(2010) 10 CHH CK 0033

In the Chhattisgarh High Court

Case No : Writ Petition No. 1611 of 2004

Nandkishore Kanwar APPELLANT

Vs

District Co-operative Central Bank Ltd. and Another RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144
Penal Code, 1860 (IPC) — Section 419, 420, 467, 468, 471

Citation : (2011) 1 MPHT 31

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—By this petition the Petitioner seeks a direction to the Respondent Bank to reimburse the Petitioner a sum of Rs. 70,000/- with interest, which admittedly was deposited by the Petitioner and withdrawn by some other person without verification of signatures.

2. Learned Counsel for the Petitioner submits that the Petitioner opened a saving account with the Respondent Bank and had made several deposits. As per the records submitted to the Petitioner, a sum of Rs. 30,000/- was given to some one on 12-2-2004 and Rs. 40,000/- has been withdrawn on 19-2-2004. showing that the same was done on the basis of false representation made by some other person.

3. Accordingly, the Petitioner made a complaint on 21-2-2004 (Annexure P-2) and thereafter, one more application was made on 25-2-2004 (Annexure P-3). The Bank, through Manjit Singh Kaushal, s/o Shri Joidhaji Kaushal, an Officer of the Bank, after having examined the complaint and other facts, lodged an FIR against unknown person, stating that a sum of Rs. 70,000/- was withdrawn by some one by forged signature from the account of the Petitioner. Accordingly, a case was registered against the unknown person under the provisions of Sections 419, 420, 467, 468 and 471 of Indian Penal Code. Thus, this petition.

4. Shri Pandey, Learned Counsel appearing for the Respondent Bank submits that the Petitioner is not entitled to any amount on account of his conduct, as he deposited some money on 16-2-2004 and made a complaint on 21-2-2004. This contention of Shri Pandey. Learned Counsel for the Respondent Bank that the Petitioner did not raise the issue, immediately after 16-2-2004 is frivolous. If money was withdrawn fraudulently by some other person without verification by the Bank Officials on 12-2-2004 and 19-2-2004, it cannot be said that there was any delay on the part of the Petitioner in making the complaint, as he had immediately after having come to know about the fraudulent withdrawal of money, reported the matter to the Bank on 21-2-2004. Thereafter, again the Petitioner made a reminder on 25-2-2004 for initiating enquiry and for making payment to the Petitioner.

5. It appears that the Bank has taken undue advantage of the innocence of the Petitioner by not returning back the money to the Petitioner and restoring the amount in the pass book of the Petitioner. It is well settled practice and principle of law that the money is deposited in a Bank account on the basis of trust and it is for the Bank Officials to ensure that money of the account holder is safe and secure, the same cannot be withdrawn by any other person fraudulently. When the fact of non-verification of the signature of some other person has been admitted, the Petitioner cannot be faulted with and cannot suffer on account of withdrawal by some other person. The Petitioner is entitled to the said amount with interest, as the Petitioner was deprived use of the money for the period from February, 2004, till date.

6. In such a case, principle of restitution would be applicable,. Had the money been available with the Bank, the Petitioner would have used the money, even for generating more money or by investing for commercial purposes or otherwise. He has denied the same on account of misconduct, malpractice on the part of the Bank Officials. The Bank ought to have without forcing the Petitioner to get into the litigation, restored the money in his account that the Bank has failed to do so.

7. The Supreme Court in South Eastern Coalfields Ltd. Vs. State of M.P. and Others, , observed as under:

27. Section 144, Code of CPC is not the fountain source of restitution, it is rather a statutory recognition of a pre-existing rule of justice, equity and fair play. That is why it is often held that even away from Section 144 the Court has inherent jurisdiction to order restitution so as to do complete justice between the parties. In Jai Berham v. Kedar Nath Marwari, Their Lordships of the Privy Council said: (AIR p. 271)

It is the duty of the Court u/s 144 of the Code of CPC to ''place the parties in the position which they would have occupied, but for such decree or such part thereof as has been varied or reversed''. Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent in the general jurisdiction of the Court to act rightly and fairly according to the circumstances towards all parties involved.

Cairns, L.C. said in Rodger v. Comptoir D''Escompte de Paris: (ER p. 125)

One of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors, and when the expression, ''the act of the Court'' is used, it does not mean merely the act of the Primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole, from the Lowest Court which entertains jurisdiction over the matter up to the Highest Court which finally disposes of the case.

This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it (A. Arunagiri Nadar v. S.P. Rathinasami). In the exercise of such inherent power the Courts have applied the principles of restitution to myriad situations not strictly falling within the terms of Section 144.

29. Once the doctrine of restitution is attracted, the interest is often a normal relief given in restitution. Such interest is not controlled by the provisions of the Interest Act of 1839 or 1978.

8. Accordingly, the Bank is directed to deposit a sum of Rs. 70,000/- with interest @ 12% per annum from the date of withdrawal till deposit in his account.

9. In the result, the petition is allowed with costs quantified to be a sum of Rs. 20,000/- payable to the Petitioner.

