

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 09.02.2011
Judgment Pronounced on: 14.2.2011

+ **CS(OS) No. 1148/1995**

**JAYPEE BROS. MEDICAL
PUBLISHERS P. LTD.**

.....PLAINTIFF

- versus -

THE BANK OF INDIA & ANR.

.....DEFENDANTS

Advocates who appeared in this case:

For the Plaintiff:	Mr Sanjay Bhatt, Adv.
For the Defendant:	Mr A.B.Dial, Sr. Adv. with Ms Sumati Anand, Adv.

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

V.K. JAIN, J

1. This is a suit for recovery of Rs 25,75,186/-. It is alleged in the plaint that the plaintiff-company vide 8 letters dated 10th July, 1992 invited offer from defendant No.1 for forward foreign exchange contracts. No offer for the rate of foreign exchange was communicated to the plaintiff. On 14th July, 1992, Mr S.K. Gupta of defendant No. 1 informed the

plaintiff that the rate of Pound St. would be in the region of Rs 61 to 62 which was not acceptable to the plaintiff. Accordingly, the plaintiff refused to enter into forward foreign exchange contract with the defendant on 14th July, 1992. It is further alleged that on 16th July, 1992, Asaf Ali Road Branch of defendant-Bank of India forwarded its counter offer to the plaintiff, offering varying rates of foreign exchange, which were materially different from the rates prevailing on that date. The plaintiff, therefore, returned back the counter offer to the defendant with the endorsement "refused and returned". It is also alleged that vide its letter dated 19th August, 1992, the plaintiff requested defendant No. 1 for release of Pound 4283.43 to it, in respect of two invoices of M/s Excel Logistics DMS Kent. Form A-1 was also forwarded to the Bank along with the letter. A pay order for the aforesaid sum was released by the defendant to the plaintiff on the same date, though no Debit-Advice was received by it.

2. It is further alleged that on 28.9.1992, the defendant advised the plaintiff that in the context of its letters dated 10.7.1992 it had already entered into seven contracts and that they proposed to keep margins of

difference in the rates of pounds coming to about Rs.3 lacs and asked the plaintiff to arrange for the same. This, however, was immediately refuted by the plaintiff. On 15.10.1992, the defendant purported to record that it had debited plaintiff's account with Rs.2.40 lacs and had kept the same as margin. A further sum of Rs.60,000/- was also demanded from the plaintiff. On 2.11.1992, the defendant further purported to record that it intended to keep a margin of about Rs.4.5 lacs and the plaintiff was required to furnish a further margin of Rs.2 lacs. It was also recorded that they would cancel the contracts on due dates and charge swap costs to the plaintiff. On 25.11.1992, a sum of Rs.2 lacs was transferred from the current account of the plaintiff maintained with Ansari Road Branch of bank against an internal communication issued by its Asaf Ali Branch. The defendant bank vide its letter dated 25.11.1992 purported to recover a sum of Rs.282419/-. The plaintiff sent a notice to the defendants calling upon them to pay, to the plaintiff the amount of Rs.722959/- which they had unilaterally debited in its account, along with interest thereon. Since the defendant failed to make payment in terms of the notice and also failed to return the

documents of the plaintiff lying with it, a complaint under Section 21(a)(1) of Consumer Protection Act, 1986, was filed by the plaintiff against the defendant. The complaint was, however, dismissed holding that the appropriate remedy was by way of a civil suit. The plaintiff is now accordingly claiming the aforesaid sum of Rs.722959/-debited from its account. The plaintiff has also claimed a sum of Rs.1363952.97 towards compensation on account of difference in the rate of foreign exchange. The plaintiff has also sought a declaration that a sum of Rs.488275/- is due to it from the defendant, being the difference in the rate of currency between 10.7.1992 and 18.12.1992, on account of wrongfully withholding of foreign exchange documents, airway bill invoices etc. Another declaration sought by the plaintiff is that the defendants are liable to pay pendente lite and future interest to the plaintiff with quarterly interest.

3. The defendant has contested the suit. It has denied that the plaintiff had invited offer for forward foreign exchange contract, vide its letter dated 10.7.1992 and has claimed that in fact the plaintiff had instructed forward booking of foreign exchange vide its aforesaid letters. It is also stated that the rates of foreign currency are never

mentioned in such letters and the rates vary from day to day or from even hour to hour. It is further alleged that the forward booking of foreign exchange was confirmed by Asaf Ali Road branch to the Overseas branch of defendant bank on the same date. It is alleged that as per the procedure, the Exchange Dealers Cell of the bank prepares confirmation notes of forward sale contracts which have printed serial numbers and preparation of such contract notes takes a few days. These confirmation notes are then forwarded to the concerned branch which forwards them to the customer for his signature on the original stamped copy of the contract note. According to the defendant, on receipt of confirmation notes by Asaf Ali Road Branch they were forwarded to the plaintiff vide letter dated 24.7.1992 who retained the same and assured to return them in due course, but failed to do so. It is also alleged that the confirmation note is intended only to record the transaction. As regards contract note No.197, it is alleged that the plaintiff brought it to the notice of the bank on 7.8.1992 that though it had taken the contract for US Dollars, the bank had erroneously booked it for pound sterling 3710.18. The matter was immediately taken up with Foreign

Exchange Dealers Cell and the contract was cancelled without debiting any cost to the plaintiff. The original duly stamped contract note No.197 was returned by the plaintiff to the bank. As regards contract No.200, it is alleged that pound sterling 4283.43 were utilized by the plaintiff on 18.8.1992 at the contractual rate and demand draft for the remittance, along with the bank advice debiting the plaintiff's account at the contract rate was duly collected by the representative of the plaintiff on 20.08.1992. As regards the amount of commission in respect of contract note No.200, it is alleged that as per FEDAI Rules, the commission charges for import bill amounted to Rs.640/-, which were recovered from the plaintiff and this amount was reflected its debit advice given to it. It is also alleged that the particulars of foreign exchange contracts were submitted to Reserve Bank of India in the R-Return filed by the defendant. It is claimed that the bank had a lien in respect of money held on account of plaintiff in any branch of the bank and it was in exercise of this lien that the money was transferred from Ansari Road Branch to Asaf Ali Road Branch of the Bank.

4. The following issues are framed on the pleadings of

the parties:-

- (i) Whether there was any contract of forward foreign exchange between the plaintiff and the defendant? If so whether the defendant could not debit the amount in question?
- (ii) If yes, whether the foreign exchange rate prevalent on July 10, 1992 was to be applied by the defendant?
- (iii) Whether the plaintiff is entitled to the reliefs claimed?

Issue No.1 & 2 : The plaintiff has produced one witness, its Managing Director Jitender P.Vij whereas the defendants have produced two witnesses namely Mr. Ravi Bhatia who was Deputy Manager with the defendant bank before he took voluntary retirement and was posted at its Asaf Ali Road Branch w.e.f. 27.9.1992 and Mr. S.K.Gupta, Deputy Chief Manager who also took retirement and was working at Asaf Ali Branch from 1.7.1989 to 8.8.1992. In his affidavit, Mr. Jitender P.Vij has stated that vide eight letters Ex.PW-1/A (colly), the plaintiff company invited offer for forward foreign exchange contracts in respect of various invoices which were due on various dates. He has further stated that on 14.7.1992, Mr. S.K.Gupta of defendant Bank informed him that the rate would be in the region of Rs.61

to Rs.62 per pound, which was not acceptable to them and, therefore, they refused to enter into a forward exchange contract. He has further stated that on 16.7.1992, the Asaf Ali Road Branch of the Bank forwarded its counter offer to the plaintiff on varying rates of foreign exchange, vide counter offer Ex.PW-1/B. Since the rates were different from the rates prevailing on 16.7.1992 and the rates prevailing on 10.7.1992, the notes were returned to the manager of the defendant with the endorsement "refused and returned". He has further stated that under RBI foreign exchange Manual and in accordance with practice, the banks forward contracts which are duly stamped and are called confirmation, seeking acceptance of the customer by way of a confirmation letter addressed by him to the Branch that he had bought a foreign exchange of a specified amount and at a specified rate along with particulars of delivery. This witness has further stated that no contract for further foreign exchange came into being as no rate of foreign exchange was mentioned in the correspondence dated 10.7.1992. According to him, the letter Ex.PW-1/C and D were sent by the plaintiff to the defendant on 16.7.1992 and 29.7.1992 respectively. He further stated that the plaintiff

sent a letter dated 19.8.1992 seeking release of Pound Sterling 4283.43 to the accounts of Excel Logistic DMS Ever Limited in relation to their invoices for which payment had to be made. Form A-1 was also forwarded to the bank along with the letter. He stated that the plaintiff, did not receive debit advice upon the issuance of draft for Pound Sterling 4283.43 and subsequently it was informed that commission of Rs.640/- was quoted for that draft. According to him, as per the bank, bank charges would be a commission of Rs.100/-, if delivery is being taken against a forward exchange contract.

5. In his affidavit by way of evidence Mr. Ravi Bhatia has stated that vide eight letters dated 10th July 1992, the plaintiff had directed and authorized the Bank to book the foreign currency during the delivery period mentioned in the letters. He has further stated that the rate of exchange of a particular currency varies from day to day and even from hour to hour and the importer who wants to book forward foreign currency has to enquire the rate of foreign exchange from the bank, this, according to him, was the reason why rate of foreign currency was not mentioned in the letters of the plaintiff dated 10th July 1992. He has further stated

that an importer wishing to enter into a contract has to submit import documents such as copies of invoice, AWB/BL and customs certified exchange control copy of Bill of Entry and the plaintiff had submitted these documents along with the letters dated 10th July 1992. He has further stated that on receipt of written instructions from the plaintiff to enter into forward booking contracts, the bank booked foreign exchange accordingly and confirmed the same to the plaintiff on telephone. According to him booking of the contracts was confirmed by Asaf Ali Road Branch Bank to Overseas Branch Bank vide eight letters dated 16th July 1992, office copies of which are Ex.DW-1/9 to Ex.DW-1/16. He has further stated that these contracts were duly reflected in the fortnightly R-Return dated 31st July 1992 submitted by the defendant bank to RBI as per Exchange Control Regulations'. A copy of the R-Return is Ex.DW-1/17. He has further stated that on receipt of confirmation notes by Asaf Ali Road Branch of the Bank, the same were forwarded to the plaintiff vide covering letter dated 24th July 1992. The plaintiff retained those confirmatory notes and assured to return them in due course. He has further stated that confirmation note

No.200 was utilized by the plaintiff for pound sterling 4283.43 on 19th August 1992 at the contractual rate and demand draft for the remittance along with the bank advice debiting plaintiff's account at the contracted rate was duly collected by the representative of the plaintiff on 20th August 1992. He has also identified the signature of Mr. R. Srivastava, representative of the plaintiff company in the hand delivery book of the bank, with respect to receipt of original draft along with the debit advice. He has further stated that the plaintiff had given duly verified signature of Mr. Srivastava to the bank. He has further stated that the utilization of contract No.200 by the plaintiff was reflected in the R-Return filed by the defendant for the fortnight ending 31st August 1992, a copy of which is Ex.DW-1/21. According to this witness, the demand draft was issued at the contract rate and not at the current spot rate prevailing on 19th August 1992. He has further stated that as per FEDAI rules, the commission charges for this transaction amounted to Rs.640/-, which were recovered from the plaintiff and were reflected in Debit-Advice.

6. Mr. Ravi Bhatia has further stated that he along with Mr. S.K. Gupta had visited the office of the plaintiff on

30th July 1992 when Mr. Gupta took him there while introducing him to important customers of the bank. He claimed that the letters dated 16th July 1992 and 29th July 1992, stated to be written by the plaintiff to the bank, were forgeries and were never received by the bank. According to him, the letter of the plaintiff dated 5th October 1992 was received by the bank on 19th October 1992, whereas the letter of the plaintiff bearing the date of 15th October 1992 was received in the envelope Ex.D-7 after the bank had written the letter dated 15th October 1992 to the plaintiff.

He has further stated that no request was made by the plaintiff till 17th December 1992 for return of the documents submitted to the bank and for the first time such a request was made on 18th December 1992 and the documents were collected from the bank on 19th December 1992. He stated that without documents, which the plaintiff had left with the bank till 19th December 1992, foreign exchange could not have been arranged for it for payment to the foreign suppliers.

7. In his affidavit by way of evidence Mr. S.K. Gupta has corroborated the deposition of Mr. Ravi

Bhatia and has stated that booking of the contracts was confirmed by him to the plaintiff on telephone and that on 30th July 1992 he had visited the office of the plaintiff to introduce Mr. Ravi Bhatia to the important customers of the bank.

8. The main dispute between the parties is as to whether vide letters dated 10th July 1992, the plaintiff had entered into contracts with the defendant for forward booking of foreign exchange or it had only invited offer from the bank for this purpose. A forward exchange contract is an agreement between a bank and another party for sale or purchase of a specified quantity of stated foreign currency on a rate of exchange fixed at the time of making the contract. The delivery date as well as the amount of the currency is also fixed at the time of the agreement. Once such a contract is entered into, it is binding on the parties and in case the party agreeing to purchase foreign exchange or sell it to the bank commits default in performance of its contractual obligation, the bank is entitled to close the agreement and recover the difference between the contracted rate and the rate prevailing on the date of close

out from that party. It has come in the deposition of the bank officer and is otherwise not in dispute that the rate of foreign exchange even for forward booking vary not only on day to day, but on hour to hour basis. If the case setup by the plaintiff is accepted, it would mean that the rates for forward booking of foreign exchange were invited by it on 10th July 1992 and were quoted by the defendant bank on 14th July 1992. Considering the very nature of such transaction, this could never have been the case. If a person wants quotation for forward booking of foreign exchange, he obviously wants the rates prevailing for such bookings as on the date of inviting offers. No bank can respond to such an invitation and then wait for a response from the customer, for the simple reason that the rates prevailing at the time they are quoted by the bank may no longer be valid by the time the offer is accepted and the acceptance is conveyed by the importer to the bank. If the bank, for example, quotes rates of Rs.80/- for a pound sterling on date 'X', the prevailing rate for such a contract on the due date at the time the quotation given by the bank is accepted by the importer and the acceptance is conveyed to the bank may be Rs.81/- and the bank may have to incur

loss in case it provides foreign exchange at the rate quoted by it to the importer. No bank is likely to adopt such a method for forward booking of foreign exchange.

9. No evidence has been led by the plaintiff to show that either the defendant bank or any other bank enters into a transaction for an advance booking of foreign exchange in the manner claimed by the plaintiff. In these circumstances, I see no reason to reject the plea taken by the defendant that in transactions of this nature, the rate of foreign exchange which varies from hour to hour can be given and is actually given by the bank to the importer only on telephone and is required to be accepted or rejected as the case may be, there and then, on the telephone itself, though written confirmation of the acceptance, given on phone, may come later, in due course. Therefore, the case setup by the plaintiff in this regard is inherently improbable and, therefore, cannot be accepted.

10. Exhibit D-1/1 to D-1/8 are the 8 letters written by the plaintiff to the defendant on 10th July, 1998. Para 2 of these letters contains an express request to the defendant for forward booking of the foreign exchange mentioned in

the letter and also contains an undertaking to make payment on due dates which are stated in the letters. By no stretch and no reasoning can any of these letters be said to be an invitation to offer for forward booking of a foreign exchange. These letters are plain and simple request to the bank for forward booking of the amount of foreign currency stated therein and no other interpretation can possible be given to them. In the face of unambiguous request contained in these letters, it is not possibly to accept the case set up by the plaintiff as regards the nature of these documents.

11. Copies of the invoices of the exporter, photocopies of airway bills and most importantly exchange control copy of bill of entry were enclosed to these letters. There could have been no reason or logic behind enclosing these letters to an invitation asking for offer for providing foreign exchange in future. If offers are invited, the person inviting the offer cannot be sure whether he would be accepting the offer or not. If the offer is not acceptable to him, it has to be rejected by him. Therefore, there would be no occasion for him to send such documents including all important exchange control copy of bill of entry along with a letter

inviting offer for forward booking of foreign exchange. He will send these documents only at the time of placing a firm order for advance booking of foreign exchange. Another important aspect in this regard is that though the case of the plaintiff is that the rates quoted by the defendant bank were rejected by it on 14th July, 1992, these documents were allowed to remain lying with the bank and were never demanded by the plaintiff at any time prior to 18th December, 1992. There could have been no reason for the plaintiff to keep these documents with the defendant bank despite rejection of the rates quoted by it on 16th July, 1992, particularly when it was not possible for the plaintiff to arrange foreign exchange from other sources, in the absence of exchange control copy of the bill of entry. This is yet another circumstance, which shows that, in fact, the plaintiff had taken forward booking of foreign exchange with the defendant bank and that is why these important documents were not demanded back from the bank.

12. It was pointed out by learned counsel for the plaintiff that no rate of the foreign exchange has been mentioned in Exhibit DW1/1 to DW1/8 which shows that no order for forward booking of foreign exchange was placed

with the bank. I, however, find no merit in this contention. It has come in the deposition of Mr. S.K. Gupta that the rate of foreign exchange was conveyed to the plaintiff on telephone and was accepted by it. Even otherwise, as noted earlier, in a transaction for forward booking of foreign change, it is not possible for a bank to quote a firm rate of foreign exchange, which keeps on varying from hour to hour and even minute to minute basis.

13. The case of the plaintiff is that the rate offered to it by the defendant bank on 14th July, 1992 was refused by it on the same date and it had also written a letter to the defendant bank in this regard on the same date. There is a specific averment to this effect in para 5 of the replication. However, the plaintiff has not placed on record any copy of the letter alleged to have been written to the defendant bank on 14th July, 1992 and when Mr. S.K. Gupta came in the witness box, no suggestion was given to him that the plaintiff had alleged to have written a letter to him on 14th July, 1992 rejecting the rates of foreign exchange quoted verbally by him on that date. This clearly shows that the plea set up by the plaintiff in this regard is totally false and no rate was quoted to it on 14th July, 1992.

14. Exhibit PW1/B(Colly) are the photocopies of the confirmation notes dated 16th July, 1992 alleged to have been refused and returned by the plaintiff to the messenger of the defendant on the same date. The case of the defendant is that these letters except in respect of contract No.197 were never returned to it by the plaintiff. It has come in the deposition of the bank officers that these confirmation notes were received by the Asaf Ali Road Branch of the bank from its Overseas Branch, which was dealing in foreign exchange, only on 24th July, 1992 and they were forwarded to the plaintiff on the same date. Exhibit DW1/18 is the forwarding letter whereby these confirmation notes were sent by the Asaf Ali Road Branch of the defendant bank to the plaintiff company. Exhibit DW-1/9 to DW-1/16 are copies of the inter office memos whereby the forward sale contracts were sent by the Asaf Ali Road Branch to the Overseas Branch of the bank informing it that they had scrutinized the documentary evidence and was thoroughly satisfied regarding genuineness of the transaction for which forward cover had been applied for and that the transaction was in conformity with the exchange control regulations. Since the confirmation notes

have been issued by the overseas branch of the bank as is evident from a bare perusal of the document, it is unlikely that they would have been received by the Asaf Ali Road Branch from the Overseas Branch on the very same date on which it had requested issue of forward sale contracts. Another important circumstance in this regard is that there is no acknowledgment taken by the plaintiff from the defendant in confirmation of having returned these notes to the bank. The case of the plaintiff is that these confirmation notes were returned to the bank official, who had brought them, after retaining their photocopies. However, at no stage before the bank asked the plaintiff to arrange Rs.3 lakhs on account of difference in foreign exchange rates, did the plaintiff ever write to the defendant bank informing it that the confirmation notes had been returned to the official, who had brought them to the office of the plaintiff company. Yet another material aspect in this regard is that the plaintiff has not filed any copy of the confirmation note with respect to contract No.197, which admittedly was got cancelled by the plaintiff on account of the defendant bank having booked the foreign exchange in Pound Sterling, though the request of the plaintiff was for

forward booking of US dollars. Had the plaintiff returned all the confirmation notes on 16th July, 1992, after retaining their photocopies, it would have been having with it copy of confirmation note in respect of contract No.197 as well. The failure of the plaintiff to file a copy of confirmation note in respect of contract No.197 indicates that it had not returned any of the confirmation note except the confirmation note in respect of contract No.197 to the defendant and that is why it was able to file the copies of all of them except contract No.197.

15. A perusal of the confirmation notes for forward booking of foreign exchange shows that this document is confirmation of a contract, which has already been taken from the bank. Vide these notes, the importer confirms having bought the foreign exchange mentioned in the document from the bank at the rate and on the dates mentioned therein. Issue of these confirmation notes by the overseas branch of the bank is yet another indicator that in fact the rate of foreign exchange was conveyed to the plaintiff on telephone as stated by the bank officers and was accepted by it and that is why, vide office memos dated 16th July, 1992, Asaf Ali Road Branch of the bank requested its

overseas branch to issue forward sale contracts to the plaintiff company and confirmation notes dated 16th July, 1992 were accordingly issued by the overseas branch of the bank and were sent to the plaintiff company for signing them and returning them to the bank. Had the plaintiff not booked foreign exchange with the defendant bank, there would have been no occasion for its Asaf Ali Road Branch to request the overseas branch to issue forward contracts and consequently the overseas branch would not have issued the confirmation notes dated 16th July, 1992 and sent them to the Asaf Ali Road Branch for obtaining signatures of the importer on them.

16. The case of the plaintiff is that it had written two letters, one dated 16th July, 1992 and the other dated 29th July, 1992 to the bank, informing that they were not interested in forward booking of exchange. The plaintiff has not produced any proof of having dispatched the letter dated 16th July, 1992, a copy of which is Exhibit PW-1/C to the defendant bank. Since the bank had expressly denied receipt of any such letter and had claimed that these letters had been forged by the plaintiff, it was obligatory for the plaintiff company to prove the dispatch and service of these

letters. The failure of the plaintiff to file any proof even of having dispatched the letter dated 16th July, 1992 to the bank leads to the inference that no such letter was ever sent to the bank. The letter dated 29th July, 1992 is alleged to have been sent under a certificate of posting. The plaintiff company has its office at Ansari Road, Darya Ganj, New Delhi. The Asaf Ali Road Branch of the defendant bank is quite near to Ansari Road. The letter dated 29th July, 1992 was an important letter since the plaintiff company was seeking to confirm to the defendant bank that it was not interested in forward booking of foreign exchange. No reason has been given by the plaintiff for not sending such an important letter to the bank either by hand or by registered post. In the absence of any explanation for not sending such an important letter either by hand or by registered post and the bank having not received this letter, it is very difficult to accept that the letter dated 29th July, 1992 was ever sent by the plaintiff company to the bank. It is more so when there is no proof of dispatch of the earlier letter dated 16th July, 1992, which finds mentioned in the letter dated 29th July, 1992. It is worth noting that neither letters dated 16th July, 1992 nor 29th July, 1992 has been

set up in the replication, which contains reference only to a letter alleged to have written on 14th July, 1992.

17. Admittedly, the plaintiff wrote a letter dated 19th August, 1992 (Exhibit PW1/E) to the defendant bank, enclosing Form A-1 and requesting the bank to issue draft for Pound Sterling 4283.43 in favour of the exporter M/s Exel Logistics DMS Ltd. Admittedly, the amount of Pound Sterling 4283.43 was paid to the plaintiff vide demand draft Exhibit PW-1/G. The case of the plaintiff is that this foreign exchange was purchased by it from the defendant against spot rate whereas the case of the defendant is that it was one of the contracts made with the bank on 10th July, 1992 for forward booking of foreign exchange. There is absolutely no indication of any spot rate or spot purchase in this letter. Rather, the letter refers to three documents, which had already been submitted to the bank viz. copies of invoices, copy of airways bill and Bill of Entry (exchange control copy) which had already been submitted to the bank, along with the letter dated 10th July, 1992. Therefore, in the background of letters written and documents submitted to the bank on 10th July, 1992, the impression one gets from a

reading of the letter dated 19th August, 1992 is that the plaintiff company was seeking to avail foreign exchange, which it had purchased in advance vide its letter dated 10th July, 1992. Another important aspect in this regard is that the foreign exchange to the plaintiff pursuant to the letter dated 19th August, 1992 was provided at the contractual rate mentioned in the confirmation note dated 16th July, 1992. Had this foreign exchange been purchased against spot rate, the bank would have charged the rate prevailing on the date of the providing foreign exchange and not the rate mentioned in the confirmation note dated 16th July, 1992 in respect of contract No.200, which was the contract, subject matter of this transaction. Yet another important aspect in this regard is that the bank has charged a sum of Rs.640/- from the plaintiff company in respect of this transaction. The case of the plaintiff is that in the case of forward contract, the bank charges a flat commission of Rs.100/- and, therefore, charging Rs.640/- clearly indicates that it was a transaction of purchase of foreign exchange at spot rate and was not a case of purchase of foreign exchange against a forward contract. The plaintiff has not produced any evidence to prove that the bank was required

to charge a flat fee of Rs.100/- in respect of sale of foreign exchange against a forward contract. On the other hand, copy of the foreign exchange manual filed by the defendant bank shows that the prescribed charges in respect of forward contract is minimum Rs.250 per contract. The bank has charged more than Rs.250/- and, therefore, it cannot be said that it has not levied charges prescribed in respect of a forward contract. The first letter of the plaintiff disputing forward booking of foreign exchange, received by the defendant bank is the letter dated 5th October, 1992, which is Exhibit D-4. This letter was dispatched to the bank on 16th October, 1992, as is evident from the envelop Exhibit D-5. The second letter received by the bank in this regard is the letter Exhibit D-6, which purports to be written on 15th October, 1992 but was actually dispatched only on 30th October, 1992 as would be evident from the postal stamp affixed on the envelop Exhibit D-7 in which it was sent to the defendant bank. These envelopes have been admitted by PW-1 in his cross-examination. The plaintiff has not given any explanation for dispatching the letters dated 5th October, 1992 on 16th October, 1992 and 15th October, 1992 on 30th October, 1992. The obvious inference

is that the plaintiff has ante dated these letters. This become important since the defendant bank vide its letter dated 28th September, 1992, which is Exhibit DW1/23, informed the plaintiff that the value of Pound Sterling against the Rupee had gone down and, therefore, it was proposed to keep a margin of difference in the two rates, which came to around Rs.3 lakhs. The plaintiff was requested to immediately arrange to provide funds in its account to enable the bank to keep the margin. In this letter, there was reference to all the 8 contracts except contract note No.197, which admittedly the plaintiff had got cancelled. It is quite obvious that by ante-dating the letter dated 5th October, 1992, the plaintiff wanted to show that it had denied the contracts even before receipt of the letter dated 28th September, 1992 from the bank. This is yet another circumstance, which indicates that the forward contracts were actually taken by the plaintiff and on account of value of the Pound Sterling against Rupee having gone down and the bank asking it to provide a margin of Rs.3 lakhs on this ground, the plaintiff company, in order to wriggle out of its contractual obligation, ante-dated the letter so that it does not have to pay the margin money to

the bank. In fact, the letter of the bank dated 28th September, 1992 was followed by letters dated 12th October, 1992 and letter dated 15th October, 1992, which is exhibit DW1/25, written before receipt of the ante dated letter Exhibit D-4 from the plaintiff company.

18. The rate of foreign exchange mentioned in Exhibit DW1/8, which is the contract relating to Pound Sterling 4283.43 is at the rate of 1.6780 and same is the rate mentioned in the advice, which was delivered to the plaintiff along with the demand draft dated 19th August, 1992 and is an admitted document having been admitted on 13th August, 1997. During cross-examination of DW-1, it was suggested to him by the plaintiff that the spot rate on 19.8.1992 was 1.7130, which clearly indicates that the spot rate was not applied by the defendant while issuing a draft for pound sterling 4283.43 to the plaintiff company on 19.8.1992. Though the plaintiff has disputed the receipt of advice from the bank, the plea taken in this regard is patently false since not only a combined photocopy of advice and demand draft was admitted on 13th August, 1997, the acknowledgement made by Mr. R. Srivastava, authorized

representative of the plaintiff in the Hand Delivery Book of the Bank Exhibit DW1/20 on 20th August 1992 also shows that the advice was delivered to Mr. Srivastava along with the demand draft. The signatures of Mr. Srivastava on the Hand Delivery Book Exhibit DW1/20, has been proved by DW-1 Mr. Ravi Bhatia, who has stated that since Mr. Srivastava was regularly coming to the bank on behalf of the plaintiff and was receiving papers/documents etc. and writing and signing in this regard in his presence, he was in a position to identify his handwriting and signatures. D-9 is the letter of the plaintiff company on which Mr. Srivastava acknowledged receipt of this Exchange Control copies of Bills of Entry which the plaintiff company had submitted to the defendant bank on 10th July, 1992 and is an admitted document. I have compared the signatures at page 3 of the Hand Delivery Book with his signatures on Exhibit D-9 as provided in Section 73 of the Evidence Act, which provides that in order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one

which is to be proved. It appears to me that both the signatures have been made by one and the same person. The power of the Court to make such a comparison was upheld in **Sukhwinder Singh & Others versus State of Punjab, 1994 (5) SCC 152, Ashok Kumar Uttam Chand Shah v. Patel Mohmad Asmal Chanchad, AIR 1999 Guj. 108** and **Satish Jayanthilal Shah v. Pankaj Mashruwala, (1997) 2 Crimes 203 (Guj.)**. Thus, the signatures of Mr. Srivastava has been duly proved by DW-1, Mr. Ravi Bhatia, who being a person acquainted with the signatures of Mr. Srivastava, was competent to give an opinion in this regard in view of the provisions contained in Section 47 of the Evidence Act, which to the extent it is relevant provides that a person is said to be acquainted with the handwriting of another person when he has seen that person write. This opinion finds confirmation not only from the comparison by the Court but also from other facts and circumstances of the case.

19. It was contended by learned counsel for the plaintiff that since recording of the rate of exchange was a mandatory requirement of a forward contract and that has

not been given in Exhibits DW1/1 to DW1/8, these documents do not fulfill the requirement of a forward contract. As stated earlier, by the very nature of such transaction, the rate of exchange cannot be incorporated in the request made by the importer to the bank for forward booking of foreign exchange and the rate of foreign exchange on account of its continuous fluctuation, can be given only on telephone. It has come in the cross-examination of DW-1 and DW-2 that the order for the advance purchase of foreign exchange was received from the plaintiff company on 16.7.1992 and on the same date, the rate of foreign exchange on the dates on which the foreign exchange was required by the plaintiff was conveyed on telephone after ascertaining the same from the Overseas branch of the bank, which was requested to prepare the contract notes in terms of the order placed by the plaintiff company with the bank. Of course, the bank is required to reduce all the terms and conditions of the forward contract into writing and the particulars such as contract amount, parties to the contract, rate of exchange and delivery dates are necessarily required to be given in such a document. The bank duly complied with these requirements by preparing and sending

the confirmation notes, which admittedly were received by the plaintiff, though the case of the plaintiff is that these notes were received by it on 16th July, 1992 and were returned on the same date along with an endorsement of refusal, whereas the case of the defendant is that these notes were sent to the plaintiff only on 24th July, 1992 and none of them except the confirmation note in respect of contract No. 197 was returned to it by the plaintiff. Therefore, there is no escape from the conclusion that the plaintiff had actually entered into an agreement with the defendant bank for purchase of foreign exchange on the dates mentioned in the letters dated 10th July, 1992, which also contained the name of the exporter, the amount of foreign exchange as well as the dates on which the foreign exchange was required by the plaintiff. The only particular not given in this document was rate of exchange, which was provided to the plaintiff on telephone and was later incorporated in the confirmation note sent to the plaintiff on 24th July, 1992.

20. The defendant is a Nationalized Bank and DW-1 as well as DW-2 were bank officials, who have since retired

from the service of the bank. Had the plaintiff not taken forward contract for purchase of foreign exchange, there could have been no reason for them to forward the letters dated 10th July, 1992 received from the plaintiff company to the overseas branch of the bank and request it to issue the forward sale contract in respect of the imports proposed to be made by the plaintiff company. They had nothing to gain by preparing false documents in this regard and making false deposition in the Court, more so when they have since retired from the service of the bank. The plaintiff does not allege any mala fide on the part of the bank officers and the relations between the plaintiff and the bank were quite cordial till the letter dated 28th September, 1992 was written by the bank to the plaintiff requiring it to arrange Rs.3 lakhs towards margin. This is also evident from the fact that on 19th August, 1992, the plaintiff purchased foreign exchange from the defendant bank though it claims to have made the purchase on spot rate whereas the case of the defendant is that the purchase was made against the forward sale contract in respect of contract note No.200.

21. It has also come in the deposition of the bank

officers that the sale of foreign exchange amounting to Pound Sterling 4283.43 was also reflected in the fortnightly return called R-Return, which the bank had submitted to the Reserve Bank of India for the fortnight ending 31st August, 1992 Exhibit DW-1/21 and 31st July, 1992, which is Exhibit DW1/17. The cancellation of the forward contracts was also notified by the defendant to the Reserve Bank of India and was reflected in R>Returns dated 13th November, 1992 and 15th December, 1992, copies of which are Exhibit DW1/37 and DW1/38.

22. For the reasons given in the preceding paragraphs, I hold that the plaintiff had taken 8 forward contracts from the defendant bank for advance purchase of foreign exchange for the amounts mentioned in Exhibits DW-1/1 to DW-1/8 and the foreign exchange was to be availed during the period noted in these documents. Since the plaintiff company failed to avail the foreign exchange, subject matter of the forward sale contracts taken by it, the bank was entitled in law to close the contract and deduct the amount of margin/difference from the funds available with it in the account of the plaintiff company. This is not the case of the

plaintiff that the amount deducted by the defendant bank was more than the amount, which ought to have been deducted in terms of the forward contracts taken by it. The case of the plaintiff is that it never took the forward contracts from the defendant bank. Since it has been proved that the plaintiff company had actually taken contracts for advance purchase of foreign exchange, no fault can be found that the deductions made by the defendant bank from the funds available with it. The issue is decided in favour of the defendant.

23. **Issue No.3**

In view of my findings on issue nos. 1 and 2, the plaintiff is not entitled to any relief.

ORDER

The suit is hereby dismissed with costs. Decree sheet be prepared accordingly.

(V.K. JAIN)
JUDGE

FEBRUARY 14, 2011
bg/sn/ag/vkm