

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

+ **RFA No.372/2002**

% **25th August, 2011**

SH. JEEVAN KUMAR Appellant
Through: Mr. Prag Chawla, Advocate.

VERSUS

CITI BANK, N. A. & ANR. Respondents
Through: Mr. Sanjay Agnihotri, Advocate.

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?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment and decree dated 19.2.2002 by which the suit of the appellant/plaintiff for recovery of certain amounts payable for alleged use

of the credit card issued by the respondent No.1/bank to one of its customer was dismissed by the Court below.

2. The facts of the case are that the appellant/plaintiff sought recovery of an amount of Rs.1,51,400/- from the respondent No.1 bank on the basis of charge slips which have been summarized in four summary forms details of which are given in para 3 of the plaint as under:-

Se. No.	Dated	Summary form	No. of Slips	Amount in Rupees
1.	24.01.1997	185821	11	41,800/-
2.	25.01.1997	185799	12	45,600/-
3.	27.01.1997	185624	13	48,800/-
4.	28.01.1997	185797	04	15,200/-
			Total	1,51,400/-

3. These charge slips are with respect to a single customer namely Sh. Dhruva Jyoti Ghose. The defence of the respondent No.1/bank was that these charge slips were never given to the respondent No.1/ bank and therefore respondent No.1/bank could not and did not recover any amount from the customer Sh. Dhruva Jyoti Ghose. It was in fact pleaded that these transactions are forged and fabricated transactions

and nothing is due to the appellant/plaintiff from the respondent No.1/ bank.

4. The trial Court has dealt with this aspect in paras 9, 11 and 12 of the impugned judgment and which read as under:-

“9. ISSUE NO.2

To prove this issue of entitlement to the suit amount, plaintiff relies upon carbon copy of summary forms and charge slips exbt. PW-2/1 to PW-2/41 for claim of the principal amount of Rs.1,51,400/- and the suit amount of Rs.2,33,000/- includes the claim of interest on 18% per annum. It is the case of the plaintiff that despite various letters, telephonic calls, personal visits, the defendant did not release the payment due against the summary forms. Letter dated 25.04.98 exbt. PW-2/42, letter dated 05.01.98 exbt. PW-2/44 and letter dated 08.07.97 exbt. PW-2/45 are stated to have been sent by the plaintiff to the Manager, Member Establishment Services, City Bank, Chennai for clearing pending dues of the plaintiff. According to the plaintiff, abovesaid summary forms alongwith charge slips exbt. PW-2/1 to PW-2/41 were dropped by him in the drop box at defendant's office. The date of dropping of the said summary forms alongwith charge slips is not specifically stated in the evidence by the plaintiff. This was required to be done as the case of the defendant is that the defendant has not received the abovesaid summary forms alongwith charge slips exbt. PW-2/1 to PW-2/41. Even if it is assumed that the abovesaid summary forms alongwith charge slips were dropped on the dates mentioned on the summary forms then except oral evidence, there is no evidence in form of letters etc. to show that the plaintiff had made any grievance of not receiving the payment against the said summary forms from January, 1997 till July, 1997 as the first letter exbt. PW-2/45 placed on record is dated 08.07.97. It has come in the evidence that the plaintiff has ceased to be Member Establishment of the defendant bank w.e.f. 30.01.97 vide

letter mark B and in the said letter, plaintiff has been requested not to submit any charges after 07.02.97 and if the plaintiff had any charges accepted under existing Member Establishment Agreement prior to the last charge, the date for submission of the same was 15.02.97. Even receiving of letters/reminders Exbt. PW-2/42, PW-2/44 and PW-2/45 is denied by defendants and evidence in respect to these letters is beyond pleadings and has not been put to the defendants in cross-examination. Otherwise also, these letters are general in nature and not shown to be pertaining to this case as there are other cases also between the parties.

11. It has come in the evidence of the defendant that the summary forms alongwith charge slips exbt. PW-2/1 to PW-2/41 were not deposited by the plaintiff with the defendant bank and statement of summary forms which are deposited by the Member Establishment are sent to such Member Establishment regularly. It has also come in the evidence of the defendant that the verbal confirmation of deposit of summary forms and charge slips is given if it is requested by the Member Establishment. It is not the case of the plaintiff that after depositing the summary forms alongwith charge slips in question, plaintiff had sought any verbal confirmation from the defendant bank within a fortnight or so.

12. It is the categorical stand of the defendant in the evidence that charge slips and summary forms in question were not deposited by plaintiff and therefore, the payments of the same were not made in this case. Although, photocopy of some writing has been placed on record which indicates the names, dates and telephone numbers but this photocopy of noting made is not proved in evidence. As per clause-6 of statement of account exbt. DW-1/1, this statement of account shall be deemed to be correct and accepted unless within 30 days of the statement, discrepancies are pointed out. The plaintiff has failed to prove that the defendant had made any grievance of non-payment in writing pertaining to summary forms in question to the defendant bank within the reasonable period of 30 days pertaining to issue of summary forms in question.” (underlining added)

5. The aforesaid paragraphs make it abundantly clear that no charge slips have at all been proved to have been received by the respondent No.1/bank from the appellant. Since no charge slips have been received by the respondent No.1/bank, it did not raise any further demand on its customer Sh. Dhruva Jyoti Ghose and did not receive any payment from the said Sh. Dhruva Jyoti Ghose. Accordingly, the trial Court was justified in arriving at a finding and conclusion that there was no liability of the respondent No.1/bank.

6. Learned counsel for the appellant however very vehemently argued that the respondent No.1/bank was intimated by means of letters dated 25.4.1998 Ex.PW2/42 and dated 5.1.1998 Ex.PW2/44 to make the payment of the charge slips and therefore it should be held that charge slips were in fact delivered to the respondent No.1/bank.

7. I am afraid I am unable to agree with the arguments as raised by the counsel for the appellant inasmuch as the letters Ex.PW2/42 and Ex.PW2/44 are very general in nature and they do not refer to the subject transactions which are mentioned in para 3 of the plaint. It is not possible on the basis of such general letters to fasten liability upon the respondent No.1/bank. The trial Court has also given similar findings and conclusions in this regard at the end of para 9 of the impugned judgment.

For the sake of facility of understanding, I am reproducing two letters
Ex.PW2/42 and Ex.PW2/44 as under:-

“To

The Manager,
Member Establishment Service,
Citi Bank,
Chennai-60002.

Dear Sir,

I want to bring few lines to your kind consideration that I approach yourself introducing as a Member of Establishment Service Vide No.11140853 of your bank.

I have already forwarded Charge Slips of various dates since January 1997, however, the payments against those Credit Slips have not been made since then for the reasons best known to you.

I have already contacted your staff on various times and wrote letters to the concerned officials in this regard, but I did not receive the payment and favourable reply yet.

Sir, you are requested to kindly look into the matter personally and direct the concerned officials to clear all my pending Charge Slips already submitted and not paid by you, so that I could submit remaining pending Charge Slips with me for necessary payment from the Bank.

Thanking you,

Dated: 25/4/98
faithfully”

Yours

“To

The Manager,
Member Establishment Service,
Citi Bank,

Chennai-60002.

Dear Sir,

I approach yourself introducing us as member of Establishment of No.11140853 of your bank.

I have already forwarded charge slips of various dates since Jan. 1997, However, the payments against those credit slips have not yet been made since then for the reasons best known to you.

I have already contacted your staff on various occasions in this regard, however, I have not received payment yet.

I request you to clear all my pending charge slips already submitted and not paid by you, so, that I could submit pending charge slips with me for necessary payment from your bank.

Yours faithfully”

Quite clearly, these two letters were general in nature and I agree with the trial Court that on the basis of such general letters it cannot be said that subject charge slips, summary of which are given in para 3 of the plaint, can be said to have been delivered to the respondents.

8. I may note that the learned counsel for the respondent has argued that during the admission of the appeal, a Division Bench of this Court on 13.5.2003 directed the respondent No.1/bank to produce the relevant accounts on the next date of hearing and which were produced.

These relevant accounts of Sh. Dhruva Jyoti Ghose were filed on 2.9.2003. These 21 pages show that none of the amounts as mentioned in para 3 of the plaint have been recovered by the respondent No.1/bank from Sh. Dhruva Jyoti Ghose. Surely, there is no personal interest of the respondent No.1/bank in not wanting to have recovered the amount from Sh. Dhruva Jyoti Ghose if indeed the charge slips in terms of the summaries contained in para 3 of the plaint were in fact delivered by the appellant/plaintiff to the respondent No.1/bank.

9. In view of the above, I do not find any perversity or illegality in the impugned judgment and decree. The onus of proof was on the plaintiff and which it failed to discharge. The respondent No.1/bank has further proved that it is not as if it had pursuant to the subject charge slips raised demands on Sh. Dhruva Jyoti Ghose and recovered amounts from the said customer but was not paying to the appellant/plaintiff. The appeal thus being devoid of merit is dismissed, leaving the parties to bear their own costs.

AUGUST 25, 2011
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VALMIKI J. MEHTA, J.