

(2011) 01 DEL CK 0411

In the Delhi High Court

Case No : Regular First Appeal No. 733 of 1994

Canara Bank

APPELLANT

Vs

R.K. Engineering Co. Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 17-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1, 96
Evidence Act, 1872 — Section 85

Citation : (2010) 1 BC 673 : (2011) 177 DLT 454

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Pradeep Dewan and Rajiv B. Samaiyar, for the Appellant; Vaibhav Agnihotri, for the Respondent

Judgement

Valmiki J Mehta, J.—Arguments were concluded on 10.1.2011 and parties were directed to file written synopsis which have been filed. I am, therefore, proceeding to pass the judgment.

2. By the present appeal u/s 96 of the Code of Civil Procedure, 1908 (Code of Civil Procedure), the Appellant bank, which is the successor in interest of the erstwhile Lakshmi Commercial Bank Ltd. challenges the impugned judgment and decree dated 27.9.1994 passed by the trial Court whereby the suit of the Appellant bank for recovery was dismissed.

3. The facts of the case are that the Respondent No. 1 was a customer of the erstwhile Lakshmi Commercial Bank. Respondent No. 1 was a seller of goods. It sold the goods to its customer in Palwal. The goods were given for transportation to the Respondent No. 2/M/s. Central Transport Organization. The Respondent No. 1 thereafter prepared a bill of exchange/hundi drawn on the customer and along with the transportation receipt presented the documents to the Appellant and sought discounting of the hundi from the bank. I may note that reference in this judgment to the bank would be either to the present Appellant M/s. Canara Bank or to its predecessor-in-interest M/s. Lakshmi Commercial Bank as per

context. The bank discounted hundi on 19.11.1983 and credited an amount of Rs. 52,704.96p to the account of the Respondent No. 1. At the time of discounting, the bank took into its custody the transportation receipt and sent the documents being the hundi and the transportation receipt for collection to the customer. In the meanwhile, the Respondent No. 1 withdrew the amount credited in its account on account of discounting of the hundi by the bank. The customer of the Respondent No. 1 at Palwal failed to make payment under the hundi and accordingly, the documents came back to the bank. On the bank receiving intimation of the default on the part of the customer of the Respondent No. 1 in making payment of the hundi, the bank informed the Respondent No. 1 and the letter so informing the Respondent No. 1 is a letter dated 14.11.1984.

Respondent No. 1 had replied to this letter of the bank by its reply dated 21.11.1984 (Ex. P-8A) and which reads as under:

xx xx xx

Reference your letter No, BSN/APD/112/909/84 dated 14.11.84.

We are taking necessary action in making the payments to you shortly for the documents received back unpaid.

Thanking you, we are

Yours faithfully,

For R.K. ENGINEERING COMPANY (P) LTD.,

MANAGING DIRECTOR.

It may be noted that there are certain missing factual aspects and documentary aspects because Lakshmi Commercial Bank was thereafter merged with Canara Bank, and certain records are stated to be untraceable. The fact of the matter however is that Ex. P-8A shows that the Respondent No. 1/customer of the bank was aware and was put to notice that the hundi was dishonoured and therefore monies which were credited in the account of Respondent No. 1 by the bank had to be refunded. The Respondent No. 1 in Ex. P-8A clearly stated that it was taking steps to make payment to the bank.

4. Disputes and differences arose on account of failure of the Respondent No. 1 to make the payment to the bank along with interest and consequently, a suit was filed by the Appellant bank on 11.11.1986 and which has been dismissed by the impugned judgment and decree dated 27.9.1994.

5. The trial Court has dismissed the suit by holding that the bank became the owner of the goods when it received the transportation receipt in which the bank was shown as a consignee along with the hundi. The trial Court therefore, arrived at a finding that it was the duty of the bank as a owner of the goods thereafter to sell the goods for recovering its amount and bank was not entitled to, file a suit against the Respondent No. 1. Reliance was placed by the trial Court on a

Division Bench judgment of the Dena Bank Vs. The Madhya Pradesh National Textiles Corporation Ltd., . I may note that even the Appellant also relied on this very judgment in the trial Court and therefore the issue is the applicability of the ratio in the Dena Bank's case (supra).

6. Before this Court, the learned Counsel for the Appellant has argued that the bank deals in documents and not in goods. It is argued that when the bank takes custody of the transportation receipt, and becomes a consignee, it is not like a normal consignee of a seller who has the transportation receipt drawn in its name, and the bank only becomes a pledgee of the goods by taking control of the goods as security for payment of the Hundi which is discounted in favour of the customer. It is argued that once the Hundi is dishonoured, the bank is entitled to receive back the amount which has been credited to the account of the customer if the bank has not in the meanwhile lost the pledged goods. The Counsel for the Appellant has also argued that the transportation company/ Respondent No. 2 in fact has possession of the goods for and on behalf of the bank and it is bound to act on the instructions of the bank for release of the goods to the bank's customer/Respondent No. 1 or on the appropriate directions of the Appellant bank. It is further argued that in the present case, though the transportation receipt has been lost by the bank, however, the goods itself having not been lost as the transportation company/Respondent No. 2 has led evidence in the trial Court as D2W1 and stated that it was ready to deliver the goods to the concerned party, subject however to payment of the requisite charges towards freight and demurrage. Counsel for the Appellant has also placed strong reliance upon the decision of the Supreme Court in the case of UCO Bank Vs. Hem Chandra Sarkar, in support of the proposition that bank deals only in documents and not goods and the bank does not become the owner of the goods when it discounts the Hundi in favour of its customer.

7. The Counsel for Respondent No. 1, in response, has argued that the impugned judgment and decree is in order and ought be sustained. Different points of arguments as raised by the Counsel for the Respondent No. 1 are as under:

? The Bank purchased the goods receiving note and on such purchase the constructive possession of the goods had been passed onto and vested in the Appellant.

? The Original Consignee copy and goods receipt was admittedly lost by the Appellant.

? The Appellant failed to prove that it had in fact presented the bill for delivery of the goods and that the same was returned unpaid by the Respondent No. 2

? The Respondent No. 1 cannot be put to prejudice for the negligent and callous actions of the Appellant.

? Without presenting back the documents of returning the goods, the Appellant could not have the suit.

Though there is some repetition in the various submissions of the Counsel for the Respondent what is argued by the Respondent No. 1 in sum and substance is that the bank became owner of the goods and in any case, since the bank is guilty of losing the transportation receipt, the suit was not maintainable and was rightly dismissed.

8. In order to appreciate the respective contentions of the parties, it is necessary to refer to applicable paras of the decisions in the case of Dena Bank (supra) and UCO Bank (supra) as relied upon. The relevant paragraphs of the decisions in the case of Dena Bank (supra) are paras 4, 5, 11, 14, 17, and 18 of the said judgment which read as under:

4. It has been further averred by the Plaintiff company that as usual and as per practice of bill purchase facility, the Defendant Bank purchased the said bills of the Plaintiff company, worth Rs. 77,975.50 and accepted the aforesaid all the Hundies for the like amount drawn on Bombay Textiles Agency, Semapur, along with respective transport receipts duly endorsed in favour of the Bank and credited Rs. 77,975.50 to the account of the Plaintiff company and took upon itself the responsibility of securing the said amount from the party concerned through any scheduled Bank and to reimburse to itself the price of the said bills purchased from the Plaintiff company.

5. The Plaintiff company pleaded that to its surprise the Defendant Bank by its letter dated 5th May, 1972 (Ex. P-2) informed the Plaintiff company that as the bills were long outstanding in their books against the Plaintiff, and therefore the Bank was reversing the credit entry and debiting the amount of the said bills. The Plaintiff company by its letter dated 10th May 1972 (Ex. P-5) protested against it by contending that if the Bank had by its negligence or otherwise wrongly delivered the documents by reason of which the goods have been lost, the Plaintiff is entitled for payment of the amounts covered by the bills purchased by the Bank and the Bank had no right to debit the price unless the relevant documents purchased by the Bank or the goods covered by them are returned back to the Plaintiff company. In spite of this protest, the Defendant Bank neither returned the relevant documents nor struck off the debit entry and hence the Plaintiff brought this suit for recovery of the said amount with interest.

11. Thus as seen above the main question centres round the controversy whether by accepting the relevant documents with endorsement in its favour and discounting the same by crediting the price thereof to the account of the Plaintiff company immediately and before realising the same from the drawee concerned, the ownership in goods covered by the said documents passed on the Defendant Bank and it became a purchaser for value of the said documents or it was simply a collecting agent for the Plaintiff company on commission and other collecting charges.

14. It may also be noted that under the banking laws when the bills are handed over to the banker by his customer in order that the same be collected when

due, and the proceeds be credited to the customer's account, then they are called, "Bills for collection". This term distinguishes from the term, "Bills negotiated" or "Bill discounted", which are bills for which the banker has given value at once, instead of waiting till the banker has actually received the proceeds of the bills when collected. Thus, in the case of the bills handed over to the banker by the customer for collection when due and to credit the amount in the account of the customer after the proceeds are actually collected, it is not a case of sale and purchase of negotiable instruments or documents of title relating to goods because these bills are merely handed over to the banker for collection and credit when received and the banker has no property in them. But the "Bills negotiated" or "Bills discounted" stand on a different footing by which the discounter is a holder for full value and gets absolute title over it. In this behalf a reference may be made to Sheldon's Practice and Law of Banking, Tenth Edition, at page 306, wherein the author has discussed that "to discount a bill" is to buy it, to become the transferee of it, by having it endorsed or transferred by delivery by the holder, giving him a price settled, either by agreement or by the current rate in the money market. It has been further stated that a discounter is a holder for full value and not a pledgee: he can deal and part with the bills as he likes, his title to the bill and to sue on it is absolute and covers the whole face value; he is in no sense a trustee for the previous holder as to any part, of the bill or its proceeds and that the person who gets the bill discounted is a transferor if by indorsement there with all the liabilities of a indorser if a transferor by delivery, then with the liabilities attaching to that character. In either case, he parts with all rights, title and interests in the bill and its proceeds.

17. Chimanlal (D. W. 1) was the Manager of the Defendant Bank at the relevant time. He deposed in para 6 of his deposition that after receiving the documents duly endorsed in favour of the Bank, the value thereof is credited to the account of the customer and if the customer so desired he may withdraw the said amount from his account. He also admitted that the amount so credited is the value of the goods covered by the bills and that after the transport receipts are presented to the Bank duly endorsed in its favour, the Bank further indorses the same in favour of the collecting agent and that party alone will get the goods in whose favour the bank endorses the same. Almost the same facts are reiterated by the Accountant of the Bank, Madhusudan (D.W. 3), who went to the extent of admitting that the Bank purchases the Hundi-builty from customers and the value thereof is immediately credited to the account of the customer and if the customer so desires, he can withdraw the amount immediately. He also deposed that the amount so paid to the customers for purchase of bills, is recovered back only after returning the documents to the customer concerned. From this evidence, it is amply clear that the Defendant Bank was not only a collecting agent of the documents presented to it by the Plaintiff company but the documents on presentation were discounted by the Bank and the value was credited to the account of the Plaintiff immediately without waiting for its collection from the drawee. These facts and circumstances clearly make out a

case that the Bank was purchaser of title documents and it was holder thereof for full value and therefore it was the responsibility of the Bank itself to collect the mount of the bills from the drawee to reimburse itself and if the drawee refused or the documents were dishonoured or the drawee could not be found, to present the documents back to the drawer and collect the value thereof either in cash or by reversing the credit entry by debiting the same amount in the Plaintiff's account and not otherwise.

18. The Defendant Bank claimed immunity on the basis of the terms printed in the application form, Ex. P-9. and the agreement, Ex. P-10, as well as on the basis of the instructions alleged to have been given by the Plaintiff company to collect the bills through Canara Banking Corporation, Semapur. But on scrutiny or the evidence, the learned trial Court found that the Defendant Bank had failed to establish the same. We have also scrutinised the evidence and find that these conclusions are well founded and call for no interference. It may be seen that the application form, Ex. P-9 and the alleged agreement Ex. P-10, are only pro forma copies in which there are no signatures of either party. The originals thereof being in possession of the Bank were not produced to prove the same, The evidence regarding the instructions alleged to have been given by the Plaintiff for collection of the bills through a particular agency is neither satisfactory nor consistent. It is clear from the evidence of the Defendant itself that the blank space in the application form, a copy of which is Ex. P-9, was left vacant by the Plaintiff and it was not specified as to from which agency the bills had to be collected and it was thus left to the discretion of the Bank to select the agency of its own choice. The evidence of the Bank Manager, Chimanlal (D. W. 1) and Accountant Madhusudan (D. W. 3) that the instructions for collection through a particular agency were written in the Hundis given by the Plaintiff could not be accepted for the simple reason that no such instructions are noted in the carbon copies of Hundis produced by the Plaintiff. In the absence of any satisfactory and convincing evidence in this behalf, it has to be assumed that the Defendant Bank adopted its own mode and choice of agency in sending the documents through the post office by registered post which were delivered to some wrong and unknown person who took the delivery of the goods and committed fraud. In these circumstances, the Defendant Bank was not entitled to reverse the credit entry, and more so, without returning back the documents to the drawer.

(Emphasis added)

9. The ratio of the decision in the case of Dena Bank (supra) on a conspectus emerging from the aforesaid paragraphs is that bank either can act simply as a collecting agent for receiving the money from the drawee and thereafter only credit the account of the customer or it may immediately discount the Hundi and credit the account of the customer and thereafter receive the amount from the customer of its customer in consideration for an appropriate commission, which commission charges are in fact really in the nature of interest for the amount advanced against discounting of the Hundi covering the period from the date of

discounting till monies are received by the bank from the drawee. Also, if the bank is guilty of losing the goods and thereby it causes loss to its customer whose Hundi it has discounted then in such circumstances, the bank will not be entitled to seek recovery of the amount discounted under the Hundi. Of course, this principle is well settled that a bank cannot maintain an action for recovery of money unless it is also in a position to return the pledged goods vide *Vallabhdas and Others Vs. Municipal Committee, Akola*, . However, the decision in *Dena Bank's* case (supra) goes to clearly emphasize that if the bank is in a position to return the goods, then, bank is entitled to present the documents back to the drawer and claim value thereof in cash or by reversing the credit entry by debiting the same amount in the customers accounts. See last lines of para 17 of *Dena Bank's* case quoted above.

10. The Supreme Court in the case of *UCO Bank*, has again dealt with the issue and held that banks deal in documents and not in goods. It has been held that the relationship of the bank and its customers is only that of a debtor and creditor. The bank is liable only when it fails to return the goods which are in its possession as a bailee i.e. it is not liable when the goods bailed can be returned back to its customer. The relevant paragraphs of the decision of the Supreme Court in the case of *UCO Bank* are paragraph Nos. 14 to 16 of the reporter and which reads as under:

14. Counsel for the Appellant appears to be very particular to get rid of the finding recorded by the Courts below as to the fiduciary relationship in Bank and customer relationship. We agree with him that the High Court and the trial Court were not justified in holding that a fiduciary relationship could exist between the parties in respect of goods for which the suit claim was based. This inference was drawn primarily from the debit entries in the Plaintiff's current account. Reference was made to collection of bills, remittances to mills, meeting expenses of storing the goods and debiting the same to the current account even without cheques from the Plaintiff. These acts according to the trial Court would lead to an inference that the Bank acted as agent of the Plaintiff and there was thus fiduciary relationship between parties. But we do not find anything in this method of operation to take the parties outside the ordinary relationship of banker and customer. Lord Chorley says that-

"the main mass of daily banking activity in branch banks is concerned with the operations of current accounts which thus provide a sort of hub round which the wheels of the whole set up of commercial banking revolve.... There is no accepted definition of a current account; though in its normal form it is easily recognised in practice. The principal feature of such an account is the fact that the customer gets his money repaid from it, or any advances which he is receiving from his banker by way of loan-and this is so whether the repayment is to himself or to a third party. Normally the repayment is made through the machinery of the cheque and conversely unless otherwise indicated by the customer it is implied that cheques paid in are for the credit of the current

account, and that they will be so credited.... We have seen that overdrawing by the customer when allowed by the banker are treated as loans. They will be debited to the current account, Indeed it is through the current account, and by means of overdrafts on it that loans and advances are normally made by bankers to their customers."

In Paget's Law of Banking (9th edn. at pp. 82-83), it is stated that-

...the current or drawing account may be either a credit or an overdrawn account. A credit account is made up of moneys paid in by the customer, the proceeds of cheques and bills collected for him, coupons collected, interest and dividends paid direct to the banker and from various other source F, less any moneys properly paid out. Moneys from different sources, once they have found their way into the current account, are treated as one entire debt.

This is the normal method of banking operation and the maintenance of the current account in this case appears to be not outside this principle and therefore, no inference could be drawn that the Bank stood in fiduciary relationship with the Plaintiff.

15. Next question for consideration is whether the Bank acted as agent of the Plaintiff in respect of the goods in question? Here also Counsel appears to be right in his submission. Banks take charge of goods, articles, securities as bailee and not as trustee or agent. Bailment is the delivery or transfer of possession of a chattel (or other item of personal property) with a specific mandate which requires the identical res either to be returned to the bailor or to be dealt with in a particular way by the bailee as per directions of the bailor. One important distinguishing feature between agency and bailment is that the bailee does not represent the bailor. He merely exercises, with the leave of the bailor (under contract or otherwise), certain powers of the bailor in respect of his property. Secondly, the bailee has no power to make contracts on the bailor's behalf; nor can he make the bailor liable, simply as bailor, for any acts he does. In the instant case, there is nothing to indicate that the Bank represented the Calcutta parties or the Plaintiff with authority to change the contractual or legal relationship of parties and therefore, there is no justification to hold that the Bank acted as agent of the Plaintiff.

16. But that, however, does not mean that the Bank could succeed in this appeal. Having regard to the finding of fact recorded by the Courts below, it is immaterial whether the Bank acted as bailee or in any other capacity. On the evidence adduced by the parties it has been established that the Plaintiff did pay the price of the goods in respect of which he based his claim in the suit. The Bank, however, took the plea that the goods were delivered to one Shishu Ranjan Sen, who was the authorised agent of the Plaintiff. But at the relevant time the Plaintiff has his own agent called Dhani Ram and he did not receive the goods. The Bank has neither examined Shishu Ranjan Sen nor Dhani Ram. The Bank examined one Dhawan (DW 2) to prove some initials of Shishu Ranjan Sen on

certain documents but his evidence has not been accepted. The fact, therefore, remains that the Bank having received the price of the goods from the Plaintiff has failed, to deliver the same to him. This finding has not been seriously disputed and indeed cannot be disputed since the Bank having (sic has) chosen not to call Shishu Ranjan Sen or Dhani Ram to give evidence. The evidence adduced by the Bank was thus insufficient to establish the factum of delivery of goods to the Plaintiff. The banker bailee gratuitous or for reward is bound to take the same care of the property entrusted to him as a reasonably prudent and careful man may fairly be expected to take of his own property of the like description. In fact a paid bailee must use the greatest possible care and is expected to employ all precautions in respect of the goods deposited with him. If the property is not delivered to the true owner the banker cannot avoid his liability in conversion. In the light of these principles the Bank could not avoid the liability to return the goods as agreed upon or to pay an equivalent amount to the Plaintiff. Even if we assume that the goods were delivered to a wrong person, the Bank has to own the responsibility to pay the Plaintiff. The liability of banker to customer in such a case is absolute even if no negligence is proved. In Halsbury's Laws of England (supra, para 94), it is stated:

...where the bank delivers the goods to the wrong person, whereby they are lost to the owner, the liability of the bank is absolute, though there is no element of negligence, as where delivery is obtained by means of an artfully forged order. In law the banker could contract out of this liability, but he would be unlikely to do so in practice".

(Emphasis added)

Paras 14 and 15 of the decision in UCO Bank's case (supra) clearly lays down that bank take charge of the goods as bailee for the customer and not as a trustee or agent. The Supreme Court has further observed that in the facts of that case, the High Court and Trial Court were not justified in holding that there existed fiduciary relationship between a bank and its customer merely because the bank was receiving the goods and keeping the same in its godown and debiting the charges to the customer and this cannot mean that there is fiduciary relationship between the bank and its customer.

11. Quite clearly, therefore, once the bank deals only in documents and is not a purchaser of goods, if the bill of exchange is dishonoured then the bank is entitled to refund of monies which it had advanced to its customer against the security return of the goods which it holds as a pledgee.

12. It is relevant that in the present case, the goods in question which were transported by the Respondent No. 1 for its customer/Respondent No. 1 and for which it issued a transportation receipt in which the bank was shown as consignee, are not lost but are very much available with the transportation company. In fact a witness of the transportation company deposing as D2W1 has in so many words stated as under:

The goods kept lying with us as Palwal for about 6 months and thereafter we brought two consignment goods in question back to Delhi in about June 1984, and since then the consignment goods in question are lying in our godown at Delhi, xxx

We are still ready to deliver the said goods to the party concerned, subject to payment of freight and demurrage charges and also subject to production of original G/R i.e. consignee.

xxx

In case the original G/R is lost, the party shall have to inform the carrier and thereafter we take indemnity bonds/surety bonds from both the consigners and consignee and then deliver the goods.

(Emphasis added)

13. In view of the aforesaid, the following facts emerge:

(i) Respondent No. 1 sold certain goods to its customer which it transported through the Respondent No. 2.

(ii) The transportation receipt along with the Hundi was thereafter given by the Respondent No. 1 to the bank for discounting and the Hundi was discounted and amount advanced to the Respondent No. 1.

(iii) The bank carried the documents to the customer of the Respondent No. 1 for delivery of the goods against payment under the Hundi however, the Hundi was dishonoured.

(iv) Bank duly informed the Respondent No. 1 and Respondent No. 1 in fact replied that it was taking steps to make payment.

(v) The present is not a case in which the goods have been lost by the bank and therefore it cannot be that it cannot maintain an action because a suit lies unless as a pledgee the bank is not in a position to return the pledged goods. The witness of the transportation company has clearly deposed that it is in possession of the goods and would return the same to its original claimant even if original transportation receipt is lost/not given, subject however, to issue of an indemnity bond.

14. The trial Court, in view of the conclusions of facts given in the above para, in my opinion, has misapplied the ratio of the case of Dena Bank. In the case of Dena Bank, the claim of the bank was dismissed because the bank had lost the goods. Obviously, in the case of Dena Bank, the Court was justified in taking such a view in view of the decision of the Supreme Court in the case of Lallan Prasad Vs. Rahmat Ali and Another, because a bank as a pledgee cannot maintain an action for recovery of money unless it is in a position to return the pledged goods. In the Dena Bank's case, the Division Bench of Madhya Pradesh High Court has clearly observed in the last five lines of para 17 of the citation that the

bank is always entitled to give back the goods to its customer so as to seek the return of the amounts advanced by discounting of the documents, either by receiving the amount back in cash or by reversing the credit entry by debiting the same in the customers account. The ratio of the decision in UCO Bank's case of the Supreme Court also clarifies that the relationship of the bank with its customer is of a debtor and creditor and is not a fiduciary relationship. Banks, as rightly argued by the learned Counsel for the Appellant, deal in documents and not goods. The Appellant/Plaintiff was thus entitled to succeed in the suit for recovery filed. Of course, I must hasten to add that when a commercial transaction takes place between a normal buyer and a normal seller and the goods are consigned by the seller to the buyer without reserving the right of disposal of the goods, then, in such a case property/title in goods does pass to the buyer, but, at the cost of repetition that is a situation which is envisaged in a normal commercial transaction between a buyer and seller of the goods who transports goods to a buyer by making him a consignee without keeping back with the seller the right of disposal of the goods. This principle of law is well established under the Sale of Goods Act, 1932.

15. The trial Court has also dismissed the suit of the bank on the ground that the bank has failed to prove that the suit has been properly instituted and the pleadings are duly signed and verified. The trial Court has held that the original power of attorney Ex. P-2 was not notarized and the subsequent power of attorney which ratifies the first power of attorney Ex. P-3 was no doubt executed before the Notary Public but was not authenticated by Notary Public as required by Section 85 of the Indian Evidence Act, 1872. In my opinion, this issue is no longer *res Integra* as the Supreme Court in *United Bank of India Vs. Naresh Kumar and others*, has held that as per order 29 Rule 1, Code of Civil Procedure, once a person who signs the plaint and institutes the suit is a principal officer, the suit should be held to be validly instituted. In fact, the Supreme Court in the case of *United Bank of India (supra)* has gone further to the extent in holding that once the suit is prosecuted for a long period of time a presumption ought to be drawn for valid instituted and filing of the suit. Applying the ratio of the Supreme Court in the case of *Union Bank of India (supra)* it is held that the suit was validly instituted and the pleadings duly signed and verified because institution was by one Sh. N.S. Kamat who is a Senior Manager of the bank and a Senior Manager of the bank would be a principal officer in terms of Order 29 Rule 1, Code of Civil Procedure. Of course, I must note that the decision of the Supreme Court in *Union Bank of India* is in the year 1997 and therefore the trial Court would not have benefit of the same as the impugned judgment and decree was passed on 27.9.1994. Accordingly, I hold that the suit has been duly instituted and the pleadings duly verified.

16. In view of the above, the impugned judgment and decree is clearly against the law and the facts which emerge on the record. If the impugned judgment is sustained, there would be grave injustice caused to the Appellant bank. Accordingly, I accept the appeal. The impugned judgment and decree is set

aside. The suit of the Appellant/Plaintiff will stand decreed against Respondent No. 1 for an amount of Rs. 94,522.06. The Appellant bank will be entitled to interest at the rate of 8% per annum simple from the date of institution of the suit till actual realization. Let a decree sheet be drawn up accordingly. Parties are left to bear their own costs.