
(1993) 07 KL CK 0080
In the High Court Of Kerala
Case No : A.S. No. 217 of 1990

M/s. Ameen Trading Co.

APPELLANT

Vs

Bank of Baroda and another

RESPONDENT

Date of Decision : 15-07-1993

Acts Referred:

Contract Act, 1872 — Section 72

Citation : (1993) 2 KLJ 447

Hon'ble Judges : G. Rajasekharan, J

Bench : Single Bench

Advocate : K. Divakaran Nair, P.M. Balasubramanian and K. Krishnan Nair, for the Appellant; B.S. Krishnan and P.R. Raman for 1st Respondent, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasekharan, J.—Defendants in a suit for money, are the appellants. The first defendant is a Partnership Firm, M/s. Ameen Trading Company at Kannur. Defendants 2 to 4 are the Partners. Plaintiff is the Kannur Branch of the Bank of Baroda.

2. Certain amounts were due, according to the defendants, more than Rs. 1 lakh from a party at Jalgaon to the defendant partnership firm. Payments were being made through the Jalgaon Branch of the Bank of Baroda. On 22-3-1985, the Jalgaon Branch of the Bank sent a telegram to the Kannur Branch, transferring a sum of Rs. 50,000/- to be credited to the account of defendant firm. The Kannur Branch credited that amount, which was subsequently withdrawn by the defendants. On 23-3-1985 also, a similar telegram transferring Rs. 50,000/- was received by the, Kannur Branch from the Jalgaon Branch and the amount was also credited to the account of the firm. The firm withdrew that amount also through their Bank.

3. In 1987, the Auditors of the Bank discovered that there was mistake in

crediting the second sum of Rs. 50,000/- and actually payment to the Jalgaon Branch was to the tune of Rs. 50,000/- only and it was by mistake that she second telegram dated 23-3-1985 was sent to the Kannur Branch. When this mistake was discovered, on 23-1-1987, the plaintiff Bank (Kannur Branch) sent a letter to the defendants calling upon them to pay back the amount with interest received by them by mistake. Defendants sent a reply, denying their liability to pay, whereupon the suit has been instituted.

4. The defendants in their written statement contended that the suit as laid is not maintainable, that the Bank is not entitled to claim repayment of the amount credited to the account of the defendant firm, and no question of reimbursement arises, that the defendant firm appropriated the sum towards the debt due to it and the debtor discharged to the tune of that sum of Rs. 50,000/-, that the firm has changed its position to its detriment, that the plaintiff's claim is barred by estoppel, that in any event the plaintiff is not entitled to interest and the suit is liable to be dismissed.

5. The trial court decreed the suit, finding that the case is one falling u/s 72 of the Contract Act, and there is no estoppel on the facts proved in the case. Aggrieved by that, the defendants have come up in Appeal.

6. Though in the Appeal Memorandum the finding entered by the lower court that the contention of discharge of liability of Raghavan at Jalgaon and altering the position of the defendants to their detriment has not been proved and so no question of estoppel arises, is challenged, no argument was advanced on that aspect of the matter by the learned counsel appearing for the appellants. The only point argued is that the case does not fall u/s 72 of the Contract Act, and the finding to the contrary and decreeing the suit cannot be sustained.

7. Reliance was placed on the decision "in Jammu and Kashmir Bank Ltd. Vs. Attar-ul-Nissa and Others, . That was a case where the Government was collecting money from certain villages on behalf of one Sultan Mohammed and after deducting the collection charges, amounts used to be credited in the State's Accounts. Thereafter, those amounts were transferred by the Government to the Bank for crediting to the account of Sultan Mohammed. The transfer used to be made by hundis or treasury bills and on receipt of hundis and treasury bills, the Bank used to credit the amounts shown in them to the account of Sultan Mohammed. For about five years, hundis or treasury bills were used to be sent to the Bank by both, the treasury and the Accountant General, with the result that, for that period double the amount realised by the Government was credited to the account of Sultan "Mohammed on the basis of hundis or treasury bills sent to the Bank As a consequence, there was over - payment by Government to the Bank to the tune of Rs. 28, 029/15 and this overpayment was credited to the account of Sulthan Mohammed. The mistake was realised by the Accountant General after five years and thereupon, the Bank was called upon to reverse the entries, which was complied with reluctantly by the Bank. After that, the Bank sued Sultan Mohammed for the above sum with interest. In dealing

with those facts, the Supreme Court held :-

There is no doubt that Section 72 of the Contract Act provides that a person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it. That section in our opinion will only apply when we are dealing with a case of two persons one paying the money and the other receiving the money, on behalf of the person paying it. In such a case, if the payment is made by mistake the person receiving the money must return it. But Section 72 in our opinion has no application to a case where money is paid by a person to a bank with instructions that it should be deposited in the account of a third person who is a constituent of the bank, the money becomes the money of the constituent, and it is not open to the bank in such circumstances to reverse the entry of credit made in the account of the constituent and in effect pay back the money to the person who had deposited it, even though it might have been deposited by mistake.

(Paragraph 7 at page 542).

Further, in paragraph 8 of the judgment, the Court says : --

As soon as the money is credited into the account of the constituent, even though the person paying in may have paid it by mistake, it becomes the money of the constituent, and the bank cannot pay it back to the person who paid it to the account of the constituent on his representation that it was paid by mistake, without obtaining the consent of the constituent...

8. Heavily relying on these passages in the judgment of the Supreme Court, learned counsel argued that the case at hand is a similar one and when money is credited to the account of the firm, whether by mistake or not, it becomes the money of the firm, and the Bank is not entitled to reverse the entry and claim that amount to be repaid by the firm. This argument cannot be accepted for the reason that the present case is not similar to the case before the Supreme Court. There, the mistake was committed by the Government, by the treasury as well as the Accountant General, sending hundis or treasury bills whereupon, both were being credited to the account of Sultan Mohammed. Here, actually there was no payment by Raghavan at Jalgaon of the second sum of Rs. 50,000/-. He paid only Rs. 50,000/- on 22-3-1985 for which telegraphic transfer was effected by the Jalgaon Branch of the Bank. By mistake a second telegram was also sent the next day, when there was no actual payment at all and it was only a duplication. The Kannur Branch on the basis of the second telegram, credited another sum of Rs. 50,000/- to the account of the defendant firm. Here, the mistake is not of the person who has paid the money, but it was the mistake by the Jalgaon Branch of the Bank in sending two telegrams for transfer of amounts, when there was only one payment. In such a situation, the credit made in the transferee branch of the Bank is not irreversible for the reason that there was no money actually paid by Raghavan and it was by sheer mistake that the sum was credited. In such circumstances, section 72 of the Contract Act squarely applies.

That fact has been noticed by the Supreme Court in the same decision at paragraph (9) of the judgment. It reads -

It has been urged that on this view the bank would not be able to correct any mistake in the account of any constituent. That is not so. If, for example, a bank credits a cheque... Similarly if the Bank receives say Rs. 5,000/- on behalf of A from some person, but by mistake enters Rs. 50,000/- in A's account, the bank can always correct that entry and mention the correct sum received. But the present case is very different from corrections of such mistakes. Here the bank had received certain moneys on behalf of Sultan Mohammed through treasury bills or hundis. There is no dispute that money was received for credit to the account of Sultan Mohammad and was correctly credited to that account. There was therefore nothing which the bank could correct, for the bank had made no mistake in making the entries. The bank in our opinion is not concerned with any mistake made by the Accountant General or the treasury in sending the amounts to the bank for the credit of the same to the account of Sultan Mohammed. If the Accountant General or the treasury had made any such mistake, it was open to them to recover the amount paid in by mistake from Sultan Mohammed...

(emphasis supplied)

9. From the above passage, it is clear that if by the mistake committed by the Bank, a wrong credit is entered, that is certainly liable to be corrected by the bank. The Supreme Court says that if actually a payment on behalf of "A" of Rs. 5,000/- from a third person was entered by mistake as Rs. 50,000/- in the accounts of the bank, that mistake was certainly liable to be corrected. Similar is the present case. Raghavan did not pay any money to the Jalgaon Branch of the bank for sending the second transfer telegram- But it was by the mistake of the bank that a second telegram was sent and the Kannur Branch credited Rs. 50,000/- on a second time by mistake, even though there was no payment. Such a mistake in view of the observations of the Supreme Court, is certainly liable to be corrected. It was after making such a correction that the suit has been instituted, claiming repayment from the defendants. So, the decision relied on by the counsel for appellants is of no help to him to contend that the present case does not fall u/s 72 of the Contract Act. u/s 72, when money has been paid by mistake, the payee has to return it. Here, the payment made by the Kannur Branch of the bank was by mistake, and the defendants are liable to repay.

10. The position may be different if actually after getting the mistaken payment, the defendants had altered their position to their detriment and then the principle of estoppel will arise. Here, the defendants in their written statement have contended that actually they have altered their position to their detriment by giving discharge to Raghavan at Jalgaon, and the claims against Raghavan have become barred by limitation. It is also contended that the firm has been dissolved and the actual beneficiary by the mistake is Raghavan and if at all any action is possible, that must only be against Raghavan. A feeble attempt has been made by the defendants to prove the case of estoppel for the reason of

discharge of Raghavan and dissolution of the partnership. The trial court did not choose to accept those items of evidence. In paragraph 11 of the judgment, dealing with the plea that Raghavan has been discharged and considering the documents produced in support of that, the trial court has entered a clear finding that (he account is not at all a genuine account and it contains some sort of manipulations, in paragraph 12, the court says:-

Exhibits A7 and AS are the reply sent by the defendant. In it also defendants have no case of having the amount appropriated towards the debt of T.V. Simon & Company till the evidence stage.

The court says further that :

Anyhow as defendant has not cared to prove that he credited the amount obtained under subsequent T.T. into the account of Raghavan and given discharge, it cannot be said that, they have acted upon the representation made by the bank to their detriment.

Then the court says :-

But here in this case I have already found that defendant has failed to prove that defendants given credit the amount towards amount due to the defendants for others.

The conclusion by the trial court and the finding on that aspect is:-

From the discussions above, I have no hesitation to find that the defendant has not altered his status acting upon the representation of plaintiff on the basis of Exts. A1 and A3 telegrams.

11. As mentioned earlier, this definite finding, though challenged in the Memorandum of Appeal, was not urged at the time of hearing Learned counsel for the respondent has taken me to the evidence on this aspect of the matter and I do not see any reason to disagree with the findings entered by the trial court on this aspect. In- the circumstances, it is not necessary to deal with those items of evidence.

12. Learned counsel for the appellants has cited two decisions, United Bank of India Ltd. Vs. A.T. Ali Hussain and Co., a firm and Others, and Hyderabad State Bank v. Ranganath Rathi (AIR 1958 AP 605). In the Calcutta case, estoppel was found because the defendant on the representation made by the bank, altered its position to its detriment and so it was held:-

It is not correct to say that every sum paid by mistake is recoverable, no matter what the circumstances may be. There may in a particular case be circumstances which disentitle a plaintiff estoppel or otherwise.

If actually the case of estoppel was established, then" this decision would have been of assistance. The other case is also similar and the facts in that case have no bearing with the facts of the case at hand.

13. A case similar to one we are dealing with, came up for consideration before a Division Bench of the Karnataka High Court in *S. Kotrabasappa v. The Indian Bank* (A.I.R. 1987 Kar 236). There the suit was by the Indian Bank of which the defendant was a constituent, maintaining accounts in the name of Sri. Kottureshwara Rice Mill and Oil Mills". During the currency of that Account, the plaintiff bank received telegraphic transfer advice from their Coimbatore Branch to credit to the Account of the defendant a sum of Rs. 1 lakh. That amount was credited the same day and was withdrawn by the defendant on that day. A confirmation telegram was sent on 21-6-1980 and by mistake or oversight, a further sum of Rs. 1 lakh was also credited to the Account, bona fide believing that there was another transfer telegram. That amount was also credited to the defendant's Account and defendant withdrew that. The mistake was detected after two years and the bank instituted the suit for recovery of the sum of Rs. 1 lakh credited and paid by mistake, together with interest. In that case, the court held that Section 72 of the Contract Act applies and the mistaken credit and consequent payment is liable to be returned by the payee.

14. This decision certainly supports the plaintiff's contention that the case is one falling u/s 72 of the Contract Act. I am in respectful agreement with the decision rendered by the Division Bench of the Karnataka High Court. In the light of the above discussions, the judgment and decree of the trial court are only to be confirmed.

In the result, the Appeal is dismissed, but in the circumstances, without costs.