

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

+ **RFA No. 82/2001**

% **13th February, 2012**

CORPORATION BANK Appellant
Through: Mr. Ajant Kumar, Advocate

VERSUS

DR. AMARJEET JOLLY AND ANR. Respondent
Through: Mr. Sudhir K. Makar, 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 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of trial court dated 14.10.2000 dismissing the suit filed by the appellant/plaintiff-bank for recovery of monies paid under a mistake. The trial court has dismissed the suit on the ground that the cause of action which accrued had accrued in favour of the appellant/plaintiff-bank at the Bhikaji Cama Place Branch, but since the suit was filed by the appellant/plaintiff-bank through its Kamla Nagar Branch, the same was not

maintainable. This finding has been given by the trial court while pronouncing on issue No. 3.

2. Learned counsel for the respondents/defendants at the outset concedes that he does not press for dismissal of suit as per issue No. 3 but pressed for dismissal of the suit and the appeal on merits inasmuch as no excess amount as alleged has been received by the respondents/defendants.

3. The facts of the case are that the respondents/defendants deposited with the appellant/plaintiff-bank currency notes of US \$ 5,500/- and two foreign instruments being two investment drafts drawn on Prudential Bache Securities and SW Taylor and Company (Brokers Limited) for amounts of US \$ 20,000.50 and US \$ 99,000/- respectively. The amount totaling to US \$ 1,24,500/- were thus deposited on 24.05.1984 by the respondents/defendants at the Kamla Nagar Branch of the appellant/plaintiff-bank. The appellant/plaintiff thereafter credited a sum of ₹13,60,292.48 to the respondents'/defendants' NRE SB account on 29.5.1984 in respect of the abovesaid foreign currency and foreign instruments. Subsequently, at the request of the respondents/defendants, a Foreign Currency (Non-resident) Re-investment (FCNR) certificate was issued for US \$ 1,20,000/- by converting the rupee amount into dollars

equivalent by debiting the NRE SB account of the respondents/defendants. The appellant/plaintiff-bank claimed that by mistake of fact when the amount was paid to the respondents/defendants, an additional amount of US \$ 12,000/- was paid by a re-investment certificate dated 01.07.1984 with the date of maturity as 01.07.1987. It was then pleaded in the plaint that US \$ 12,000/- was never received by the appellant/plaintiff-bank and the FCNR deposit receipt was issued by mistake inasmuch as because of the rules of the appellant/plaintiff-bank when dollars are repaid back, only same amount of dollars have to be repaid back, which were originally deposited (of course with interest) because the crediting in the account is on the basis of notional rate of conversion of dollars into rupees. It was pleaded that the mistake of excess payment of dollars was discovered on the internal audit of the bank in March 1987 and whereafter the respondents/defendants were called upon to pay back/refund US \$14,849/-(US \$12000/- with interest thereon) paid to them on 19.9.1986 by way of premature payment of FCNR Re-investment Certificate No. 2/84. Since the respondents/defendants failed to pay the amount, the subject suit for recovery of US \$ 18,576.91 was filed claiming interest at 16.5% per annum compounded quarterly. Before the amount claimed in the suit was arrived at, the appellant/plaintiff-

bank adjusted an amount of US \$ 4932.94/- lying with it of the respondents/defendants after converting the rupees credit in the account into dollars. The details of the appropriation are given in para 21 of the plaint.

4. The respondents/defendants contested the suit. It was pleaded that there was no privity of contract between the respondents/defendants and the Kamla Nagar Branch after the amounts were transferred by the Kamla Nagar Branch to the Bhikaji Cama Place Branch. It was further pleaded that the appellant/plaintiff-bank is not entitled to take advantage of its own wrong and raise a false claim against the respondents/defendants. It was further pleaded that when the amount was converted into US dollars from rupees, the respondents/defendants were entitled to the dollars taking benefit of the actual conversion rate of dollars into rupees and the corresponding certificates thus issued to them for such larger amounts in dollars including of the re-investment certificate for US \$ 12,000/- were rightly issued. It was pleaded that any fluctuation of dollar rate is for the benefit of the respondents/defendants and not the appellant/plaintiff-bank.

5. The only issue which has been argued before this Court by counsel for both the parties is as to whether when a customer deposits dollars and a rupee amount is credited to his account, whether on re-conversion of the

amount of rupees available in the account into dollars, the customer gets the dollars as per the actual conversion rate when the dollars were credited or that the customer only gets the exact amount of dollars deposited, irrespective of the actual conversion rate.

6. Learned counsel for the appellant/plaintiff-bank has relied upon the circular issued by the appellant/plaintiff-bank being Ex. PW-2/1 which provides that when there is a deposit of dollars in the account, the deposit of rupees to the credit of the account is at a notional rate of conversion and when the rupees were converted back into dollars, then the same has to be at the same notional rates when the dollars were deposited in the account, irrespective of the actual buying and selling rate of the dollars. The relevant portion of this circular, Ex. PW-2/1 reads as under:-

“CORPORATION BANK
CENTRAL FOREIGN EXCHANGE DEPARTMENT
MITTAL CHAMBERS
NARIMAN POINT
BOMBAY 400021

ACCOUNTING ENTRIES FOR FCNR/FCNRO TRANSACTIONS :
ENTRIES TO BE PASSED BY LINKED BRANCHES:

I. OPENING OF ACCOUNT:

- a) Foreign Currency Instruments meant for New FCNR sent to CFED Bombay for collection:
(Instrument to be sent to CFED by fastest mode to ensure early realization.)

i) On receiving intimation of realisation from Nostro Bank, telex/telegram is being sent to the branch by CFED Bombay informing value date, Notional Rate and amount of credit. On receipt of telex/telegram branch will pass following entries:

Debit – Suspense Debtors CFED Bombay.

Credit – FCNR Account

(at the Notional Rate as informed in the Telegram)

FCNR deposit receipt to be issued to depositor with interest payable and due date reckoned from value date.

ii) On receipt of branch advice from CFED Bombay, Suspense Debtors entry to be eliminated.

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b) CONVERSION OF NRE BALANCES TO FCNR A/C :

The linked branch should contact their designated branch and inform them of the NRE amount in Indian Rupee to be converted. Based on the TT Selling rate for the desired currency prevailing on that date the designated branch will convert the Rupee amount and inform the linked branch the equivalent amount for opening the FCNR account in the designated currency. The entries to be passed by the linked branch are as follows:

i) Debit NRE Account of the depositor

Credit designated branch

(at TT selling rate as advised by designated branch)

ii) Debit suspense Debtors Designated branch

Credit FCNR Account

(At prevailing Notional Rate for the equivalent amount in the designated currency as advised by designated branch. FCNR receipt for this amount to be issued to depositor. The value date would be, date of conversion in this case).

iii) On receipt of branch advice from the designated branch, the suspense debtors entry is to be eliminated.

NOTE: A confirmatory letter is to be sent by linked branch to the Designated Branch on the same day, alongwith a copy of the Account Opening form. Account Opening form need not be signed by the Depositors, but should be verified by an authorized official of the branch filing in all the particulars like name and address of depositor, period of deposit, rate of interest etc.

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7. Other portions of this circular are also relied upon basically for the purpose that the same amount of dollars are paid to the account holders who have deposited dollars irrespective of the actual buying and selling rate of the dollars on the date of the deposit of the dollars and on the date of withdrawal of dollars or getting a certificate of the equivalent amount of dollars.

8. Ordinarily, the aforesaid circular, Ex. PW-2/1 would have no application, unless, the contents of this circular were brought to the notice of the customer. A person whose account is credited with rupees is ordinarily entitled to benefit of the actual conversion rates when the equivalent rupees for the dollars are credited in the account of a person/customer. In the facts of the present case however, the issue at hand is to be answered in favour of the appellant/plaintiff-bank inasmuch as the respondents/defendants had categorically admitted in their cross-examination that they were always aware of the procedure of the bank that they are entitled to the same amount of dollars when they seek withdrawal of dollars or take a certificate of such dollars irrespective of the buying and selling rates of US dollar on the date of the deposit and on the date of the withdrawal of the US dollar. The categorical admissions made by the

respondents/defendants are contained in the cross-examination of DW-1 Dr. Amarjit Singh Jolly, and who is the defendant No. 1 in the suit. The relevant part of said cross-examination reads as under:-

“XXXXXXX by Sh. Ajant Kumar, Adv. Counsel for plaintiff.

.....It is correct that whenever any amount in US Dollars is deposited in FCNR Account the same amount of US dollar, the depositor is entitled to have together with interest allowable on such account. It is correct that the account holder is not concerned with conversion rate which is applied for debiting or crediting Indian rupee or US Dollar. It is correct that I was entitled to refund of the same amount of US dollars as was deposited by me together with interest in US dollar. The conversion rate applied for conversion of currency is internal matter of the bank for their day today basis. I do not remember if I had withdrawn any other amount from my FCNR Account besides two Re-investment Certificates, as stated by me in my examination-in-chief. When I got Re-investment Certificate and cash, I received the amount in US Dollars only. Alongwith interest which was also paid to me in US Dollars. It is correct that according to RBI Rules applicable to banks in respect of FCNR Account, the banks are to keep the money by converting the foreign currency into Indian rupee at a notional rate of conversion which is decided by RBI from time to time.”(underlining added)

9. The aforesaid admissions made in the cross-examination of the DW-1/defendant No.1 leaves no manner of doubt that the respondents/defendants were all along aware that only a notional rate applies for conversion into rupees and actually only the same amount of dollars with interests thereon is refunded back when the dollars are sought to be withdrawn from the account.

10. In the present case, it is not disputed that there is in fact a mistake which had occurred on account of applying an actual conversion rate instead of notional rates for conversion of dollars into rupees, and which mistake resulted into over payment to the respondents/defendants of dollars when the same were withdrawn at a later point of time. Once this is clear that a mistake has occurred, then as per Section 72 of The Indian Contract Act, 1872 such amount paid under a mistake has to be refunded. Section 72 of The Indian Contract Act, 1872 reads as under:

“72. *Liability of person to whom money is paid, or thing delivered, by mistake or under coercion--A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.*”

11. Learned counsel for the respondents/defendants strongly sought to argue that the respondents/defendants cannot be punished for the mistakes of the appellant/plaintiff-bank. It was also argued that the circular, Ex. PW-2/1 does not bind the respondents/defendants and in any case the same is in favour of the respondents/defendants. Reliance is placed upon certain statements made by the bank's witness, PW-2/Sh. Venkat Krishna Bhatt, in his cross examination as if there were admissions in favour of the respondents/defendants. All the aforesaid arguments have been raised to contend that the respondents/defendants are entitled to benefit of the actual

conversion rate of dollars into rupees when the dollars were deposited in the account.

12. In my opinion, the arguments as raised on behalf of the respondents/defendants in fact seek to make capital out of the mistake caused by the appellant/plaintiff-bank, and which is impermissible in view of the provision of Section 72 of The Indian Contract Act, 1872 reproduced above. The respondents/defendants are aware that they have wrongly received excess dollars, however, they have obdurately refused to refund the same although the mistake is quite apparent and as admitted by the defendant No.1 in his cross-examination when he deposed as DW-2.

13. In view of the above, it is quite clear that respondents/defendants were not entitled to the excess amounts in dollars received by them inasmuch such excess amount received by them was caused by applying actual conversion rates of dollars into rupees, whereas only notional rates are applied, and when amounts are withdrawn from the account as dollars, only the original dollars deposited with interest accrued thereon have to be paid back. Therefore, the suit of the appellant/plaintiff-bank is liable to be decreed.

I may state that whether the appellant/plaintiff-bank would seek execution of recovery of dollars or rupees equivalent, will be an issue which will be examined when the execution proceedings are filed in view of judgment of the Supreme Court in the case of ***Forasol v. Oil and Natural Gas Commission, 1984Supp SCC 263, AIR 1984 SC 241.***

14. The appeal is therefore accepted and the impugned judgment and decree is hereby set aside. Suit of the appellant/plaintiff-bank is decreed for recovery of US \$ 18,576.91 with interest at 16.5% per annum simple pendente lite and future till realization. The appellant/plaintiff-bank is also entitled to costs of ₹ 25,000/- for the present appeal in terms of the ratio of the judgment of the Supreme Court in the case of ***Ramrameshwari Devi and Others v. Nirmala Devi and Others (2011) 8 SCC 249.*** Decree sheet be prepared. Trial court record be sent back.

VALMIKI J. MEHTA, J

FEBRUARY 13, 2012

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