

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

+ **RFA No.357 /2004**

% **10th May, 2012**

ORIENTAL BANK OF COMMERCE Appellant
Through: Mr. S.A.Khan, Adv.

versus

SH. DARSHAN LAL Respondent
Through: Mr. M.S.Ahluwalia, Adv.

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

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the Trial Court dated 7.4.2004 by which the trial court decreed the suit of the respondent/plaintiff for recovery of Rs.12,87,500/- with interest @ 15% per annum against the appellant/defendant-bank on account of alleged illegal debit entries in the saving bank account no.6702 maintained by the respondent/plaintiff with **RFA No.357 /2004**

the appellant/defendant-bank.

2. The facts of the case as pleaded by the respondent/plaintiff were that he was maintaining a saving bank account no.6702 with the appellant-bank. It was pleaded that various withdrawals and debits were illegally made by the appellant/bank in this account over a period of time. The respondent/plaintiff claims that when appellant-bank wrote to him a letter dated 12.2.2002 it transpired that there were a total of four illegal debit entries in his account i.e. for the amounts of ₹8,00,000/- on 22.9.2000, ₹6,00,000/- on 21.6.2001, ₹10,00,000/- on 7.9.2001 and ₹2,00,000/- on 9.12.2001. The respondent/plaintiff claims that these debit entries being illegal, the entry of Rs.10,00,000/- be reversed and the respondent/plaintiff be granted credit of this amount. The other entries were said to be already revised. The subject suit thereafter came to be filed for the recovery of ₹10,00,000/- with interest i.e. an amount of ₹12,87,500/-.

3. The appellant-bank in the written statement denied its liability to pay the amount of ₹10,00,000/- and claimed that from the last few years in the saving bank account of the respondent/plaintiff there were regular entries showing transactions of the respondent/plaintiff with the holder of the account no.CA 1894 in the name of M/s. J.K. Constructions, 88A,

Shalimar Bagh, Delhi-52. The appellant-bank denied that there were any wrong debits which were made in the account of the respondent/plaintiff. The appellant-bank claimed that all the entries, including disputed entries in the account of the respondent/plaintiff, as co-related to the account no.CA 1894, were made with the knowledge and consent of the respondent/plaintiff.

4. After the pleadings were completed, the trial court framed the following issues:

- “1. Whether the suit is without any cause of action as alleged?
OPD
2. Whether the plaintiff is entitle to suit amount? OPP
3. Whether the plaintiff is entitle to interest? If so, at what rate and for which period? OPP
4. Relief.”

5. Trial Court has decreed the suit by holding that since there are admissions made on behalf of the appellant-bank that the vouchers with respect to various debit entries do not bear the signatures of the respondent/plaintiff, therefore, the vouchers represent illegal transactions without knowledge and consent of respondent/plaintiff, hence entitling the respondent/plaintiff to the suit amount. The trial court has held that the appellant-bank failed to file the account opening form to show that the

disputed voucher of ₹10,00,000/-, which was the subject matter of the suit, did in fact bear the signatures of the respondent/plaintiff, inasmuch as, there were signatures though only on the back of the voucher of the respondent/plaintiff. Some of the relevant observations of the Trial Court, to decree the suit, are contained in paras 15 to 17 of the impugned judgment and which read as under:-

“15. Turning to the case in hand the plaintiff had summoned PW-2 Sh. N.K. Gupta, Manager of the defendant bank. He brought the statement of account of account no.1894 pertaining to J.K. Construction which is Ex.PW-2/3. As seen above the plaintiff has also challenged in his reply and complaint regarding the transfer of ₹ 8 lakh, ₹ 6 lakh, and ₹ 2 lakh which have been unauthorisedly made in his account. It is also his case that the account no.1894 is a dummy account maintained by the then branch manager Mr. Baljeet Singh who for his own use make the withdrawal from the account of the plaintiff and to deposit the money in that account and subsequently used to credit that amount in the account of the plaintiff. With this background the transfer vouchers pertaining to ₹ 8 lakh, ₹ 6 lakh, and ₹ 2 lakh Ex.PW-2/4 to Ex.PW-2/9 assumes significance. PW-2 Sh. N.K. Gupta admitted that on the credit voucher Ex.PW2/4 to 7 which are in respect of ₹ 2 Lakh, ₹ 4 Lakh and ₹ 6 Lakh. Signature of the plaintiff are not appearing either on the front or back. Even DW-1 Sh. Manmohan Singh and DW-2 Sh. Baljeet Singh had to admit this fact in their cross-examination. PW-2 further deposed that all these vouchers are written and signed by Sh. Baljeet Singh and Baljeet Singh has admitted this fact in his cross-examination. Absolutely, no explanation has been put forward as to how by virtue of these transfer vouchers the amount from the account of the plaintiff could be withdrawn and transferred to account no.1894 without the instruction of the plaintiff. This itself reflects something fishy. Furthermore, a perusal of transfer voucher Ex.PW-2/5

goes to show that a sum of ₹ 4 lakh has been transferred to the account no.1894 by way of transfer from account no.6702 and 6703. It is surprising as to how from the account of two persons by virtue of a single transfer voucher amount can be withdrawn and transferred to the account of another person and that too without any instruction from the account holder and only on the basis of signature of the branch manager Mr. Baljeet Singh.

16. The relevant transfer voucher for the sum of ₹10 lakhs is Ex.PW-2/1 and PW-2/2. The plaintiff has categorically denied his signature on both these vouchers. Onus of proving the fact that these transfer voucher were signed by the plaintiff was upon the defendant. It was not difficult for the defendant to have proved the signature of the plaintiff on the voucher inasmuch as admittedly the defendant bank was having the original account opening form and the specimen signature of Sh. Darshan Lal. Nothing prevented the defendant from examining any hand writing expert to prove the signatures of the plaintiff on these vouchers with the admitted signatures available with the bank but that was never done. Similarly, it is the specific case of the plaintiff that he has no concern with account no.1894. No efforts were made by the defendant to examine the account holder of account no.1894 to prove that he had dealing with the plaintiff. Undisputedly, Mr. Baljeet Singh who was the then branch manager is under suspension. Even when he was appeared in the witness box he was brought from the jail and he admitted that he was suspended in February, 2002 from Sarv Priya Vihar branch of the defendant where the plaintiff was having his account. At the risk of repetition it may be mentioned that immediately on coming to know about the irregularities in the statement of account the plaintiff sent a reply and made a complaint to the Reserve Bank of India and when no action was taken on his complaint he was constrained to file a suit. It has come in evidence that no action was taken by the ombudsman on the ground that a civil case is going on. It is the specific case of the plaintiff that because of illegal transfer in his account Mr. Balheet Singh has been suspended. Although, DW-1 Sh.Manmohan Singh has tried to depose that Mr. Baljeet Singh was suspended because of certain

irregularities. However, PW-2, Sh. N.K.Gupta who is the branch manager of the defendant bank admitted that an enquiry against Baljeet Singh is still pending and he is under suspension. It is pertinent to note that he did not produce the record pertaining to the enquiry against Mr. Baljeet Singh by stating that he had been asked by the higher authorities not to produce the record. He could not even deny the suggestion that the higher authorities are intentionally not producing the record since the enquiry against Baljeet Singh is pertaining to embezzlement of account of this case.

17. The result of the aforesaid discussion is that as per the own showing of the defendant various transfers have been made in the account of the plaintiff without his instruction. Plaintiff has specifically alleged that he has no connection with the account no.1894 pertaining to J.K. Construction and he has denied his signature on the debit voucher vide which a sum of ₹10 lakh was transferred from his account to account no.1894 and the defendant has failed to prove that this amount was transferred under the instruction of the plaintiff coupled with the fact that admittedly the then branch manager Sh.Baljeet Singh is under suspension and for reasons best known to the defendant officials, the relevant record pertaining to enquiry against Baljeet Singh was not produced for which an adverse inference has to be drawn against him. I am of the opinion that the defendant has failed to prove that the suit is without any cause of action. This issue is accordingly decided against the defendant.”

6. Learned counsel for the appellant-bank has very emphatically argued the following points before this Court:-

- i) The statement of accounts of the respondent/plaintiff filed and exhibited before the trial court as Ex.PW1/2 contained earlier admitted entries dated 21.9.2000, 31.3.2001, 21.6.2001, 6.9.2001, 7.9.2001 and 1.12.2001 with the A/c CA 1894, and therefore, it was clear that the

transactions which were made with the account no.1894 were not with a stranger, thus even the disputed entries were clearly with the knowledge and consent of the respondent/plaintiff, otherwise, these large amounts entries over a period of one year would have been objected to by the respondent/plaintiff within that period of one year, and in any case definitely before the issue of the disputed debit entries was brought to the notice of the respondent/plaintiff by the appellant-bank vide its letter dated 12.2.2002, Ex.PW1/1.

ii) Not only the account of the respondent/plaintiff showed entries and transactions with account no.1894, these very transactions are also reflected in the statement of account of M/s. J.K. Constructions, and which account with the cross entries has been proved and exhibited before the Trial Court as Ex.PW2/3, showing that the various entries made during the years 2000-2001 were always in the knowledge and with the consent of the respondent/plaintiff.

iii) The respondent/plaintiff initially did not file his passbook of the saving bank account, however, he subsequently filed the photocopy of this passbook, (and being the document of the respondent/plaintiff this can always be looked into), and this passbook shows that the entries which are found in the account of the

respondent/plaintiff, Ex.PW1/2 existed in the passbook, thus confirming the knowledge and consent of the respondent/plaintiff to the disputed transactions, otherwise the respondent/plaintiff would have objected at the time of getting the passbook filled or immediately thereafter.

iv) Trial Court has arrived at a totally illegal finding that the appellant-bank did not produce the account opening form containing the signatures of the respondent/plaintiff inasmuch as the account opening form was in fact brought by the witness of the appellant-bank, DW1, Sh.Manmohan Singh and in spite of the original account opening form and specimen signatures form being brought by the said witness, not only the said documents were not got filed on record by the respondent/plaintiff, but also no suggestion was also put to the witness, DW1 that the signatures found on the back of the disputed voucher of ₹10,00,000/- do not tally with the signatures on the account opening form and the specimen signatures card.

v) The respondent/plaintiff though admitted that his accounts were audited, however, such accounts were deliberately not filed, and therefore adverse inference must be drawn against the respondent/plaintiff in failing to produce the account vide Illustration

(g) of Section 114 of Indian Evidence Act, 1872 inasmuch as the accounts if filed would have shown the existence of disputed entries to the knowledge/consent of the respondent/plaintiff.

vi) Trial Court has hopelessly failed to discuss the most relevant issue in this case being as to why the respondent/plaintiff should only dispute some entries in his account qua the other account CA No.1894 and not of other debit and credit entries. It is argued that the trial court has just done a lip service to this argument without really dealing with it and if dealt with, the suit could never have been decreed.

7. In response to the arguments raised on behalf of the appellant-bank, counsel for the respondent/plaintiff has basically argued that once the disputed vouchers of various entries did not contain the signatures of the respondent/plaintiff, entries made in his accounts have to be held as illegal entries and therefore the appellant/defendant-bank has to reimburse the respondent/plaintiff. It is argued that even on the voucher with respect to the disputed entry of ₹10,00,000/- which is the subject matter of the suit, there is only one signature of the respondent/plaintiff at the back of the voucher and there are no signatures on the front of the voucher, and the signatures on the back of the voucher are in fact forged signatures. It is

further argued that the appellant/defendant ought to have produced the holder of the account CA No.1894, and which since the appellant-bank failed to do, the respondent/plaintiff was entitled to the decree as granted by the trial court. In sum and substance, the respondent/plaintiff basically relies upon the reasoning which is given by the trial court to decree the suit.

8. In my opinion, the arguments urged on behalf of the appellant-bank indeed carry weight. I accept and adapt them in total without reproducing them to avoid prolixity. It was very convenient for the respondent/plaintiff when the appellant-bank wrote the letter dated 12.2.2002 to him for confirming the balance in the account for all the entries, to deny only four entries totalling to ₹ 26 lacs because by that time, respondent/plaintiff had come to know that the appellant-bank had taken action against its Manager, Baljeet Singh for operating certain fictitious accounts and making entries therein. It is rightly argued on behalf of the appellant that it is inconceivable for a person like respondent/plaintiff, who is not a businessman having hundreds and thousands of entries in his account every year, not to have noticed few entries of amounts running into lakhs of rupees from 21.9.2000 to 1.12.2001, and which showed that actually the respondent/plaintiff was a lender of his account to the Manager, Baljeet Singh for making of entries. Counsel for the appellant-

bank is right in arguing that deliberately the respondent/plaintiff did not initially file his passbook for this relevant period, because if the same had been filed, it would have been clear that the so-called disputed entries were in the passbook also and therefore within his knowledge each time the passbook was filled in, and it is only during cross examination of the witness of the appellant-bank, DW2 that this passbook was brought for the first time. In my opinion, this passbook would go against the respondent/plaintiff to further show the knowledge and consent of the respondent/plaintiff of the transactions with account CA No.1894, and which transactions were subsequently denied only to suit the respondent's/plaintiff's convenience. I also agree with the arguments on behalf of the appellant-bank that if really the disputed transactions were without the knowledge and consent of the respondent/plaintiff, it was very easy for the respondent/plaintiff to have filed his audited accounts and which would have shown that these audited entries were never to his knowledge and definitely not with his consent. I agree that merely because vouchers do not bear the signatures of the respondent/plaintiff cannot mean that the disputed entries were without the knowledge and consent of the respondent/plaintiff inasmuch as it appears that the respondent/plaintiff in fact was colluding with the Manager, Baljeet Singh and lending his account

for entries. I may state that it is not unknown that sometime people lend their accounts for making “white payments” or other purposes including for persons who have no bank accounts, and holder of the account probably receives commission in cash for lending his account for the entries/transactions to be routed therefrom. I am strengthened in the opinion which I am taking from the content of the letter of the appellant-bank dated 12.2.2002, Ex.PW1/1 to the respondent/plaintiff which showed that in spite of the earlier visit of the official of the appellant-bank with a statement of accounts seeking confirmation of the balance on 4.2.2002, the respondent/plaintiff kept quiet till the subsequent letter dated 12.2.2002, Ex.PW1/1 was issued to the respondent/plaintiff. The respondent/plaintiff in his reply, Ex.PW1/3 has not disputed the averments of letter, Ex.PW1/1 which states that in fact an earlier visit was also made by the official of the appellant-bank seeking confirmation of the account. Obviously, in the interregnum period of about one week the respondent/plaintiff must have thought that there is a golden chance to make some money as he knew that the most of the vouchers would never contain his signatures, as he was acting in cahoots with the Branch Manager, Baljeet Singh.

9. I may state that the most important argument of there being a relationship of the respondent/plaintiff with account CA No.1894 has

hardly at all been dealt with by the Trial Court, and the only observation of the Trial Court made in this regard is as under:

“12.....

Plaintiff has even challenged these withdrawals therefore mere fact that he has no specifically challenged about ₹50,000/- ₹2,50,000/-, ₹44,000/- is not of much consequence.”

Therefore in my opinion the most important fact of there being a relationship of the respondent/plaintiff with account CA No.1894, assuming that the same was even a dummy account, has not been sufficiently dealt with by the Trial Court.

10. In my opinion, the arguments urged on behalf of the respondent/plaintiff that the appellant-bank should have summoned the holder of account CA No.1894, and having failed to do that the respondent/plaintiff must succeed, is an argument which begs the question on the basis of which the argument is framed. This is because surely a dummy account which is created by the Manager, Baljeet Singh would not have an actual and a real person, and the entity being M/s. J.K. Constructions would be a non-existent entity. Therefore, I fail to understand that how can it be held against the appellant-bank in having not summoned an imaginary person i.e. a person who never existed viz owner of account CA No.1894, i.e. M/s. J.K. Constructions. I may note that

statement of account filed of M/s. J.K. Constructions, Ex.PW2/3 does not show any individual real human being as the sole proprietor of the account or if the account was of a partnership firm then the same was operated by which partner. I may add that the statement of account, Ex.PW2/3 is in fact proved and exhibited by the respondent/plaintiff himself in the Trial Court.

11. In view of the above, I am of the opinion that the Trial Court has committed a clear-cut illegality in decreeing the suit of the respondent/plaintiff. Obviously, the respondent/plaintiff lent his account for questionable activities of making entries, and the suit is only an endeavour to take advantage of the departmental proceedings initiated by the appellant-bank against the Manager, Baljeet Singh who was found to be operating fictitious accounts and creating questionable entries.

12. In view of the above appeal is allowed and the impugned judgment and decree is set aside. Suit of the respondent/plaintiff shall stand dismissed. Parties are left to bear their own costs. Decree sheet be prepared.

13. The appellant had deposited the decretal amount in this Court. The respondent has been allowed to withdraw a sum of ₹3 lacs from the same. Whatever is the balance amount deposited by the appellant-bank lying in this Court alongwith accrued interest be released back to the

appellant/defendant. The respondent/plaintiff who has been allowed to withdraw the sum of Rs.3,00,000/- on furnishing FDRs as security, will be bound to return the amount of Rs.3,00,000/- alongwith interest at 9% per annum simple from the date of the withdrawal, within a period of 6 weeks from today, and failing which, the said amount can be recovered from the FDRs which were given by the respondent/plaintiff as security in this Court for withdrawing the amount of Rs.3,00,000/-. If the amounts of the security alongwith interest is not sufficient to recover the amount on Rs.3,00,000/- with interest at 9% per annum simple, the appellant-bank is at liberty to execute the present judgment and decree so far as this aspect is concerned to recover the balance amount from the respondent/plaintiff.

14. Appeal is disposed of with the aforesaid observations. Decree sheet be prepared. Trial Court record be sent back.

VALMIKI J. MEHTA, J.

MAY 10, 2012
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