced the cheque in question and the specimen card of the plaintiff kept in the bank and have testified to the effect that he himself passed the impugned cheque on verifying the signatures appearing therein and the seal of the plaintiffs company thereon with the specimen signatures of the plaintiff on being satisfied that the signatures on the cheque tallied with the specimen signature.

The Ld. Advocate for the plaintiff, on the other hand has challenged the testimony of Mr. Bhowmick and has suggested to him that even though the signature did not tally and that there were over writings he with utter negligence passed the cheque in which signature was forged and not genuine and was responsible for the passing of the cheque even though the signatures did not tally with specimen signature. The Learned Advocate has further urged that the plaintiff from the beginning raised the protest to the bank that the payment was made on forged cheque and called upon the bank to credit the amount of Rs. 5,000/- to his account but the bank did not send any reply to his several letters. He has also urged that the cheque in question was shown to the plaintiff in cross examination but he categorically denied the signatures appearing in the disputed cheque book as his signature and consequently proved by evidence that the signature in the cheque in question was forged. The Ld. Advocate has also referred to the decision of the Supreme Court reported in Canara Bank Vs. Canara Sales Corporation and Others, , in which the Supreme Court has categorically held that whenever, a cheque purporting to be issued by a customer is presented before a bank it carries a mandate to the bank to pay, but if a cheque is a forged one there is no such mandate and the bank can escape the liability only if it can establish that the customer had knowledge to that forgery. The Ld. Advocate, therefore, submits that when the plaintiff has proved by evidence that the signatures appearing in the cheque book are the forged signatures, the defendant bank cannot escape its liability as it is not the case of the defendant that the plaintiff had knowledge of such forgery. The Ld. Advocate for the defendant seeks to distinguish the decision of Supreme Court by observing that the decision does not make any reference to Section 85(2) of the

Negotiable Instruments Act and, therefore, the bank having discharged its statutory obligation as set out in Sub-section (2) of Section 85 of the Negotiable Instruments Act cannot be saddled with the liability in this case.

On carefully considering the above decision of Supreme Court I am of the view that the decision of the Supreme Court clearly holds that the mandate of the customer to the Bank to pay the cheque signed by him for the bearer which is statutorily recognised by Section 85(2) of the Negotiable Instruments Act ceases as soon as it is proved that cheque paid by the bank was a forged one because a forged cheque is no cheque issued by the customer. Therefore the mandate of the customer is not there to the bank to pay such forged cheque. So the protection given to the bank by Section 85 is not available to the bank in respect of forged cheque. I would now consider as to whether the plaintiff has succeeded in proving that the cheque Ext. 2 contains the forged signature or not. In cross examination plaintiffs attention was drawn to the cheque, Ext.2, and he has clearly stated that the signatures are not his. It is also proved that on 14-8-78 the plaintiff took the plea before the bank that the cheque was forged. The letter dt. 16- 8-78 clearly shows that the plaintiff complained to the bank that it had made payment on the forged cheque several letters were sent to the bank alleging the same thing and calling upon the bank to credit the amount of the said cheque to the account of the plaintiff's. But the bank did not respond to any of the letters. The witness examined for the defendant has not been able to state categorically that the cheque Ext.2 contained the genuine signatures of the plaintiff. The witness being the passing Officer of the bank at the relevant time has only stated that as he found the signatures in the cheque Ext. 2 to tally with the specimen signature he passed the cheque Ext. 2 for payment. But that evidence is not the specific denial of the plaintiffs evidence that those signatures in the cheque Ext. 2 were not his signatures. The forgerer can imitate the signature of the drawer and in such case there may be seeming appearance of the signatures of the cheque with the specimen signature. The Bank Officer may be duped by the machinations of the forgerer. But when it is established that the signatures in cheque Ext. 2 are forged it must be held that the bank has made payment on the forged cheque and for the said forged cheque there was no mandate of the plaintiff to the bank to make payment on such forged cheque. In view of the decision of the Supreme Court the bank is not liable to debit the said amount of the cheque even if it be found that the plaintiff did not take proper care to keep the cheque of the relevant cheque book in proper custody. The Supreme Court in the above decision has clearly held that the bank can only avoid the liability if it can prove that there was ratification or estoppel. In this particular case there is nothing to show that the plaintiff ratified the payment of the cheque. The plaintiff immediately after coming to know of the payment of the cheques complained to the bank that the cheque was forged and called upon the bank to credit the said amount to his account. So the plaintiff cannot be bound by the principle of estoppel. In view of the above circumstances I answer issue Nos. 1 and 5 in favour of the plaintiff.

Now to the issue Nos. 2 and 3. The plaintiff has proved that the signatures in cheque Ext. 2 were forged. In such case even if the necessary formalities were complied with by the bank, the bank would be liable in view of clear decision of the Supreme Court referred to above. So the plaintiff need not prove whether the defendant bank was guilty of negligence or not. The bank cannot avoid the liability only by proving that it made payment in due course according to the apparent tenor of [the cheque or by verifying the signatures of the cheque with the specimen signature and finding no apparent discrepancy. The decision of the learned Single Judge of this Court being *Pranenda Mohan Das Vs. Central Bank of India*, is not attracted to the facts and circumstances of this case and cannot help the decision of this suit because in that case the finding in issue No. 1 was that the cheque in question was not a forged one. Issue No. 4 plaintiff has claimed interest at the rate of 12% per annum on and from 12th Aug. 1988 and also interim interest and interest on judgment. On behalf of the defendant bank it is urged that the plaintiff had the current account on which no interest was payable and so the question of payment of interest to the plaintiff on the amount claimed does not arise. In my view such a contention is correct. The plaintiff cannot claim interest from the bank on Rs. 5,000/-.

Issue No. 6 : In view of my findings in the above 1 allow the plaintiff the decree for Rs. 5,000/-, The plaintiff shall also get the costs of the suit.