(2007) 11 DEL CK 0113

In the Delhi High Court

Case No : Regular Second Appeal No. 295 of 2006

Cavalier Security — APPELLANT

Vs

Bank of Baroda and Others — RESPONDENT

Date of Decision : 13-11-2007

Acts Referred:

Citation : (2007) 11 DEL CK 0113

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Saurabh Tiwari, for the Appellant; Arun Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.

CM. No. 12240/2006

1. There is a delay of 8 days in filing the appeal. Reason stated is that the appellant was down with viral fever and was bed ridden.

2. For the reasons stated in the application, delay in filing the appeal is condoned.

3. Application stands disposed of.

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4. It is urged by learned Counsel for the appellant that a substantial question of law arises for consideration in the instant appeal. Counsel states

that the question of law of substantial importance which arises for consideration is: on the facts and circumstances of the case has it been proved

that the respondent No. 1 bank has discharged the obligation of duty of reasonable care when it permitted withdrawal of the amount in sum of Rs.

47,000/- from the account of the appellant?

5. Relevant facts are that the appellant maintained an account with respondent No. 1 being current account No. 3030. From out of the cheque

book issued by the bank, cheque bearing No. 510284 was alleged to be misused by Yagya Bhattaria an employee of the plaintiff and after forging

signatures of the plaintiff, Rs. 47,000/- were withdrawn. The cheque in question was drawn on self.

6. In the written statement filed by defendant No. 1, it was specifically pleaded that the bank followed all norms and banking procedures in

entertaining the cheque and that the signatures on the cheque matched the specimen signatures of the plaintiff when account was opened. It was

specifically pleaded that the bank had neither any reason nor any occasion to suspect the genuineness of the signatures of the plaintiff on the

cheque.

7. These averments have been specifically made in para 1 of the preliminary objections in the written statement filed by the bank. It was further

stated in the written statement that in letter dated 30.10.1998 written by the plaintiff, plaintiff had admitted that the signatures on the cheque

appeared to be genuine.

8. The learned Trial Judge decreed the suit by recording a finding that in its pleading contained in the written statement the stand of the bank was,

(to quote from the judgment of the learned Trial Judge):- ""the stand of the defendant bank is not that no forgery was committed, rather, the stand is

that forgery was committed by defendant No. 3 and 4 and there was no negligence on behalf of the bank.

9. Learned Counsel for the appellant very fairly concedes that aforesaid reproduction of the pleadings of the bank as is recorded by the learned

Trial Judge is incorrect.

10. Be that as it may, learned Appellate Court has corrected the incorrect reproduction of the pleadings of the bank. It has set aside the judgment

of the learned Trial Judge.

11. S.S. Aulakh, Senior Manager of the Bank who appeared as DW-1 proved the specimen signatures of the plaintiff and the precaution taken by

the bank when the cheque was permitted to be encashed.

12. The only cross examination of DW-1 is as under:

x x x by Sh. Amitabh Rajat, Ld. Counsel for the plaintiff.

I have carefully gone through my affidavit Ex. D-1 before signing the same. I am working with the Bharat Nagar branch of the defendant Bank

w.e.f. 21st Nov. 2002. We identify filed the signature of the customer from the signature cards which are retained by the bank. I have filed the

specimen signature of the plaintiff on record. It is wrong to suggest I am deposing falsely.

13. Learned Appellate Judge has noted that except for stating that his signatures were forged, plaintiff led no evidence to substantiate the plea.

Learned Appellate Judge has noted that not even a handwriting expert was examined. Thus, it has been opined that the plaintiff had failed to prima

facie establish that the cheque was forged.

14. In my opinion, issue which needed to be adjudicated was whether the bank exercised the duty of reasonable care when cheque was presented

for encashment.

15. The testimony of DW-1 establishes the duty of reasonable care taken by the bank. As noted hereinabove, DW-1 was hardly subjected to any

cross examination.

16. Thus, it has to be held that the bank successfully discharged the burden of proving the duty of reasonable care.

17. The appeal is accordingly dismissed.

18. LCR be returned forthwith.

19. No costs.

