(1998) 02 DEL CK 0042

In the Delhi High Court

Case No : Suit No. 889/89

State Bank of India APPELLANT

Vs

M/s. Jackson Maye and Co. and Others RESPONDENT

Date of Decision : 27-02-1998

Acts Referred:

Citation : (1998) 2 AD 836 : AIR 1998 Delhi 206 : (1998) 3 CivCC 240 : (1998) 45 DRJ 38 : (1999) 1 RCR(Civil) 12 : (1998) 3 RCR(Criminal) 595

Hon'ble Judges : Kripa Shankar Gupta, J

Bench : Single Bench

Advocate : Sh.S.C. Sharda, for the Appellant;

Judgement

K.S.Gupta, J.—plaintiff filed suit alleging that it is a corporate body constituted under the State Bank of India Act, 1955 and is carrying on business of banking including at Model Town, New Delhi. S.K. Basu has been authorised to sign and verify the plaint and to institute the suit. Defendant No. 1 is a partnership concern of which defendants 2 to 5 are the partners. Defendant No. 1 had a current account No. 30201 since the year 1974 in the Model Town Branch of the plaintiff Bank. It is alleged that the plaintiff purchased two cheques from defendant No. 1. Cheque bearing No. 690627 for Rs. 23,995/- purchased on May 20, 1981 was issued by M/s. Aggarwal Industries, Amritsar defendant No. 7 in favor of defendant No.1. Cheque purchased on June 7, 1981 bearing No. 609405 for Rs. 27,420/- was issued by M/s. Jalan Sales Corporation, Rajpura defendant No. 6 favouring defendant No. 1. After the purchase of both the said cheques the amount equal to the value thereof was credited in the aforesaid current account of defendant No.1 and cheques were sent for collection to the branches of the plaintiff Bank at Amritsar and Rajpura. plaintiff Bank has got about 7000 branches in India. Reconciliation of the accounts of all the branches in respect of the DD purchases is conducted by the head office. Due to rush and volume of work it some-times take years together to reconcile the entries. On receipt of intimation on December 22, 1985 from I.O.A. Department, Bombay that the entries in regard to the said cheques remained unresponded, Model Town Branch of the plaintiff checked the accounts and found that the aforesaid current account of defendant No. 1 had been closed in 1983 and the entries in respect thereto had not been responded. Thereafter the Model Town Branch took up the matter with the branches at Amritsar and Rajpura whom the cheques were sent for collection, by the letter dated February 25, 1986. Amritsar Branch of the plaintiff vide its duplicate list of originating Debt Remittance Schedule No.DDP-2433 for Rs. 23,995/- advised that the cheque in question was returned unpaid vide advice DDP No. 690. It seems that the intimation sent by the Amritsar Branch was not received by the Model Town Branch. Rajpura Branch of the plaintiff Bank also intimated Model Town Branch that no cheque for Rs. 27,420/- was received by it. Thereafter the matter was taken up with the Indian Overseas Bank, Rajpura Branch through Rajpura Branch of the plaintiff Bank vide letter dated April 2, 1986. By the letter dated April 9, 1986 the Indian Overseas Bank informed that defendant No. 6 had instructed it to stop payment of cheque bearing No. 609408 dated June 7, 1981 for Rs. 27,420/- issued in favor of defendant No. 1. Thus, both the aforementioned cheques had been dishonoured. Thereafter, on being contacted defendant No. 1 refused to pay the amounts of the cheques. Finding no other way out the amounts of the cheques were transferred to the Branch Protested Bill Account. It is stated that defendant No.1 had also an account in Chawri Bazar Branch of the plaintiff Bank and an amount of Rs. 9,596/86P lying in that account was transferred to Model Town Branch towards partial adjustment on March 10, 1988 leaving a balance of Rs. 41,818/14P. Defendants were served with legal notice dated August 19, 1988 and August 22,1988 but they did not pay the said amounts with interest. It is stated that plaintiff is entitled to recover the said amounts with interest @ 16.5% per annum which was the prevalent rate of interest applicable to such transaction from the date of the purchase of the cheques till payment with quarterly rest and the total amount including interest up to December 6 1988, comes to Rs. 1,90,200/-. It was prayed that a decree for recovery of Rs. 190,200/- be passed in favor of the plaintiff and against the defendants.

2. Defendants 1 to 5 contested the suit by filing a joint written statement. Defendant No. 6 filed a separate written statement. Defendant No. 7 who was served by publication in ''Tribune'' for February 20, 1991, did not choose to contest the suit.

3. In the written statement it is admitted by defendant No. 6 that cheque No. 609405 dated June 7, 1981 for Rs. 27,420/- was issued by it in favor of defendant No. 1. However, it is alleged that as stated by defendants 1 to 5 said cheque was misplaced by them and they telephonically requested it to send a fresh cheque in lieu thereof. Defendant No. 6 settled the accounts with defendants 1 to 5 by issuing a fresh cheque No. 609406 dated June 16, 1981 for Rs. 25,000/- in the name of defendant No.1. Defendant No. 6 also issued instructions to Indian Overseas Bank, Rajpura to stop payment of cheque No. 609405 dated June 7, 1981. It is denied that defendant No. 6 is liable to pay any

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amount to the plaintiff-Bank.

4. Defendants 1 to 5 in their written statement have further raised counter-claim for Rs. 14,060/86P. It is alleged that the plaintiff is stated to have been informed by its head office on December 22,1985 that the entries in regard to both the cheques in question remained unresponded. Therefore, the suit ought to have been filed latest by December 21, 1988 and the suit instituted in 1989 and is, thus, barred by time. It is further stated that the plaintiff by having not intimated the defendants about the loss/dishonour of the cheque in question had impaired the remedy of defendants 1 to 5 against the drawers i.e. defendants 1 to 5 against the drawers i.e. defendants 6 & 7 and thus they stood discharged of their liability to pay the amounts of the cheques to the plaintiff. Further, cheques in question have not been returned to defendant No. 1 till date. It is denied that the cheques in question were purchased by the plaintiff as alleged. It is stated that as per the understanding the plaintiff had been providing credit for the amounts of the cheques on the dates they were deposited. Model Town Branch of the plaintiff had no legal right to adjust Rs. 9,596/86P lying to the defendant''s credit in Chawri Bazar Branch against the amount of the cheques in question. That amount Along with interest of Rs. 4,464/- @ 18% per annum with effect from October 20, 1986 to May 19, 1995 has been claimed by way of counter-claim by defendants 1 to 5.

5. In the replication-cum-written statement the plaintiff inter alias denied the liability to pay Rs. 14,060/86/- to defendants 1 to 5.

6. In the replication filed to the written statement of defendant No. 6, defendants 1 to 5 have alleged that two cheques bearing Nos. 609405 dated June 7, 1981 for Rs. 27,420/- and 609406 dated June 12, 1981 for Rs. 25,000/- were given by defendant No. 6 towards the payment of bill No. 65 dated May 2, 1981 for Rs. 56,100/-. It is denied that said cheque No. 609406 was issued in lieu of cheque No. 609405 as alleged. It is further denied that defendant No. 6 was ever informed on telephone regarding loss of said cheque No. 609405.

7. On the Pleading of the parties the following issues were framed on April 21, 1992:-

1. Whether the suit has been instituted and the plaint signed and verified by a duly authorised person?

2. Whether the suit is within time?

3. Whether the suit against defendant No. 1 is not maintainable as framed?

4. Whether the plaintiff bank acted diligently in the collection of payments of cheques. If not, its effect?

5. Whether the plaintiff acted negligently in not having re- turned the dishonoured cheques to the defendant No. 1 to 5? If so, its effect?

6. What is the effect of not serving a notice an defendant No. 1 of dishonoured

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cheques?

7. To what amount the plaintiff is entitled from, the defendants on account of interest and what rate and for what period?

8. Whether defendant No.1 informed the defendant No. 6 that cheque No. 609405 dated 7.6.1981 for Rs. 27,420/- had been misplaced and the defendant No. 6 in lieu of the above mentioned cheque issued another cheque No. 609406 dated 16.6.81 for Rs. 25,000/- to defendant No.1 ?

9. Whether defendant No. 1 to 5 are entitled to recover any amount from the plaintiff?

10. Whether defendants No. 1 to 5 are entitled to interest @ 18% per annum from the plaintiff?

11. Relief.

ISSUES NOS. 1, 2, 3, 4 & 7

8. Onus of proof of these issues was on the plaintiff. Since nobody had been appearing on behalf of the plaintiff-Bank and there was a counter-claim raised by defendants 1 to 5, the suit was ordered to proceed ex-parte against the plaintiff by the order dated October 14, 1996. By that date the plaintiff-Bank had not adduced any evidence. In the absence of evidence all these issues are answered against the plaintiff-Bank.

ISSUES NOS. 5, 6, 9 & 10

9. These issues may be conveniently taken up together for discussion. Submission advanced by Shri S.C. Sharda appearing for defendants 1 to 5 was that according to the plaintiff-Bank it had a current account No. 30901 of defendant No.1 and after purchase of the two cheques Nos. 690627 dated May 20, 1981 for Rs. 23,995/- and 609405 dated June 7, 1981 for Rs. 27,420/- amounts thereof were credited in the said current account which defendant No. 1 withdrew. Aforesaid cheque dated May 20, 1981 was issued by defendant No. 7 while cheque dated June 7, 1981 was issued by defendant No. 6 in favor of defendant No. 1. Cheque dated June 7, 1981 was alleged to have been lost in transit while cheque dated May 20, 1981 was dishonoured by defendant No. 7 on presentation. According to the learned counsel neither cheque dated May 20, 1981 was returned to defendants 1 to 5 nor were they intimated about the loss in transit of cheque dated June 7, 1981 and dishonouring of cheque dated May 20, 1981 by the plaintiff-Bank thereby rendering the remedy barred by limitation of defendants 1 to 5 to recover the amounts thereof from their drawers i.e defendants 6 & 7. Thus, the Model Town Branch of the plaintiff-Bank could not have transferred the amount of Rs. 9,596/86P lying to the credit of defendant No. 1 in Chawri Bazar Branch and adjusted it towards the amounts of the aforesaid to cheques subsequently on March 10, 1988. Defendants 1 to 5 are, Therefore, entitled to recover the aforesaid amount together with interest.

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Strong reliance was placed on a decision of this Court in Syndicate Bank Vs. Swaika Chemical Works & Another, (1987) 61 C C 752.

10. In Syndicate Bank''s case (supra) defendants respondents had presented a cheque for Rs. 2,500/- for encashment while the amount lying to their credit was short by Rs. 436/49P. At the request of the defendants cheque was encased and Rs. 436/49P were debited to their account. When the defendants did not pay the said amount, plaintiff-petitioner Bank instituted a suit for recovery of Rs. 851/64P including interest against the defendants which was dismissed by the trail court. Feeling aggrieved the plain-tiff Bank filed a revision petition. As is manifest from the discussion made in the last but one para of the decision aforesaid cheque for Rs. 2,500/- was sent for collection by the plaintiff-Bank at Amritsar. Same was dishonoured and returned by the Bank at Amritsar to the plaintiff Bank. However, in transit it was got misplaced. Defendant sent three letters dated July 13, 1973, December 21, 1973 and April 17, 1975 to the plaintiff-Bank and asked it to intimate what had happened to the said cheque but no information was sent by the Bank till January 1976. Only submission advanced on behalf of the plaintiff Bank in this Court was that the Bank had to collect the cheque at the risk of the defendants and had no further responsibility except to send the cheque for collection and the suit was, Therefore, erroneously dismissed. Submission was, however, repelled observing:-

"In any case even if the cheque had been misplaced it was the duty of the plaintiff Bank to intimate to the depositor as to what had happened. In the present case, no such intimation was sent till January 1976 when obviously the limitation of the depositor against the drawers of the cheque had already expired and the defendant could never recover that amount. I find no merit in this petition which is dismissed."

11. In support of the counter-claim defendants 1 to 5 have examined Jai Kishan Gupta, defendant No. 2 as DW1. It is in his deposition that the plaintiff-Bank informed them about the dishonour of the two cheques in May 1996 by means of a letter dated May 28, 1986. In reply thereto they sent letter Ex.P1 dated June 18, 1986. plaintiff-Bank never returned the two cheques after they were dishonoured. By the letter Ex.P1 defendant No. 1 had repudiated the liability to pay the amounts of both the cheques on the grounds that neither the cheques were received back by them nor any intimation regarding non-encashment thereof was sent to them by the plaintiff-Bank. Obviously, it was through the letter dated May 28, 1986 that defendant No. 1 was informed for the first time about the loss/dishonour of the aforesaid cheques dated May 20, 1981 and June 7, 1981 by the plaintiff-Bank and by that time remedy of defendant No.1 to recover the amounts thereof from their drawers i.e. defendants 6 & 7 had become barred by limitation. Ratio in Syndicate Bank''s case (supra), thus applies on all fours to the facts of this case. Model Town Branch of the plaintiff-Bank, Therefore, could not have legally appropriated the amount of Rs. 9,596/86 lying to the credit of defendant No.1 in Chawri Bazar Branch towards the

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amounts of the aforementioned two cheques.

12. Needless to repeat that by way of counter-claim defendants 1 to 5 in addition to the refund of amount of Rs. 9,596/86P has also claimed interest thereon amounting to Rs. 14,060/86P @ 18% per annum with effect from October 20, 1986 to May 19, 1989. Testimony of Jai Kishan Gupta DW1, however, is completely silent on interest. In the absence of evidence, defendants 1 to 5 must be held to be not entitled to recover the aforesaid amount by way of interest. Issues are answered accordingly.

ISSUE NO. 8:

13. In the absence of evidence of defendant No. 6 on whom the onus of this issue was, the issue is answered in negative.

RELIEF:

14. In view of findings on the said issues, suit of the plaintiff is dismissed. Counter-claim preferred by defendants 1 to 5 is decreed for Rs. 9, 596/86P with interest pendente lite and future @ 9% per annum thereon. No order as to costs.

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