

(2012) 05 DEL CK 0541

In the Delhi High Court

Case No : Regular First Appeal No. 490 of 2004 and Regular First Appeal No. 491 of 2004

Corporation Bank

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 11-05-2012

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 131, 131A

Citation : (2012) 130 DRJ 299

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : M.D. Rai, for the Appellant; Ashish Agarwal with Ms. Lekha, for the Respondent

Judgement

Valmiki J Mehta, J.—These appeals are being disposed of by this common judgment inasmuch as facts and issues are more or less the same. For the sake of convenience, facts pertaining to RFA No. 490/2004 are stated. The facts of the case are that the respondent/plaintiff-bank filed a suit for recovery against the appellant-bank for a sum of Rs. 8,14,007/- alongwith interest at 16% per annum by pleading that the appellant/defendant no. 1 acting as the collecting bank for its customer/defendant no. 2, Bhupinder Singh, sole proprietor of M/s. Radha Trading Company, collected from the respondent/plaintiff an amount of Rs. 6,00,000/- under the forged bank draft bearing no. RUG 071395 dated 25.5.1999 issued by the branch of the respondent/plaintiff-bank at Begum Bridge, Meerut, UP. The proceeds of the bank draft, which were collected, by the appellant, were credited to the account of the defendant no. 2, and which amount was withdrawn on 27.5.1999. The bank draft was presented by the appellant-bank on behalf of its customer on 27.5.1999. The respondent/plaintiff-bank, when it did not receive the advice with respect to the subject instrument, took up the matter with its branch office at Begum Bridge, Meerut, UP on 28.5.1999. The respondent-bank came to know that the bank draft was not for the amount of the instrument in question and also that the beneficiary was

different. The Begum Bridge, Meerut Branch of the respondent-bank informed the respondent that the subject draft was actually draft bearing serial no. 306/99 and was issued on 19.4.1999 for Rs. 400/- in favour of the M/s Bhupinder Leasing & Housing Limited. It therefore transpired that the defendant no. 2 through its banker, namely the appellant-bank, had encashed the draft which was actually a forged draft. The respondent-bank pleaded that the appellant-bank committed negligence including of failing to observe safeguards for collection of the instrument for a huge amount in a newly opened account in the name of the defendant no. 2. It was also pleaded that the account was not a properly introduced account. It was further pleaded that the very fact that the amount of the bank draft was immediately withdrawn by the defendant no. 2 soon after collection, and which fact taken with the doubtful acts of opening of account, proximity of opening of the account with the depositing of a huge amount and the immediate withdrawal show that it was part of one scheme/one set of transactions making the appellant-bank liable to pay the amount of the bank draft. The respondent-bank issued letters dated 1.6.1999, 5.10.1999 and 20.12.2000 calling upon the appellant-bank to make the payment, however, since the payment was not made, the subject suit came to be filed.

2. The appellant-bank contested the suit by filing its written statement. The appellant-bank denied its liability by pleading that it acted in good faith without negligence in collecting the amount of the draft for its customer/defendant no. 2. It was pleaded that the appellant-bank was not liable because not only there was no negligence, the appellant-bank had no occasion to doubt the genuineness of the bank draft. It was contended that in fact it is the respondent-bank who was negligent because it without verifying the genuineness of the bank draft made payment, which is such lapse on its part thereby disentitling it to the suit amount.

3. After the pleadings were complete, the Trial Court framed the following issues:

ISSUES:

1. Whether defendant no. 1 is not liable to reimburse the plaintiff with the amount of demand draft in question which was later on discovered to be forged one as alleged in the W.S.?OPP.

2. To what amount the plaintiff is entitled to recover and against whom? OPP.

3. Whether the plaintiff is entitled to any interest and if so, on what amount, at what rate and for which period? OPP.

4. Relief.

4. The main issue decided by the Trial Court is issue no. 1. With regard to issue no. 1, Trial Court has held that there was negligence by the appellant-bank in opening of the account of the defendant no. 2. Trial Court has also referred to the general practice in the banking industry for a drawee bank to make payment of the bank draft to the collecting bank in good faith even before the receipt of advice from its concerned branch. Trial Court has also observed that it has

otherwise been proved on record that bank draft was issued only for Rs. 400/- that too not in favour of defendant no. 2 but in favour of the M/s. Bhupinder Leasing and Housing Limited. Trial Court holds that the payment was made by the respondent-bank in good faith and there was negligence of the collecting bank/appellant-bank. Accordingly, the Trial Court has held that appellant-bank is not entitled to the benefit of the defence of the provisions of Sections 131 and 131A of the Negotiable Instruments Act, 1881. The Trial Court has also arrived at finding of the fact that the negligence of the appellant-bank in collecting the instrument is writ large on the face of the record because account was opened by the defendant no. 2 without proper introduction with the appellant-bank on 1.5.1999, the draft in question for a huge amount of Rs. 6,00,000/- was deposited in account on 27.5.1999, the amount of the draft was credited on the same day and also paid on the same day. If the appellant-bank had acted with due diligence, the fraudulent action of the defendant no. 2 could have been prevented. Trial Court also rejected the stand of the appellant-bank of contributory negligence of the respondent/plaintiff-bank. The relevant observations of the Trial Court are contained in paras 16 to 18 of the impugned judgment and which read as under:-

16. In the present case there is unrebutted evidence of the plaintiff on record to the effect that there is a general practice in the banking industry for a payee bank to make payment against a draft to the collecting bank in good faith before the receipt of the advise from its concerned branch. There is also unrebutted evidence of the plaintiff to the effect that the plaintiff's Begum Bridge Branch at Meerut had issued a draft of Rs. 400/- with Sr. No. 306/99 in favour of M/s Bhupinder Leasing & Housing Ltd. and it is the said draft which appears to have been later on manipulated by making interpolations therein in as much as the name in whose name the draft was made, the amount of the draft and Sr. No. all were changed. The signatures of the officers of the bank who had prepared the draft in question are not in question in the present case. It is pleaded and deposed by the plaintiff that the payment against the draft in question was made by the plaintiff in good faith under a mistaken belief believing the said draft to be genuine, though later on it was found to be a forged one. To me it appears that the payee bank had made the payment of the draft in question to the collecting bank in good faith and in routine course of banking business. In the facts and circumstances of the case, the plaintiff being the payee bank cannot be accused of negligence as alleged on behalf of defendant no. 1.

17. One thing which clearly emerges from the facts and circumstances of the case is that the instrument against which payment was made by the plaintiff bank to the collecting bank cannot be called to be a negotiable instrument because it does not contain a mandate to the bank for making the payment against the said instrument. The defense u/s 131 of the Negotiable Instrument Act is not available to the collecting bank.

18. It is not disputed by the collecting bank that the account of the defendant no.

2 was opened by it on 1.5.99 without a proper introduction. The collecting bank has filed an account opening form of defendant no. 2 which is Ex. DW1/1. A perusal of the said account opening form of defendant no. 2 would reveal that neither the account number of the introducer nor his address is mentioned below his name. The defendant no. 1's witness DW-1 Mr. A.K. Rajan has deposed that he is not aware whether any action was taken against the introducer Ramesh Kumar Aggarwal on detection of fraud committed by defendant no. 2. The defendant no. 2 has failed to produce any evidence on record to show that the introducer of the account of defendant no. 2 was a genuine person or what action was taken by defendant no. 1 against the introducer of the account after discovering that defendant no. 2 had opened an account in the name of a fake and fictitious person. DW-1 had admitted in his cross-examination that if there is any heavy transaction in a new account opened by a party, the defendant no. 1 bank was required to take extra precaution while clearing the transaction. He, however, stated that he is not aware whether any precaution was taken by defendant no. 1 bank while clearing the payment of defendant no. 2 against draft which was later on found to be forged. In my opinion, the loss in question on account of payment made against the draft in question has been caused to the plaintiff bank only due to sheer negligence on the part of the collecting bank who had opened an account in the name of the defendant no. 2 without a proper introduction. The defendant no. 1 bank who acted as a collecting bank was further negligent in taking due care and caution in operating the account of defendant no. 2. It is a matter of record that the account was opened by defendant no. 2 with defendant no. 1 on 1.5.99, the draft in question was deposited by defendant no. 2 in his said account on 27.5.99 and the draft was sent in clearing on the same day and the amount of the draft was also collected on the same day i.e. 27.5.99 itself. As such, opening of a new account by defendant no. 2, depositing a forged draft in the said account, realisation of its payment and withdrawing the payment received against forged draft constitute transaction of one series and since defendant no. 2 had deposited a draft of huge amount and withdrew its payment shortly thereafter would have aroused suspicion of defendant no. 1 bank and had defendant no. 1 bank been a little conscious, the alleged mishap could have been saved. Considering the facts and circumstances of the present case, no room of doubt is left in my mind except to hold that the collecting bank alone was negligent in the loss caused to the plaintiff bank. I am supported in my view in this regard from a Division Bench Judgment of Hon'ble Madras High Court in Indian Bank Vs. Catholic Syrian Bank Ltd., The facts of the case decided by this Hon'ble Madras High Court and that involved in the present case are exactly identical. It may be noted that the defendant no. 1 has not produced any such document on record to establish its plea that ombudsman of the banks in holding the payee bank and the collecting bank equally responsible for the loss caused on account of payment made against a forged negotiable instrument. The defendant no. 1 bank, being the collecting bank is, therefore, held liable to reimburse the plaintiff with the amount of the demand draft in question. This issue is decided accordingly in

favour of the plaintiff and against the defendant no. 1.

(Emphasis added)

5. The law with respect to the liability of the collecting banker, considering the provisions of Sections 131 and 131A of the Negotiable Instrument Act, 1881, is contained in the judgment of the Supreme Court reported as *The Kerala State Co-operative Marketing Federation Vs. State Bank of India and Others*, Relevant para of the judgment where the law has been stated is para 11 and which reads as under:

11. The principles governing the liability of a collecting banker have also been extracted in the impugned judgment. They read as follows:

(1) As a general rule the collecting banker shall be exposed to his usual liability under common law for conversion or for money had and received, as against the "true owner" of a cheque or a draft, in the event the customer from who he collects the cheque or draft has no title or a defective title.

(2) The banker, however, may claim protection from such normal liability provided he fulfils strictly the conditions laid down in Section 131A of the Act and one of those conditions is that he must have received the payment in good faith and without negligence.

(3) It is the banker seeking protection who has on his shoulders the onus of proving that he acted in good faith and without negligence.

(4) The standard of care to be exercised by the collecting banker to escape the charge of negligence depends upon the general practice of banker which may go on changing from time to time with the enormous, spread of banking activities and cases decided a few decades ago may not probably offer an unfailing guidance in determining the question about negligence today.

(5) Negligence is a question of fact and what is relevant in determining the liability of a collecting banker is not his negligence in opening the account of the customer- but negligence in the collection of the relevant cheque unless, of course, the opening of the account and depositing of the cheque in question therein form part and parcel of one scheme as where the account is opened with the cheque in question or deposited therein so soon after the opening of the account as to lead to an inference that the depositing the cheque and opening the account are interconnected moves in an integrated plan.

(6) Negligence in opening the account such as failure to fulfill the procedure for opening an account which is prescribed by the bank itself or opening an account of, an unknown person or non-existing person or with dubious introduction may lead to a cogent, though not conclusive, proof of negligence particularly if the cheque in question has been deposited in the account soon after the opening thereof.

(7) The standard of care expected from a banker in collecting the cheque does

not require him to subject the cheque to a minute and microscopic examination but disregarding the circumstances about the cheque which on the face of it give rise to a suspicion may amount to negligence on the part of the collecting banker.

(8) The question of good faith and negligence is to be judged from the stand point of the true owner towards whom the banker owes no contractual duty but the statutory duty which is created by this section and it is a price which the banker pays for seeking protection, under the statute, from the otherwise larger liability he would be exposed to under common law.

(9) Allegation of contributory negligence against the paying banker clause provide no defence for collecting banker who has not collected the amount in good faith and without negligence.

6. A reference to the aforesaid principles culled out by the Supreme Court in the judgment of Kerala State Co-operative Marketing Federation (supra) shows that there is never any mandate to pay under a forged cheque or forged bank draft and if payment is collected under such a bank draft by a bank, such bank is liable for conversion and therefore is bound to make payment of the amount of the forged cheque/bank draft. The collecting banker can only avoid its liability provided it strictly fulfills the conditions laid down under Sections 131 and 131A of the Negotiable Instruments Act, 1881 i.e. it must show that the payment has been received by it in good faith and without negligence. Supreme Court has further observed that though negligence is towards collecting of the instrument however the opening of the account is closely related to the deposit of the instrument and encashment thereof will give indication of the lack of good faith on behalf of the collecting banker. Supreme Court has also observed that the duties of a bank has changed over a period of time and the duty of a collecting banker has to be seen from today's standpoint of the requisite facts for opening of account and collection of the instrument inasmuch as there is a considerable development with respect to the banking practices. Finally and most importantly, Supreme Court has held that allegation of contributory negligence against the paying banker (and which is the respondent/plaintiff bank in this case) does not provide a defence for a collecting banker who has not collected an instrument in good faith and without negligence.

7. In the facts before the Supreme Court in the case of Kerala State Co-operative Marketing Federation (supra) the Supreme Court held that the collecting banker was liable/responsible by making the following observations in para 14 of the judgment:

14. The 1st Respondent's Branch Manager gave evidence. From his evidence it is clear that the person who called himself K. Narayhanan opened an account on the introduction of an account holder by name Dharam Panicker. In the Account Opening Form the address is given only as "Kaniyarath P.O. Kallisseri". Thus an absolutely vague address was given. The Bank made no enquiries as to the creditworthiness of he said K. Narayjanan or as to his full address or even about

his telephone number. Thereafter even though initially the account was opened with only Rs. 20/- the exact amount of Rs. 80/- was deposited for purposes of receipt of a cheque book. The 1st Respondent bank does not seem to have put on its guard, even when a cheque for a very large amount i.e. Rs. 1,00,000/- was deposited soon thereafter. In cross-examination the Branch Manager admits that in the Account opening form neither the name or the occupation of the person introducing had been filled up. He admits that not enquiry was made regarding the nature of business of K. Narayhanan or where the place of business was. Even after it was found out that a cheque had been forged and stop payment notice had been issued, no enquiry was made by the Bank with the introducer. When asked why no enquiries were made, the answer given was that the bank has no responsibility to look in to it. Another factor which mitigates against the 1st Respondent Bank is that it made no attempt to lead the evidence of the person who had introduced the account holder.

8. In the facts of the present case I must note one very important fact before I proceed ahead. This important fact is that the appellant/banker did not cross-examine the witnesses of the respondent/plaintiff-bank. Once this is not done the testimonies of the witnesses of the respondent-bank have naturally to be accepted. Therefore, in my opinion, this is one salient fact in the present case to hold the appellant-bank guilty of negligence and want of good faith.

9. The facts of the present case show that it is otherwise established on record that the account of the defendant no. 2 was opened by the appellant-bank without proper introduction. Opening of an account without proper introduction is not only violative of banking practices but also the circulars of the RBI in this regard. The account opening form of defendant no. 2, Ex. DW1/1, showed that the same did not reveal the account number of the introducer and nor was the address mentioned. The witness of the appellant, DW1, Mr. A.K. Rajan admitted that he was not aware whether any action was taken against the introducer, Marrakesh Kumar Aggarwal on detection of fraud committed by the defendant no. 2. Trial Court has also noted that the appellant-bank failed to produce evidence to show that the introducer of the account of the defendant no. 2 was a genuine person. The witness of the appellant-bank also rightly admitted that in a newly opened account if there is heavy transaction i.e. of a large amount of money, then the appellant-bank was required to take extra precaution while collecting the instrument, and, that he does not know what precaution the appellant-bank took while clearing the large amount of the disputed bank draft of Rs. 6,00,000/- .

10. I have already reproduced the facts of the case in detail above and I have no hesitation in agreeing with the conclusions of the Trial Court that there was lack of due faith on behalf of the appellant-bank which has in fact acted with negligence. This becomes clear from the short period of time within which the account was opened, bank draft was deposited, the bank draft was encashed taken with the fact that there were serious flaws in introduction for the opening

of the account. Accordingly, I have no reason to interfere with the impugned judgment and decree except to the extent of rate of interest as stated below. The Supreme Court has observed in the case of Kerala State Co-operative Marketing Federation (*supra*) that contributory negligence of the defrauded bank which issued the bank draft, cannot be a ground not to fasten the collecting banker with liability, once the collecting banker's negligence is otherwise established on record.

11. There is one issue with respect to which the judgment of the Trial Court needs to be interfered with. I may note that the impugned judgment awards *pendente lite* and future interest at 16% per annum with quarterly rest. In view of the judgments of the Supreme Court in the cases reported as *Rajendra Construction Company Vs. Maharashtra Housing and Area Development Authority and Others*, *McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others*, *Rajasthan State Road Transport Corpn. Vs. Indag Rubber Ltd.*, *Krishna Bhagya Jala Nigam Ltd. Vs. G. Harischandra Reddy and Another*, & *State of Rajasthan Vs. Ferro Concrete Construction Pvt. Ltd* (2009) 3 Arb.LR 140 (SC), Courts are bound to interfere with high rates of interest which are granted especially when litigation remains pending for a long period of time. I am therefore of the opinion that the respondent-bank should be entitled to interest at the rate of 9% per annum simple *pendente lite* and future till the amount was deposited in this Court.

12. In view of the above, except to the extent of reduction in interest, there is no merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

RFA No. 491/2004

13. For the reasons stated in detail while disposing of the RFA No. 490/2004, this appeal is also dismissed leaving the parties to bear their own costs.

14. Trial Court record be sent back.

15. The amount deposited by the appellant-bank in both the appeals, alongwith accrued interest thereon, be released to the respondent-bank in terms of the today's judgment. Since the appellant-bank has deposited amounts which possibly would be more than the amount payable to the respondent-bank as per today's judgment inasmuch as I have reduced the rate of interest, it is clarified that the respondent-bank will only receive the amount as decreed by the Trial Court alongwith interest at 9% per annum simple till the date the amount was deposited in this Court by the appellant-bank. On this amount which is payable to the respondent/plaintiff as per today's judgment if thereafter however interest has accrued inasmuch as the amount deposited by the appellant-bank has been put in a fixed deposit, then the respondent-bank will be entitled to such accrued interest. Registry is directed to release the cheques in favour of both the parties in terms of today's judgment within a period of 2 weeks from today.