

(1979) 05 AHC CK 0039
In the Allahabad High Court
Case No : S.A. No. 1088 of 1969

Bhag Singh Dang

APPELLANT

Vs

State Bank of India, Dehradun

RESPONDENT

Date of Decision : 11-05-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 5
Contract Act, 1872 — Section 56
Limitation Act, 1908 — Article 120, 60, 10
Oaths Act, 1873 — Section 13, 4

Citation : (1980) AWC 105

Hon'ble Judges : P.N. Goel, J

Bench : Single Bench

Advocate : Triveni Shanker, for the Appellant; S.N. Verma, for the Respondent

Final Decision : Allowed

Judgement

P.N. Goel, J.—This is a Defendant's appeal against the judgment and decree dated 21-12-1968 passed by the district Judge, Dehradun in Civil Appeal No. 3 of 1965.

2. The matter relates to State Bank of India Dehradun Branch. The State Bank of India has taken the place of Imperial Bank of India. Appellant Bhag Singh Dang was Head Cashier of the State Bank of India at Dehradun, Respondent. The Respondent filed suit for recovery of Rs. 5,778.55 P. The Additional Civil Judge 11 Dehradun who tried the suit decreed the suit for the full amount. In appeal by the present Appellant, the District Judge reduced the amount of the decree to Rs. 3,227.48 because the Respondent had deducted a total sum of Rs. 2,251.05 outstanding to its another employee Ram Asre, who was responsible for the forgery involved in the case.

3. Facts for the disposal of this appeal may be set out at some length. On 22-4-1950 Smt. Lilawati, widow of one Shyam Lal deposited Rs. 10,000/- with the Respondent and obtained fixed deposit receipt. She gave her specimen

signatures. The said signatures were verified by the Appellant. The amount was deposited for a period of 12 months. Smt. Lilawati did not obtain payment of her money after 12 months of the deposit. Consequently, the amount was carried in "deposit at call account, of the bank. On 1-6-1953 the bank received a letter dated 30-5-1953 from Smt. Lilawati saying that the fixed deposit receipt had been lost and that a duplicate receipt be issued to her. On this letter the Appellant verified the signature of Smt. Lilawati. The Bank called upon Smt. Lilawati to remit Rs. 2/- being the cost of stamp for the indemnity bond. The said sum was received by the bank on 6-6-1953 with a covering letter dated 4-6-1953 from Smt. Lilawati. The signature of Smt. Lilawati on this letter was also verified by the Appellant. On 6-6-53 the bank sent stamped indemnity bond to Smt. Lilawati. She returned it duly signed with a covering letter dated 11-6-1953. The Appellant verified the signatures of Lilawati on the letter as well as the indemnity bond. Consequently a duplicate fixed deposit receipt dated 18-6-1953 was issued in favour of Smt. Lilawati, With letter dated 24-6-1953 Smt. Lilawati sent the duplicate fixed deposit receipt to the bank duly discharged by her. The Appellant verified her signatures on the letter as well as the fixed deposit receipt. Thereupon the receipt was renewed and a fresh fixed deposit receipt was issued to her for a sum of Rs. 10,150/- on 27-6-53. On 1-7-1954 the renewed receipt was presented at the bank for payment. The Appellant verified the signature of Smt. Lilawati on the back of the receipt. Consequently, a sum of Rs. 10,302.25 P. was paid by the bank to Smt. Lilawati. On 15-3-1955, the real depositor Smt. Lilawati called at the bank and presented the original fixed deposit receipt dated 22-4-1950 requesting that the proceeds be invested in 12 years national savings certificates. She was told that full payment of the receipt had already been made. She was shown all the papers. She disowned the signatures on the various documents adding that she was not even in India during the period 1st July 1953 to 5th August 1954. The bank then concluded that the signature of real Lilawati had been forged and on that basis duplicate fixed deposit receipt was obtained, that then renewed fixed deposit receipt was obtained and lastly its payment was obtained. However, the bank obtained opinion of its hand writing expert Sri S. C. Chaudhary of Calcutta, who confirmed that the disputed signatures were not of real Lilawati. In these circumstances the bank paid Rs. 10,150.00 to real Lilawati on 20-6 -1955. In this way the bank alleged that it suffered a loss of Rs. 10,302.25 P. The bank further alleged that under the terms of the agreement dated 29-12- 1949 the Appellant was absolutely liable to make good the loss caused to the bank. Deducting certain amounts due to the Appellant, the bank sued for recovery of Rs. 5,778.53 P.

4. The Appellant contested the suit on various grounds. The Respondent filed replication. The Appellant moved an application (63 B) for amendment of the written statement. In this application he alleged that it had been the practice of the Bank that whenever any letter enclosing documents bearing the signatures of any customer in vernacular was received the signatures of the customer both on the letter as well as on the enclosed valuable securities or documents were first

sent to the Head cashier for verification of the signatures of the customer, that as a matter of practice the signatures of the customer were first verified by the Head Cashier in blank and it was only in case the Head Cashier verified the signatures to be in order that the method of disposal was entered, that if the Head Cashier reported that the signature differed from the specimen on record the letter as well as the enclosed valuable securities and documents used to be returned to the person sending the same, that the bank was aware at the time the signatures were verified that they were verified in blank. This amendment application was allowed. It may be pointed out that the sheet containing new para 31-A has been affixed on page 5 of the replication instead of affixing it at the end of the written statement. The Respondent filed additional replication.

5. The trial court did not accept the contentions of the Appellant and as such decreed the suit. In appeal the District Judge modified the decree in the manner indicated above.

6. The learned Counsel for the Appellant referred to the agreement Ex. 31 and contended that the Appellant could be held liable only if the Respondent could prove forgery and loss to the bank on that account. In this connection, he further urged that the bank had not suffered any loss and that the courts below had not recorded any finding in respect of the alleged forgery.

7. The Respondent's counsel contended that the Respondent had proved that it had suffered loss on account of the forgery committed in the instant case, that the Appellant did not specifically deny that allegations of forgery made in the plaint, that a reading of the written statement of the Appellant would indicate that the allegation of forgery was admitted to the Appellant, that in view of the pleadings the trial court did not strike any issue about the alleged forgery and that the Respondent had led evidence to prove the alleged forgery.

8. Agreement Ex. 31 was entered into between the Appellant and the Imperial Bank of India, predecessor of the Respondent on 29-12-1949. The Appellant was employed as Head Cashier of the Dehradun Branch of the bank on payment of salary. Para 2 of the agreement provides that the duties, liabilities and responsibilities of the Appellant as Head Cashier shall be such-as either by custom or contract usually devolved upon Head Cashier in the employ of the bank including the duties, liabilities and responsibilities hereinafter mentioned. Para 3 of the agreement empowers the Head Cashier to appoint sufficient staff for carrying on the business of the cash department of the said branch of the bank. Then comes the relevant para 4 which reads as follows:

The Head Cashier shall be responsible for the intromissions of any person so appointed as aforesaid for the correctness and genuineness of all hundis, cheques, securities, vouchers, deeds, documents, writings and signatures, written in any native language or character which the Head Cashier shall at any time during his employment as Head Cashier accept or deal with as correct and genuine and he shall make good to the bank any loss or damage that may be

sustained by the bank arising from any forged instrument or signature which shall come into the hands of the Head Cashier in the course of his employment as Head Cashier and shall be accepted or dealt with by him as correct and genuine.

9. The above paragraph clearly shows that the Head Cashier is responsible for the correctness and genuineness of all signatures written in any native language or character, and he shall make good to the bank any loss that may be sustained by the bank arising from any forged signature or instrument which will come into his hands in the course of his employment as such and shall be accepted or dealt with by him as correct and genuine. It means that the Head Cashier is liable only if there is forgery in the signature or instrument and the bank has sustained loss arising therefrom. To this extent the contention of the Appellant's counsel is undisputedly correct.

10. It is undisputed that Smt. Lilawati deposited Rs. 10,000/- on 22-4-1950 with the bank and obtained fixed deposit receipt Ex. 33. The Appellant verified her signatures at relevant places. It is further clear that the Appellant had access to the original signatures of Smt. Lilawati. It is further undisputed that Smt. Lilawati, real one, did appear before the bank in March 1955 and desired payment of her deposited amount. In the meantime some person moved application saying that the receipt was lost, that a duplicate be issued, that on being required by the bank indemnity bond was furnished, that the bank is sued duplicate fixed deposit receipt, that the said receipt was renewed and that on the basis of the renewed receipt that person obtained payment of Rs. 10,304.25 from the bank on 1-7-54. On all these documents the Appellant verified the signatures of Smt. Lilawati. In the plaint all these facts have been alleged in extenso. All these facts are admitted in the written statement. The Appellant admitted that he did verify the signatures of the person, who applied for a duplicate fixed deposit receipt alleging that the original was lost. He also admits the verification of the signature of the said person on all the relevant documents. A perusal of the written statement shows that the main plea of the Appellant was that he verified the signatures of the person, not real Lilawati at the instance of a responsible employee of the bank Ram Asre. He further pleaded that he compared the disputed signatures in due course with the specimen signatures on record. He further pleaded that the bank should not have made payment to Smt. Lilawati. He did not contend that the bank did not make payment subsequently to real Lilawati. He did not even contend that real Lilawati had moved application for obtaining a duplicate fixed deposit receipt on the allegation that the original was lost. In these circumstances, the Respondent's counsel has rightly urged that the question of forgery was not disputed by the Appellant, and that on the other hand he impliedly admitted the forgery. The Respondent's counsel drew attention to para 14 of the plaint which reads as follows:

That in this way, the Plaintiff Bank has suffered a loss of Rs. 10,302.25 paid on the first July 1954 as stated in paragraph 9 hereof as a consequence of the

Defendant's action in verifying the forged signatures of the depositor the said Shrimati Lilawati, as genuine.

11. The Respondent's counsel then pointed out that the Appellant simply stated in Para 14 of the written statement that Para 14 of the plaint was not admitted. The Appellant thus did not specifically deny the allegation made in Para 14 of the plaint. Therefore, in view of the provisions of Order 8 Rule 5 CPC the allegations of Para 14 of the plaint would be taken as admitted. Rule 5 of Order 8 requires the Defendant to specifically deny every allegation of fact. It lays down that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the Defendant, shall be taken to be admitted...." The Respondent's counsel relies on the latter portion of this rule. The Respondent's counsel appears quite justified in this contention.

12. In view of the above facts, the contention of the Respondent's counsel is correct that in view of the pleadings of the parties, the trial court did not frame any issue about the alleged forgery. It has to be remarked that if the Appellant really assailed the allegations in respect of forgery made by the Respondent, he should have seen that the trial court struck a definite issue on the point. The very fact that the trial court did not strike such an issue goes to show that the Appellant had not made specific denial of the facts relating to the alleged forgery.

13. Apart from this, the Respondent examined real Lilawati on commission. She was cross-examined by the Appellant. She clearly denied to have made the disputed signatures on the application for issue of duplicate fixed deposit receipt and other connected papers. She further stated that during the period 1-1-1953 to 5-8-1954 she was in Burma. She produced her passport before the commissioner, who recorded her statement. It means that she did not come to India during the relevant period. Therefore, there was no occasion for her to have moved an application for a duplicate F. D. R. or to have received payment of the subsequent renewed F. D. R. From the cross-examination of this witness it does not appear that the Appellant really assailed her testimony. To corroborate her testimony the Respondent examined hand writing expert Sri S. C. Chaudhary, who is an expert of long standing. He compared the disputed signatures as well as the real signatures of Smt. Lilawati and clearly expressed his opinion that the disputed signatures were not made by the real person. His statement more or less goes unchallenged. In this way the Respondent proved on record that the disputed signatures were forged ones. In other words, the Respondent proved the alleged forgery.

14. In view of what has been discussed above if the courts below have not recorded a specific finding of forgery, the Appellant cannot get any advantage.

15. The Appellant's counsel contended that the Respondent made payment on 1-7-1954, that prior to that date the Respondent had not made payment of the fixed deposit receipt, that prior to that date the entire money of the depositor

was in the hands of the Respondent and that the Respondent was earning profits out of it and as such it could not be held that the Respondent suffered any loss on account of the said forgery. This contention, on the very face of the facts of the instant case, is without substance. The case of the Respondent is that it suffered loss because it had to pay the real depositor subsequently and it had also to pay the person, who had committed forgery in obtaining first duplicate F. D. R. and then renewed F. D. R. This position is well proved on record. Therefore, the contention of the Appellant's counsel is simply fallacious and is not justified on the facts of the case.

16. The Appellant's counsel next contended that there was no forgery in the signature on 1-7-1954 on which date the bank made payment of the renewed F. D. R. because the signatures on 1-7-1954 tallied with the signature of the depositor on earlier documents, namely, application for issue of duplicate F. D. R., indemnity bond and application for renewal. This is no doubt correct, but the position in the case is that the signatures of the real depositor Lilawati produced as a witness in the case by the Respondent were forged on all the relevant documents including the one dated 1-7-1954. Therefore, this contention does not help the Appellant.

17. The learned Counsel for the Appellant then urged that the courts below blindly accepted the inquiries made by the bank in respect of the alleged forged signatures and identity of real depositor Smt. Lilawati, who appeared before the bank on 15-3-1955. This contention is not correct. No doubt when real Lilawati appeared before the bank on 15-3-1955, the Agent of the Bank Sri G. S. Srivastava (PW 2) showed her alleged forged signatures made during the period 30-5-53 to 1-7-54 and when she denied them then he got her signatures compared with the disputed ones. In the present case the bank did not rely on the bare statement of G. S. Srivastava, but also produced real Lilawati and the hand writing expert. The evidence of the last two witnesses fully proved the forgery. Therefore, it is not correct to say that the courts below blindly accepted the result of the inquiry made by the Respondent bank.

18. The Appellant's counsel then contended that the Respondent bank paid time barred debt because real Lilawati had not called on the bank within three years of the amount repayable on the F.D.R. Real Lilawati deposited the amount in question on 22-4-1950. It was repayable within 12 months with interest at the rate of Rs. 1 1/2 percent per annum vide receipt Ex. 33. The case of the Respondent is that after the expiry of the period of 12 months, the amount was transferred to "deposit at call account". There is positive statement of Sri G. S. Srivastava (PW 2) that the claim of real Lilawati had not become time barred and that she was only deprived of getting interest beyond the period of 12 months. The learned Counsel for the Appellant has not pointed out under which provision of the Limitation Act the right of Lilawati to recover the amount of the fixed deposit receipt of the bank had become time-barred. Article 60 of the Indian Limitation Act, 1908 provides a period of three years for a suit for money

deposited under an agreement, that it shall be payable on demand from the date of the demand. In the fixed deposit receipt there is no mention that the deposited amount was payable on demand. Therefore, Article 60 is not applicable. Then there remains the residuary Article 120 which provides a period of six years from the date the right to sue accrues. In the present case the amount was payable after 12 months of 22-4- 1950, i.e. on 22-4-1951. Under Article 120 the suit could be filed by 21-4-1957. The real Lilawati appeared before the bank well before 21- 4-1957 i.e. 15-3-1955 and wanted payment of her money. Therefore, legally the Appellant's counsel is not correct in saying that the Respondent bank made payment of time barred debt.

19. The Respondent's counsel pointed out that after the expiry of period of 12 months the amount of real Lilawati remained in trust with the Respondent bank and, therefore, u/s 10 of the Limitation Act there was no period of limitation to recover the amount. Section 10 of the Limitation Act lays down that no suit against a person in whom property has become vested or trusted for any specific period, shall be barred by any length of time. In the present case real Lilawati had deposited the amount with the bank. It means that the bank was to keep her money in deposit so long as she did not want its repayment. In other words the money was in trust with the bank. From this aspect of the matter there is considerable force in the contention of the Respondent's counsel.

20. The result of what has been discussed above is that there is no substance in this contention of the Appellant's counsel.

21. The Appellant's counsel then drew attention to the plea contained in Para. 31-A of the written statement which was added as a result of the amendment application 63-B of the Respondent having been allowed by the trial court. In this paragraph the Respondent simply alleged a practice of the verification of signatures by the Head Cashier in bank. This contention is not of any help to the Appellant. The duty of the Appellant is to verify the signatures. It is immaterial whether he did so on the basis of practice or in any other manner adopted by him. If he verifies the signatures, he cannot plead the practice alleged by him. Therefore, this contention is absolutely without force.

22. The Appellant's counsel pointed out that the statement of Lilawati recorded on commission was not on oath. This point was not at all raised by the Appellant either in the trial court or before the lower appellate court. A perusal of her statement shows that she gave statement on "S. A." (Solemn affirmation) (vide "S. A." written in the beginning of the statement). Section 4 of the Indian Oaths Act of 1873 provides that all courts and persons having authority to receive evidence are authorised to administer oaths and affirmations. This section clearly indicates that the evidence of a witness can be recorded on solemn affirmation. Therefore, the contention of the Appellant's counsel on facts is not correct.

23. The learned Counsel for the Respondent has contended that no omission to take any oath or make any affirmation shall invalidate any proceeding or render

inadmissible any evidence as provided in Section 13 of the Indian Oaths Act, 1873. On this ground also the statement of Smt. Lilawati cannot be ignored.

24. The last contention, which in fact is the real contention of the Appellant's counsel, is that the Appellant acted in a bonafide manner, that he did compare the alleged forged signatures with the specimen signatures dated 2-4-1950 of real Lilawati and he could not detect the forgery and that for this mistake/error of judgment he was not liable. In Paras 4 to 6, 8 and 9 of the written statement the Appellant clearly alleged that in due course of business he compared the alleged forged signatures with the specimen signatures of real Lilawati and found the same in order and, therefore, he verified these signatures. The Appellant gave statement on oath accordingly. There is no evidence on behalf of the Respondent that the Appellant had verified the disputed signatures without comparing them with the specimen signatures of real Lilawati. There is no evidence on behalf of the Respondent that the Appellant had conspired with the forger. It is in the statement of G. S. Srivastava (PW 2) that the forgery was really committed by Ram Asrey. In these circumstances it can be said that the Appellant was not acting negligently or in a malafide manner. In other words in verifying the disputed signatures he acted in the usual manner, i.e. he verified the disputed signatures after comparing them with the specimen signature of real Lilawati, There is no evidence worth the name that when the Head Cashier or any other employee of the bank verifies signatures, he uses any magnifying glass or any other mechanical instrument. It means that the Head Cashier or the employee concerned just sees the specimen signature and the signature on the application, cheque etc. with his naked eyes and if he finds them similar, he verifies the signature on the application, cheque etc. Thus in the instant case, it is fully proved that the Appellant acted in the usual manner in verifying the signatures in question.

25. It shall be noticed that the Appellant had not attested the signatures. There is difference between attestation and verification. In the case of attestation the person attesting should see that the person making his signatures signs in his presence or he is well versed with the signatures of the person making it. Ordinarily it is presumed that a person attesting the signature sees the signature being made in his presence. But in the instant case it was not necessary for the person concerned to have signed on the application for duplicate F. D. R. etc. before the Head Cashier.

26. The result of what has been stated above is that the Appellant's counsel has rightly contended that the Appellant had acted in a bonafide manner and that it was a case of mistake /error in comparing the signatures. In this connection the Appellant's counsel referred to the statement of Sri S. C. Chaudhary, handwriting expert produced by the Respondent. Sri S. C. Chaudhary's opinion is based on photo-enlargements and on comparison by a magnifying glass. Sri S. C. Chaudhary has not stated that a bare look at the two types of signatures indicates forgery. On the other hand, he stated that two signatures of the same

person were not exactly alike in such a way as to coincide with one another, that the signatures of the person did vary on account of posture, state of health or age, that a person who was not a handwriting expert could not, on ordinary inspection, have detected that the signatures on the documents in question were not of the same person as on the specimen card and that to the naked eyes the disputed signature did not show signs of hesitation or tremor and that they were visible to an examiner. He further stated that the signature of real Lilawati on the fixed deposit receipt dated 22-4-1950 when compared with the signature of specimen card indicated that they were not of the same hand. It means that the signatures of real Lilawati made later on, on F.D.R. dated 22-4-1950 did not tally with her signatures on the specimen card. Sri Chaudhary stated that it was a case of imitation forgery. Then he stated that he could have formed an opinion without taking photograph but by using his special magnifier. It means that without his special magnifier he could not have formed opinion.

27. It is a matter of common knowledge that the employees of the banks do not use magnifiers while comparing the signatures on cheques, etc. with the signature of the specimen card. Therefore, from the very statement of the Respondent's expert it can easily be gathered that the Appellant could not have detected the forgery in the usual manner at the time of verifying the alleged forged signatures.

28. The contention of the Respondent's counsel is that under the terms of the agreement the liability of the Appellant was absolute even though he acted in a bonafide manner and committed a mistake or error of judgment in comparing the signatures, Para 4 of the agreement has been re-produced above. No doubt it says that the Head Cashier shall be responsible for the correctness and genuineness of the signatures and shall make good to the bank any loss sustained by it arising from any forged signature which will come into his hands in the course of his employment and will be accepted or dealt with by him as correct and genuine. There is no qualification in this paragraph. But at the same time this agreement does not lay down in what manner the Head Cashier has to verify the signatures. No doubt the Head Cashier can be considered as an expert but the agreement does not lay down that the Head Cashier can verify the signatures only after making photographic enlargements or by comparison with the help of a magnifier. In other words the Head Cashier can verify the signatures by comparing it with the specimen signatures by seeing the same with his naked eyes. In this circumstance, despite the fact that there is no qualification in para 4 of the agreement it cannot be said that the Head Cashier would be liable to the bank even if he had acted in the usual manner or in the manner in which any other person placed in his position would have acted. Taking this into consideration, in case the Head Cashier had made a genuine mistake or error in judgment in making comparison, he should not be held liable to make good the loss if subsequently any forgery is detected in the disputed signatures. Every person is supposed to act in a bonafide usual manner. If he acts so, he cannot be held liable for a mistake committed in the ordinary course.

In the result, notwithstanding the responsibility laid down by para 4 of the agreement the Appellant cannot be held liable to make good the loss to the Respondent bank in the unusual circumstances of the case. Therefore, the decree passed by the lower appellate court cannot be maintained.

29. The learned Counsel for the Respondent referred to Section 56 of Indian Contract Act, and urged that this section did not help the Appellant. This section declares an agreement to do an act impossible itself void. This section has no relevance to the facts of the present case. Besides, it has not been relied upon in this Court by the Appellant's counsel.

30. Appeal is allowed and the judgment and decree dated 21-12-1968 passed by the District Judge, Dehradun in Civil Appeal No. 3 of 1965 are set aside and the Plaintiff-Respondent's suit is ordered to be dismissed.

31. In the unusual circumstances of the case the parties shall bear their own costs incurred in all the courts.