

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

+ **RFA No.761/2010**

% **29th November, 2011**

VINAY MEHTA & ANR Appellants
Through: Mr. Manish Gandhi, Adv.

versus

BANK OF INDIA Respondent
Through: Mr. Mahesh Singh, Adv.

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 under Section 96 of the Code of Civil Procedure (CPC), 1908 is to the impugned judgment of the Trial Court dated 3.5.2010 by which the suit of the respondent-bank was decreed against the appellants/defendants. The appellant no.1 is the sole proprietor of appellant no.2. Appellant no.1 was the defendant no. 2 in the Trial Court and the appellant no. 2 was the defendant no. 1 in the Trial Court.

2. The facts of the case are that the appellants obtained a

temporary overdraft facility from the respondent-bank, when the respondent-bank purchased a cheque of ₹15,00,000/- dated 20.9.2004 on the assurance that this cheque would be honoured on presentation. This cheque was, however, dishonoured and therefore to secure the interest of the respondent-bank, the appellant no.1 executed a demand promissory note in favour of the respondent-bank for an amount of ₹8,50,000/-. The appellants thereafter repeatedly promised to make payments of the amount due, and in fact made certain payments, however, the net balance was not cleared and a cheque of ₹1,50,000/- was dishonoured due to insufficient funds on 18.12.2004. The respondent/plaintiff thereafter sent a legal notice dated 2.3.2006, which having failed to yield the desired result, the subject suit was filed.

The basic defence of the appellants in the Trial Court was that the amounts which are due to the respondent-bank were in fact paid on behalf of the appellants to two employees of the respondent-bank namely one Mr. Mathur and secondly one Mr. Nagpal. Mr. Nagpal was stated to be the Manager of the respondent-bank.

3. The Trial Court has disbelieved the stand/defence of the appellants and has decreed the suit by making reference to the exhibited documents. The relevant findings and conclusions of the Trial Court, and to

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which I agree, read as under:-

“The plaintiff proved the cheque, return memo and debit advice as Ex.PW1/2, Ex.PW1/3 & Ex.PW1/4 respectively. Debit Promissory Note was proved as Ex.PW1/5. The handwritten letter dated 11.10.2004 of the defendant admitting that the cheque had been dishonoured was proved as Ex.PW1/6. The e-mail sent to defendant no.2 to adjust the overdraft account immediately has been proved as Ex.PW1/7 and the hand written letter of the defendant dated 25.11.2004 admitting that the cheque of ₹15 lacs had been dishonoured and the assurance that he will settle the accounts has been proved as Ex.PW1/8. The letter dated 8.12.2004 written by the defendant No.2 to the plaintiff bank in which he admitted his liability to the plaintiff bank has been proved as Ex.PW1/9. The defendant no.2 gave two cheques of ₹1,50,000/- and ₹1,25,000/- and requested the plaintiff bank to present them after 15.12.2004, but the cheque of ₹1,50,000/- was dishonoured due to insufficient fund on 18.12.2004. On the request of the defendant the plaintiff bank again sent it for clearance on 24.12.2004, but the same was dishonoured due to insufficient fund. The cheque, return memos, and debit advice has been proved as PW1/10, PW1/11, PW1/12 and PW1/13 respectively. The letter dated 17.2.2005 and letter dated 10.3.2006 sent to the defendant No. 2 by the plaintiff bank through registered post has been proved as Ex.PW1/12 and Ex.PW1/15 along with receipt of registered post Ex.PW1/16. The plaintiff bank proved the follow up reports as reported that the premises of the defendant no.2 were locked. On 7.7.2005 defendant no.2 admitted his liability towards the plaintiff bank and assured to clear the accounts vide letter which has been proved as Ex.PW1/20. The follow up reports for collecting the payment have been proved as Ex.PW1/21 and Ex.PW1/23. Another follow up report has been proved as Ex.PW1/24 as per which the defendant no.2 could not be contacted at his residence. The relevant portion of the account books has been proved as Ex.PW1/25.

Defendant no.2 proprietor of defendant no.1, examined himself as DW-1 and admitted that he had got a cheque discounted from the plaintiff bank, but he took up a plea that he was not liable to make any payment to the bank as he made payment of ₹1,25,000/- and ₹50,000/- to the plaintiff bank on 12.12.2004 by way of cheques and the receipt of the said cheques were duly acknowledged by Shri D.K.Nagpal of plaintiff bank in his Diary which is Ex.DW1/1. DW1 deposed that he made a payment of ₹2 lacs on 20.7.2005, ₹2 lacs on 15.9.2005, ₹1 lac each on 12.10.2005 and 15.11.2005 and final payment of ₹1.25 lacs on 20.12.2005 towards full and final settlement of principal along with interest. According to defendant no.2, Shri D.K.Nagpal and Sh. K.S. Mathur, employees of the plaintiff bank had received the entire payment from him and for this reason no amount much less than the suit amount was due from him. He denied all the notices and letters sent by plaintiff bank but in the cross examination DW1 stated as follows:

“It is correct that I have got discounted a cheque of ₹15 lakhs for a sum of ₹Eight Lakh Fifty Seven Thousand and odd from the plaintiff bank.”

“I had signed Demand Promissory Note but at that time the amount was not filed in.”

“I admit document Ex.PW1/10 i.e. Cheque of ₹1,50,000/-.”

“The handwriting in Ex.DW1/1 i.e. diary is of mine.”

“I have not received letters Ex.PW1/14 and Ex.PW1/15.”

“No receipts were given separately with regard to the payments received by Mr. Mathur of Mr. Nagpal.”

Dw-1 admitted the entire case of the plaintiff and also his letters Ex.PW1/6, Ex.PW1/8, Ex.PW1/9 and Ex.PW1/20 vide which he admitted his liability to the bank but set up a case that the payment had been made to the employees of the bank and they had acknowledged the receipt of the same in

diary Ex.DW1/1. DW-1 admitted that Ex.DW1/1 which is a diary was in his handwriting and no receipts had been issued against the payment made by him to Sh.D.K.Nagpal and Sh.K.S. Mathur, employees of the bank. In support of his defence, DW-1 examined his wife as DW-2 who also admitted the handwriting of DW-1 on the diary Ex.DW1/1 and admitted in the cross-examination, that the liability was towards the bank and not towards the employees of the bank. The defendant failed to prove the defence set up by him that he had made the payment to the employees of the bank, whereas the plaintiff has successfully proved its case against the defendant, who has categorically admitted his liability towards the plaintiff bank.”(underlining added).

A reference to the aforesaid findings and conclusions show that the demand promissory note was proved and exhibited as Ex.PW1/5. The hand written letter dated 11.10.2004 admitting dishonour of cheques was proved and exhibited as Ex.PW1/6. Various other letters, the cheque return memos with the debit advice were also duly exhibited. The legal notice dated 2.3.2006 was also proved and exhibited as Ex.PW1/23. The follow up reports for collecting the payments were proved and exhibited as Ex.PW1/21 and Ex.PW1/22.

4. Learned counsel for the appellants once again argued before this Court that there were no dues of the appellants because the appellants filed before the Trial Court a copy of the diary, Ex.DW1/1, which was signed by Mr. Mathur and Mr. Nagpal to show that the payments were, in

fact, made to these employees. It was argued that payments were made at home by the appellant no.1 because he was not well.

In my opinion, this argument lacks substance because it is inconceivable that a total amount of ₹7,25,000/- was paid in cash to the employees on 5 occasions being amounts of ₹2,00,000/- on 27.7.2005, ₹2,00,000/- on 15.9.2005, ₹1,00,000/- on 12.10.2005, ₹1,00,000/- on 15.11.2005 and ₹1,25,000/- on 20.12.2005, but the appellants would not ask for a proper deposit slip/pay-in-slip showing that these amounts were, in fact, credited to the account of the bank. Further, the appellants have taken no steps to summon the said Mr. Mathur or Mr. Nagpal to prove their alleged signatures on the diary, Ex.DW1/1. Therefore, the self-serving statement that the signatures appearing on DW1/1 are the signatures of Mr. Mathur and Mr. Nagpal cannot be believed, more so, in view of the huge amount of ₹7,25,000/- which is involved. I put it to counsel for the appellants as to whether the appellant no.1 was the only person in his family, but it is admitted that he was married and he has a wife. Therefore, even assuming that the appellant no.1 was not well, surely, his wife would have gone to the bank and deposited the amounts or at least if what is stated is correct, taken the deposit slips/pay-in-slips showing payments of these huge

amounts over 5 occasions totaling to ₹7,25,000/-. The Trial Court has therefore, in my opinion, rightly decreed the suit of the respondent-bank. The Trial Court has been more than reasonable in granting pendent lite and future interest only at 8% per annum simple.

5. In view of the above, there is no merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA,J

NOVEMBER 29, 2011
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