

(2017) 02 RAJ CK 0126
In the Rajasthan High Court
Case No : 205 of 1999

M/S S K Bagra & Co. & anr.

APPELLANT

Vs

Bank Of India

RESPONDENT

Date of Decision : 15-02-2017

Acts Referred:

Contract Act, 1872, Section 72 - Liability of person to whom money is paid, or thing delivered by mistake or under coercion
Limitation Act, 1963, Section 17 - Effect of f

Citation : (2017) 02 RAJ CK 0126

Hon'ble Judges : G R Moolchandani

Bench : SINGLE BENCH

Advocate : Arul Bhardwaj, A.K. Bhandari, Parag Rastogi

Judgement

1. Challenging the validity of judgment and decree dated 24.03.1999 passed by the learned Additional District Judge, No.4, Jaipur City, Jaipur in Civil Suit No.44/1997, instant appeal has been filed.

2. Factual descriptions of the suit pertains to demand of money which is stated to have been wrongly paid to the appellant-defendants and a recovery suit was brought against the appellant-defendants pleading therein that during the course of search of the accounts, it was gathered by the bank on 05.09.1994 that appellant-defendant deposited Rs.4,000/- on 23.03.1989 through a cheque and because of a clerical error, Rs.40,000/- were entered as deposited instead of Rs.4,000/- in his account and this amount of Rs.36,000/- was withdrawn and used by the appellant-defendants, subsequently on 05.04.1989, appellantdefendants withdrew Rs.20,000/- by a cheque, which was wrongly entered as Rs.10,000/- and there was a difference of Rs.1,000/-, which was adjusted and accordingly an amount of Rs.45,000/- was found to have been deposited extra and used in addition by the appellantdefendants, which was demanded back by filing recovery suit.

3. The appellant-defendants, while submitting their written statements, denied the pleadings and refuted any such transaction and receipt of additional money, whatsoever. The learned trial court, after perusal of the pleadings framed following issues:- "VERNACULAR MATTER OMITTED"

4. Three witnesses and twenty six documents were produced by respondent-plaintiff, appellant-defendant Suman Kumar Bagda was produced as D.W. One, after examining and appreciating the evidence, the learned trial court adjudicated the "lis" by decreeing the suit in favour of the respondent-plaintiff vide judgment impugned and passed a decree for recovery of Rs.45,000/- with interest of 12% per annum payable for a period between 05.04.1989 to 17.02.1997 and subsequently after presentation of the suit from 18.02.1997 with an interest @ 6% per annum.

5. Learned counsel for the appellant has contended that the suit is time barred and the alleged money transactions relates to 1989, which would have been detected during the course of annual and financial year closures and account matching in that year itself but no suit was filed during that period, hence the alleged demand is obviously time barred and the person who brought suit on behalf of the respondent-plaintiff, was not an authorized signatory to file the suit, despite that the trial court did not ponder upon these vitals and passed impugned judgment erroneously, in fact, there was no anomaly in any credit or debit in the account of the appellantdefendant and the learned trial court has passed impugned judgment on assumptions, which is not sustainable in the eye of law, so it be quashed after allowing the appeal. Learned counsel for the respondent-plaintiff has contended that there is nothing wrong in the findings of trial court because under some bonafide mistake, instead of Rs.4,000/-, an entry of Rs.40,000/- was made in the account for deposit, which on detection was demanded and subsequently in lieu of drawing of Rs.20,000/-, a debit entry of Rs.10,000/- was made erroneously, as such, the excess amount, which was wrongly deposited in the account, and non-bonafidely withdrawn by the appellant-defendant, was demanded, has rightly been decreed by the learned trial court and there is no infirmity in the judgment impugned. So, appeal does not have any force, hence it be dismissed. Learned counsel for the respondent-plaintiff has remained candid in accepting that he is not aware as to what departmental action has been taken against the erring staff of the bank, responsible for the alleged wrong entries and mistakes.

6. Heard both the sides and perused the record. Factum of existence of a current account by appellant-defendant with respondent-plaintiff bank is not in dispute. Appellant-defendant Suman Kumar Bagda has himself said that he was holding a current account with the respondent-plaintiff bank. He has also said that he has closed the said account in 1989. In crossexamination, he has admitted his signatures on Ex.1, 3, 5, 6, 8, 9, 10, 13, 14 and 16 to 19 and has admitted that payment asked through these papers have already been made to the parties concerned. He has made a statement by saying that he does not remember

whether he received an amount of Rs.40,000/- for payment to others while depositing Rs.4,000/-, he has also said that he does not remember whether by way of Ex.13. He would have got Rs.20,000/- from the bank in lieu of Rs.10,000/-, which is enough to indicate that he has not refuted factum of receipt of these payments candidly. PW-1, Dy. Manager of respondent-plaintiff bank has specifically said that he was posted as Dy. Manager from August 1992 to August 1995 and during the process of reconciliation, it could be detected that in lieu of Rs.4,000/-, Rs.40,000/- were mentioned and accounted and in lieu of issuance of cheque of Rs.20,000/-, mistakenly entry for Rs.10,000/- was made and this amount comes to Rs.46,000/-, which after settling mistake of totaling of Rs.1,000/- being deducted, an amount of Rs.45,000/- was found due against the appellant-defendant and this witness has ratified all the documents. In his cross-examination he has specifically said that on 22.09.1989, the account was closed and at the time of balancing of the books in 1995-96, mistakes were detected and suit was filed in 1997. He has further said that on examination of all the accounts, mistake was detected in the accounts of the appellant-defendant, upto 1995-96, no action was taken against the appellant-defendant because till then, no mistake could be detected, he has also said that employee responsible for the mistake is not known to him and as to what action was initiated against him is also not known to him. PW-3 Kamal Krishna setiya, bank employee, has also asserted that the account relating to S.K. Bagda & Co. was closed on 22.09.1989.

7. Section 72 of the Contract Act deals with quasi contracts and it reads as under:- "72. Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.-A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. -A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it."

Section 17 of the Limitation Act deals with concept of limitation in case of mistake, which is an exclusion with respect to general provisions of prescription of period of limitation and this Section postulates as under:-

"17. Effect of fraud or mistake.-

(1)Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,-

(a)the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b)the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c)the suit or application is for relief from the consequences of a mistake; or

(d)where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him, the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the

mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production: Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which-

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or

(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or

(iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order: Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be."

8. Respondent-plaintiff bank has come with a case that during the course of reconciliation, factum of mistake was detected and it was found that instead of Rs.40,000/-, an amount of Rs.4,000/- was found credited to the account of the defendant and likewise for a withdrawal of Rs.20,000/- an entry of Rs.10,000/- was made, which is duly corroborated by Ex.26 as well. Surendra Kumar, Dy. Manager of Bank, has ratified this document that Ex.26 ledger/statement of account, whose certified copy is produced. The appellant-defendant has not explicitly denied these anomalies and receiving of this amount, in excess of the actual amount and he has only said that he is not in memory of receiving of said amounts.

9. Banks maintain and holds the accounts in a bonafide way and as per Section 4 of the Bankers' Book Evidence Act, 1891, mode of proof of entries in bankers books is prescribed, which says:- "Subject to the provisions of this Act, a certified copy of any entry in a banker's books shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible but not further or otherwise."

10. As such, factum of veracity in respect of entries is also statutorily supported

in addition to the evidence adduced. So far as question of authenticity of filing plaint is concerned, it is duly supported with an attorney during the course of which alleged mistakes are asserted to have been detected and to have been found. Section 17 of the Limitation Act sufficiently dictates limitation, under which the suit has been brought after detection of the mistake, so it too could not be said to be beyond time.

11. In view of the aforesaid discussions, this court does not find any infirmity in passing the decree with respect to principal amount of Rs.45,000/- but inclined to modify, payable simple interest for entire period at a rate of 6% per annum. Thus, the appeal is partly allowed and the judgment impugned stands modified, accordingly. Cost is made easy.