(2011) 02 DEL CK 0422

In the Delhi High Court

Case No : Regular First Appeal No. 428 of 2001

The Bharat Overseas Bank Ltd. and Another — APPELLANT

Vs

Shri Prasert Sirikuruwan Alias Avtar Singh Gorowara — RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Limitation Act, 1963 — Article 22

Citation : (2011) 02 DEL CK 0422

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This matter is on the ''Regular Board'' of this Court since 17.1.2011. Today, this matter is effective item No. 6 on the ''Regular Board''. Though it is 3.30 P.M. no one has chosen to appear for the parties. I have therefore perused the record and am proceeding to dispose of the appeal.

2. The challenge by means of this regular first appeal u/s 96 of the CPC is to the impugned judgment and decree dated 2.6.2001 whereby the suit of the Respondent/Plaintiff /customer was decreed against the Appellants/ bank for not giving due credit of foreign currency of US Dollars 2000 deposited in cash with the Appellants/bank on 30.10.1976.

3. The facts of the case are that the Respondent/Plaintiff is stated to have deposited US Dollars 2000 in cash with the Appellants/Defendants/ bank on 30.10.1976 and for which a counterfoil was issued duly signed by one Mr. R.D. Sharma, the then Manager of the bank. The Respondent/Plaintiff also separately deposited Travellers Cheques of US Dollars 3000 on 4.11.1976 and for which a fixed deposit receipt was issued. It was the further case of the Respondent/ Plaintiff that he did not visit India from 1976 to 1992 and on checking of his account in 1992 when he came to India, he found that the amount of US Dollars 2000 have not been credited to his account, whereupon, he sent a letter dated

4.8.1992 to the Appellant bank and which was replied by the bank on 14.5.1994. It was contended in the plaint that the Appellant bank was deliberately seeking to create confusion between the cash of US Dollars 2000 deposited on 30.10.1976 and the travellers cheques deposited on 4.11.1976 by contending that the amount of US Dollars 2000 deposited in cash on 30.10.1976 is included in the travellers cheques of US Dollars 3000 for which a fixed deposit receipt was issued.

4. The Appellants/Defendants contested the suit and claimed that no amount of cash of US Dollars 2000 was deposited on 30.10.1976 and the sum of US Dollars 2000 was in fact a part of the travellers cheques of US Dollars 3000 which was credited in the account between 30.10.1976 and 4.11.1976 and for which a fixed deposit receipt was issued.

5. Before the trial court, two main arguments were raised by the Appellant bank. The first was that the suit was barred by limitation and the second was that Respondent/Plaintiff had not deposited any cash of US Dollars 2,000/- on 30.10.1976.

6. The trial court has held the suit to be within limitation because the suit was governed by Article 22 of the Limitation Act, 1963, as per which limitation does not commence with respect to a deposit, unless a demand is made and a suit has to be thereafter filed within 3 years from the date of making of the demand. The demand in this case was made on 4.8.1992 and the suit was filed on 3.8.1995 and therefore the trial court has rightly held the suit to be within limitation. The amount which is deposited by a customer in his saving bank account is a deposit and unless and until a demand is made for repayment and the trial court has rightly so held, the limitation cannot begin. Also, relationship between the bank and his customer is of good faith and once a deposit is proved to have been made in the saving bank account, it does not lie in the mouth of the Appellant bank to dispute the liability on frivolous grounds of limitation.

7. So far as the second defence is concerned, the trial court has referred to the following main aspects for decreeing the suit:

(i) The deposit of cash in US Dollars 2000 was proved by means of counterfoil of the deposit receipt exhibited as Ex. DW1/P1 and in spite of a specific direction of the court to produce Mr. R.D. Sharma, the then Manager of the bank, who received the deposit in cash and signed the counter-foil, the said Mr. R.D. Sharma was not produced by the bank for admission/denial and instead one other officer appeared.

(ii) The Appellant bank admitted that the fixed deposit receipt was with respect to US Dollars 3000 which were deposited through travellers cheques and not in cash and therefore this FDR cannot be confused with the cash of US Dollars 2000 deposited on 30.10.1976. (iii) The Appellant bank at its convenience claimed that old record was destroyed before 8 years of filing of the suit however, for its convenience, the other records of the year 1976 were produced. An adverse presumption was drawn against the bank by the court for concealing the records.

8. I do not find any illegality or perversity in the impugned judgment which calls for interference by this Court in this appeal. After all, the cash deposit was received by a person no less than the Manager of the bank and it does not lie in the mouth of the Appellant bank to contend that Manager was not the authorized person to receive the cash which could have only been received by the cashier. In banking practice as a gesture of goodwill, cash deposited by a privileged customer is received by even Manager of the Banks. The subject account in which the amount of US Dollars 2000 was deposited was an NRI account and it would not be unusual for the Manager himself to receive the cash and issue the receipt. As already stated, Mr. R.D. Sharma was not produced in spite of adjournment of the case several times and repeated directions of the court. Also, it is the Manager of a bank who assigns different duties to different staff members, including approaching a cashier at the counter, and surely thus what a delegatee/cashier could do i.e., signing a counter-foil for cash deposit, could well have been done by the delegator/manager himself. The Appellant bank is not justified in creating confusion between the travellers cheques of US Dollars 3000 which were deposited on 4.11.1976, and which is the date shown in the register filed by the bank itself that the travellers cheques were deposited on 4.11.1976. Therefore, there can be no confusion between a deposit of cash of US Dollars 2000 on 30.10.1976 and deposit of travellers cheques totaling to US Dollars 3000 on 4.11.1976.

9. This Court also feels that it is quite possible that the then Manager of the bank Mr. R.D. Sharma probably pocketed the amount deposited in cash of US Dollars 2000 because the Respondent/Plaintiff was a resident of Thailand and who had immediately left for Thailand after deposit of US Dollars currency in cash on 30.10.1976 and had not returned till the year 1992. If the employee of the bank has committed defalcation, the bank is surely liable once it is proved that the deposit of US Dollars 2000 in cash was in fact made on 30.10.1976 and such deposit is duly poved by the counterfoil receipt Ex. DW1/P1. Merely because two views are possible, this Court will not interfere in the appeal, unless the view of the trial court illegal or perverse. I do not find any illegality or perversity in the impugned judgment and decree. In fact grave injustice would be caused to the Respondent/Plaintiff unless the impugned judgment and decree is sustained.

10. The appeal, therefore being devoid of merits is accordingly dismissed leaving the parties to bear their own costs. The Respondent will be entitled to withdraw the decretal amount deposited in this Court by the Appellants. Trial court record be sent back.

