
(2000) 08 MAD CK 0069

In the Madras High Court

Case No : Original Application No's. 616 to 618 of 1999 in C.S. No's. 738 to 740 of 1999

Canara Bank

APPELLANT

Vs

Kandaswamy and Others

RESPONDENT

Date of Decision : 04-08-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1
Original Side Rules — Order 14 Rule 8

Citation : (2000) 08 MAD CK 0069

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Judgement

A. Ramamurthi, J.—These applications are filed by the applicant-bank/plaintiff under Order XIV, Rule 8 of the Original Side Rules read with Order 39, Rule 1 of the Civil Procedure Code, 1908, to pass an order directing the second defendant-bank to release the amount to the plaintiff-bank on such terms and conditions as the court may deem fit and proper and also restrain defendants Nos. 1 and 2 by an order of injunction preventing them from withdrawing or allowing any withdrawal of any amount from S. B. Accounts Nos. 8818, 8819 and 8820 in the name of the first defendant.

2. The case in brief for disposal of all these applications is as follows :

On September 5, 1996, three instruments each for Rs. 9.50 lakhs purporting to be demand drafts issued by the plaintiff-bank's Cantonment branch, Bangalore were presented by the first defendant and two others. The second defendant acting as the banker of the first defendant its customer, presented in clearing at Madras the instrument on September 6, 1996. The amount mentioned in the instrument was realised and received from the applicant-bank. Later, it was found that the instrument was not a genuine demand draft issued by the applicant-bank but was a fake and fraudulent one, fraudulently created and presented to defraud the applicant-bank and the instrument was deceptively

similar to a genuine instrument. The applicant-bank made payment to the second defendant-bank in the usual and ordinary course of business. On coming to know of this fraud, the second defendant-bank was apprised of the same and they were requested to return the amount and not to allow any money to be withdrawn by the customer in the S. B. Accounts Nos. 8818 to 8820 with the second defendant branch. The plaintiff-bank is entitled to the amount fraudulently collected from it and the same cannot be allowed to be withdrawn by the first defendant. The first defendant is an imposter and the second defendant-bank without proper and sufficient investigation and introduction, allowed the savings bank account to be opened in the name of the first defendant. The plaintiff's attempts to trace or keep track of the first defendant have been in vain. The notices sent were returned with a postal endorsement "no such person". The plaintiff called upon the second defendant-bank to release the amount realised on the fake instrument, but the second defendant was reluctant to release the amount in the absence of a court order. The plaintiff even offered to provide proper and sufficient indemnity to persuade the second defendant to release the amount without resort to the court. Hence, these applications.

3. The first defendant remained ex parte.

4. The second respondent filed a counter affidavit and denied the various averments. The first defendant is the account holder in the second defendant-bank and he deposited demand draft for an amount of Rs. 9,50,000 dated August 30, 1996, issued by the plaintiff's Cantonment branch for realisation. The second defendant presented the installment in the clearing section of the plaintiff-bank and the amount was realised and credited to the account of the first defendant in the S. B. Accounts Nos. 8818 to 8820 for the three demand drafts. A letter was sent to the second defendant stating that the instrument was a forged one and directed the second defendant-bank to stop operation and not to allow the first defendant to withdraw the amount and also to freeze the amount. The plaintiff-bank also lodged a complaint with the police. The second defendant-bank on instructions, stopped payment of any amount from the account of the first defendant and duly informed the plaintiff-bank that freezing of the account will not be continued if any court order or an order from the investigating officer is not produced.

5. The plaintiff-bank approached the second defendant for reimbursement of the amount realised with interest. The second defendant-bank informed them about their inability to pay any amount available unless an order from the competent court is produced to avoid liability. Only after following the bank's normal procedure to open an account, the first defendant was eligible to open the account. The bank is willing to release the amount realised towards the instrument without any interest if the plaintiff-bank produces an order from the competent court. The drawer of the demand draft are Bangalore Cantonment branch officers of the plaintiff-bank. The paying bank is expected to know the specimen signature of the drawer. The plaintiff-bank had made payment in

contravention of the banking practices and law and the plaintiff-bank has no locus standi to claim the amount realised against a forged demand draft. Moreover even an account holder cannot claim interest for the deposit of the forged demand drafts. The second defendant alone has a right over the interest amount on the deposits. The request of the bank may be considered for the release of the amount only after the expiry of the three years. The second defendant-bank froze the account of the first defendant in 1996 itself and till date, the first defendant was not allowed to withdraw any amount. Hence, these applications are liable to be dismissed.

6. The plaintiff-bank filed a reply affidavit to the counter affidavit filed by the second respondent.

7 Heard learned counsel of the parties.

8. The points that arise for consideration are

(1) whether respondents Nos. 1 and 2 can be restrained from withdrawing or allowing withdrawal of any amount from S. B. Accounts Nos. 8818 to 8820 standing in the name of the first defendant ?

(2) To what relief ?

9. Points : The first defendant opened savings bank account in the second defendant-bank in Accounts Nos. 8818 to 8820. The first defendant had produced three instruments each for Rs. 9.50 lakhs purporting to be demand drafts issued by the plaintiff-bank of the Cantonment branch, Bangalore. The second defendant acting as the banker of the first defendant presented all the three demand drafts for clearing with the plaintiff-bank on September 6, 1996. The amount mentioned in the respective instruments was cleared to the second defendant-bank. Only later, the plaintiff-bank came to know that the demand drafts are not genuine and they were fake and fraudulent ones created to defraud the plaintiff-bank and the instruments were deceptively similar to genuine instruments. Immediately, the plaintiff-bank apprised the matter to the second defendant-bank and requested them not to return the money to the first defendant or allow withdrawal of the same.

10. Learned counsel for the plaintiff-bank stated that the plaintiff-bank is entitled to get back the amount collected from them from the second defendant as clearing agent of the first defendant. It is further stated that the second defendant-bank without proper and sufficient investigation, allowed the first defendant to open the accounts. The attempts made by the plaintiff to trace or keep track of the first defendant in vain and the notices sent were also returned. When the attention of the second defendant was drawn to return the amount, they insist on a direction from the court or they should be indemnified before releasing of the amounts.

11. Per contra, learned counsel for the second respondent/second defendant stated that on getting information from the plaintiff, they did not allow the first

defendant to withdraw the amount and the three accounts were also frozen. However, they insisted on the court order for returning the amount and at the same time they contended that they are not liable to pay any interest to the plaintiff and on the other hand, they alone are entitled to have the interest. Now, learned counsel, for the applicant stated that there cannot be any dispute with reference to the return of the amounts covered under the three demand drafts. It is not the money of the first defendant or the second defendant but it is the money of the plaintiff-bank, which had cleared the same on the forged documents. Now, for the last three years, the whereabouts of the first defendant are not known and fortunately the amount had also not been withdrawn from these accounts and they are safe. When once the money does not belong to the second defendant, they are bound to return the same to the plaintiff bank. In spite of several communications, they evaded to return the same but learned counsel for the second defendant stated that the present application has been filed not for return of the amount but for other reliefs and, as such, no direction can be given to the second defendant to return the amount.

12. Admittedly, the amount belongs to the plaintiff bank and the amount was cleared when it was presented by the second defendant bank for clearance. Under law, the plaintiff is entitled to get back the amount which was wrongly cleared by them presuming to be genuine documents issued by their branch at Cantonment. Under the circumstances, I am of the view that the second defendant has no legal right whatsoever to retain the money and the retention of the same all these years is not a proper one. So far as the claim of interest raised by the parties is concerned, it can be considered in the suit.

13. For the reasons stated above, the second respondent is directed to return the amounts covered under the three demand drafts to the plaintiff-bank within a period of two weeks from this date and the dispute relating to the interest will be considered in the suit. These applications are ordered accordingly.