
(2012) 07 DEL CK 0070
In the Delhi High Court
Case No : CS (OS) No. 1923 of 2003

Punjab and Sind Bank

APPELLANT

Vs

M/s. Textile Syndicate and Others

RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Evidence Act, 1872 — Section 47

Citation : (2012) 07 DEL CK 0070

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : D.P.S. Guliani, Defendant No. 4 in person, Rajinder Wali, for the Appellant;

Judgement

Valmiki J Mehta, J.—This suit CS(OS) No.1923/2003 was filed by the plaintiff-bank against total of four defendants. Defendant Nos.1 and 2 were the beneficiaries of the amounts received under the unauthorized banker's/ Manager's cheque. This Manager's/Banker's cheque was issued by the then Manager Mr. S.K. Tyagi/ defendant No.3 under his signatures. Since the Manager's cheque book was in the joint custody of the defendant No.3 with the defendant No.4 (defendant No.4 being the Accountant), liability of defendant no.4 is also alleged. This suit was originally filed in this Court, however, the suit was thereafter transferred to the Debt Recovery Tribunal (DRT) after passing of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act). The O.A. before the DRT was decreed against the defendant Nos.1 and 2, however, the DRT returned the OA so far as defendant Nos.3 and 4 are concerned to this Court inasmuch as the amount claimed as against the defendant Nos.3 and 4, being the Manager and the Accountant of the plaintiff-bank respectively, was not a "debt" as per the definition of this expression under the RDDBFI Act inasmuch as it did not arise out of a business transaction of the bank and recovery against defendants no. 3 & 4 thus could not be the subject matter of recovery under RDDBFI Act. After the file has been received from the DRT, plaintiff-bank has led evidence. Defendant Nos.3 and 4 failed to lead

evidence and therefore their right to lead evidence was closed.

2. The facts of the case as averred by the plaintiff-bank in the plaint are that the defendant Nos.3 and 4, being the Manager and Accountant of the plaintiff-bank at Guru Nanak Market, Hemkunt Colony, Greater Kailash I, New Delhi branch illegally utilized a leaf from the Manager's cheque book bearing No.485494 and transferred an amount of Rs. 25 lacs to the defendants no. 1 & 2. This amount was credited in the account of the defendant Nos.1 and 2 and was utilized by the said defendants. The basic cause of action in the plaint is the loss of money caused to the plaintiff-bank on account of the aforesaid facts.

3. Plaintiff-bank has filed affidavits by way of evidence of Sh. J.S. Tib as PW-3 and Sh. P.S. Kohli as PW-2. The two witnesses of the bank have proved on record the factum with respect to credit of the amount under the Manager's cheque bearing No.485494 for Rs. 25 lacs. The manager's cheque has been proved and exhibited as Ex.PW3/1. The witness of the bank has deposed to the fact that this banker's cheque was deliberately torn off, except a portion thereof which was attached to the counterfoil, so as to destroy all evidence with respect to making out of the banker's cheque. In my opinion therefore defendant No.4 is also jointly and severally liable with the defendant No.3 inasmuch as the custody of the manager's cheque book was jointly with the defendant Nos.3 and 4.

4. The defendant Nos.1 and 2 had admitted their liability by means of a letter dated 24.5.1993, and which aspect has been taken note of by the DRT while passing the judgment against the defendant Nos.1 and 2 on 21.11.2001. The contents of the letter dated 24.5.1993 will thus also bind the defendants no. 3 & 4. The statement of account of the bank has also been filed and exhibited as Ex.PW3/4 and which contains the necessary entries. The legal notice dated 30.4.1988 has been proved and exhibited as Ex.PW3/5 and the corresponding postal receipts have been proved and exhibited as Ex.PW3/6 to Ex.PW3/12.

5. In my opinion, nothing material has been extracted from the deposition of either PW-3 or PW-2 inasmuch as the deposition with respect to the banker's cheque being unauthorisedly issued has not been shaken. Similarly, there is already a decree against defendant Nos. 1 and 2 showing that the amount was credited to the account of the defendant Nos.1 and 2 and the plaintiff-bank was caused loss of this amount.

6. I may also state that now the Supreme Court in the case of Gulzar Ali Vs. State of H.P., has clarified that it is not necessary that the documents can only be proved by the person before whom the document is signed etc u/s 47 of the Evidence Act, 1872 and the Supreme Court has held that u/s 47 a person who keeps custody of the record can always prove the same. The Supreme Court has held that ingredients as stated in Section 47 of the Evidence Act, 1872 are not exhaustive of the methods of proving the documents in a case. The argument of the defendant no.4 therefore that the statements of the witnesses of plaintiff have no value as they were not posted in the branch at the relevant time is an

argument which I reject.

7. Once the defendants no. 3 & 4 failed to step into the witness box to prove their case and had no courage to stand to the test of cross-examination, the evidence led on behalf of the plaintiff has necessarily to be believed. In view of the above, the suit of the plaintiff-bank is decreed against defendant Nos.3 and 4 for a sum of Rs. 25 lacs alongwith interest @ 9% per annum simple pendente lite and future till realization. Plaintiff will also be entitled to costs of the suit. Decree sheet be prepared.