

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

+ **RFA No.579/2001**

% **4th March, 2011**

M/S BELAIR TRAVEL & CARGO P. LTD. Appellant
Through: Mr. K.R.Chawla, Adv.
VERSUS

INDIAN BANK Respondent
Through: 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?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

1. This case is on the 'Regular Board' of this Court since 17.1.2011. Today, it is effective item No.7 and although it is 2.25 pm no one has appeared for the respondent. I have therefore heard learned counsel for the appellant and have perused the record and am proceeding to dispose of the appeal.

2. The challenge by means of this regular first appeal under Section 96 of the Code of Civil Procedure, 1908, is to the impugned judgment and decree dated 28.7.2001 whereby the suit of the respondent bank was decreed against the appellant/defendant for the amount of cheques which were

credited in the account of the appellant/defendant before their realization, and which cheques were subsequently not realized from the drawers of the cheques.

3. The facts of the case are that appellant/defendant was maintaining a current account with the respondent/plaintiff bank and on 24.3.1994 deposited two cheques of Rs.3,38,710/- dated 4.9.93 and for Rs.3 lacs dated 30.1.1994. These cheques were given by the customer of the appellant M/s Space Tours & Travel, in favour of the appellant/defendant and were drawn in favour of Punjab National Bank, Barakhamba Road, New Delhi. Out of these cheques one cheque of Rs.3 lacs was stale. When the two cheques were presented by the respondent bank for clearing, the same were returned back by the Punjab National Bank. Since in the meanwhile, the amount of the cheques were already credited in the current account of the appellant and amounts were withdrawn by the appellant, the respondent bank asked the appellant/defendant to return the amount, as these amounts would, on account of non-realization of cheques, be an overdraft/loan granted in the current account. The stand of the defendant/appellant in the written statement was that the respondent bank was guilty of negligence because in the meanwhile, the appellant had given credit and goods to M/s Space Tours & Travel. It has come on record in the proceedings in the trial court that on instructions of Reserve Bank of India, the respondent bank gave credit to Punjab National Bank, Barakhamba Road and thereafter debited the cheque amounts to the current account of the appellant/defendant.

4. The trial court, after the pleadings were complete framed the following issues:-

"ISSUES.

No.1. Whether the plaintiff-bank is entitled to recover any amount from the defendant? If so what extent?OPP.

No.2. Whether the plaintiff is entitled to claim interest? If so, at what rate? OPP.

No.3. Whether the suit is bad for non-joinder of parties? OPD

No.4. Whether the plaint is not properly verified? If so, its effect? OPD

No.5. Relief."

5. The decision in the case is woven around admitted facts as stated above, except that the issue was whether the appellant/defendant was bound to return the overdraft amount to the respondent/ bank. I may note that the respondent bank acted only as a collecting agent for the appellant/defendant/customer and it had not discounted the cheques. Even assuming the cheques were discounted, the respondent bank is entitled to return of the amount advanced on the basis of dishonor of cheques. The only reason why the respondent/bank would not be entitled to receive the amount was if the appellant had not come to know of the dishonor of the cheques within the period of limitation, in which case it could have sued its customer M/s Space Tours & Travel. It has been held by this court in the case of ***Syndicate Bank Vs. Swaika Chemical Works, 1987 (61) Comp. Cases 752: 1987 RLR 119*** that once the right of the customer of the bank against its own client becomes time barred whereby the customer of the

bank loses its right to file a suit against the client who gave the customer the cheques, then the bank cannot seek refund of the amount. This is however, not the position in the present case because there was no case set up by the appellant that its right to recover the amount from M/s Space Tours & Travel had become time barred and consequently the respondent bank could not recover the amount.

6. Some of the findings of the trial court and with which I concur, are contained in the following paragraphs:-

“17. It is admitted fact that two cheques, Ex.DX-1 for Rs.38,710 & DX-2 for Rs.3,00,000/- were deposited with the plaintiff-bank on 24.3.94 vide counter-foil receipt Ex.DW1/1 by the defendant. The plaintiff bank presented those cheques for clearance in the normal course of business; and, then after waiting for a reasonable time under the RBI- rules, credited the amount of those cheques in current account of the defendant being maintained with the plaintiff. As per the statement of account Ex.PX-1, the said amount was credited into the account of the defendant on 28.3.94. On 31.3.94, the defendant withdrew the amount. It is also the admitted fact that RBI debited the amount of the said two cheques in the account of the plaintiff-bank by giving credit of the same to the Punjab National Bank. On receipt of the unpaid cheques, the plaintiff-bank asked the defendant to return back the amount of those cheques.

18. Under these facts and circumstances, the question to be determined is “What was the position of the plaintiff bank when it received the cheque in question from the defendant for crediting of its account?” “Had the plaintiff-bank received as agent for collection or as holder for value of the cheques?” The answer to these question is obvious and that is that the plaintiff received the two cheques as agent for collection and did not place the amount to defendant’s credit to draw upon. Even otherwise, as per the transaction between the plaintiff-bank and the defendant, the customer, there was, in fact, no relationship of debtor and creditor.

19. Law on this point is quite clear. Where the bank receives cheques from its customers for credit of their amount, and the entrusted cheques are dishonoured by the other bank, and the bank, thereafter reverse the customer’s original credit to its account in respect of those very cheques, the act of the bank in reversing the credit would be consistent with its having received

the cheque only as an agent for collection, and the fact that they never placed any money to its customer's credit to draw upon. In this regard a reference may be made to a case Alliance Bank of Simla, in Liquidation-in Re. AIR 1925 Calcutta 54 wherein the Hon'ble High Court in similar circumstances held as under:

"The action of the Alliance Bank of Simla, Ltd. in reversing the credit to their constituent's account in respect of these very cheques was consistent only with their having received the cheques as agents for collection and with the fact that they never placed any money to their customer's credit to draw upon."

The Hon'ble High Court further observed:

"If, as a matter of fact, the proceeds of these cheques had been actually collected and the relationship of banker and customer established; it would not have been open to the Alliance Bank to reverse their original credit to their constituent's accounts. This strengthens the conclusions that the cheques in question were not finally cleared. It would, therefore, follow that the moneys represented by these cheques were never in fact collected by the Alliance Bank of Simla, Ltd. at a time when they were entitled to claim them as part of their assets: Farrows Bank (1921) 1 CH. 41. There was, in fact, no relationship of debtor and creditor as between the Alliance Bank and their customers and, therefore, in my opinion on the facts presented before me is that the liquidators of the Alliance Bank of Simla Ltd. must pay out of the assets in their hands the full amount claimed by the Chartered Bank in their application".

21. Therefore, keeping in view the law laid down by the Hon'ble High Courts, in the above noted cases, I am of the view that the plaintiff-bank just acted as an agent by receiving the two cheques for collection; and it never placed the money to the defendant's credit to draw upon. Now, since, the factum of defendant's having withdrawn the amount of those two cheques is admitted one, the defendant, is, certainly, supposed to return back the amount. Though, the defendant is alleged to have paid the amount by giving credit of goods to M/s Space Tour and Travel, who issued the cheque, yet, the defendant cannot escape its liability to pay the amount for those unpaid cheques. Even otherwise, the amount to the tune of the amount of both the cheques has already been debited in the account of the plaintiff-bank by the Reserve Bank of India, vide its debit note Ex.P1; in view of this, the plaintiff-bank, perhaps, was unable to take any action against Punjab National Bank, to whom the said amount was credited."

(emphasis added)

7. The trial court has balanced the equities by not granting interest for a particular period to the respondent bank. I do not find illegality or perversity in the impugned judgment and decree which calls for interference in appeal, inasmuch as the respondent bank acted only as a collecting bank and if in the meanwhile on account of the amount of the cheques having been credited in the account of the appellant/defendant/customer which the appellant withdraws, in law, such withdrawal is to be treated as an overdraft in the current account and which has to be repaid. Merely because two views are possible, this Court is not entitled to interfere with one plausible view which has been taken by the trial court unless the view of the trial court is illegal or perverse or causes grave injustice/prejudice. I do not find any illegality or perversity in the findings and conclusions of the trial court and no injustice has been caused to the appellant. The remedy of the appellant was against his own customer and it cannot take up the stand to refuse repayment of the overdraft/loan in the current account. The appeal being therefore devoid of merit is dismissed leaving the parties to bear their own costs. Interim Orders stand vacated.

March 04, 2011
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VALMIKI J. MEHTA, J.