

(1980) 05 DEL CK 0035
In the Delhi High Court
Case No : Suit No. 487 of 1972

P. Roy Company

APPELLANT

Vs

Punjab National Bank and Another

RESPONDENT

Date of Decision : 23-05-1980

Acts Referred:

Citation : (1980) 18 DLT 318

Hon'ble Judges : R.N. Aggarwal, J

Bench : Single Bench

Advocate : Ravinder Sethi, G.N. Aggarwal, Prabhodjus Roy and J.P.Chopra, for the Appellant;

Judgement

R.N. Aggarwal, J.

(1) This suit by the plaintiff M/s. P. Roy Company for the recovery of Rs. 62,708 has been instituted in the following circumstances. The plaintiff, a registered partnership firm and of which Shri Premjus Roy is a partner (now dead) dealt in purchase and sale of shares. The plaintiff had overdraft accounts Nos. 6664 and 6665 and a current account with the Punjab National Bank, Paharganj Branch, New Delhi. The plaintiff had overdraft facilities in the account No. 6664 to the tune of Rs. 52,000 and in the second account No. 6665 to the extent of Rs. 48,000. The "account No. 6664 was mainly operated upon by Premjus Roy. Defendant No. 2 Ram Awtar Aggarwal was an accountant in the plaintiff firm and he had worked with the plaintiff from about 1968 till early April 1972. The case of the plaintiff is that in April 1972, defendant No. 2 went on leave and in early May 1972 he wrote to the plaintiff that he would not rejoin the service and this created suspicion in their mind and on checking the records, they found cheque books and pass-books etc. missing and they obtained from the bank duplicate pass books and on checking the accounts they found that Rs. 57,249.55 had been embazzled by forging the signature of Premjus Roy on cheques and advices on the basis of which bank drafts had been obtained, details of which are given in annexure "A" to the plaint. The plaintiff alleged that defendant No. 1 had debited

their accounts on the basis of cheques and advices without any mandate from the plaintiff and, Therefore, the bank is liable to refund the amount along with interest illegally debited to the account of the plaintiff. The plaintiff further claimed interest at the rate of 12 percent per annum from 16th November 1972 until the amount claimed is paid.

(2) Defendant No. 1 contested the suit and pleaded that the cheques and advices on the basis of which the alleged debits, were made in the account of the plaintiff, are genuine and the debits were correctly made. In the additional pleas the defendant No. 1 submitted that according to the practice between plaintiff firm and the defendant No. 1/Batik's Paharganj Branch, statements of accounts concerning the over-draft account No. 6664 were supplied to the plaintiff periodically and the plaintiff never raised any objection about their correctness and further that the plaintiff had confirmed correctness of the accounts for the period up to 30th June 1971 and 31st December 1971 Vide the letters of confirmation dated 1st August 1971 and 15th February 1972 (Exts. D.1 and D.2) and further that on 1st August 1972, Premjus Roy, a partner of the plaintiff firm acting on behalf of the firm had vide the letter dated 1st August 1972 to the Manager of the defendant No. 1/Bank's Paharganj Branch closed the over draft account Nos. 6664 and 6665 after paying the amount of Rs. 49,497.04 which was outstanding against the plaintiff and taken back the securities pledged with the bank. and that the aforesaid acts and omissions on the part of the plaintiff amount to admission and acknowledgement of the accounts and the plaintiff is estopped from challenging the validity and correctness of the debit entries.

(3) The plaintiff in its replication re-asserted that the cheques and advices in dispute purporting to have been issued by the plaintiff firm were not genuine; and that the signatures of Premjus Roy on the advices for draft and cheques were forged signatures. The plaintiff admitted the contents of para 12 of the written statement but contended that the forgeries could not be detected on comparison of the bank statements with the counter-foils of the cheque books and copies of the letters of advice and that they were only found out when the original cheques and letters of advice were seen.

(4) The plaintiff further admitted that on 1st August 1972 it had closed the over-draft accounts after paying the balance amount of Rs. 49,497.04 but contended that after coming to know of the fraud the plaintiff did not wish to continue business relations with defendant No. 1 since defendant No. 1 was not prepared to acknowledge the liability of the amount embezzled by defendant No. 2

(5) It may be stated that defendant No. 2 did not put in appearance and was proceeded ex parte.

(6) On the pleadings of the parties, following issues were framed :

1. Whether the cheques and advices mentioned in annexure "A" were not signed by Shri Premjus Roy but are forged, and if so, are they forged by defendant No. 2 ? 2. On case issue No. 1 is established, whether the first defendant acted in

good faith in the due course of business, and was not negligent and, if so, to what effect ? 3. Whether the plaintiff is estopped from instituting the present suit having accepted a sum of Rs. 49,497.04 in full and final settlement of accounts Nos. 6664 and 6665 ? 4. Relief.

(7) On issue No. 1 both the parties have examined handwriting experts. The plaintiff in support of its case examined Shri M. K. Mehta and defendant No. 1 Shri Veer Kumar Sakhuja. The report of Shri M. K. Mehta (Public Witness 2) is Ext. Public Witness 2/A and that of Shri Sakhuja Ext. Dw 5/1. Mr. Mehta on a comparison of the disputed signatures with the standard signatures gave the opinion that the disputed signatures are forged and they are not hand written but have been affixed by a rubber stamp. Mr. Mehta opined that the disputed signatures cover the same space, they are replica of each other and one can be super-imposed over the other. The relevant part of the statement of Mr. Mehta reads as under :

"I have compared these signatures (disputed signatures) with the standard signatures of Premjus Roy on Exts. P2, D1, D2, D4 and D3, the various signatures marked as 51, A and A1 to A6. I am of opinion that the disputed signatures are in fact not the signatures but they are the impressions of a rubber stamp and these signatures have not been made by any human being on the original documents. These appear to have been made from a common model and for this reason these impressions are almost the perfect replica of each other that is they are super imposed upon one another. In the natural course no two signatures of the same individual are ever the replica of each other and there always occur natural variations in them especially in the matter of size and proportion of the letters, relative positions of the letters, angles and degree of curvatures of letters etc. The standard signatures inter se show pronounced variations in this regard whilst this is not the case in the alleged disputed signatures."

(8) Shri Sakhuja (DW 5) on a comparison of the disputed signatures Cd series Exts. Public Witness 1/2 to Public Witness 1/21) with the standard signatures (A series Exts. D-1 to D-4 and Public Witness 1/1) gave the opinion that the writer of the A series of signatures has also affixed the D series of signatures to the documents referred as Ext. Public Witness 1/2 to Ext. Public Witness 1/21. The relevant part of the statement of Shri Sakhuja reads as under :

" AS a result of this examination and comparison cumulatively from the notes of the original documents examination subsequently enlarged with the aid of photomicrographs, I am of the considered opinion that the writer of the A series of signatures has also affixed the D series of signatures to the documents referred as exhibits Ex. Public Witness 1/2 to Ex. Public Witness 1/21. The disputed signatures on documents are of extreme values involving monetary exchanges and valuable letters and Therefore they naturally display more care in their execution as compared to the other signatures which are normally affixed to the documents of lesser consequences with comparative degree of more ease

and freedom. I have further examined the disputed signatures on exhibits Ex. Public Witness 1/2 to Public Witness 1/21 and also the comparative signatures on Exhibits D.1, D.2, D.3 and D.4 with the aid of relevant photo transparencies aided with their contact prints to ascertain if there is any element of suspicion in respect of disputed signatures suggesting the same to be an act of traced forgery. After very careful and mechanically calculated examination. I am of the considered opinion that the disputed signatures do not show evidence of physical super imposition of the type which is to be always discerned between a model and a signatures traced from the same. These signatures bearing D. series show natural variations confined to reasonable degree and there is no evidence of super imposition in the same. The photo transparencies are 11 in number and so are their contact prints. My report dated 17th April, 1978 with regard to the executorial characteristics of the disputed and comparative signatures and the resultant opinion there from is Ex. Dw 5/1."

(9) Shri Sakhuja was cross-examined at length by Shri Sethi, learned counsel for the plaintiff, and towards the end of the cross-examination Shri Sakhuja admitted that there are divergences between the disputed and the standard signatures but went on to state that as far as the comparison value of intrinsic writing characteristics are concerned, he believes that he has interpreted them correctly.

(10) I have carefully perused the statements of the hand-writing experts produced by both the parties, examined the documents in the light of their statements and I have no hesitation in coming to the conclusion that the disputed signatures are forged. The ground covered in all the disputed signatures is the same, the difference if any is due to the thickness of the stroke of the lower terminal of the letter "P" in the name Premjus Roy, whereas in the standard signatures the length of the signatures varies. A careful examination of the disputed signatures will reveal that they are replica of each other and one can be super imposed on the other. I am inclined to agree with the conclusion of Mr. Mehta (Public Witness 2) that the disputed signatures are not manually written but have been affixed on the disputed cheques and letters of advice by a rubber stamp". The forgeries, in my opinion. are so skilful that even an expert could have failed to detect the same. Dw 2 Shri Viswa Nath Malhotra, Dw 3 Shri V. P. Khetrapal and Dw 4 Shri Virender Dev Sabharwal were posted as Accountants/ Sub-Accountant in the Branch office, Paharganj during the relevant period and they testified that they had passed the various cheques after verifying the signatures of the drawer with the specimen signatures maintained in the bank record. The witnesses stated that they did not have any special training in the science of comparing signatures and that on an average daily they had to handle about 25 to 30 cheques and sometimes the number of the cheques went up to 100. It is clear from the statements of DWs 2, 3 and 4 that they had no expert training in the science of comparison of hand writing and while comparing the signatures of the drawer on the cheques with the specimen signatures they had to depend on their normal skill and experience.

(11) My finding on issue No. 1 is that the signatures on the disputed cheques and letters of advice are forged.

(12) While discussing issue No. 1 have found that the forgeries were so skilful that even an expert eye could have missed to detect the forgeries, but this, in my opinion, will not save the bank from its liability to credit the plaintiff for the payments made on forged cheques and letters of advice. The bank having paid the disputed amount without any mandate or authority from the customer had obviously acted negligently and it cannot plead that the payment had been made bona fide.

(13) In K.M. Abbu Chettiar Vs. Hyderabad State Bank, Mr. Justice Ramaswami, in a well considered judgment, held :

" THE banker cannot charge his customer with any money with which he has parted without the customer's authority. Where the customer's signature on a cheque as drawer is forged, the banker is not protected because a document purporting to be a cheque but to which the drawer's signature is forged, is not a cheque at all, and is not drawn on a banker. The mutual duties and obligations of a banker and customer, so far as the passing of a cheque is concerned, are rested in India on the well known relationship of agent and principal. This relationship requires that the agent banker is bound in making payments to bring to bear upon his task the skill and prudence required in the ordinary course of business like being able to identify the signature of the customer and detect imitations and must make the payments in good faith and without negligence and which in each case is a question of fact. A payment made without good faith and in negligence is not a due payment within s. 10 of the Negotiable Instruments Act. On the other hand, there is a corresponding obligation on the part of the customer not to be negligent or disregard ordinary precautions for the reasonable protection of the banker against injury because where the customer's neglect of due precautions has caused his bankers to make a payment on a forged order, the customer cannot set up against the banker the invalidity of a document which he has induced them to act on as genuine. Mere carelessness in keeping the cheque book is, of course, of no use. What particular act or line of conduct precludes the drawer from denying the banker's right to debit him with a forged cheque is a question of fact. It is for the customer to establish affirmatively that the signature on the disputed cheque is not that of the customer but a forgery. If the drawer's cheque is forged or unauthorised, however clever the forgery is, the banker cannot debit his customer's account in case he pays the sum unless he establishes adoption or estoppel. What amounts to adoption of estoppel is dependent upon the circumstances of each case. In order to make the customer liable for the loss the neglect on his part must be in or intimately connected with the transaction itself and must have been the proximate cause of the loss. The banker cannot set up either estoppel or adoption if his own conduct or negligence has occasioned or contributed to the loss, the well settled principle being that where one of two innocent parties must

suffer for the fraud of a third, that party should suffer whose negligence facilitated the fraud."

Also see *Bihta Co-operative Development Cane Marketing Union Ltd., and Another Vs. The Bank of Bihar and Others*, , Halsbury's Laws of England, Third Edition" Vol. 2, Article 380.

(14) The only evidence of negligence is that the plaintiff was leaving the cheque book with defendant No. 2, but that, in my view, was essential in the course of the business. Defendant No. 2 was the accountant and he was maintaining the account books and for writing out the account books the use of the cheque book was necessary. The mere fact that the plaintiff at times left the cheque book with defendant No. 2 can be of no use to the bank.

(15) The bank has, however, pleaded estoppel by conduct.

(16) The case of defendant No. 1 is that in accordance with the practice it was sending periodically statements of account to the plaintiff and the plaintiff never took any objection to any of the debit entries and that further the plaintiff confirmed the balances for the period up to 30th June. 1971 and 31st December, 1971 vide the confirmation slips dated 1st August, 1971 and 15th February, 1972 (Exts. D1 and D. 2) and lastly that on 1st August, 1972 Shri Premjus Roy partner of the plaintiff firm had vide letter dated 1st August, 1972 closed the overdraft account after making the payment of the amount outstanding to its debit; and that the aforesaid circumstances amount to an admission and acknowledgement of the correctness of the accounts and now it is not open to the plaintiff to challenge the correctness of the debit entries.

(17) The plaintiff in reply pleaded that the bank statements were checked with the counter-foils of the cheque books and the copies of the letters of advice but the fraud could not be discovered and that only when the original cheques and letters of advice were seen that the forgeries were detected. As regards the closures of the over-draft accounts, the plaintiff pleaded that since the bank was not willing to give credit, for the amounts unauthorisedly paid, it did not wish to continue the business relations with the bank.

(18) In my opinion, no general statement can be made on the subject under discussion and as to what amounts to adoption or estoppel would depend on the circumstances of each case. The debit entries in dispute number about 20 and are spread over to a period of about 8 months (August 1971 to March 1972). There is clear evidence on the record that the bank was maintaining a separate ledger for the overdraft account No. 6664 and as and when the sheet was full the perforated copy of it was sent "-to the plaintiff either by post or delivered to its employee. During the period in question about 33 statements were sent. It is not the case of the plaintiff that the bank statements were not received by them or that they had not looked into the statements. Their plea is that on checking of the statements with the counter-foils of the cheques and copies of the advices they could not discover the forgeries and that only when the original cheques

and the letters of advice were seen that the forgeries were found out. Now this plea of the plaintiff is difficult to accept. The disputed cheques except Ex.. Public Witness 1/9 were bearer cheques and are drawn in favor of Ram Awtar Aggarwal or Subhash Chander Gupta or Subhash Chander Sharma". The bank statements contained the date, the name of the payee, and the amount credited or debited and the balance. It also mentioned the limit of overdraft, interest and the nature of the securities deposited. Ex. Dw 3/1 is one such statement.

(19) P.W. 1 gave evidence that in the books of account and the counter-foils of the cheques, the payments of the cheques in dispute and the drafts obtained on the letters of advice were shown to have been paid/debited to M/s. K. B. Malik and Company or M/s. Bharat Bhushata and Company Share brokers with whom the plaintiff had dealing and, Therefore, the plaintiff by reference to the counter-foils and books of account could not discover the forgeries. As already stated in the bank statements the name of the party in whose favor the cheques or drafts were drawn is stated. If what the plaintiff has stated is true, the plaintiff could not have missed to detect the forgery for the name of the party mentioned in the statement, and the name of the party correspondingly mentioned in the counter-foils of the cheques or the plaintiff's account books were not the same and the plaintiff would have been immediately put to enquiry regarding the correctness of the debit entry.

(20) In Court Public Witness 1 gave evidence that bearer cheques in favor of third party were never issued and that bearer cheques were always issued by the plaintiff in favor of one of its partners and they were always encased by the partners and they were always encased by the partners themselves. The above would further be a reason for the plaintiff to have discovered forgeries, for, all the cheques except one are bearer and in favor of a third party.

(21) It is true that in the bank statements it was not specified whether the cheque is bearer or crossed but that, in my opinion, would make no difference. There was no occasion for the plaintiff to have issued crossed cheques in favor of defendant No. 2 nor it is the case of the plaintiff that crossed cheques were issued in favor of defendant No. 2.

(22) Mr. Sethi contended that it is not the case of the Bank that there was any practice or agreement that the statements were to be regarded as accounts stated and settled and. Therefore, the plaintiff is not precluded from questioning the debit entries. Mr. Chopra for the bank contended that the fact that the bank had opened a separate ledger for the overdraft account of the plaintiff and it was sending periodically perforated copies of the statements clearly evidences that there was an implied agreement that the statements constituted a stated and settled account. Mr. Chopra further contended that if the above was not the position the bank would not have taken the extra expense and labour to maintain a separate ledger and sent perforated copies of the accounts as soon as a sheet was complete. Mr. Chopra contended that in any case the plaintiff had the means of finding out the correct position of the account and in case he did not choose

to scrutinise the statements the bank cannot be made liable for the failure of the plaintiff to perform its duty.

(23) The law on the above subject is not clear. There are cases in Which it has been held that unless there is evidence to show that the practice or the custom indicated a stated and settled account the customer is not precluded from questioning the debit entries in the pass book. See : *Essa Ismal v. Indian Bank, Ltd.* (1963) 1 C L J 194. In fact, authorities have gone further and held that even if the balances in the pass book are penciled in and returned without any comment the customer can within a reasonable period challenge a debit entry. See : *The Kepitigalla Rubber Estates, Limited v. The National Bank of India, Limited* (1909) 2 K.B. 1010(4).

(24) According to Halsbury's Laws of England, Third Edition Volume 2, para 389 "where a periodical or other balance has been struck in the pass-book, and the pass-book is returned by the customer without comment, this has been treated as Constituting evidence of a stated and settled account. Elsewhere the matter has been regarded as one still requiring evidence of implied contract between banker and customer.

(25) Assuming the return of the pass-book without comment to constitute a stated and settled account, it appears doubtful whether the customer is estopped from subsequently disputing debits shown therein to the prejudice of the bank, that is, from reopening the account on proof of error. The question usually arises with reference to cheques to which the customer's signature has been forged, or the amount of which has been fraudulently raised. The estoppel depends mainly on whether there is or is not a duty on the part of the customer to examine the pass-book and paid cheques, if returned with it, and to communicate to the banker within reasonable time all debits which he does not admit, on which point the authorities are conflicting. It might further be contended that means of knowledge was equivalent to the knowledge or reasonable grounds of belief, so as to fix the customer with adoption or ratification of the cheques, or that, the customer's claim not to be debited being in effect one for money had and received, it is not exaequo et bono that he should not bear a loss occasioned by his neglect or ordinary business precautions."

(26) It is true that there is no proof of any agreement between the plaintiff and the bank that the statement submitted by the bank to the plaintiff was to be regarded as account stated and settled but, in my opinion, in this case the fact that the bank was maintaining a separate ledger of the overdraft account and was submitting regular statements of account to the plaintiff coupled with the fact that at regular intervals the bank sent balance confirmation slips which were returned duly signed by the plaintiff would evidence a proactive indi- eating that the statements were to be considered as a stated and settled account. The confirmation of the debit balance would amount to an admission of the correctness of the debit entries.

(27) In *Essa Ismal v. Indian Bank, Ltd.* (1963) 1 C L J 194, it has been held that when confirmation slips are sent and signed by the customer he will be bound by the debits made.

(28) Mr. Sethi placed reliance on a decision of the Punjab High Court in *Allahabad Bank Ltd. Vs. Kul Bhushan and Others*, for the proposition that the confirmation slips do not preclude a customer from challenging the action of bank in encashing forged cheques. On going through the authority I find that the facts of the cited case are distinguishable. In the cited case the customer had long before confirming the balances taken objection regarding the cheques in dispute therein.

(29) In certain cases it may be open to a customer to challenge the errors subsequent to the confirmation of the balance but in this case I feel that the plaintiff is precluded from challenging the debit entries for the reason that the cheques and the advices in dispute range over a period of about 8 months and in spite of the fact that the bank submitted the perforated copies of the statement regularly to the plaintiff, the plaintiff neglected to observe ordinary business precaution of scrutinising the statements.

(30) In present times, the bank plays an important role in the life of the business community. The banks provide loans and numerous other credit facilities and in order to protect their commercial interest as well as the interest of the customer the banks send periodical statements and balance confirmation slips. The object behind issuing the statements and balance confirmation slips is to keep the customer informed with the latest position of the account and further they help in detecting mistakes and avoiding frauds. I am inclined to agree with Mr. Chopra that the sending of the statements of account and the balance confirmation slip is not an exercise in futility and it has definite meaning and purpose to achieve. In my opinion, the plaintiff was under a duty to scrutinise the bank statements and balance confirmation slips and if he failed in that duty he would be bound by the debits made.

(31) Mr. Chopra in support of his contention of estoppel also relied upon the letter dated 1st August 1972 (Ex. D. 4) written by the plaintiff to the bank at the time of the closing of the two overdraft accounts. The relevant part of Ex. D. 4 reads as under :

" WE propose to make payment in full in the above accounts so to square up both these accounts and close them. You may kindly deliver the securities standing in the name of Prabhodjus Roy to him and all other securities to me."

(32) Mr. Chopra contended that the plaintiff by writing the underlined portion of the letter had adopted the payments made under the cheques and advices in dispute and now the plaintiff is estopped from changing his position and challenging the alleged debit entries. I do not agree in this contention. Before closing the overdraft accounts the plaintiff had served a notice dated 21st July 1972 (Ex. Public Witness 1/22) on the bank stating that Rs. 57,250 had been embezzled from overdraft account No. 6664 and claimed that the plaintiff be

given credit for the amounts paid on forged cheques and advices. It appears that the bank had refuted the claim of the plaintiff. The plaintiff had also before sending the aforementioned notice lodged a report at the police station.

(33) P. W. 1 gave evidence that since the bank was not prepared to acknowledge the liability of the amount embezzled by defendant No. 2 they had lost faith in the bank and. Therefore, had decided to close the accounts and take back the securities. It appears that in the circumstances of the case it was not possible for the plaintiff to have continued their business relations with defendant No. 1 and that is how they had decided to clear the over-draft accounts. The overdraft facility was allowed by the bank against pledge of securities. The plaintiff could not have got back the securities unless they had cleared the debit balance in the overdraft accounts.

(34) For the reasons stated earlier, I find that the statements of account taken along with the balance confirmation slip Ex. D. 2 amount to accounts stated and acknowledged and the plaintiff is precluded from questioning the debit entries in dispute. Even if I was to find that the bank statements did not amount to account stated and settled and the plaintiff could, after the balance confirmation slip, have the account re-opened on proof of error, the plaintiff, in my opinion, is estopped from challenging the debits made for this neglect to observe ordinary business precautions. I would answer issue No. 3 accordingly.

(35) Before concluding I would like to mention that issue No. 3 is not happily worded and it does not embrace the entire gamut of the pleadings on estoppel (paras 12, 13, 14 and 15 of the written statement) but this, in my opinion, has not resulted in any prejudice to either party because they were fully aware of the case they were required to meet.

(36) In view of my findings on the various issues, I would dismiss the suit against the defendant No. 1. As the point covered by issue No. 3 is not free from difficulty I leave the plaintiff and defendant No. 1 to bear their own costs.

(37) On the evidence produced on the record there appears to be no doubt that defendant No. 2 who was employed as Accountant with the plaintiff had, in the course of his employment, forged the cheques and letters of advice and embezzled a sum of Rs. 57,249.55. The plaintiff would be entitled to a decree against defendant No. 2. I pass a decree for Rs. 62,708 with costs and interest at the rate of 12 per cent per annum from the date of the institution of the suit until the amount is realised in favor of the plaintiff and against defendant No. 2. Suit dismissed against Def. No. 1 but allowed against Def. No. 2.