

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

+ **RFA No.8 /2004**

% **15th February, 2012**

DR. PROF. B.M.S. BEDI

..... Appellant

Through: Mr. Suryakant Singla, Advocate with
Ms. Shagun Bhatnagar, Advocate.

VERSUS

PUNJAB NATIONAL BANK & ORS.

..... Respondents

Through: Mr. Sanjeev Bajaj, Advocate.

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 (RFA) filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 6.9.2003 dismissing the suit filed by the appellant/plaintiff for damages against the respondents/defendants who are the Punjab National Bank and its Manager. The suit was filed for damages on the ground that the appellant/plaintiff had suffered a fall while using a wobbly makeshift step made of wood, and by using which step the lockers, which the appellant/plaintiff had in the respondent-bank, had to be operated.

2. The facts of the case are that the appellant/plaintiff had two lockers numbered as 793 and 922 with the respondent No.1-bank at the

respondent No.2 branch situated at Madhuban, Vikas Marg, Delhi. The case of the appellant/plaintiff was that when he went to operate his lockers on 19.1.2002, and when he stepped on the last step which was made of wood, and which is alleged to be a temporary makeshift step, the wooden step wobbled and as a result of which the appellant/plaintiff suffered a fall. The appellant/plaintiff was said to be about 64/65 years of age at the time of fall. It was pleaded that the appellant/plaintiff suffered a fracture in his right thigh bone and for which he had to be treated by implanting of a steel rod in his right thigh. The appellant/plaintiff therefore claimed the expenses incurred on account of his treatment, loss of earnings and other expenses on account of his having suffered on account of the stated negligence of the respondent No.1-bank at the Madhuban branch.

3. The respondents/defendants contested the suit and pleaded that the step in question was not a makeshift step. It was pleaded that the said step was a permanently fixed step which does not wobble. It was pleaded that there was no negligence of the respondents/defendants and therefore no claim under different heads as pleaded by the appellant/plaintiff can be allowed. It was pleaded that the unfortunate incident which took place was a coincidence and only an 'accident' in which the respondents/defendants had no role to play and there was no act of negligence on the part of the

respondents/defendants. It was pleaded that the so-called foot step which is in issue was a properly fixed foot step having proper width and necessary length. It was also pleaded that the appellant/plaintiff had operated the lockers for many years on many occasions (about 30 or so) prior to 19.1.2002, the date when the appellant/plaintiff fell down and sustained injuries. It was pleaded that all the facilities were provided to the appellant on his falling down as the bank was required to do towards its customers.

4. After completion of pleadings, the trial Court framed the following issues:-

- “1. Whether the present suit of the plaintiff is bad for non cause of action? OPD
2. Whether the present suit of the plaintiff is bad for mis joinder of parties? OPD
3. Whether the plaintiff is entitled for decree of suit amount if so what amount? OPP
4. Whether the plaintiff is entitled to the interest, if so at what rate and for which period? OPP
5. Relief.”

5. The main issue which this Court is called upon to decide, and which was also argued on behalf of the counsel for both the parties, was that whether the disputed step is a wobbly makeshift step and therefore on account of such wobbly makeshift step, the appellant/plaintiff suffered a fall injuring himself and therefore is entitled to the claim towards damages as prayed for.

6. In order to appreciate the issue of the subject step, let me reproduce below the photographs of the disputed step which were filed, proved and exhibited by the appellant/plaintiff himself in the trial Court as Ex.PW1/19 to Ex.PW1/24. These photographs are shown below:-



(i) No doubt, the step is made of wood, but it is a regular step having a width of over about at least 12”, and length which exceeds the length of the entrance point to the step.

(ii) This wooden step has its fixed supports and various legs.

(iii) The main legs are about 4” or so thick, and which are put at different places below the step, and in addition there are other legs of about 1-1/2” thick.

(iv) In fact, the step is basically in two/three parts by fixing two/three wooden plank boards together with the supporting legs. Of course, it is possible that there may be even three flat boards instead of two flat boards. These flat boards are about 2” or so thick.

(v) Since the length of the step is much wider than the entry and exit point to the step thus it is not possible to step from the point of entry and exit of this step to the extreme sides of this step.

8. Considering the width of the step, length of the step, different supports/legs of the step, width of the supporting legs and overall fixing of the step, it cannot be said that the step is a wobbly makeshift step as is sought to be made out on behalf of the appellant/plaintiff. I may state that the concept of a wobbly step portrays a picture in one’s mind of something very fragile and something which is lacking in necessary length, width, strength and

supports. However, when we look at the step in question, it cannot be said that it is so-called classical wobbly step. There does not arise a question in view of the disputed step as shown in the photographs for application of doctrine of *res ipsa loquitur*. This doctrine could only arise when the nature of the step was such that it was bound to cause a person to fall by its very nature. It is well known that even wooden steps can be strong and firm steps, and in fact I may take judicial notice that in the hills, steps in many places are not of concrete but only of wood, like of solid wood, which is of many decades at many places. Be that as it may, the application of doctrine of *res ipsa loquitur* does not arise in the facts of the present case because even the appellant/defendant admitted in his cross-examination that he had used the locker for over 30 occasions from the year 1995 to 2002 before the incident occurred on 19.1.2002, onus of which is sought to be laid at the door of the respondent-bank.

In view of the above, the appellant/plaintiff is wholly unjustified in describing the step in question to be a temporary and a makeshift step. The step is a properly fixed step which was being used not only by the appellant/plaintiff but by hundreds of other customers of the respondent No.1-bank, and none of whom have been proved to have made any complaint or suffered any fall by use of the said step.

9. Not only this, the appellant/plaintiff has made very pertinent admissions in his cross-examination with respect to the disputed step, and which admissions in the cross-examination show that it cannot be held in the facts of the present case that there is a wobbly makeshift step or any negligence, as alleged, of the respondent-bank. These admissions made by the appellant/plaintiff in his cross-examination read as under:-

“XXXX XXXXX XXXX XXXX

I have been maintaining the Locker in the deft. bank at Madhuban branch since 1995. I must have operated my locker about 30 times before the incident alleged on 19/1/2002. The lockers in the year 1995 till the date of incident i.e. 19/1/02 are and were in the basement of the bank. After signing of the register of locker I used to down stairs first flight of 5 to 6 steps and there are another three steps and there is a basement and there is a wooden steps. It is correct that since 1995 the position of the stairs in the basement is the same till now. But the wooden step of the basement is now worn out. I operated my locker about few months ago from the date of alleged incident i.e. 19/1/02. It is correct that there was a wooden step at the time when I operated few months my locker from the date of incident. It is correct that since 1995 till today there is a wooden step. Vol. but it is in improper condition. I have not written any letter to the branch Manager about warning out the wooden step in the basement. Vol. But it was brought to the notice of Manager by me. The Manager name is Mr. S.K. Gupta. And he is a Manager Incharge. Mr. S.K. Gupta has never accompanied with me to the basement for operation of the locker, at any time. I have not mentioned in the register of the lockers as there is no provision of column in the said register so I did not write the complaint about worn out the wooden steps in the basement. There is no column in the register of locker as “remarks”. Mr. S.K. Gupta is not a locker incharge but he is a over all incharge of the branch. There is no mat lying on the floor of the basement. There is no mat even on the stair which is built in brick cement mortar and there

was only a mattress on the wooden step in the basement. The width of the stairs is about 7 inches. The width of wooden step is about 6 inches approximately. Normally the width of the stairs is about 8 to 10 inches. Normally a person is required to climb the stairs width about 5 to 6 inches.

XXXX XXXX XXXX XXXX”
(underlining added)

A reading of the aforesaid cross-examination shows that the same step which is alleged to be wobbly on 19.1.2002 has been regularly used by the appellant/plaintiff without any complaint for many years and on many occasions and no complaint was ever made by the appellant/plaintiff allegedly of the step being wobbly at any time for many years.

10. I may at this stage refer to the fact that even the averment in the plaint of the step being inadequately lit, has been shown to be incorrect by the admissions made in the cross-examination that there were as many as three to four tube lights in the basement and never was any complaint made to the bank that there is lack of adequate lighting in the stairs or in the basement.

11. An important aspect is also noted by the trial Court for disbelieving the evidence of the son of the appellant/plaintiff-Dr. Rajesh Bedi who deposed as PW5. In the evidence led by him, the son-Dr. Rajesh Bedi deposed that he did not put his step on the alleged disputed step when he came to take his father on 19.1.2002 after the incident took place. This is stated by Dr. Rajesh Bedi in his cross-examination that he allegedly jumped

over the step. The trial Court has therefore rightly held that how can Dr. Rajesh Bedi therefore depose that the step was a wobbly step unless he had actually stepped upon the same and found the same to be wobbly. In any case, I have also reproduced the photographs above and the photographs show that there is nothing in the nature of the disputed step being a wobbly makeshift construction, as is being sought to be made out by the appellant/plaintiff.

12. There are other aspects in the impugned judgment pertaining to the proof of medical expenses or the loss having been suffered by the appellant/plaintiff on account of loss of earnings, however, I need not go into these aspects inasmuch as once it is held, and it was so rightly held by the trial Court and which finding I am upholding, that there is no negligence because there was never any wobbly makeshift step, there does not arise the issue of grant of any damages to the appellant/plaintiff.

13. An appellate Court would not interfere with the judgment of the trial Court unless the findings and conclusions of the trial Court are wholly perverse or illegal. I do not find any illegality or perversity in the impugned judgment which calls for interference by this Court sitting in appeal. The trial Court has very exhaustively dealt with all the factual aspects, and the factual matrix of the case and held that it cannot be said that there was negligence on

behalf of the bank allegedly because the disputed step was a wobbly makeshift structure. Obviously, the appellant/plaintiff fell not because of any negligence of the bank but because of his own self or because of an unfortunate incident, for which, however, only he himself has to be blamed.

Some of the relevant observations of the trial Court read as under:-

“So in consideration of the observations of the case laws, I have also given my thoughtful consideration on the testimony of PWs and in the testimony of PW1 he has stated that the stairs leading to the locker in the basement is inadequately and improperly lit. All the steps leading to the locker are laid in brick/cement mortar except last one which is a temporary makeshift one made of wooden plank which wobbles the moment any one steps on to it and in cross examination he has stated that it is correct that since 1995 the position of the stairs at the basement is same till now but the wooden step of the basement is worn out but he has not stated in his cross examination that as to when he felt that now the wooden step is worn out and if he felt like that why he has not made the worn out and if he felt like that why he has not made the complaint to the responsible person i.e. Manager/Chief Manager of the said branch or written complaint to the Chairman of the said bank. But in cross examination he has admitted that he had not written any letter to the Branch Manager about wearing out of the wooden step in the basement vol. it was brought to the notice of the Manager by him. But he has not disclosed when it was brought to the notice of Manager Sh. S.K. Gupta. He has stated that there is only mattress on the wooden step in the basement and width of wooden step is about 7 inches. Normally the width of the stairs is about 8 to 10 inches. He has further stated in his cross examination that normally a person is required to climb the stairs width about 5 to 6 inches. I have also given my thoughtful consideration on his further cross examination and he has further stated that it is correct that in the month of May 2002 he went to the bank and entered into the basement and he signed the locker operation register at that time. It is correct that from the day of incident till he entered into the basement in the month of May

2002 the condition of stairs are/were the same. But PW1 has admitted that the condition from the day of incident till May 2002 are the same but he has not made any complaint even at that time in the month of May 2002 that the wooden stair is in wobbling condition. It means that the last wooden step even was not in wobble condition on the day of incident. PW3 Smt. Shobhangi Bedi in her cross examination has admitted that the wooden step have full support from the floor upto the step and she has further stated that normal space required to a person to step is one feet only. To give the substantial justice to the parties I have also perused the photographs which have been alleged to be taken by Ms. Shobhangi Bedi. But as far as her cross examination is concerned she could not identify the locker incharge who is Mr. Rajeev Jain and even he was present in the court itself at the time of conducting her cross examination. So, it seems false that she has gone to the Bank to take the photographs. However, some photographs have been produced by the plaintiff. So, I have given my thoughtful consideration on these photographs and even from these photographs the plaintiff could not prove that the stair case is in wobbling condition. It is admitted fact that the said wooden step is covered with mattress and it was covered with mattress at the time of incident i.e. 19.1.2002 and it was also covered even on 23.5.2002 when PW1 had again visited the bank to operate his locker. So, after incident it is alleged in the testimony of DW2 Rajeev Jain that the plaintiff also operated the locker three times after the alleged injury in the same set of circumstances and typography but the plaintiff had not lodged any complaint to the Manager of the said Branch of the defendant about wobbling of the wooden stair case. So, it seems that the stair case has never been in wobbling condition. PW5 who is the son of the plaintiff has also stated in his cross examination that he did not use the last wooden step of the locker room but he jumped the same to reach his father but in his chief examination by way of affidavit in para 2 he has deposed that he has seen the last step which is of wooden plank in the basement of the Madhuban Branch of the Punjab National Bank. The said wooden step is not fastened with anything and it wobbles as soon as anyone stepped on it, exposing the unwary person to fall. So, on this statement and in consideration of his cross examination it seems that this witness being the son of the plaintiff wants to support his father while he

has not put his step on the said wooden stair then how he can say that the said stair was in wobbling condition as soon as anyone steps on to it. So, PW3 and PW5 being the daughter-in-law and son of the plaintiff have supported being the tutored by the plaintiff and they are not reliable witnesses and they are unworthy. As far as the testimony of PW2 Dr. Rajender Kumar is concerned, he was a doctor in operation tem of Dr. B.M.S. Bedi when he was operated and he has stated about the injuries of Dr. B.M.S. Bedi. There is no doubt that Dr. B.M.S. Bedi had fallen in the basement of the Locker room of the bank of defendant and he has sustained some injury. So, in this present case, I am in the agreement with the contentions of the Ld. counsel for the defendant and plaintiff that in this case only the negligence has to be decided and who is on the fault to cause the injury to the plaintiff. Whether the plaintiff himself was on the fault to sustain the injury or whether the defendant bank was negligent and due to negligence of the bank Dr. B.M.S. Bedi sustained injury. So, in consideration of these issues, I have given my thoughtful consideration on the case law as well as the testimony of PWs and DWs and Dr. B.M.S. Bedi has failed to prove any document about his damages and he has examined PW4 Sh. Arun Bansal who deposed on oath that he maintains the account of Dr. B.M.S. Bedi. He also look after filing of income tax return. Document mark A was prepared by him (objected to). In cross examination he has stated that document Mark A does not bear his signatures. So, this witness is a Chartered Accountant (CA) by profession but he has failed to prove any authenticated document which proves the income of the plaintiff Dr. B.M.S. Bedi or the expenses incurred by him on his treatment after sustaining the injury in the premises of the bank. So, in consideration of the case law I have also given my thoughtful consideration on each para of the case law relied upon by the plaintiff counsel and it is a fact that Dr. B.M.S. Bedi is a Dermatologist by profession and at the time of incident he was about 64 years of age and he used to visit the bank to operate his locker from many years ago till the date of incident and it has come in the evidence of defendant that even after the incident Dr. B.M.S. Bedi has operated his locker trice, but Dr. BMS Bedi has never complained regarding the wobbling of the wooden stair even before the day of incident or even after the day of incident. As per the testimonies of PWs and DWs, the width and length and

size of the last wooden stair plank are normal and not defective in pursuance of the stair case of cement mortar. As far as the doctrine of res ipsa loquitur stands drawn that the accident took place from want care on their part. But the plaintiff has failed to prove that incident took place from want of care on the part of defendant. Even the plaintiff has failed to prove that the locker room was hazardous premises of the bank. When the plaintiff has failed to prove these aspects, the defendants are not liable for the same. As far as the damages part is concerned the plaintiff has failed to prove as to how he is demanding Rs.5.00 lacs as damages. So, in consideration of the totality facts & circumstances, I am of the opinion that the plaintiff is not entitled to the decree of the suit amount. Issue no.3 is disposed of accordingly in favour of defendant and against the plaintiff.”
(underlining added)

14. In view of the above, I do not find any merit in the appeal which is accordingly dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

VALMIKI J. MEHTA, J

FEBRUARY 15, 2012

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