

(2011) 01 DEL CK 0072

In the Delhi High Court

Case No : Regular Second Appeal No. 18 of 2011 and CMs. 2062-64 of 2011

Jammu and Kashmir Bank Ltd.

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0072

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : G.M. Kawoosa, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 22.07.2010 which has endorsed the finding of the trial Judge dated 05.09.2007 whereby the suit of the Plaintiff i.e. State Bank of India against the two Defendants namely Jammu and Kashmir Bank and Om Prakash had been decreed. The impugned judgment had endorsed this finding.

2. Along with the appeal, an application u/s 5 of the Limitation Act has been filed seeking condonation of delay of 69 days in filing the present appeal.

3. The Plaintiff bank had sought recovery of Rs. 1,16,537/- along with interest against the Defendants. Contention was that Defendant No. 1 bank had an account of Defendant No. 2. Defendant No. 2 had presented a demand draft dated 08.09.1999 for a sum of Rs. 95,000/- drawn on Indra Nagar Bareilly Branch of State Bank of India for encashment. The said draft when presented for encashment for realization by Defendant No. 1 was honoured as per the banking practice in good faith. It later on transpired that the said draft had not been issued by Indra Nagar Branch of State Bank of India. It was one of the various drafts looted from Parval Pur Branch, Bihar; it was not a legal instrument. This information was communicated to Defendant No. 1 who in turn informed Defendant No. 2 of the same. Defendant No. 2 was not a bonafide owner of the

draft; the document was a forged document. The Plaintiff had made payment in good faith; both the Defendants are jointly and severely liable to refund this amount to the Plaintiff. Defendant No. 1 was the contesting party; Defendant No. 2 had been proceeded ex-parte. On the pleadings of the parties, following two issues were framed:

1. Whether the Plaintiff is entitled for decree for recovery of Rs. 1,16,537/- against the Defendants? OPP

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

4. Oral and documentary evidence was led. It had come in the evidence of the witness of the Plaintiff that demand draft had been looted from the State Bank of India, Parval Pur Branch. DW-1 had proved the Account Opening Form of Defendant No. 2 as Ex. DW-1/D1. He admitted that this account had not been opened on the introduction of any previous existing account holder; branch was operational w.e.f. 18.08.1999; account was opened on 31.08.1999. Circular of the RBI was exhibited as document Ex.DW-1/P2; DW-1 admitted that Defendant No. 1 bank had not adhered to the guidelines of the said circular whereby substantial withdrawals of money from a saving bank of an account holder has to be monitored for the first six months; further there was no letter of thanks on record which could suggest that any letter of thanks had in fact been sent by Defendant No. 2.

5. Provisions of Section 131 of the Negotiable Instruments Act (hereinafter referred to as "NI Act") and protection claimed by Defendant No. 1 under the said statutory provision had been adverted to. It was held that Defendant No. 1 was negligent in opening the account of Defendant No. 2 which had facilitated this fraudulent encashment. He had not adhered to the guidelines of the RBI in this context and there was clear admission by DW-1 on this score. The account of Defendant No. 2 had not been introduced from any existing customer. Guidelines No. 79, 81, 83 and 85 of the RBI had not been adhered to. The protection of Section 131 of the NI Act was not available to Defendant No. 1 bank. The suit of the Plaintiff was accordingly decreed.

6. The appellate court had affirmed this judgment of the trial court.

7. This is a second appeal. It is yet at the stage of admission. The substantial questions of law have been formulated at pages No. 4 and 5 of the body of appeal. They do not in any manner raise any such substantial question of law. They are fact based. The averment that in para 42 of the judgment, the trial court had returned a finding that there was some contributory negligence on the part of the Plaintiff does not find mention anywhere in the said judgment.

8. 10 No substantial question of law has arisen. Appeal as also pending applications are dismissed in limine.