

(2018) 12 DEL CK 0051

In the Delhi High Court

Case No : Regular First Appeal No. 811 Of 2006

Delhi State Cooperative Bank Ltd

APPELLANT

Vs

Syed Mohd. Ahmad Through Lrs

RESPONDENT

Date of Decision : 03-12-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 96

Indian Penal Code, 1860 — Section 34, 380, 420, 468, 471

Citation : (2018) 12 DEL CK 0051

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Anand Yadav, Anita Tomar

Final Decision : Allowed

Judgement

Valmiki J. Mehta, J

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant/bank impugning the Judgment of the trial court dated 28.10.2006 by which the trial court has decreed the suit filed by the respondent/plaintiff for a sum of Rs. 15.40 lakh alongwith interest @ 6% per annum.

2. The facts of the case are that the respondent/plaintiff pleaded that he had a savings bank account no. 1832 with the appellant/defendant/bank and the appellant/defendant/bank had issued a cheque book containing cheque nos. 826176 to 826180. The respondent/plaintiff pleaded that on 02.12.2002, he found that two cheques bearing nos. 826176 & 826177 were stolen alongwith certain jewellery from his almirah kept in his house. The respondent/plaintiff lodged a complaint with the police being FIR No. 373/2003 dated 08.12.2003 under Sections 380/420/468/471/34 of the Indian Penal Code, 1860. The FIR was lodged by the respondent/plaintiff against his own son, Syed Mohd. Irfan and his wife, Saima. The respondent/plaintiff pleaded that his signatures were

forged on the two cheques whereby Rs. 5.15 lakh and Rs. 10.25 lakh were withdrawn from his bank account on 04.01.2003 and 10.11.2003. The cheques were stolen by his son and his wife who had withdrawn the amount of the cheques totaling to Rs. 15.40 lakh under the forged signatures of the respondent/plaintiff. It was, therefore, pleaded that since under the forged cheques the amounts were withdrawn, the appellant/defendant/bank was liable to refund the amount to the respondent/plaintiff.

3. Appellant/Defendant/Bank contested the suit and pleaded that the suit was liable to be dismissed because the signatures on the cheques were not forged. It was also pleaded that the respondent/plaintiff was negligent in not keeping his cheque book at a safe place, and therefore, the appellant/defendant/bank cannot be held liable. It was pleaded by the appellant/defendant/bank that it tallied the signatures on the cheques before clearing, and therefore, it has acted prudently and in good faith, and therefore, was not liable.

4. After pleadings were complete, trial court framed the following issues:-

"(1) Whether the suit is bad for non-joinder of necessary parties as alleged by the defendant? OPD

(2) Whether the cheque bearing No. 826176 and 826177 do not bear the signatures of the plaintiff as alleged by him? OPP

(3) If issue no.2 is decided in favour of the plaintiff, whether the defendant was negligent in encashing said cheques? If so, its effect?

OPP

(4) Whether the plaintiff is entitled to recover the amount claimed from the defendant? OPP

(5) If issue no.4 is decided in favour of the plaintiff, whether he is entitled to recover any amount on account of interest? If so at what rate, for what period and to what amount? OPP

(6) Relief."

5. The main issue in this case was as to whether the signatures on the cheques were or were not of the respondent/plaintiff. An additional issue which arises in this case, in view of the two Orders dated 24.02.2004 and 25.02.2004/Ex.DW1/4 and Ex.DW1/5, which showed a compromise in a criminal case between the respondent/plaintiff/father and his son, and that the respondent/ plaintiff/father did not oppose the bail of his son against whom the FIR was lodged with respect to encashment of the cheques. Accordingly, it is argued on behalf of the appellant/defendant/bank that there cannot be a case of theft which continues to exist because the alleged act of theft stood condoned and whereupon the cause of action would dissolve/vanish as against the appellant/defendant/bank.

6. In order to prove the cause of action that the signatures of an account holder

on his cheques are forged and fabricated, the account holder such as the respondent/plaintiff must necessarily prove by leading requisite evidence that the signatures on the cheques are not of the respondent/plaintiff. This is all the more so as the case of the appellant/defendant/bank was that the signatures on the cheques were of the respondent/plaintiff. In this regard, it is noted that the respondent/plaintiff has except making a self-serving averment in his deposition as PW1 that the signatures on the cheques Ex. PW1/C and PW1/D do not bear his signatures, has led no other evidence. The minimum that the respondent/plaintiff should have done was at least to have summoned the account opening form and the signatures card of the respondent/plaintiff with the appellant/defendant/bank and thereupon file a handwriting expert's report, but admittedly no such evidence of a handwriting expert has been led by the respondent/plaintiff stating that the signatures on the two cheques are not of the respondent/plaintiff. The respondent/plaintiff sought to place reliance upon a certified copy of the FSL report filed in the criminal case but the FSL report can only be proved by the author thereof and admittedly the author of FSL report was not led into the witness box to prove the report in accordance with law.

7. Once the appellant/defendant/bank has stated that the cheques were cleared in due course after comparison with the signatures of the respondent/plaintiff with the signatures of the respondent/plaintiff appearing in the record of the appellant/defendant/bank, it was mandatory upon the respondent/plaintiff to have filed the report of the handwriting expert that the signatures on the two cheques were not of the respondent/plaintiff, and this has admittedly not been done.

8. I have also compared the signatures on the two cheques Ex. PW1/C and Ex. PW1/D with the account opening form Ex. PW4/B and it is seen that the signatures are in Urdu language. The signatures are not signatures in the sense of signatures but the signatures appear to be the full name of the respondent/plaintiff and who appears to have written as signatures in Urdu language. In such a case, therefore, I do not think that the appellant/defendant/bank can be held guilty of negligence in clearing the cheques and in such a case as the present, where no report of the handwriting expert has been filed and proved by the respondent/plaintiff, it has to be held that the signatures of the respondent/plaintiff on the two subject cheques are not forged and the appellant/defendant/bank is not guilty of illegality in clearing the said cheques.

9. In my opinion, really the respondent/plaintiff is trying to be clever by half, and this is because it is seen that the appellant/defendant/bank has proved the two Orders in the criminal case dated 24.02.2004 and 25.02.2004/Ex.DW1/4 and Ex. DW1/5 which show that the respondent/plaintiff/father had compromised with his son, and who thus got bail. What has finally happened to the criminal case has also not been led in evidence by the respondent/plaintiff, and obviously this must be because the respondent/father in all probability would not have pursued the criminal case against his son. In such a case, therefore, when the respondent/

father had compromised with his son, Syed Mohd. Irfan, who along with his wife is alleged to have forged the signatures on the cheques, in such a case, the action of the son of the respondent/plaintiff being condoned by the respondent/plaintiff, as against the appellant/defendant/bank, there possibly cannot remain any cause of action for seeking recovery of the amount of cheques. If this Court permits the respondent/plaintiff to do so, it would amount to putting premium on the ulterior action of the respondent/plaintiff/father suing the appellant/defendant/bank although the respondent/plaintiff/father does not hold his own son to be guilty of the criminal offence of cheating and forgery.

10. In view of the aforesaid discussion, this appeal is allowed and the impugned Judgment of the trial court dated 28.10.2006 is set aside. The suit of the respondent/plaintiff will stand dismissed. Whatever amount has been deposited by the appellant/defendant/bank in an FDR in the name of the respondent/plaintiff in the appellant/defendant/bank itself, the said FDR can now be encashed by the appellant/defendant/bank.