

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

+ **RFA No. 750/2002**

% **28th November, 2011**

SH. JUGAL KISHORE Appellant
Through Mr. Vineet Jhanji, Advocate.

versus

BANK OF INDIA Respondent
Through Mr. V.K. Tandon, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the Trial Court dated 28.2.2002. By the impugned judgment, the Trial Court dismissed the suit as barred by limitation by refusing to give benefit to the appellant / plaintiff of the provision of Section 14 of the Limitation Act, 1963 for the time taken by the appellant / plaintiff before the Consumer Forum. It is not disputed that if the time spent in the litigation before the Consumer Forum is excluded, then, the subject suit will be within

limitation.

2. The facts of the case are that the appellant / plaintiff pleaded that he had an account with the respondent / Bank and on 8.5.1994 after withdrawing a sum of ₹25,000/- he was left with a credit balance of ₹1,20,000/- in his account. The appellant / plaintiff pleaded that he never got a new cheque book from the respondent / defendant / Bank and he was shocked to learn on 21.5.1994 that a huge amount of ₹1,20,000/- was debited from his account on 10.5.1994. It transpired that in fact a certain cheque from a cheque book, which was allegedly received by the appellant / plaintiff, was used for withdrawing the amount. The cheque in question was the cheque bearing No.454652 of ₹1,20,000/-.

3. When a legal notice was sent to the respondent / Bank, the respondent / Bank firstly stated that the said cheque bearing No.454652 was missing from its records as also the acknowledgment slip indicating receipt of cheque book by the appellant / plaintiff.

4. The appellant / plaintiff, thereafter, filed a complaint before the Consumer Forum, which was, however, dismissed because the Consumer Forum found that the cheque requisition slip bore the signature of the appellant / plaintiff of having received the cheque book. The Consumer

Forum, however, clearly observed that the appellant / plaintiff is left with the

remedy of Civil Courts in case the appellant / plaintiff is still of the opinion that he has been defrauded.

5. Before proceeding further, I may only state that it is settled law that once a signature on a cheque of a customer of the bank is forged, there is no mandate upon a bank to pay the amount, and the customer on showing the cheque bearing his forged signature, is, entitled to recovery of the amount from the bank, unless the bank shows that there was no negligence in dealing with the subject cheque.

6. A reference to the judgment of the Consumer Forum dated 1.12.1998 clearly shows that all these aspects have not been dealt with by the Consumer Forum, and the only aspect dealt with is that there was no deficiency of service because the appellant / plaintiff was found to have signed the cheque requisition slip and, therefore, the receipt of the cheque book. There is no discussion in the judgment of the Consumer Forum of the fact that the subject cheque has been forged and, therefore, the forged cheque not being a mandate upon the respondent / Bank to make payment thereunder. Further and obviously, therefore, there is no discussion on any alleged findings of lack of negligence of the respondent / Bank. As has already been stated above, the Consumer Forum at the end of the judgment observed that “complainant if so advised may seek his remedy in Civil

Courts”.

7. A reference to the impugned judgment shows that the Trial Court has held that the Consumer Forum in fact went into the merits of the matter and, therefore, the judgment of the Consumer Forum will effectively operate as res judicata. I have already stated above, the issue is with regard to a forged cheque not being a mandate upon the Bank to pay, and any issue of alleged negligence of the Bank or non-negligence of the Bank was not an issue and not decided by the Consumer Forum.

8. In my opinion, therefore, the Trial Court was not justified in declining the benefit of Section 14 of the Limitation Act, 1963 to the appellant / plaintiff inasmuch as the appellant / plaintiff was bonafidely pursuing his remedy in a wrong Court/forum i.e. the Consumer Forum, instead of the appellant/plaintiff having approached the Civil Court. A plaintiff should not be thrown out from the court, unless his case and the averments made by him are looked into after proper trial in the case. This is, more so required in the present case because of the fraud pleaded by the appellant/plaintiff and the respondent / Bank pleading very surprisingly that the subject cheque was lost and no longer available with it.

9. I however note that I need not go into these aspects in detail herein, because these aspects as to whether the cheque bore a forged signature of the

appellant / plaintiff or whether the respondent / Bank committed no negligence and, therefore, they were not liable are aspects which will be decided after trial in the suit at the stage of passing a final judgment.

10. In view of the above, appeal is allowed. Impugned judgment dated 28.2.2002 is set aside. Appellant / plaintiff is granted benefit of Section 14 of the Limitation Act, 1963 by excluding the period / time taken in pursuing the litigation before the Consumer Forum. The suit is, therefore, held to be within limitation. The Trial Court will now, hear and dispose of the suit in accordance with law and give findings on the merits of the matter, except the issue of limitation. Parties are left to bear their own costs. Trial Court records be sent back.

11. Parties to appear before the District & Sessions Judge, Delhi on 5.1.2012 and on which date, the District & Sessions Judge will mark the suit to a competent court for disposal in accordance with law.

VALMIKI J. MEHTA, J.

NOVEMBER 28, 2011

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