

THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI

A.S.No.550 OF 2019

JUDGMENT:

Aggrieved by the judgment and decree dated 25.06.2019 in O.S.No.1275 of 2007 (hereinafter will be referred as 'impugned judgment') passed by the learned IX Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar (hereinafter will be referred as 'trial Court'), the plaintiff preferred the present appeal to set aside the impugned judgment.

2. For the sake of convenience, the parties hereinafter are referred to as they are arrayed before the trial Court.

3. The brief facts of the case, which necessitated the appellant to file the present appeal, are as follows:

a) The plaintiff filed O.S.No.1275 of 2007 against defendant Nos.1 and 2 seeking recovery of Rs.5,37,753/-. The brief averments of the plaint are as under:

i) Defendant No.1 got hold of a demand draft bearing No.009494 of plaintiff's Gurushaigunja Branch, Uttar Pradesh and manipulated a DD in his name for a sum of Rs.4,75,560/-dated 19.06.2006. Defendant No.1 in a premeditated scheme had opened

savings bank account No.3009 with defendant No.2 on 26.06.2006. The said account was allowed to be opened by defendant No.2, even without following the rules and regulations/instructions issued by RBI. The antecedents of defendant No.the absolute owner and psoessor of the were not verified and the account was opened in a cursory manner, with introduction from one of its customers/existing account holders. No efforts appear to have been made as to how the account holder, who signed the account opening form of defendant No.1 is acquainted with the applicant, and even the residential address is not verified by the defendant No.2. The defendant No.1 deposited the fabricated demand draft with defendant No.2 to be credited to his SB Account and the same was presented for clearance through Development Credit Bank, A.S.Rao Nagar Branch on 29.06.2006. The said demand draft was honoured by the plaintiff, since its apparent tenor was found to be genuine.

ii) Gurusahaiganj Branch did not respond to the debit advice. The plaintiff bank, which is a centralized clearing house for all the branches of the bank in Hyderabad and Secudnerabad, set up for expeditious clearance of proceeds of the cheques and DDS issued by the Branches of Bank of India, took up the matter with the said Branch. Gurusahaiganj Branch in its turn advised the plaintiff that

the said demand draft did not emanate from their branch, through their letter dated 30.08.2006, which was received by the plaintiff on 04.09.2006. Thereafter, the plaintiff bank lodged a complaint with P.S. Neredmet on 06.09.2006. On the basis of the said complaint, the Neredmet Police have registered FIR No.308 of 2006, dated 08.09.2006 under Sections 468, 467 and 420 of IPC. During the course of investigation, it is revealed that the address furnished by defendant No.1 to defendant No.2 is fake and that defendant No.2 had allowed him to withdraw the entire funds from the account, within a very short span of time. The Police are making hectic efforts to apprehend the accused i.e., defendant No.1.

iii) The plaintiff bank issued a registered notice defendant No.2 and also the Development Credit Bank Limited on 09.10.2006 bringing to their notice the deficiencies on their part in enabling defendant No.1 to encash a forged instrument, resulting in unwarranted loss to the plaintiff and demanded refund of the amount of the DD. The said notice was received by both the presenting bank and clearing bank. The defendant No.2 bank by its reply dated 11.10.2006 denied its liability to repay the amount and tried to justify its action by allowing defendant No.1 to open the account and draw the proceedings, ignoring the fact that he is the

new customer. The defendant No.2 being a collecting Bank shall not get any protection under Section 131 of the Negotiable Instruments Act, in as much as it acted without due diligence in the manner of opening of account by defendant No.1, and collected the instrument with defective title for him. It is thus evident that defendant No.2 had collected a fake instrument and the plaintiff in utmost good faith that defendant No.2 had acted with due caution for defendant No.1 parted with the funds. In view of the fact that defendant No.2 had acted in a negligent manner, and allowed defendant No.1 to withdraw the entire proceeds, it is equally liable to make good the loss, along with defendant No.1 with upto date interest till the date of payment. The defendant No.2 cannot claim protection under Section 22 of the Indian Contract Act also. Hence, the suit.

b) In reply to the plaint averments, Defendant No.1 was set exparte, however, the defendant No.1 filed written statement, the brief averments of which are as under:

i) The plaintiff chosen to attribute negligence on the part of defendant No.2 with malafide intention to cover its deficiencies and circumvent the law and chose to wrongfully lay claim against this defendant. There is no negligence on the part of defendant No.2 in opening the accounts much less the account of defendant No.1.

Defendant No.1 submitted demand draft and for clearing this defendant sent the same through Development Credit Bank, AS Rao Nagar Branch on 29.06.2006 for presentment. The draft is issued by the plaintiff bank and it is deposited by defendant No.1 with this defendant bank for collection and this defendant through its clearing agent i.e., Development Credit Bank Limited, A.S.Rao Nagar Branch collected the proceeds of the draft in the normal course and proceeds were credited to the payees account. This defendant acted prudently without negligence in good faith following the banking practice and guidelines laid down for collection of draft and presented the draft in clearing. Draft issued by the plaintiff bank was paid by the Gurushaigunj Branch (Uttar Pradesh) of the plaintiff bank when presented in clearing in the normal course and the proceeds are credited to the defendant No.1 account. Thus, this defendant, which is only collecting banker, is no way concerned with purported defects in the draft if any and the plaintiff has no manner of right to raise any disputes. The draft was issued by the plaintiff bank itself and paid by the plaintiff banks branch and thereby the plaintiff bank shall have no manner of right to raise any claim against this defendant. It is the responsibility of the paying banker to verify and satisfy the genuineness or otherwise of the draft before making payment and collecting banker is no manner responsible for the

genuineness or otherwise of the draft in law and on facts.

iii) This defendant issued a detailed reply on 11.10.2006 to the notice issued by the plaintiff bank on 09.10.2006, however, the plaintiff filed the vexatious suit. There is no cause of action against this defendant bank

c) Based on the pleadings of both the sides, the trial Court has framed the following issues and additional issue:

1. *Whether the plaintiff is entitled for recovery of the suit amount from the defendants?*
2. *To what relief?*

d) The plaintiff, in support of his contentions, examined its Senior Manager as PW1 and got marked Exs. A1 to A5. On the other hand, on behalf of defendant No.2, its Chief Executive Officer was examined and got marked Exs.B1 to B7. The trial Court on appreciating the evidence on record, has decreed the suit only against the defendant No.1 for recovery of Rs.5,37,753/- and the suit against defendant No.2 was dismissed. Aggrieved by the dismissal of suit against defendant No.2, the plaintiff preferred the present appeal.

4. Heard both sides and perused the record including the

grounds of appeal.

5. The grievance of the plaintiff is that Defendant No.1 is a white collar offender involved in cheating banks of their customer's monies by suing stolen/forged and fabricated negotiable instruments of out station branches of nationalized banks to delay early detection. The defendant No.1 adopted said process and defrauded the plaintiff bank of the suit amount. The defendant No.2 is the banker, who facilitated the illegal activity of the defendant No.1 and is equally liable to make good the loss suffered by the plaintiff due to its negligence in opening the account and allowing the person to draw the entire amount. On the other hand, the defendant No.2 contended that there is no negligence on the part of the defendant No.2 bank in opening the account in the name of defendant No.1 and thereby liability cannot be fixed on it.

6. The contention of the plaintiff is that the trial Court failed to appreciate the fact that burden is cast on defendant No.2 to establish that it opened the account in the name of defendant No.1 without negligence and it failed to discharge the said burden by examining the persons, who worked in the branch at relevant point of time. It is further contended that defendant No.2 examined the person, who is presently incharge of the bank and who stated that

he does not have any personal knowledge about the facts that transpired at the time of opening the account and the same is of no consequence. As seen from the record, even the plaintiff got examined its Senior Manager as PW1, who deposed about the facts of the case based on the records maintained by the branch, which suggests that he is not the person, who was working with the branch of plaintiff bank during the relevant period of time. Moreover, PW1 admitted that he has been working in the plaintiff bank from June, 2016 and whereas the incident in dispute occurred in the year 2006 i.e., ten years prior to the date of joining of PW1 in plaintiff bank. Further, the plaintiff has not even filed any authorisation before the trial Court authorizing PW1 to depose on its behalf. It is always not possible to examine the exact persons, who were holding official positions at the relevant point of time to depose about the facts of the case. Furthermore, the burden of proof as to any particular fact lies on that person, who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. When the plaintiff asserts or makes allegation of negligence in allowing the defendant No.1 to open a savings bank account against defendant No.2 bank, the burden of proving that there is negligence on the part of defendant No.2 is on the plaintiff. As per Section 102 of the Indian Evidence Act, the

burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. The Honourable Supreme Court in **Anil Rishi v. Gurubaksh Singh**¹ observed that ordinarily, the burden of proof would be on the party who asserts the affirmative of the issue and it rests, after evidence is gone into, upon the party against whom, at the time the question arises, judgment would be given, if no further evidence were to be adduced by either side. In the case on hand, both the sides have adduced oral and documentary evidence to discharge burden on their respective sides. Initially the burden was thrown on the defendant No.2, who in turn has discharged its burden by adducing oral and documentary evidence to refute the contention of the plaintiff bank.

7. In the cross examination PW1 admitted that demand draft contains the signature of concerned office and his code number. He further admitted that DD was issued by Guru Sai Gunj Branch, Uttar Pradesh and that the demand draft was honoured after verification of the signatures. It is admitted by PW1 that after passing the demand draft in their bank, amount will be credited to the defendant No.2 bank and thereafter to the account of defendant

¹ (2006) 5 SCC 558

No.1. PW1 deposed that Bank of India, Guru Sai Gunj Branch never complained about missing of DD. These admissions on the part of PW1 makes it clear that only after verification of the signatures on the demand draft and after passing of the demand draft in the plaintiff bank, the amount was credited to the account of defendant No.1. If the contention of the plaintiff that the acts of defendant No.2 allowing defendant No.1 to open account in their bank amounts to negligence, then the acts of plaintiff bank and its branch of Guru Sai Gunj Branch at Uttar Pradesh in issuance of demand draft and passing of the draft, which is alleged to be forged and fabricated, would also amounts to sheer negligence.

8. Though the plaintiff bank lodged complaint against defendant No.1 under Ex.A1, it did not lodge any complaint against defendant No.2 for the reasons best known. Perhaps, the plaintiff bank only with an intention to recover the money from the defendant No.2 has filed civil case rather than lodging a complaint against the defendant No.2 for initiating criminal action against defendant No.2. If at all there was any malafide intention on the part defendant No.2 leading to negligence, then certainly, plaintiff bank ought to have lodged complaint against the defendant No.2 also apart from defendant No.1.

9. It is the specific contention of the plaintiff that the defendant No.2 failed to ascertain the correct address and other details of the defendant No.1. However, PW1 admitted that for opening of SB Account in the year 2006 introduction form was sufficient but whereas there was no necessity of KYC (Know Your Customer) like Aadhar card, PAN Card etc in the year 2006. Admittedly, the account was opened by the defendant No.1 with the plaintiff bank in the year 2006. Hence, there is no necessity for the defendant No.2 bank to know about the details of the customer before opening the account except the introduction form.

10. The burden on the part of defendant No.2 was discharged by defendant No.2 by examining DW1 and adducing documentary evidence in the form of Exs.B1 to B7. The defendant No.2 got marked Ex.B1 i.e., the board resolution authorizing DW1 to depose in this case. Ex.B2 is the account opening application form of defendant No.1. Ex.B3 is the driving license of defendant No.1. Ex.B6 is the letter addressed by the Station House Officer, Neredmet Police Station to the defendant No.2 bank to furnish the original bank account opening application forms, original cheques, which are used for encashment from their bank. Ex.B7 is the reply given by defendant No.2 bank to EX.B6. Thus, the burden shifts

upon the plaintiff to establish that the defendant No.2 bank has shown negligence in allowing the defendant No.1 to open a savings bank account in their bank. Except asserting that defendant No.2 has not followed the rules and regulations/instructions issued by RBI, the plaintiff has not explained as to which guidelines/instructions issued by RBI, were not followed by defendant No.2.

11. As rightly pointed by the learned counsel for the defendant No.2, the demand draft was issued by the plaintiff bank and the draft was cleared by the branch of plaintiff bank. Merely because defendant No.1 has shown fake address in the account opening application form, defendant No.2 cannot be found at fault. It is not the case of the plaintiff bank that the introducer having account No.2443 with the defendant No.2 bank, who alleged to have introduced defendant No.1 to the defendant No.2 bank, is hand in glove with defendant No.1 or defendant No.2.

12. It is further contended that the trial Court strangely held that the plaintiff is responsible to establish negligence on the part of the defendant No.2 ignoring the decision of **Union Bank of India v.**

Bank of Baroda², wherein the High Court of Madras observed as follows:

“21. The attempt on the part of the learned counsel for the appellant to contend that since the amount is sought to be regarded as one paid on account of a mistake, the claim has to be adjudged only in the context of Section 72 of the Contract Act has no meaning. The plaintiff and the defendant are both banking institutions. A perusal of the plaint would go to show that the very grievance of the plaintiff-bank is that the defendant-bank has not acted with reasonable care and caution and though the provisions of Section 131 have not been specifically referred to, the fact the plaintiffs have made a grievance about the lack of care and caution in opening the account and seeking to fix on the defendant the responsibility and liability for the suit claim and the defence taken also in the written statement that they have taken such care as is expected of a banker would go to show that their liability has to be adjudged not merely on the basis of one act or the other but, at any rate, has to be in the light of the provisions contained in the Act. The grounds of appeal filed and the question of law formulated by the appellant bank also is using reference to Ss. 131 and 131A. That the provisions of Negotiable Instruments Act applies to the case admits of no doubt for the simple reason that the case on hand really deals with the handling of a negotiable instrument only and the plaintiff-bank cannot therefore avoid its liability by taking such plea or by contending that they are neither the beneficiary of the amount, nor that the amount is still with them. Once the Court found as of fact that the defendant-bank has not taken the required care and caution and has been, on the other hand, found to be negligent in opening the account and being mainly responsible to have the draft realised and make the plaintiff-bank to part with its money, the claim that they are not themselves the beneficiaries or that the money of the plaintiff-bank is not still with the defendant-bank is no answer in law.”

13. In the case on hand, as stated supra, the plaintiff failed to establish before the trial Court that the acts of defendant No.2 in allowing the defendant No.1 to open savings bank account in its bank amounts to negligence. Moreover, the defendant No.2 could successfully establish that there was no negligence on the part of

² AIR 19897 Madras 23

defendant No.2 in allowing defendant No.1 to open savings bank account. It is not the case of the plaintiff bank that only because of the negligence of defendant No.2, the defendant No.1 could withdraw the amount under demand draft. It is pertinent to note that if at all the plaintiff bank or its Branch at Uttar Pradesh exercised due diligence in issuing the demand draft or passing of demand draft, there would not have been any occasion for the defendant No.1 to withdraw the amount covered under demand draft. As can be seen from Ex.A3 i.e., the complaint lodged by plaintiff bank, there is no whisper about the negligence on the part of defendant No.2 in the complaint as alleged by the plaintiff bank. In fact, it is clearly mentioned in Ex.A3 that defendant No.1 and Mr. G.V. Reddy have cheated their bank by depositing fraudulent demand drafts.

14. Thus, the evidence adduced on behalf of the plaintiff bank, more particularly, when the evidence of PW1 is not consistent and cogent, it is not sufficient to hold that the acts of defendant No.2 bank amounts to negligence. It is not the case of the plaintiff bank that the trial Court has entirely dismissed the suit claim. The trial Court has rightly dismissed the claim of the plaintiff bank against the defendant No.2 and decreed the suit only to the extent defendant No.1, who is the beneficiary under his fraudulent acts. The plaintiff

bank failed to show any palpable evidence to establish that due to the negligence on the part of defendant No.2, the defendant No.1 could succeed in his misdeeds of withdrawing the amount under demand draft by adopting illegal methods.

15. In view of the above facts and circumstances, this Court do not find any merits in the appeal to set aside the impugned order and in fact, the trial Court has elaborately discussed all the aspects and arrived to a proper conclusion. Therefore, this Court is of the opinion that there is no need to interfere with well reasoned judgment passed by the trial Court and thereby, the appeal is devoid of merits and liable to be dismissed.

16. In the result, this appeal is dismissed. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

JUSTICE M.G. PRIYADARSINI

Date: 14.6.2024

Note: LR Copy to be marked.
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