(2010) 12 DEL CK 0239

In the Delhi High Court

Case No : Regular First Appeal No. 42 of 1996

Syndicate Bank APPELLANT

Vs

Bank of Baroda and Another RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2010) 12 DEL CK 0239

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Ajant Kumar, for the Appellant; Arun Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The challenge by means of the present appeal u/s 96 of the Code of Civil Procedure, 1908 (CPC) is by one of the Defendants, namely M/s Syndicate Bank, which has been held jointly and severely liable with the Defendant No. 1/Bank of Baroda/Respondent No. 1 under the money decree to the Respondent No. 2/plaintiff.

2. The facts of the case are that Respondent No. 2/plaintiff filed a suit for recovery of Rs. 32,865.30 along with interest at 12% per annum on the ground that there have been fraudulent withdrawals from his saving bank account by four entries, of which two were major, being through encashment of cheques of Rs. 9,000/- and 15,000/-, both dated 6.10.1978 and the other two entries of Rs. 4000/- and Rs. 1000/- being through self cheques dated 7.10.1978 and 9.10.1978. The Respondent No. 2/plaintiff contended that all his transactions in the saving bank account prior to the disputed entries were through withdrawal slips and he never asked for or got issued any cheque book with respect to the saving bank account.

3. By the impugned judgment, the trial court by a detailed judgment running into as many as 65 pages has very exhaustively and thoroughly examined the

testimonies of all the witnesses including that of the handwriting experts, the circumstances of the case, the legal position and has arrived at a finding that the withdrawals were fraudulently made from the saving bank account of the Respondent No. 2 and the Respondent No. 1 bank/Defendant No. 1 and the Respondent No. 2/Defendant Nos. 2 respectively were guilty of negligence and collusion in allowing the fraudulent encashment of the cheques in clearing as also through self cheques.

4. The Defendant No. 1/Bank of Baroda, with whom the Respondent No. 2 had a saving bank account, has not challenged the judgment and decree. The judgment and decree is therefore final so far as the Bank of Baroda/Respondent No. 1/Defendant No. 1 is concerned. The challenge is laid only by Defendant No. 2 which was the banker which opened the account and through which account the cheques were collected by it on behalf of its customer one Sh. Satpal.

5. As regards, the liability of the Appellant/Defendant No. 2 is concerned, the trial court has dealt with the same from paras 71 to 78 of the judgment. In these paras, it has been found, inter alia, that the account of Mr. Satpal was opened only with the deposit of Rs. 20/- and soon thereafter, two cheques were encashed in the said account totaling to Rs. 24,000/- which itself should have aroused suspicion with the officers of the Appellant bank at least after the first encashment. It is trite and could not be disputed by the learned Counsel for the Appellant that various circulars have been issued by the Reserve Bank of India (RBI) with respect to operation of the accounts opened with miniscule amounts, in which huge amounts are thereafter credited and withdrawn. The present case clearly shows negligence of the officers of the Appellant bank with respect to the operation of the account. In fact, there is negligence also with respect to opening of the account because though the Appellant bank claimed that the account was validly opened with introduction of one Mr. Mangla however, the said Mr. Mangla was not even brought into the witness box. In fact no steps were taken thereafter to contact and seek recovery from Mr. Satpal or Mr. Mangla.

6. Learned Counsel for the Appellant sought to place reliance upon State Bank of India Vs. The United Commercial Bank Ltd. and Others, , however, the said case does not deal with the situation as to when a collecting banker can be exempt from liability although negligence and collusion of its officers and staff is found as a matter of fact on the record. In the facts of the present case, in view of the detailed findings and conclusions of the trial court, with regard to the negligence of the Appellant bank, this judgment would therefore not be applicable.

7. This Court sitting as an Appellate Court would not be entitled to interfere with the detailed findings of facts and conclusions of the trial court merely because another view is possible, though of course in the facts of the present case only one view was possible and which has been taken by the court below in its detailed and thorough judgment. There are no ground for interference by this Court sitting in appeal. The appeal is therefore dismissed, leaving the parties to bear their own costs. Trial court record be sent back.