

(2006) 05 DEL CK 0241

In the Delhi High Court

Case No : Regular First Appeal No. 265 of 1986

Syndicate Bank

APPELLANT

Vs

General Sales and Exports and Others

RESPONDENT

Date of Decision : 25-05-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 21, 21(1), 96

Citation : (2006) 05 DEL CK 0241

Hon'ble Judges : Swatanter Kumar, J;S.L. Bhayana, J

Bench : Division Bench

Advocate : M.B. Rana, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—This Regular First Appeal u/s 96 of the CPC (for short "CPC") is directed against the judgment and decree dated 5.4.1986 passed by the learned Additional District Judge, Delhi decreeing the suit of the plaintiff/respondents (in appeal) against the defendant/appellant, M/s. Syndicate Bank, New Delhi.

2. It was the case of the respondents, before the Trial Court that respondent No. 1 was a partnership concern and the other respondents No. 2 to 5 were the partners of the said partnership concern (respondent No. 1). The respondent-firm was dissolved w.e.f. 31.1.1976. The said firm had a current account No. 1391 in the Bank which they had been operating for a considerable time. There were certain disputes between the partners and on 19.11.1975 the bank was informed that the cheques would only be signed by Mr. H.C. Sarna and Mr. R.C. Sarna (respondents No. 1 and 2). The bank duly acted upon it and even started sending the statement of accounts to the concerned. Both the partners who were to operate the bank account left for Frankfurt on 24.2.1977 and thereafter returned to India on 12.3.1977 and 14.3.1977 respectively. On 12.4.1977, a statement was received by them from the bank stating that nearly 14 cheques during the periods 26.2.1977 to 4.3.1977 had been encased totalling up to Rs.

62,336/-. The plaintiffs had not issued any of these cheques and according to them, these withdrawals were unauthorised and were based on forged documents. They were neither signed nor filled in by the partners of the respondent.

3. The appellant filed a written statement and took the objection that the suit was barred by time and the same is not maintainable. They denied any discrepancy on their part and prayed that the suit be dismissed being mischievous. On the pleadings of the parties, the following issues were framed:

1. Whether the plaintiff is a partnership firm duly registered under the Partnership Act, 1932 and the suit has been instituted by a duly authorised person

2. Whether the plaintiffs did not issue 14 cheques mentioned in para 6 of the plaint, as allowed

3. If issue No. 2 is found in the affirmative, when the defendant is not liable to pay the amount claimed in the suit

4. Relief.

4. The learned Trial Court after deciding the above issues in favor of the respondents, passed a decree for recovery of Rs. 65,000/- with costs Along with interest @ 12% per annum.

5. This decree of the learned Trial Court is challenged before this Court and the grounds pleaded are that the suit was not maintainable, it was barred by time and also the fact that there was no discrepancy of the signatures on the cheques issued by the respondents or any material on record placed by the respondents to prove the said facts. This argument is hardly of any merit. The cheques Ex.D1 to D12 were issued and the hand-writing expert had expressed his opinion that the signatures of the plaintiffs were not there on these cheques and even the specimen signatures which were Ex.AW1/1 and DW1/2 were taken on record. Once the cheques were found to be not bearing the signatures of the respondents, it was obligatory on the Bank to show why these cheques were encashed particularly in view of the fact that both the respondents were abroad during the relevant period. The Bank, in fact, failed to lead any cogent evidence in the case which could substantiate the plea taken by the Bank that they were not responsible for the wrongful encashment of the forged cheques. As far as the plea with regard to the limitation is concerned, it in any case, has no merit as the suit was apparently filed in the year 1977 itself and the court had directed registration of the suit vide order dated 21.12.1977.

6. The suit was initially instituted in the name of the partnership concern. However, subsequently after dissolution of the firm, the partners were permitted to be added as parties on 23.10.1982. On the strength of the provisions of Section 21, the Counsel for the appellant has contended that the suit by the newly added parties was barred by time as it would be deemed to have been

instituted when they were added as parties. This argument is based upon misreading of the provisions of Section 21. Firstly, the counsel has not been able to show as to how the provisions of Sub-section (1) of Section 21 would apply in face of Sub-section (2) of the said Section. Besides that proviso to Sub-section (1) of Section 21 provides a discretion to the court to treat the suit as having been instituted on behalf of the newly added parties even on the date when it was actually instituted, if the mistake on the part of the party was bonafide or was in good faith. In the present case, the suit was initially instituted by the partnership concern on 17.8.1977 and subsequently the names of all the partners were added with the leave of the court. The mistake on the part of the respondents herein, thus would be bonafide and would not support the plea of the appellant that as a result of such omission the suit would become barred by time. Furthermore, the suit on behalf of the partnership concern, in any case, would be within time and in the written statement filed by the defendant no objection was taken that the suit is not maintainable in view of the provisions of the Partnership Act as the partners had not been joined. In fact, no objection was even taken that there had been change in the constitution of the partnership and this was done without taking the Bank into confidence. In absence of any such pleas been specifically taken in the written statement, the contention raised on behalf of the appellant cannot be accepted.

7. Furthermore, it may also be noticed that from the statements of the witnesses of the plaintiff, particularly PW2 Mr. R.C. Sarna, it was clear that they, after intimating the Bank had even got the cheque books issued in their name while both of them were operating the account and had duly informed the bank of the changes in the partnership business. In face of this evidence, the conclusion arrived at by the learned Trial Court can hardly be faulted with. It is the obligation of the Bank to take expected normal care while dealing with its clients and ensure that only those cheques are cleared by the Bank which bears the signatures of their clients and the implicit duty of the Bank cannot be ignored as a result of imaginary basis. Firstly, the bank did not take care to ensure that the cheques presented to the Bank had the genuine signature of their customer and secondly, even before the court they led no evidence to show that the case pleaded by the respondents was not maintainable or was factually incorrect.

8. In these circumstances, we see no reason to interfere in the judgment under appeal and would dismiss the same. Consequently, the appeal is dismissed. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.