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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA 854/2003

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31st January, 2012

CANARA BANK

..... Appellant

Through : Mr. Atul Kumar, Advocate.

versus

M/S J.R. EXPORTS & ORS.

..... Respondents

Through : None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This matter is on the Regular Board of this Court since 16.1.2012. Today, it is effective item No. 14 on the Regular Board. No one appears for the respondents. I have heard counsel for the appellant and after perusing the record am proceeding to dispose of the matter.

2. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 25.1.2003 decreeing the suit of respondent

No.1/plaintiff against the appellant/defendant No.4 as also against defendant No.1.

3. The facts of the case are that respondent No.1/plaintiff filed a suit making averments that under the agreement dated 10.12.1982 entered into between it and defendant No.1, a sum of ₹3,00,000/- was deposited in one particular bank account of defendant no. 1 with the appellant-bank. It is argued that this amount which was deposited in one particular bank account of defendant No.1/respondent No.2 was withdrawn therefrom and transferred to a loan account so as to wipe off the liability of defendant No.1 in the said loan account. It was further pleaded in the plaint that the agreement dated 10.12.1982 was breached by defendant No.1/respondent No.2 and therefore respondent No.1/plaintiff became entitled to refund of ₹3,00,000/-. It was further pleaded that this amount of ₹3,00,000/- was sought to be paid by defendant No.1/respondent No.2 to respondent No.1/plaintiff by means of a pay order of ₹3,00,000/- bearing No. 261/83 dated 4.5.1983 of the appellant-bank. It was pleaded that, however, when this pay order was presented for payment, the same was returned with the remarks “Genuineness disputed hence payment refused”. The subject suit, therefore, came to be filed for recovery of the amount of the pay order.

4. The appellant/defendant No. 4 contested the suit and pleaded that the pay order in question was issued unauthorizedly by its officer/defendant No.2, who was the then Manager of the appellant-bank, by removing a leaf from the pay order book. The appellant-bank argued that on account of fraud a departmental action was taken against defendant No.2 and a criminal complaint of fraud and forgery was also lodged against defendant Nos.1,2 & 3. It was pleaded that the amount which was credited to the loan account of defendant No.1, had the effect of wiping off the liability and therefore there was no question of the appellant/defendant No.4-bank refunding the amount, once it was discovered that the pay order in question which was presented for payment was not a genuine pay order.

5. The trial Court, after completion of pleadings, framed the following issues:-

- “1. Whether the suit of the plaintiff is not maintainable in view of para 1 of the preliminary objection of the WS? OPD-4.
2. Whether the suit of the Plaintiff is not maintainable, in view of para 36 of the WS? OPD-1.
3. Whether the agreement defendant 10.12.1983 became a dead document and incapable of being acted upon between the Plaintiff and the deft. No.1

and Plaintiff failed to perform his part of his contract? OPD-1

4. Whether the Plaintiff is entitled to the suit amount as claimed? OPP
5. Whether the Plaintiff is entitled to interest, if so, at what rate and for which period? OPP
6. Whether the deft. No.1 to 3 obtained the pay order from the deft. No. 4 in collusion and conspiracy with the plaintiff? OPD-4.
7. Whether the deft. No.4 is not bound by the acts of the deft. No.2 who issued the pay order? OPD-4.
8. Relief.”

6. Learned counsel for the appellant argued that the trial Court has fallen into an error while arriving at a finding with respect to issue No. 4 in holding the appellant-bank to be liable. It is argued that the amount which respondent No.1/plaintiff claimed was based upon a forged pay order and fraud nullifies everything, and the trial Court cannot give a sustainable legal finding promoting a fraud and forcing the appellant-bank to pay under the forged pay order. It is argued that so far as the amount credited in the loan account of defendant No.1, once the transaction took place, there cannot arise a question of turning back the transaction inasmuch the transaction

took place by a proper channel whereby respondent No.1/plaintiff did make a payment of ₹3,00,000/- to defendant No.1/respondent No.2 under the agreement dated 10.12.1982. May be, the agreement dated 10.12.1982 was breached, however, that cannot mean that this appellant-bank will be liable to pay the amount because it is based on account of breach of contract and for such breach, it would only be the defendant No.1/respondent no.2 who received the amount of ₹3,00,000/- be bound to refund the amount.

7. I completely agree with the arguments as advanced on behalf of the appellant. It is not disputed that the amount of ₹3,00,000/- was credited in the account of defendant No.1 by means of a proper bank channel. Once the amount was credited in the account of defendant No.1, defendant No.1 became owner of such moneys and therefore, the appellant-bank was fully entitled to transfer the aforesaid moneys from the account from where ₹3,00,000/- was credited to another loan account of defendant No.1/respondent No.2 so as to square off the loan account.

8. I further agree with the argument of learned counsel for the appellant, that fraud nullifies everything, and once it has been established on record that the pay order which was issued was not authorised, and infact was

found to be a forged and fabricated document, such fraud nullifies
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everything and the appellant-bank cannot be forced to pay under a forged pay order. I agree with the arguments urged on behalf of the appellant because it is not the legal position that a bank is forced to make payment under a forged pay order merely because one officer has issued the same though it is found that such instrument is a forged and fabricated instrument.

9. In view of the above, the present appeal is accepted. The impugned judgment dated 25.1.2003 is set aside. The suit of respondent No.1/plaintiff against the appellant-bank/defendant No.4 shall stand dismissed. Parties are left to bear their own costs. Trial Court record be sent back.

10. The amount deposited in this Court by the appellant be released to the appellant, through counsel, and the FDR given by the appellant/bank be discharged in favour of the appellant. The appellant-bank had also furnished a pay order in favour of respondent No.1, and which pay order the respondent No.1 did not take as it failed to furnish security for the same. This pay order be also discharged and returned to the appellant-bank. The present appeal is disposed of accordingly.

VALMIKI J. MEHTA, J.

JANUARY 31, 2012/AM