

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No.8/2000**

% 18th January, 2011

UCO BANK

Through: Appellant
Mr. Sanjay Kumar Singh,
Advocate.

VERSUS

M/S. D. NATH & CO. & ORS.

Through: Respondents
None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. By the present first appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) the appellant bank seeks to impugn the judgment and decree dated 13.10.1999 whereby the suit of the respondent No.1/plaintiff was decreed against the appellant bank on account of having passed three forged cheques⁹.*.

2. The facts of the case are that the accountant of the respondent No.1 Mr. Rajinder Kumar Joshi alongwith one Sh. Subhash Chand, defendants no.2 and 3 in the suit, stole the cheques of the

respondent No.1 company and forged the signatures of its partner Sh. Ram Kumar. These three cheques were thereafter got encashed and amounts realized by these persons and who are respondent Nos.2 and 3 herein. The details of the forged cheques are as under:-

"Sl. No.	Cheque Number	Dated	Amount
1.	992937	26.08.1987	40,239.75
2.	992983	26.10.1987	48,485.00
3.	516188	21.03.1988	59,715.00"

3. After the pleadings were complete, the trial Court framed the following issues:-

"1. Whether the signatures on behalf of the plaintiff on the cheques subject matter of the suit are not of the partner of the plaintiff and forged? OPP

2. If issue No.1 is decided in affirmative, to what amount, if any, is the plaintiff entitled to and against which the defendant? OPP

3. Whether the plaintiff is entitled to any interest and if so at what rate and for which period? OPP

4. Relief."

4. The main issue was issue No.1 because if the signatures on the subject cheques are found to be forged, there is no mandate upon the bank to pay and if the bank pays under the forged cheques, it is bound to refund the amount paid under the forged cheques to its customer whose signatures were forged on the cheques.

5. While dealing with the issue No.1, the trial Court has examined the entire evidence in the case in this regard. On the one hand there was evidence of one Sh. V. K. Khanna who was the Principal Scientific Officer of CFSL, CBI and whose evidence was led as an expert

witness by the respondent No.1/plaintiff, the appellant led evidence of two witnesses. The first witness of the appellant was its Chief Manager Sh. R.K. Khera who was said to have about 28 years experience in passing of bank cheques though who did not pass the forged cheques. The bank also examined one handwriting expert V.K. Sakhuja as its other witness. After considering the expert evidence led on behalf of both the parties, the Court itself compared the disputed signatures with the admitted signatures and thereafter with reference to the evidence led by both the parties gave the following conclusions in paras 12 to 14 of the impugned judgment and which read as under:-

“12. I have myself compared the disputed signatures on cheques Ex.PW1/22, Ex.PW1/23 and Ex.PW1/24 with documents Ex.PW1/D1 and Ex.PW1/D2 and with naked eye I can make out that the signature are not of the same person on the disputed cheques. In one way the report of PW-2 is also handicapped. PW-2 did not compare the disputed signature on Ex.PW1/22 to Ex.PW1/24 with the signatures of Ram Kumar on account being form and specimen signatures card (Ex.PW1/D1 and Ex.PW1/D2) but the fault does not lie with the handwriting expert because he examined the disputed and admitted signatures on the instructions of SHO PS Hauz Qazi in FIR No.216/88. The specimen signature of Ram Kumar were taken by the SHO on different papers. Those specimen signature were sent to PW-2 for purpose of comparison with the disputed signature. I have gone through the detailed report given by the witness and I am inclined to believe this witness for the following reasons.

13. The witness opined that the questioned signatures mark A-14, Q-15, Q-16 and on cheques Ex.PW1/22, Ex.PW1/22 and Ex.PW1/23) could not be connected with the specimen signature for the reasons that the questioned signatures on the disputed cheques had been written slowly showing drawn and hesitating line quality, presence of tremor, unusual penlifts. Some of the defects in these signatures were

- a) Unnatural pen lifts was observed in the staff of the English capital letter K in the word Kumar in questioned signature marked Q-14.
- b) Unnatural tremor was observed in the English capital

letter R in the word Ram and the letters K u m in the word Kuamr in questioned signature marked Q-17.

C) The questioned signature marked Q-14 appears to have been written slowly as there is unnatural pen lift in the staff of letter K in the word Kumar in questioned signature marked Q-17.

14. On the other hand, the specimen English signature have been written freely showing smooth line quality and natural variations, presence of rhythm and unconsciousness in its execution as well as lack of attention to the writing process. The questioned signature marked Q-14 to Q-17 when compared with the specimen English signature marked S-12 to S-16 show differences in the minute and inconspicuous writing characteristics. Apart from this report the basis of minute observations made by the expert is that the signatures were compared scientifically by this witness. To some extent his report is supported by the report of Shri Shukhja also where he also opined that there was tremor and unusual pen lift and hesitation in the disputed signature on the three cheques Ex.PW1/22 to Ex.PW1/24 whereas the writer of specimen signature on Ex.PW1/D1 and Ex.PW1/D2 was a skilled writer and had sufficient command in the art of writing English script. I have considered the report of the handwriting expert (PW-2) and have compared the disputed signatures on the original cheques with the specimen signatures of Ram Kumar and I am of the considered opinion that signatures of Ram Kumar were forged on the cheques Ex.PW1/22 to Ex.PW1/24. Issue No.1 is decided accordingly."

6. I do not find any illegality or perversity in the discussion, approach or conclusions which have been arrived at by the trial Court in paras 12 to 14 of the impugned judgment. I am entitled to interfere with the findings and conclusions of the trial Court if the same are illegal and perverse and cause grave injustice. Merely because two views are possible, this Court is not entitled to interfere with the findings and conclusions of the trial Court.

7. Learned counsel for the appellant has argued that the trial Court committed an error in disbelieving the evidence of Sh. R.K. Khera,

who had 28 years of experience. It was further argued that the report of the handwriting expert of the respondent No.1/plaintiff should not have been relied upon because the said handwriting expert did not compare the disputed signatures with the signatures appearing on the account opening form of the respondent No.1/customer. It is also argued that there is considerable time lapse between the encashment of the cheques in the months of August and October, 1987 and March, 1988 and the discovering of the fraud by the customer and which should disentitle the respondent No.1/plaintiff with respect to its claim.

8. Taking the last issue as regards the fact whether delay in discovering the fraud by the respondent No.1/customer of the bank would disentitle the respondent No.1/plaintiff for recovery for payment made under the forged cheques, I may state that the trial Court has once again exhaustively dealt with this issue in paras 15 to 17 of the impugned judgment. The trial Court has referred to the decision of the Supreme Court in the case of **Canara Bank Vs. Canara Sales Corporation & Others (1987) 2 SCC 666** to hold that when payment is made of a forged cheque there is no mandate of the bank to pay and the bank cannot resist the claim of the customer with the defence of negligence on his part such as leaving the cheque book casually so that a third party would easily get hold of it. Trial Court has also relied upon the relevant passage from the Halsbury's Laws of England (3rd Edition) that a cheque which is forged is a mere nullity and the same being without authority, ought not to be paid and the customer cannot be debited with the

payment made on the basis of such fraud cheques and there cannot be any estoppel against the bank in such circumstances. In fact, the Supreme Court in the case of **Canara Bank (supra)** has also held that ordinarily the principle of estoppel and negligence cannot be raised against the bank because negligence has to be so great such that the customer should be denied the refund of the money paid under the forged cheque. In my opinion, the facts of the present case are not such and nor it stands proved by the appellant that there is such great amount of negligence by which it can be said that customer/respondent No.1/plaintiff should be denied refund claim for payment under the forged cheques.

9. In my opinion, the trial Court has very soundly examined and discussed this aspect in para 15 of the impugned judgment and the same reads as under:-

“15. The case of the plaintiff is that it is entitled to recover a sum of Rs.1,48,229/- from all the defendants as they are jointly and severally liable to pay the suit amount to the plaintiff. The claim was contested by defendant No.1. The defence is that the plaintiff used to hand over signed cheque book to his employee and the defendant No.1 is not liable for any illegal act committed by the employee of the plaintiff. The defendant No.1 was maintaining perforated ledger account of the plaintiff. The statement of account was supplied to the plaintiff regularly and it failed to point out any discrepancy in the statement of account within seven days from the receipt of the same. Hence the plaintiff is negligent and the defendant No.1 cannot be hold responsible for this negligence of the plaintiff. As there was sufficient balance in the account of the plaintiff, the defendant No.1 was bound to follow the mandate issued by the plaintiff. The payment was made through clearing and the signature on the disputed cheques were tallied with the specimen card and hence, there was no negligence on the part of defendant No.1. The amount of the cheque was paid as per the tenor of the same in due course and normal business and in good faith without negligence or connivance of the bank officials. There was no

negligence on the part of the defendant No.1 in honouring the cheques, hence the plaintiff was not entitled to claim the suit amount from the defendant No.1. In support of its contention, the defendant No.1 examined DW-3 RK Goel who deposed that the original cheques of Ex.PW1/22, Ex.PW1/24 and Ex.PW1/25 were passed by him and Mr. Monga, the then Senior Manager of the bank jointly. Before passing the cheque he took all the precautions like comparison of the signature on the cheques with the specimen signature on the card Ex.PW1/D2. He also verified that the cheques were issued from the cheque book issued to the party. The date of issue of cheque amount in words and figures in the cheque. For his opinion, that all the three cheques were of Ram Kumar and tally with the specimen card in cross-examination, Shri Goel admitted that he tallied the signatures and cleared the 4th cheque no.980088 dated 30.8.88 in the sum of Rs.35,848/-. He admitted that the payment of this cheque was not made to the creditor. This cheque was also cleared as per the specimen signature but subsequently, he was told that the signature were forged and hence the account was credited with this amount which was already debited one day earlier. The amount of this cheque already stood transferred to payee bank through clearing but when they were told that the signature were forged, this amount was called back from the presenting bank. He admitted that the defendant bank was never contracted by the presentor bank or the payee that after once crediting the amount it was not paid to the payee and why it was again debited. There is no substance in the defence raised by the defendant no.1. It was argued on behalf of the defendant No.1 that when the cheque duly signed by customer is presented with the bank with whom he has account there is mandate on the bank to pay the amount covered by the cheque. In the present case, there was sufficient balance in the account of the plaintiff and the bank was as bound to follow the mandate issued by the plaintiff. This proposition is not disputed but the defendant bank is not entitled to any benefit of this proposition because I have already held that signature of Ram Kumar were forged on all the disputed cheques. It was held by Hon'ble Supreme Court in Canara Bank Vs. Canara Sales Corporation & Ors., that if signature on the cheques is not genuine, there is no mandate on the bank to pay. The bank when it makes payment on such a cheque, cannot resist the claim of the customer with the defence of negligence on his part such as leaving the cheque book carelessly so that third parties would easily get hold of it. This is because a document in cheque form on which the customer's name as drawer is forged is a mere nullity. The relationship between the customer of a bank and

the bank is that of a creditor and debtor. When a cheque presented for encashment contains a forged signature the bank has no authority to make payment against such a cheque. The bank would be acting against law. When a customer demands payment for the amount covered by such cheques, the bank would be liable to pay the payment to the customer. It can succeed in denying payment only when it establishes that the customer is disentitled to make a claim on account of adoption, estoppels or ratification. Again, in Bank of Bihar and others, AIR 1967 389, it was held by the Hon'ble Supreme Court that the customer and the banker are under a contractual relation and in drawing a cheque the customer is bound to take usual and reasonable precautions to prevent forgery. Crime is indeed, a very serious matter but every one knows that crime is not uncommon. If the cheque is drawn in such a way as to facilitate or almost invite any increase in the amount by forgery if the cheque should get into the hands of a dishonest person, forgery is not a remote but a very natural consequence of negligence of this description. Of course, the negligence must be in the transaction itself, that is, in the manner in which the cheque is drawn. It would be no defence to the banker, if the forgery had been that of a clerk of a customer, that the latter had taken the clerk into his service without sufficient inquiry as to his character. On the other hand, if the signature on the cheque had been genuine so that there was a mandate by the customer to the banker but the cheque was somehow got hold of by an unauthorized person and encashed by him, the bank might have had a good defence. If the signatures on the cheque are not genuine, there is no mandate on the bank to pay and the question of any negligence on the part of the customer such as leaving the cheque book carelessly so that a third party could easily get hold of it would afford no defence to the bank. According to Halsey's Laws of England (3rd Edition) Vol 2, Article 380. A document in cheque form to which the customer's name as drawer is forged or placed thereon without authority is not a cheque, but a mere nullity. Unless the banker can establish adoption or estoppels, he cannot debit the customer with any payment made on such document."

10. A civil case is decided on balance of probabilities where the evidences of the respective parties are considered. After all the evidences are put into a scale, a decision is arrived at on the balance of probabilities. The balance of probabilities in the present case was such

that the trial Court deemed it fit to decree the suit of the respondent No.1 against the bank. I do not think that the conclusions arrived at by the trial Court are in any manner perverse and against the settled law, and therefore, I do not find any reason to interfere with the impugned judgment and decree.

11. So far as the argument that the expert witness of respondent No.1 ought to have compared the disputed signatures with the signatures on the account opening form, I do not agree with the learned counsel for the appellant because it is not the law that it is a sine qua to compare the disputed signatures with the signatures on the account opening form only. Of course, account opening form is one of the better evidences to show the admitted signatures, however, other admitted signatures can also be utilized to show that the signatures appearing on a disputed cheque were forged. In fact, the trial Court has noted the peculiar difficulties in the present case of the originals not being available because the criminal case was filed against respondent No.2 and 3/defendant Nos.2 and 3 and which criminal case was pending adjudication at the stage of passing of the impugned judgment and where the original cheques and other original documents were filed.

12. At the request of the counsel for the appellant, I note that the appellant bank is fully entitled in accordance with law to pursue the original defendant Nos.2 and 3/respondent Nos.2 and 3 and who have committed acts of defrauding the respondent No.1/plaintiff as also the appellant/defendant No.1.

Appeal is accordingly dismissed, leaving the parties to bear their own costs. Interim orders stand vacated. Trial Court record be sent back.

JANUARY 18, 2011
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VALMIKI J. MEHTA, J.