

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

+ **RFA No. 365/2006**

% **23rd October, 2018**

M/S SIGMA EXPORTS

..... Appellant

Through: Mr. Sandeep Garg, Advocate
(M. No.9811362403).

versus

STATE BANK OF PATIALA

..... Respondent

Through: Mr. Garva Dhyani, Advocate
(M. No.9910137827).

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the Trial Court dated 15.02.2006 by which the trial court has dismissed the suit for recovery of Rs. 4,33,061/- filed by the appellant/plaintiff against the respondent/defendant/State Bank of Patiala. The claim of the plaintiff was that the

respondent/defendant-bank, after more than three and half years of giving a credit for an amount of Rs. 2,74,820/- on 27.05.1996, vide letter dated 28.08.1999, claimed that the credit advice was given by mistake. The credit/payment of Rs. 2,74,820/- equivalent to US\$ 7885.50 (at Rs.35/- per dollar) was the payment to be received by the appellant/plaintiff as seller from the buyer M/s Jean Poppe, Belgium.

2. The facts of the case are that the appellant/plaintiff filed the subject suit pleading that it is the manufacturer and exporter of cotton home furnishing. The appellant/plaintiff maintained its current account with the respondent/defendant-bank. In July, 1995, the appellant/plaintiff shipped its consignment to Belgium for the buyer M/s Jean Poppe, Belgium as per Invoice dated 18.06.1995. The documents with respect to the shipment of goods were sent by the appellant/plaintiff for collection of payment through the respondent/defendant-bank. The appellant/plaintiff states that it received a credit advice from the respondent/defendant-bank on 27.05.1996 with respect to the amount of Rs. 2,74,820/-, however, the respondent/defendant-bank after about three and half years on 28.08.1999 claimed that by mistake the credit was made in the account

of the appellant/plaintiff because in fact no amount was received by the respondent/defendant-bank from the foreign buyer through its bank with respect to the subject shipment under Invoice dated 18.06.1995. Reference is made in the plaint, thereafter, to various correspondence between the parties of the year 1999 and ultimately of the appellant/plaintiff sent Legal Notice dated 25.04.2001 and thereafter the subject suit was filed claiming the principal amount of Rs. 2,74,820/- along-with the balance amount towards interest totaling to Rs. 4,33,061/-.

3. The respondent/defendant-bank contested the suit and pleaded that by a mistake, credit was given in the account of the appellant/defendant, in view of the foreign department of the respondent/defendant-bank sending the payment advice dated 23.10.1996, which was actually under a mistake of fact, because in fact no payment has been received by the respondent/defendant-bank.. This mistake was discovered while reconciling the bank's account in August, 1999. Accordingly, the respondent/defendant-bank marked a lien on the funds of the appellant/plaintiff lying with the respondent/defendant-bank for the amount of Rs. 3,45,019/- on

account of the wrong credit given of Rs. 2,74,820/- to the appellant/plaintiff on 27.05.1996. The respondent/defendant-bank also pleaded that the original documents were already sent back to the appellant/plaintiff by courier on 17.08.1996. Therefore, the Suit was prayed to be dismissed.

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

- “1. Whether the suit has been filed by duly authorized person and hence, not liable to be dismissed? OPP
2. Whether the export bill of the plaintiff was inadvertently paid under mistake and it was credited to the plaintiff’s account? OPD
3. Whether the plaintiff is entitled for the relief claimed? OPP
4. Relief.”

5. The crucial issue to be decided is issue no.2 as to whether the appellant/plaintiff is entitled to the recovery of the amount claimed in the suit on account of the respondent/defendant-bank only informing the appellant/plaintiff after three and half years of the credit made on 27.05.1996 i.e. in terms of the Letter of the respondent/defendant-bank dated 28.08.1999. The trial court has decided this issue against the appellant/plaintiff by observing that the

witness of the respondent/defendant-bank DW-2, Sh. Naval Kishore, proved and exhibited the courier receipt of the courier Speed Way Courier as Ex.DW1/1 by which the original documents of shipment were returned by respondent/defendant-bank to the appellant/plaintiff. The bill of the courier was exhibited as Ex.DW1/2 and debit voucher was exhibited as Ex.DW1/3. Accordingly, the trial court has held that the appellant/plaintiff was well aware since August, 1996 of the goods not having been accepted by the foreign buyer, as appellant/plaintiff had received the original documents in August 1996, and since, the foreign buyer in fact had not made payment, the appellant/plaintiff was always aware of the fact that a wrong credit was given in its account much later on 27.05.1996.

6(i) Learned counsel for the appellant/plaintiff has argued that the defendant no.2 cannot be said to have proved the courier receipt Ex.DW1/1 as also the courier bill Ex.DW1/2 inasmuch as no one from the courier company came to prove these documents.

(ii) This argument of the appellant/plaintiff is misconceived because Section 47 of the Evidence Act, 1872 is not exhaustive of the mode and manner of the proof of documents and once the documents

come from proper custody, courts are entitled to take as proved the documents which come from proper custody. This is held by the Supreme Court in the judgment in the case of ***Gulzar Ali & Ors. v. State of H.P., (1998) 2 SCC 192.*** The relevant para of this judgment is para 9 and which holds that Section 47 is not exhaustive of the manner of proof of documents. This para 9 of the judgment in the case of ***Gulzar Ali & Ors. (supra)*** reads as under:-

“9. It must be remembered that expert evidence regarding handwriting is not the only mode by which genuineness of a document can be established. The requirement in Section 67 of the Evidence Act is only that the handwriting must be proved to be that of the person concerned. In order to prove the identity of the handwriting any mode not forbidden by law can be resorted to. Of course, two modes are indicated by law in Sections 45 and 47 of the Evidence Act. The former permits expert opinion to be regarded as relevant evidence and the latter permits opinion of any person acquainted with such handwriting to be regarded as relevant evidence. Those and some other provisions are subsumed under the title "Opinion of third persons, when relevant". Opinions of third persons, other than those enumerated in the fasciculus of provisions, would have been irrelevant. Among the permitted opinions those mentioned in Sections 45 and 47 are also included. So it cannot be said that identity of handwriting of a document can be established only by resorting to one of those two sections. There can be other modes through which identity of the handwriting can be established. Citing an example, if a letter is seized from the possession of 'A' and the letter contains the name of the sender as well as the name of the sender and if such sender happens to be 'A' himself, those circumstances even without resorting to the mode indicated in Sections 45 and 47 of the Evidence Act, would be sufficient to draw an inference that the author or even scribe of that letter is the sender and 'A' is the sendee of it.”

7. Also, it is required to be noted that before commencement of the cross-examination of the DW-2 on 22.04.2004, no objection was raised to the exhibition of the documents Ex.DW1/1 to Ex.DW1/3 being the courier receipt, bill and the debit voucher and once no objection is raised to the proof of the documents, before commencement of cross-examination, then subsequently no objection can be raised that documents are not validly proved. This is so held by the Supreme Court in the judgment in the case of ***R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple and Another, (2003) 8 SCC 752.*** Therefore, this Court holds that it is not open to the appellant/plaintiff to claim that the documents Ex.DW1/1 to Ex.DW1/3 do not stand proved.

8(i) Learned counsel for the appellant/plaintiff then argued that whereas the respondent/defendant-bank claimed that the documents were returned in terms of Ex.DW1/1 dated 17.08.1996 and with respect to which, a debit voucher was issued on 18.10.1996, however, it is argued that the respondent/defendant-bank in its written statement has claimed that the mistake was discovered in October, 1996 and the original documents were thereafter returned i.e. after

October, 1996 to the appellant/plaintiff i.e. not in August 1996, and it is argued that it is clearly destructive of the case of the respondent/defendant-bank that the documents were returned in August, 1996. It is argued that documents could not have been returned in August, 1996 once the case of the respondent/defendant-bank was that they were returned after October, 1996.

(ii) This argument urged on behalf of the appellant/defendant is nothing except making mountain out of a molehill. Mistake of mentioning the dates/month of the factum of stating in written statement of return of the documents after October, 1996, the same cannot take away the factum of proof of courier receipt as Ex.DW1/1 and the bill of the courier as Ex.DW1/2, and these documents show that the original title documents of the goods being the invoice, bill of lading, etc. were sent back in original to the appellant/plaintiff in terms of Ex.DW1/1 dated 17.08.1996, and with respect to which the courier company had issued its bill Ex.DW1/2. It is also seen that Ex.DW1/2 is a bill not with respect to the positive article but with respect to which over 55 articles which were found to have been sent by the courier company for the respondent/defendant-bank.

9. This Court may at this stage deal with and reject an argument urged on behalf of the appellant/plaintiff that whereas in the bill Ex. DW 1/2 for all other courier receipt numbers, no weight is mentioned, but only in this courier receipt weight is mentioned, because in my opinion this is not such a overwhelming aspect that on this ground itself otherwise documents which are validly proved, should be discarded by the Court. The documents which are the courier receipt and the courier bill are filed in original and having examined the same, I do not find any illegality or fabrication of these documents. Also, it is not possible to believe that the State Bank of Patiala would forge and fabricate documents just for one case and that too when the amount in question is only Rs. 2,74,820/-. Therefore, this argument of the appellant/plaintiff is rejected.

10(i) In my opinion, there are two very valid reasons why the suit filed by the appellant/plaintiff was false to its knowledge. Firstly, it is seen that admittedly the payment of Invoice dated 18.06.1995 drawn by the appellant/plaintiff upon the foreign buyer at Belgium was payable within six months of drawing of the invoice, i.e. payment was to be received by the appellant/plaintiff by 18.12.1995. It is not

disputed that the witness of the appellant/plaintiff who deposed as PW1, namely Sh. Chakarabaraty Garg, the partner of the appellant/plaintiff, stated in his cross examination that the period for payment of the invoice is six months. The six month period from 18.06.1995 expired on 18.12.1995, and therefore, well before 18.12.1995 if the appellant/plaintiff was to receive payment of the exported goods, but had not received that payment, the appellant/plaintiff would have entered into correspondence/communication with the Belgium buyer, however, not a single document has been filed in around few weeks before or after 18.12.1995 of communication being sent by the appellant/plaintiff to the foreign buyer to send the payment as the last date of payment was or has expired on 18.12.1995.

(ii) In fact, the aforesaid aspect is compounded by the fact that the credit advice in the bank of the appellant/plaintiff is much later than 18.12.1995 i.e. on 27.05.1996. Even in this period from 18.12.1995 to 27.5.1996, there is no correspondence or communication of the appellant/plaintiff with the foreign buyer that why the foreign buyer is not releasing the payment despite having

received the goods. Clearly, therefore the appellant/plaintiff knew all along that it had wrongly received a credit in its account of Rs. 2,74,820/- with respect to subject Invoice dated 18.06.1995 drawn upon the foreign buyer in Belgium M/s Jean Poppe.

(iii) Another and second important aspect to be noted is that it is not the case of the appellant/plaintiff that the goods which are the subject matter of the Invoice dated 18.06.1995 have been purchased and received possession of by the foreign buyer. A right of the seller such as the appellant/plaintiff is only when the foreign buyer has received the goods and then in such a case, payment of the goods has to be made by the foreign buyer or at best the bank of the appellant/plaintiff in case any mistake is made by the respondent/defendant-bank. It is conceded by PW1 Sh. Chakarabaraty Garg in his cross examination that in case goods were rejected by the buyer then it was the appellant/plaintiff who had to take back the goods and seek its return from the foreign buyer. PW1 in the cross examination also conceded that ownership of the goods would only pass to the foreign buyer when the foreign buyer received the goods. Therefore, in the facts of the present case the title in the goods

continued to vest with the appellant/plaintiff, and in such a situation, the appellant/plaintiff could not have any remedy for receiving the price of the goods, much against the respondent/defendant-bank which was only its agent, and who had by mistake given a credit advice on 27.05.1996 for the amount of Rs.2,74,820/-.

11. In view of the aforesaid discussion, I do not find that the trial court has committed any error in dismissing the suit for recovery filed by the appellant/plaintiff inasmuch as the appellant/plaintiff was trying to take advantage of a wrong credit advice made in its account and which credit advice the appellant/plaintiff was not entitled to because respondent/defendant-bank did not receive any payment from the foreign buyer/foreign buyer's bank with the fact that the title in the goods sold by the appellant/plaintiff never passed on to the foreign buyer.

12. Therefore, the appeal is dismissed. The parties shall bear their own costs.

OCTOBER 23, 2018
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VALMIKI J. MEHTA, J