

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

+ **RFA No.602/2011**

% **2<sup>nd</sup> January, 2012**

DHANLAXMI BANK ..... Appellant  
Through: Mr. A.N.Tiwari, Adv.

versus

ADMINISTRATOR OF SPECIFIED UNDERTAKING OF THE UTI  
& ORS ..... Respondents  
Through:

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

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

**CM No.23699/2011(exemption)**

Allowed, subject to all just exceptions.

Application stands disposed of.

**CM No.23698/2011(condonation of delay)**

1. This is an application seeking condonation of delay of 393 days  
in filing of the appeal on the following grounds:

“3. That the officials of Appellant/Defendant No.1 were always in touch with the then counsel Mr. Chandrasekharan to know about the decision of the Id. ADJ, however, it was always orally informed that matter was reserved for orders by

ADJ. It was further informed that although as per allocation of the works, his assignment was to look after other recovery matters, however, at the instructions of Id. District Judge, he was directed to pronounce judgment since he has heard the entire matter.

4. That even after shifting to Kerala also, officials of Appellant/Defendant No.1 have been in touch with Shri P.Chandrasekharan, then Counsel and always assurance was given that he was in touch with some colleague to know about the fate of the case. After realizing that no progress has been made, officials of Appellant/Defendant No.1 Bank successfully contacted Mr. Mehndiratta, Advocate after searching his mobile number and that too only with the help of Mr. P.Chandrasekharan and with great difficulty Mr. Mehndiratta provided photocopy of Judgment and Decree from his office in Defence Colony in first week of August, 2011. After tracing the copy it was realized that suit was decreed against the Appellant/Defendant No.1. Accordingly higher authorities were approached for instructions and in the last week of September, instructions were received to handover the matter to counsel substituted Mr. P. Chandrasekharan Advocate.”

2. The expression “sufficient cause” as per Section 5 of the Limitation Act, 1963 means sufficient cause and not a mere narration of facts, that too wholly vague. The afore-quoted paras 3 and 4 show that no dates have been given, no names of the officers have been given, and therefore, really there is negligence of the appellant in not duly keeping track of the case.

3. Although, there is no ground for condonation of delay, since I have heard counsel for the appellant on merits, the delay is condoned, subject to just exceptions. CM stands disposed of.

**RFA No.602/2011**

4. The challenge by means of this Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 is to the impugned judgment of the Trial Court dated 13.8.2010. By the impugned judgment, the suit filed by the respondent no.1, i.e. Administrator of the Specified Undertaking of the Unit Trust of India for recovery of ₹4,85,956.83 has been decreed only for ₹69,561.67 along with interest at 12% per annum. The suit has been dismissed for almost 5/6<sup>th</sup> of the amount inasmuch as, the suit was held to be barred by limitation with respect to the 5/6<sup>th</sup> of the amount.

5. The facts of the case are that the respondent no.1/plaintiff filed the subject suit for recovery on the ground that the appellant/defendant no.1 allowed cheques of various unit holders to be encashed fraudulently by defendants no. 3 and 4/respondents no. 3 and 4 in an account maintained in the name of the respondent no.2/defendant no.2. The subject suit was filed making averments that various cheques were issued by respondent no.1/plaintiff to the various unit holders towards the maturity amount/re-purchase amount etc. These cheques were sent by means of non-negotiable and non-transferable cheques of the banker of the respondent no.1 by registered post AD. The cheques were sent between January, 1998 to April, 1998. A large number of unit holders did not receive the cheques sent towards the maturity amount/re-purchase amount or interest amount/dividend

warrants as it was found that various cheques/warrants were encashed by the respondents no. 3 and 4 by depositing them for collection in an account in the name of the respondent no.2. An FIR was also lodged after the fraudulent encashment of cheques was discovered. The unit holders filed complaints before the Consumer Forum and succeeded in recovering the amounts from the respondent no.1, and who thereafter filed the subject suit against the appellant and the respondents no. 2 to 4 herein.

6. No evidence was led on behalf of the appellant/defendant no.1 inasmuch as after filing of the affidavit by way of evidence, the witness, Sh. V.Aman failed to appear for cross-examination. The order of closing of evidence has become final and it has not been challenged at any point of time, including in the present appeal. The relevant para of the Trial Court in this regard is para 7 which reads as under:-

“7. Affidavit of Sh. V.Aman was filed on behalf of defendant no.1 and the same was tendered on 4.4.05. Cross examination of Sh. V.Aman was deferred but he could not be produced again in the court for his cross-examination. Thereafter affidavit of Sh. Jyotirmoy Jain was filed on behalf of defendant no.1 and was tendered on 8.2.07 and cross examination was deferred. Thereafter many opportunities were given to defendant no.1 for producing Sh. Jyotirmoy Jain for his cross-examination but could not be produced and evidence of defendant no.1 was closed. Thus, no evidence has been led by the defendant no.1.”

7. The Trial Court, as already stated above, has dismissed the suit for most of the amount as the same was barred by limitation since the suit was

filed on 23.4.2003, whereas payments to most of the unit holders were made by 20.4.2000. So far as unit holders namely Madan Lal Bhatia, Jai Prakash Nigam, Girjeshwari Singh, Badri Vishal Mishra and Vivek Mathur; who were paid the amounts on 12.5.2000, 5.5.2000, 12.5.2000, 23.7.2001 and 24.9.2001; the suit was held within the period of limitation and therefore decreed for ₹69,561.67. On the aspect of the negligence of the appellant/bank, the Trial Court held as under:-

**“19. FINDINGS ON ISSUE NO.4**

Defendant has taken the plea that he had acted bona fide in allowing defendant no. 2 to 4 to open the account and encashed the cheques. Counsel for plaintiff submits that in view of the ratio of case law namely **KERALA STATE COOPERATIVE MARKETING FEDERATION – APPELLANT VS/ STATE BANK OF INDIA AND OTHERS – RESPONDENTS (2004) 2 SCC 425**, defendant no. 1 has to prove the fact that he had acted in good faith and without negligence. Defendant no.1 in the present case, has not examined any witness and therefore has failed to prove the fact that it had acted in good faith and without negligence. There is no evidence on record from the side of defendant no.1 proving that they had verified the genuineness of defendant no.2 and allowed defendant no. 3 & 4 to open the new account in the bank in the name of defendant no.2. It is an admitted fact that defendant no.1 had allowed defendant no. 2 to deposit the third party cheques and credit the proceeds in the account of defendant no.2. PW4 Sh. Mohan Singh Rawat Examined from RBI office. He has proved the circulars exhibited as Ex.PW4/AEx.-PW4/B and Ex.PW4/C. As per circular Ex.PW4/A, account payee cheques payable to third party could not be collected and the cheques which are crossed generally and payable to order should be collected only on proper endorsement by the payee. AS per letter/circular Ex.PW4/C, in case of cheques not having been drawn in the name of constituents, not containing any

direction to pay to the constituents, the proceeds thereafter, or having any other independent direction to that effect, the amount cannot be paid to the constituents. If any bank credits the account of a constituent who is not the payee named in the cheque without proper mandate of the drawer, it does so at its own risk and will be responsible for the unauthorized payment. In case of account payee cheques wherein a bank is a payee, the payee bank should always ensure that there are clear instructions for disposal of the proceeds thereof from the drawer of the instrument. If therefore are no such instructions, the cheque should be returned to the sender. The bank cannot and also should not invoke market practice in justification of doing that which is not supported by law or recognized banking practice. The bank which indulges in any deviation from these instructions would invite severe penal action.

20. Admittedly, defendant no. 1 has allowed third party cheques and the same were of large amount as such defendant no. 1 as negligent. Admittedly, the cheques were not only account payee but also non-transferable and non-negotiable. Therefore, negotiability of these cheques was destroyed marking non negotiable on the face of these cheques. My view is fortified by the ratio of case law namely **SR. MANAGER – PUNJAB & SIND BANK – PETITIONER V/S SANJI WALIA – RESPONDENT, 2007 (3) CPR 311 (NC)**. Therefore, it is clear that the cheques in question should not have been allowed to be deposited in the account of any other person except in the account of the persons in whose names these cheques were issued. It has come in evidence that on the reverse of the cheques, it was clearly mentioned that payee bank help prevent fraudulent encashment. If this instrument is presented for clearing through newly opened account i.e. (opened after issue of this cheque), then please demand the counter foil and other documents to verify the correctness of payee and identity of the person in case of any doubt, please contact the Branch Office.” (underling added)

8. I completely agree with the findings and conclusions given in

aforesaid paras of the impugned judgment inasmuch as there is a clear-cut negligence of the appellant/bank in allowing non-transferable and non-negotiable cheques to be re-endorsed in the name of the respondent no.2. The Trial Court has also rightly observed that on the reverse of the cheques it was mentioned that the payee-bank must prevent fraudulent encashment and overlooking of which in the facts of the present case amounted to negligence.

9. In view of the above, there is no merit in the appeal, inasmuch as, not only the Trial Court has rightly found the appellant guilty of negligence, more so because the appellant led no evidence whatsoever. As already stated above, there was also no ground for condonation of delay in filing of the appeal and I would have ordinarily dismissed the appeal as barred by limitation, but since I had heard counsel for the appellant on merits, I formally had allowed the application for condonation of delay.

10. In view of the above, the impugned judgment and decree is sustained and the appeal is dismissed, leaving the parties to bear their own costs.

**VALMIKI J. MEHTA,J**

**JANUARY 02, 2012**  
**ak**