

(2011) 12 DEL CK 0299

In the Delhi High Court

Case No : Regular First Appeal No. 128 of 2003

Punjab National Bank

APPELLANT

Vs

Shri Sita Ram Malik

RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Contract Act, 1872 — Section 12, 72

Citation : (2012) 5 AD 126 : (2012) 2 BC 302 : (2012) 186 DLT 677

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : S.N. Relam, for the Appellant; Abhinay, Proxy Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular First Appeal (RFA) filed u/s 96 Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the Trial Court dated 10.12.2002. By the impugned judgment, the trial Court decreed the suit filed by the respondent/plaintiff and granted mandatory injunction in favour of the respondent/plaintiff to remove the lien in the account with respect to an amount of Rs. 1,75,000/-.

2. The brief facts of the case are that the respondent/plaintiff was operating a current account in the name of M/s Naresh Electric Company with Krishna Nagar branch of the appellant/defendant/Bank. The respondent/plaintiff had deposited a cheque No. 534531 for Rs. 1,75,000/- drawn in its favour by one M/s Arun Electricals. This cheque was credited in the account of the respondent/plaintiff on 12.9.1997. After about one year and four months i.e. on 19.2.1999 the appellant/defendant/Bank marked a lien for this amount in the account i.e. balance in the account was taken as less by Rs. 1,75,000/-. This, the appellant/Bank did, because it transpired that the cheque drawn by M/s Arun Electricals in favour of the respondent/plaintiff was infact lost in clearing from Reserve Bank of India,

Clearing House to the Chandni Chowk Branch of the appellant-Bank and which aspect was noticed after about one year and four months. The respondent/plaintiff contended that there was negligence on behalf of the appellant/defendant-Bank, inasmuch as because of this huge time gap M/sArun Electricals had closed the account with the Chandni Chowk Branch of the appellant-Bank and therefore, the respondent/plaintiff could not recover this amount from M/s Arun Electricals.

3. The appellant/Bank took up the defence that they were entitled to lien on the account because of not receiving credit from M/s Arun Electricals. The appellant claimed benefit of certain Reserve Bank of India Guidelines. The relevant issues in this regard as framed by the trial Court are issue Nos. 3, 8 and 9, and these issues were dealt with by the trial Court, inter alia, by giving the following findings:-

18. ISSUE NO. 3, 8 and 9

It is not disputed that M/s Arun Electricals issued a cheque in the sum of Rs.175000/- in the name of plaintiff which was deposited by plaintiff with defd. No.2/Krishan Nagar Branch. It is also not disputed that M/s Arun Electricals had its account in Chandni Chowk branch/defendant no.3. It is also admitted that cheque amount of Rs.175000/- was credited to the account of plaintiff with defendant no.2 (Krishan Nagar Branch) in 1997. The other admitted facts are since 19.2.99 the defendant no.2 imposed lien in the sum of Rs.175000 in the account of plaintiff on account of debit entry standing against it with the defendant no.3/Chandni Chowk Branch. It is also not disputed that M/s Arun Electricals had its account with defendant no.3/Chandni Chowk branch but since had closed it.

19. The arguments on behalf of plaintiff is that the defendant no.2 cannot impose lien to dishonour the cheques issued on 19.2.99 and for subsequent periods. It is argued that in the absence of any security or property in the banks''s custody the bankers cannot exercise its lien. Reliance is placed upon Indian Bank V/s. Annapoorna Finance, II (2002) BC 340.

20. It is also argued that the bank is duty bound to either return the cheque deposited by an account holder in his account or credit the amount in his account failing the bank shall be at liberty for the negligence. Reliance is placed upon the authority Syndicate Bank Vs M/s Swaika Chemicals Works & Anr. 1987(12) DRJ , Delhi page 227. It is further argued that if bank does not honoured the cheque of the account holder despite having sufficient amount in the account then the action of the bank is arbitrary and unfair and bank is liable to pay damages. Reliance is placed upon the author- Gupta Biscuits (P) Ltd. Vs. United Commercial Bank and Another, .

21. On the strength of above arguments counsel for the plaintiff has prayed for decree of injunction and damages as claimed in the plaint.

22. The arguments on behalf of defendant is that the cheque issued by M/s Arun Electricals in the name of plaintiff was credited in 1997 in the account of plaintiff in defendant No.2/Krishan Nagar Branch against impressed account but the said cheque of M/s. Arun Electricals was lost in transit so as per R.B.I. Guidelines the lien was imposed in the sum of Rs.175000 in the account of the plaintiff. It is also argued that M/s. Arun Electricals has closed its account with defendant no.3/ Chandni Chowk Branch so the amount could not be debited from the account of M/s Arun Electricals. When the defendant no.3 approach the suit M/s. Arun Electricals it promised to pay the amount but made only part payment of Rs.50,000/- but the balance amount was not paid by M/s Arun Electricals to the defendants. The defendants have filed a separate suit against M/s. Arun Electricals for recovery of Rs.2,62,400 and also plaintiff is made defendant no.2 in that suit. M/s. Arun Electricals is contesting that suit and has filed written statement. It is argued that amount of Rs.175000/- was credited to the account of the plaintiff by defendant no.2 by mistake so as per Section 72 of the Indian Contract Act the defendant no.2 is entitled to refund of his amount so lien was rightly exercised in the account of the plaintiff. Reliance is placed upon the authority. Sales Tax Officer, Banaras and Others Vs. Kanhaiya Lal Mukundlal Saraf, where in it was held that the mistake in Section 72 of the Contract Act comprises both mistake of law and fact. The payment under mistake of law is also repayable reliance is further placed upon the authority Grindlays Bank Vs. Centre for Development of Instructional Technology & Anrs. 65 (1997) DLT 736 where in it was held that when second Installment was made by mistake. The defendant cannot be allowed to retain the benefit and to enrich himself. On the strengths of above arguments it is prayed on behalf of defendant that plaintiff is neither entitled as to relief of injunction nor the relief of damages as claimed in the plaint.

23. I have heard the Id. counsel s for the parties and I have gone through the record of the case carefully. In the present case undisputedly the cheque of Rs.1750000 was issued by M/s Arun Electricals in the name of plaintiff. It was deposited by plaintiff in his account in defendant no. 2 and was credited to the account of the plaintiff. The amount of credit of Rs.175000 cannot be said to be payment made by mistake. It could have been said so if the plaintiff was not entitled to it as for instance a wrong entry of credit made in the account of plaintiff without any basis. When the credit entry of Rs.175000 is made in the account of plaintiff on the strength of the cheque of Rs.175000 issued by M/s Arun Electricals and deposited by the plaintiff in his account, it cannot be said that the said entry was made by mistake. Undisputedly the said credit of Rs.175000 was made in 1997 soon after lien was imposed in Feb. 1999. As discussed earlier there was no collusion between the plaintiff and Arun Electricals to defraud the defendants. It is not disputed that at the time of the plaintiff deposited the cheque of M/s Arun Electricals in his account, M/s Arun Electricals had its account with defendant no.3/chandni chowk branch. No where it is pleaded by the defendant that at the time the said cheque was deposited by

plaintiff in his account. The amount in the account of M/s Arun Electricals with defendant no.3 was not sufficient to honour the cheque issued by M/s Arun Electricals and deposited by plaintiff in his account. Thus the facts and circumstances of the case clearly depict that on account of negligence of the defendant the debit entry in the account of negligence of the defendant that debit entry in the account of M/s Arun Electricals could not be made though corresponding credit entry in the account of plaintiff was made by defendant no.2/Krishan Nagar branch. It appears that taking benefit of the fact tat the defd. no.3 has not made debit entry in its account, the aid M/s Arun Electricals closed its account with the defendant no.3. The plaintiff who had deposited cheque in the amount of Rs.1750000 in his account with defendant no.2 is at no fault. The defendants being bankers who are dealing with public money should act carefully and give goods service to the customers. It is due to negligence of defendant no.3 in not debiting the amount in question from account of M/s Arun Electricals and the cleverness of said M/s Arun Electricals who close its account with defendant No. 3 which has made the plaintiff to suffer. It is not a case in which the payment is made by mistake to the plaintiff but the plaintiff having deposit the cheque of Rs. 175000 in its account with defendant no.2/M/s Arun Electricals having its account with defendant no.3 in currency at the relevant time, in usual course the plaintiff was entitled to credit of this amount in his account which was done. It is not a payment made by mistake by defendant bank. The mistake lies else where i.e. in not debiting the amount of Rs.175000 from the account of M/s Arun Electricals so the recover of the amount by taking recourse to Section 12 of Indian Contract Act should be made by defendants from said M/s Arun Electrical instead of exercising lien of the amount in question in the account of the plaintiff. The case supra and Sales Tax Versus Kanhiya Lal Mudand Lal Saraf relief by defendants are not applicable to the present case as in those cases the payments were made by mistake to the persons who was not entitled to them while in the present case the plaintiff was entitled to it. The facts that neither the cheque was returned to the plaintiff dishonoured within reasonable time not any intimation was given to the plaintiff regarding loss of cheque or any other reason shows that the cheque amount was rightly credited to the account of the plaintiff.

(Underlining added)

4. The trial Court has thus held that the admitted facts were that the cheque was lost and inspite of the lapse of a long period i.e. about one year and four months, the fact that the cheque drawn by M/s Arun Electricals was not honoured was not brought to the notice of the respondent/plaintiff/customer and in the meanwhile M/s Arun Electricals had closed its account with the Chandni Chowk Branch of the appellant-Bank and consequently the respondent/plaintiff could not recover the amount from M/s Arun Electricals.

5. The trial Court has accordingly held that it is due to the negligence of the appellant, in not debiting the amount in question for a long period of time, that

loss has been suffered by the respondent/plaintiff and therefore there should not be any lien which can be marked in the account.

6. Learned counsel for the appellant argued that there is no negligence of the appellant/Bank and sought to rely upon the Reserve Bank of India's circular dated 3.2.1995. Though this circular is not on the trial Court record as it was not filed, let us still examine the same. This circular reads as under:-

TRUE COPY OF LETTER/CIRCULAR DATED 3RD FEBRUARY, 1995 OF RESERVE BANK OF INDIA, NEW DELHI

RESERVE BANK OF INDIA

NATIONAL CLEARING CELL

JEEVAN BHARTI BUILDING

TOWER I

124, CANNAUGHT CIRCUS,

NEW DELHI

DEL. NCC. NO. CIR. 950 CZ/41.01.01/94-95 3RD FEBRUARY,
1995

ALL MEMBER AND SUB-MEMBER BANKS OF
NEW DELHI BANKERS CLEARING HOUSE

DEAR SIRS,

MANAGEMENT OF CLEARING HOUSE - INSTRUMENTS LOAN IN TRANSMIT-COURSE OF ACTION. WE HAVE BEEN RECEIVING REFERENCES FROM MEMBER BANKS FOR SOLVING THEIR CLEARING DIFFERENCES ARISING OUT OF THE FOLLOWING:- 1. INSTRUMENTS LISTED TO DRAWEE BANKS BUT NOT RECEIVED BY THEM (LOST IN TRANSMIT). 2. INSTRUMENTS TRANSMITTED UNPROCESSED AND NOT DELIVERED TO THE DRAWEE BANKS. THE MATTER HAS BEEN EXAMINED BY OUR CENTRAL OFFICE AND ACCORDINGLY MEMBER BANKS ARE ADVISED TO TAKE THE FOLLOWING STEPS: (A) THE LAST HOLDER OF THE CHEQUE/DRAFT, WHO HAS GIVEN THE SAME FOR COLLECTION, SHOULD BE ADVISED TO OBTAIN DUPLICATE CHEQUE OR DRAFT AND PRESENT THE SAME FOR PAYMENT. (B) THE PAYING BANK SHOULD RECORD A STOP PAYMENT INSTRUCTION AGAINST THE MISSING CHEQUE/DRAFT; AND

(C) THE CONCERNED BANKS HOLDING FUNDS WITH IT ON ACCOUNT OF ITS CUSTOMER SHOULD NOT PART WITH THE MONEY TO THE CUSTOMER WHEN THE BANK WHICH HAS PAID, HAS INFORMED IT OF THE LAPSES/LOSS OF INSTRUMENTS ETC. IT MAY NOT BE FAIR ON THE PART OF A BANK TO REFUSE TO RETURN MONEY TO ANOTHER BANK BY RAISING TECHNICAL OBJECTION, THAT THE LOSS OF INSTRUMENT OR LISTING DISCREPANCIES ETC. WERE NOT

POINTED OUT IN THE RETURN CLEARING SO LONG AS THE MONEY IS IN ITS HANDS.

MEMBER BANKS MAY PLEASE CONFIRM RECEIPT OF THIS CIRCULAR AND IMPLEMENTATION OF THE COURSE OF ACTION INDICATED THEREIN.

YOURS FAITHFULLY,

SD/-

(G.RAMESH)

O C M OFFICER

(underlining added)

Reliance is placed upon para 2(C) of this circular that the appellant/Bank was entitled to withhold the funds and mark the lien on the account. It is argued that on the basis of this para 2(C) once the cheque is stated to be lost, lien can be marked in the account.

7. Firstly, in my opinion this circular has no application to the facts of the case because this circular does not entitle a Bank to commit negligence in dealing with the customer which causes loss to its customer. The subject suit was a suit for the loss caused to the plaintiff/respondent/customer on account of negligence of the appellant/Bank and which has been proved on record. Further, a reference to para 2(C) of this circular dated 3.2.1995 shows that it applies to different banks and not to different branches of the same bank. The object of para 2(C) is to protect loss being fastened by one bank upon another. The object of this is not to allow negligence inter se branches of the same bank. In any case the plaintiff/respondent/customer is not concerned with this issue, once negligence is otherwise established and proved.

8. A civil case is decided on balance of probabilities. Balance of probabilities establish on record that there was negligence committed by the appellant/Bank which caused loss to its customer/respondent/plaintiff and for which the appellant has been held liable.

9. In view of the above, there is no merit in the appeal and the same is accordingly dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.