

(2012) 03 DEL CK 0559

In the Delhi High Court

Case No : Regular First Appeal No. 250 of 2004

Sh. Harjeet Singh

APPELLANT

Vs

Punjab and Sind Bank

RESPONDENT

Date of Decision : 29-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Punjab High Court Rules and Orders — Rule 15

Citation : (2012) 3 BC 121 : (2012) 190 DLT 85

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Subhash Oberoi, for the Appellant; A. Kumar for Mr. Pallav Sexena, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular First Appeal filed u/s 96 of the Code of Civil Procedure, 1908 is to the impugned judgment of the Trial Court dated 9.2.2004 by which suit of the appellant/plaintiff for recovery of Rs. 5,79,000/- against the respondent-bank was dismissed by upholding the action of the respondent-bank in adjusting an amount of Rs. 5,00,000/- given by the appellant/plaintiff as lien for recovery of the amounts which were due from the father of the appellant, one Sh. Baljeet Singh. The facts of the case are that the appellant/plaintiff is the son of Sh. Baljeet Singh. Both the father and son had Savings Bank Accounts with the respondent-bank. On 19.11.1993 the father-Sh. Baljeet Singh deposited a bank draft no. 219975 in his Savings Bank Account 2185 and amount of which draft was credited in the account of the father on 20.11.1993. This bank draft was in fact a forged bank draft and when the respondent-bank came to know of this it wrote a letter dated 3.12.1993 to the father-Sh. Baljeet Singh, and which letter was received by the appellant/plaintiff as the father-Sh. Baljeet Singh was not in Delhi. The appellant/plaintiff alleges that the official of the bank said that the father of the appellant/plaintiff would be arrested in a case of fraud and therefore the appellant/plaintiff was coerced into

signing a letter marking a lien for the amount of the bank draft of Rs. 5,00,000/- in the personal account of the appellant/plaintiff. The letter of the appellant/plaintiff to the respondent-bank is also of the same date, i.e. 3.12.1993. It is further pleaded that subsequently on 2.5.1994, the appellant/plaintiff wrote a letter to the respondent-bank withdrawing the lien created by him vide his letter dated 3.12.1993 and whereafter the respondent-bank informed the appellant/plaintiff that his Savings Bank Account was debited with the sum of Rs. 5,00,000/-. Pleading that the debiting of his account for the sum of Rs. 5,00,000/- was illegal after the appellant/plaintiff had withdrawn the lien granted by the letter dated 3.12.1993 in terms of his letter dated 2.5.1994, the subject suit for recovery of Rs. 5,79,000/- came to be filed.

2. In the written statement, the respondent-bank took up a stand that there was no coercion when the appellant/plaintiff issued the lien letter dated 3.12.1993 and which was issued to save his father from criminal prosecution and civil action. It was further pleaded by the respondent-bank that the letter granting lien in the account was voluntarily given for saving the father from the consequences of having encashed a forged bank draft. It was further pleaded that besides the father and son maintaining Savings Bank Accounts in their individual names, there was also an account in the respondent-bank in the name of M/s Balsons Paint Industries (India) in which both the father and son were partners and the amount of the forged bank draft was got transferred to the account of M/s Balsons Paint Industries (India), i.e. benefit was taken both by the father as also the appellant/plaintiff/son of the amount of the forged bank draft.

4. After the pleadings were completed, the Trial Court framed the following issues:-

1. Whether the suit is bad for non-joinder of necessary parties? (OPD)
2. Whether the defendant was duly authorised and fully justified in debiting the account of the plaintiff for a sum of Rs. 5 lacs? (OPD)
3. Whether the plaintiff is entitled to recover Rs. 5,79,000/- from the defendant? (OPD)
4. Whether the plaintiff is entitled to any interest and if so, at what rate and for which period? (OPP)
5. Relief.

4. The main issue was issue no. 2, and with regard to this issue the Trial Court has held as under:-

10. ISSUE NO. 2:-

I would like to mention dates of the various documents, before I proceed further with the matter.

- i. Draft was deposited by Mr. Baljeet Singh on 19.11.1993.
- ii. It was credited to account of Baljeet Singh on 20.11.1993.
- iii. Bank wrote a letter to Baljeet Singh regarding the fraudulent draft on 02.12.1993.
- iv. Plaintiff, thereafter, wrote a letter creating lien Ex.PW1/3 on 03.12.1993.
- v. Plaintiff wrote a letter withdrawing the lien, which is Ex.DW1/X-1 on 02.05.1994.
- vi. Bank debited the account of the plaintiff on 03.06.1994.

11. So according to learned counsel for plaintiff, plaintiff had withdrawn his letter by which lien was created on 02.05.1993. Once the lien is withdrawn back ceased to have any right to debit account of the plaintiff. At the most, they could have debited the account before 02.05.1994.

12. If we go through the documents filed by the parties, we find that lien, which had been created by the plaintiff was not of temporary nature. It nowhere mentions that it was to remain in force only till the time Mr. Baljeet Singh returned.

13. Defendant bank acting upon the said lien created by the plaintiff did not lodge FIR against Mr. Baljeet Singh. Defendant bank acted upon the lien and did not proceed against Mr. Baljeet Singh because of the said letter Ex.PW1/3. Defendant bank gave away its valuable right because of Ex.PW1/3. To my mind, plaintiff could not have withdrawn the said letter unilaterally without concurrence of defendant bank.

14. Moreover, the amount of fraudulent draft was created in the account of Baljeet Singh, from there it was transferred to account of a firm, in which plaintiff and Baljeet Singh were partners. Plaintiff enjoyed fruits of the said fraudulent draft. Plaintiff in his cross-examination had admitted that his father, his brothers and he himself were partners in M/s Balsons Paints. He further admitted that they had an account in name of M/s Balsons Paints in Punjab and Sind Bank. He claimed further that he did not know whether the amount of Rs. 5 lacs had been transferred to account of M/s Balsons Paints from the account his father on 26.11.1993. He did not deny that the amount had not been transferred to account of M/s Balsons Paints. It means that the proceeds of the fraudulent draft were transferred to the firm of M/s Balsons Paints and plaintiff in deed enjoyed the money. Thus, he could not have withdrawn the lien without taking concurrence of the defendant bank.

15. Plaintiff further admitted that he had not filed complaint against the so called forcible extortion of the lien. Thus, it seems that he had voluntarily created lien on his account to avoid prosecution of his father. This was sufficient consideration for the defendant bank and as I have already observed that plaintiff could not have withdrawn the lien. Thus, the defendant bank was fully justified in debiting

the account of the plaintiff in sum of Rs. 5 lacs. This issue is decided in favour of defendant bank and against the plaintiff.

(underlining added)

5. A reading of the aforesaid paragraphs shows the following:

i) Never was written a letter by the appellant/plaintiff to any higher officials in the respondent-bank that the letter dated 3.12.1993, Ex.PW1/3 had been written on account of alleged coercion. I may note that the letter of the respondent-bank of the same date i.e. 3.12.1993, and which was received by the appellant/plaintiff, has been proved and exhibited in the Trial Court as Ex.P1.

ii) The creation of lien is a contract and once lien is granted by a person on his account for repayment of dues of another person, such a lien could not have been unilaterally withdrawn.

iii) There is nothing written in the letter, Ex.PW1/3 that the lien was a "temporary lien" as was alleged by the appellant/plaintiff.

iv) On account of the lien having been created by the appellant/plaintiff for the amount of forged bank draft benefit was received by the father of the appellant/plaintiff inasmuch as because of the lien created no criminal prosecution was launched for getting encashed a forged bank draft, and also no civil proceedings for recovery were initiated .

v) The amount of Rs. 5,00,000/- which was credited to the account of the father, Sh. Baljeet Singh was ultimately transferred to the account of the partnership firm-M/s. Balsons Paint Industries (India) and in which partnership firm-M/s. Balsons Paint Industries (India), the appellant/plaintiff was a partner, and therefore, he also received benefit of the value of the forged bank draft.

6. In addition to the above, I may note that when in the cross-examination of the appellant/plaintiff, a specific suggestion was put that the amount of Rs. 5,00,000/- was transferred to the account of the M/s. Balsons Paint Industries (India), all that the appellant/plaintiff replied was that "he does not know". There is no specific denial that the amount was not transferred from the account of the father, Sh. Baljeet Singh to the account of the partnership firm-M/s. Balsons Paint Industries (India). The cross-examination of the appellant/plaintiff also further showed that never any protest or complaint was lodged with the respondent-bank or the higher authorities with respect to the letter, Ex.PW1/3 having been written under coercion. An important aspect which was conceded by the appellant/plaintiff was that no proceedings were ever initiated by him against the father for recovery of Rs. 5,00,000/-, and in fact never was any notice issued by the appellant/plaintiff to his father. It is also categorically admitted by the appellant/plaintiff in his cross-examination that it was correct that on giving of lien on his account by him, no criminal or civil action was taken by the respondent-bank against the father.

7. Learned counsel for the appellant/plaintiff cited before this Court three judgments reported as *Leela Manchanda Vs. State Bank of India and Others*, , *Anumati Vs. Punjab National Bank*, & *Vijay Kumar Vs. Jullundur Body Builders and others*, . In the judgment in the case of *Leela Manchanda(supra)*, a learned single Judge of this Court held that where excess amount of pension was wrongly credited into a Savings Bank Account of a person, it was necessary that the employer (which was Indian Agricultural Research Institute, i.e. an arm of the "State) ought to have issued a notice and should have passed a reasoned order before proceeding to get the account of the employee frozen. In the case of *Anumati (supra)*, the Hon"ble Supreme Court held that an account which is jointly owned by two persons cannot be pledged only by one account-holder. In the judgment of *Vijay Kumar(supra)*, a learned single Judge of this Court held that once there is a fixed deposit receipt for the amount pledged for a bank guarantee, on the bank guarantee being discharged, the fixed deposit receipt cannot be held on by the bank by continuing to claim lien thereon.

8. I fail to understand as to how at all even a single judgment cited on behalf of the appellant has any applicability in the facts of the present case where there is a contract of lien for an amount of Rs. 5,00,000/-, and which was voluntarily given to save the father of the appellant/plaintiff from criminal and civil proceedings on account of getting encashed a forged bank draft, and also the fact that the amount of the forged bank draft was credited into an account of a partnership firm in which the appellant/plaintiff was also one of the partners. Obviously, the appellant/plaintiff is trying to be clever by half, and it must be in collusion with his father, inasmuch as, the father was not made party to the suit, and the Trial Court in fact while dealing with issue no. 1 has held the suit to be bad for non-joinder of the father as a party to the suit. As already stated above, the appellant/plaintiff, besides not making the father as a party to the suit, admitted that he has initiated no action against the father with respect to the amount of Rs. 5,00,000/- for which the lien was given. I may only again reiterate that a lien is a bilateral act of a contract and a unilateral action withdrawing the lien cannot be permitted more so in the facts of the present case where not only the father of the appellant/plaintiff got the benefit of not launching of any criminal or civil proceedings but also the fact that there is a loss to the respondent-bank of the amount of the forged bank draft.

9. In view of the above both, the suit as also the appeal are an abuse of process of law on behalf of the dishonest litigant seeking to make away with the amount which was in fact payable to the respondent-bank. Appeal is therefore dismissed with costs of Rs. 25,000/-. I may note that Supreme Court in the recent judgment of *Rameshwari Devi and Others Vs. Nirmala Devi and Others*, has held that it is high time that for dishonest litigations, actual costs should be awarded so as to preempt filing of false cases and for due compensation to the successful party. A Division Bench of three Judges of the Supreme Court in the case of *Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI)*, has also observed that the opposing party who has incurred costs of the litigation must

also be suitably compensated by actual costs. I am also empowered to impose actual costs by virtue of Volume V of the Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15. Appeal is accordingly dismissed with costs as stated above.