

(1986) 11 DEL CK 0023

In the Delhi High Court

Case No : Civil Revision No. 732 of 1977

Syndicate Bank

APPELLANT

Vs

Swaika Chemical Works and another

RESPONDENT

Date of Decision : 21-11-1986

Acts Referred:

Citation : (1987) 61 CompCas 752 : (1987) 12 DRJ 227 : (1987) RLR 119

Hon'ble Judges : N.N. Goswamy, J

Bench : Single Bench

Advocate : M.C. Dewan and H.L. Vijn, for the Appellant;

Judgement

Goswamy, J.—This revision petition by the plaintiff-bank has arisen in the following circumstances :

The plaintiff-bank instituted a suit for recovery of Rs. 851.64. It was alleged that the defendant had presented a cheque for Rs. 2,500 for encashment at the counter while the credit to the plaintiff was short by Rs. 436.49. On the request of the defendant, the cheque was encashed and Rs. 437.49 was debited to the account of the defendant. The defendant never paid that amount in spite of repeated reminders and notice thereby compelling the plaintiff-bank to institute the present suit. The suit amount includes principal and the interest at the usual rate.

The suit was contested by the defendant. It was pleaded that the defendants had not taken any overdraft in as much as he had deposited a cheque for Rs. 500 in his account in August, 1972, which had neither been credited to the account of the defendant nor had been returned to the defendant.

2. On the pleadings of the parties, the following issues were framed :

1) Whether the plaint has been signed and verified and filed by a duly authorised person ? Opp.

2) Whether a sum of Rs. 852.64 is due from the defendants to the plaintiff as

alleged in the plaint ? Opp.

3) Relief.

As far as issue No. 1 is concerned, there is no dispute that the suit was filed by a duly authorised person. On issue No. 2, the learned trial judge found that the defendant had deposited a cheque for Rs. 500 in his account which was dated August 8, 1972. The plaintiff-bank had neither credited that amount to the account of the defendant nor had sent any intimation to the defendant as to what had happened to the cheque till January, 1976. Consequently, it was held that the plaintiff-bank had been negligent in handling the cheque deposited by the defendant and, as such, the suit was dismissed.

3. I have heard learned counsel for the petitioner and have also gone through the various letters written by the bank and the defendant. It is not disputed that a cheque was deposited on August 10, 1972. According to the petitioner, the cheque was sent for collection at Amritsar. The same was dishonoured and was returned by the Amritsar Bank to the plaintiff-bank. However, in transit, it got misplaced and was not received back by the plaintiff-bank. All this may be true, but the question arises whether the plaintiff-bank was expected or was duty bound to intimate to the defendant as to what had happened to his cheque. The defendant had specifically written three letters to the plaintiff-bank which are of July, 13, 1973, exhibit D-1, December 21, 1973, exhibit D-2, and April 17, 1975, exhibit D-3. In all these letters, the defendant had given full particulars of the cheque and the date of its having been deposited and had asked the plaintiff-bank to intimate as to what happened to the cheque. Admittedly, no intimation at all was sent by the plaintiff-bank till January, 1976. In the circumstances, the defendant presumed that the cheque probably had been wrongly deposited in some other account or was lying in the suspense account and he was telling the plaintiff-bank to verify as to what had happened. The negligence is clearly established on the part of the plaintiff-bank. Mr. Dewan, learned counsel for the plaintiff-bank, states that the plaintiff-bank had to collect the cheque at the risk of the defendant and had no further responsibility except to send the cheque for collection. I am afraid, I cannot accept this contention. The plaintiff-bank is certainly not liable if the cheque had been dishonoured but was duty bound to return the cheque to the depositor. 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, not such intimation was sent till January, 1976, when obviously the limitation of the depositor against the drawer of the cheque had already expired and the defendant could never recover that amount.

4. I find no merit in this petition which is dismissed. Since there is no appearance for the defendant, I leave the parties to bear their own cost.