

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

...

CFA no.13/2017

Reserved on: 17.09.2024

Pronounced on: 24.12.2024

1. Chairman, Grameen Bank, Head Office Jammu
2. General Manager, Grameen Bank, Regional Office Kashmir New Colony Sopore Baramulla
3. Branch Manager, Grameen Bank Pringal Uri Baramulla

.....Appellant(s)

Through: Mr Hakim Haqani, Advocate

Versus

1. Mushtaq Ahmad Chalkoo
2. Bashir Ahmad Chalkoo
3. Khurshid Ahmad Chalkoo
4. Mohammad Shafi Chalkoo
Nos. 1 to 4 Sons of Ghulam-u-din Chalkoo
All Residents of Warikha Tehsil Uri Baramulla
5. Farooq Ahmad Mir S/o Abass Mir R/o Gant Mullah Tehsil & District Baramulla

.....Respondent(s)

Through: Mr N.H.Shah, Sr. Advocate with
Ms. Saima, Advocate

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Judgement and decree dated 31st December 2016, passed by 1st Additional District Judge, Baramulla (for short "*Trial Court*") in a Civil Original Suit bearing File no.50/11 titled as *Mushtaq Ahmad Chalkoo and others v. Chairman Kamraz Rural Bank and others*, is sought to be set-aside.

2. Heard and considered.

3. Counsel appearing for appellant-bank would contend that impugned judgement and decree has been passed on improper and illegal exercise of jurisdiction by Trial Court inasmuch as it has failed to appreciate that there was absolutely no evidence available on record to show that respondent no.5 had set the premises on fire or that while carrying out the said act during intervening night of 26th /27th September 1998, respondent no.5 was doing the same during the course of employment or that the said act was an authorized act or based on wrongful mode of authorized act. The Trial Court is said to have failed to discuss the evidence available on record properly. The Trial Court has fastened the liability for damages against appellants even when the alleged act admittedly was not committed by respondent no.5 during the course of employment with the bank and when, admittedly, neither the wrongful act of setting the premises on fire was authorized by the bank nor could the said act be treated as having been committed in a wrongful and unauthorized mode of any act authorized by the bank. The alleged act of setting the premises on fire did not fall within the scope of the duties of respondent no.5. It is being also stated that it is admitted case of plaintiffs/respondents 1 to 4 that respondent no.5 during intervening night of 26th/27th September 1998 set the building in question on fire with an attempt to screen and conceal the misappropriation by destruction of record. It is submitted that despite of the said categorical admission of plaintiff/respondents 1 to 4 in terms of the plaint, the Trial Court has wrongly and incorrectly held appellants liable of negligence and thus responsible to pay damages with interest. Impugned

judgement and decree is liable to be set-aside for non-joinder of necessary parties.

4. *Per contra*, learned senior counsel appearing for respondents 1 to 4 would contend that it is established that a portion of building, owned by plaintiffs/respondents, was let out to appellant-bank wherein its Branch was functioning and the said portion of building was in exclusive occupation, possession and control of the bank and it was always being opened and closed by employee(s) of the bank, before and after the business hours. He also states that admitted position of the case is that respondent no.5 herein (defendant no.4 before the Trial Court) was held liable for an act of embezzlement of the bank-accounts for which disciplinary proceedings were initiated against him and subsequently he was dismissed from service. When building caught fire, a criminal was got registered by authorities of bank against respondent no.5 alleging an act of mischief on his part with a view to obliterate the evidence of embezzlement and investigation of the case culminated in finding him liable for commission of offences of criminal breach of trust by a public servant, forgery of valuable security etc. and mischief by fire or explosive substance with intent to destroy house etc. (i.e., for offences punishable under Sections 409, 467, 436 RPC) and accordingly a charge sheet was also presented against him in the court of law. It is his vehement contention that once sufficient evidence on record would show that it was defendant/respondent no.5, who had set building on fire, thus, it is appellant-bank, which was/is liable to pay damages to plaintiffs/respondent on account of loss caused to their building. Apart from it, he contends that appellant-bank

5. Respondents herein filed a civil suit for recovery of an amount of Rs.3.00 Lacs as damages before the Trial Court. Their case before the Trial Court was that they had a shop-cum-office complex at Pringal Tehsil Uri. In its first-floor branch of appellant-bank was established on 14th March 1989 after proper deed was executed. Rent was being paid by appellant-bank. It had also been case of respondents that during intervening night of 26/27th September 199...., the office bearer of appellant-Bank Branch Pringal Uri, namely, Farooq Ahmad Mir, deliberately set to fire the building of plaintiffs/respondents because there was misappropriation of the bank money. The case FIR no.70/1998 was registered in police station Boniyar, Uri. After registration of FIR, a letter was addressed to SHO Boniyar on 15th February 1999, stating therein that building belonging to plaintiffs had been set to fire and there had been misappropriation of huge public money, as such, case being of serious nature, accordingly, it was requested to SHO concerned take immediate action against corrupt culprit. After investigation, police came to conclusion that one Farooq Ahamd Mir, office bearer of appellant-bank was responsible and accordingly challan was presented before the court of law. According to respondents, fire has caused loss to the building of respondents and that the loss was assessed to the tune of Rs.3.00 Lacs. The expert has assessed the value of the building and had issued assessment sheet. Plaintiffs/respondents issued notice upon defendant/appellant-bank to pay Rs.3.00 Lacs as cost of damage, but of no avail.
6. Appellant-bank caused its appearance before the Trial Court and filed its written statement, averring that suit of plaintiffs for damage caused

to the bank building was not maintainable because of the fact that plaintiffs/respondents themselves had gutted the bank building by putting it on fire because of the fact that all the family members of respondents were indebted to the bank and had received the loan amount to the extent of lakhs of rupees and in order to destroy the records respondents/plaintiffs put the bank building on fire. The building was already insured. When previously a crack developed in the building, respondents made a claim to Insurance Company and obtained cash amount. The building was constructed in mud and mud bricks and assessment of damage for which plaintiffs/respondents had filed suit was an exaggeration. The building could hardly fetch not more than Rs.25,000/-.

7. The Trial Court vide order dated 20th August 2006 framed following issues:

- (i) Whether the suit property comprising of a shop/office building situated at Pringal, Tehsil, Uri while it was on rent with defendant No.1 to 3 was deliberately burnt by defendant No.4 (office bearer of defendants Nos.1-3) for his own interest? OPP
- (ii) In case the issue no.1 is proved in affirmative, what is the actual loss/damage caused to the plaintiffs and who is to be saddled with the liability to pay the said damages? OPP
- (iii) Whether the defendant nos.1 to 3 are not responsible for any act of defendant no.4 (their office bearer) and are not liable for payment of any damages caused to the suit property? OPD
- (iv) Whether the plaintiff has no cause of action in the case? OPD
- (v) Whether the suit has not been valued properly and if so what is the actual/correct Court fee payable in the case? OPD
- (vi) Relief.

8. As a consequence of framing of issues, parties were directed to lead evidence in support of their respective stand. Respondents/plaintiffs' witness were: Feroz-ud-din Khan; Mohd Arif Mir; Mushtaq Ahmad

Chalkoo. Defendants/appellants also adduced three witnesses, namely, Gyas-ud-din Mufti; Rayaz Ahmad Shah; Syed Bashir Ahmad.

9. Respondents/Plaintiffs' witness, namely, Feroz-ud-din Khan, deposed that plaintiffs were known to him. He was fully acquainted with the property. He had visited the said building along with Junior Engineer for measurement, which were made and, on the basis thereof estimate of Rs.3.00 Lacs was made. Plaintiffs' Another witness, Mohd. Arif Mir, the then Executive Engineer, deposed that he had put his signatures on building assessment with respect of house in question. He submitted that he had submitted the entire assessment report. Plaintiff no.1, Mushtaq Ahmad Chalkoo, in his examination, deposed that occurrence took place on 26th September 1998. He supported all that has been mentioned in the suit.

10. Appellant/Defendants' witness, namely, Gyas-ud-din Mufti, the then Sr. Manager, Kamraz Rural Bank, Head Office Sopore, deposed that plaintiffs were known to him. Defendant no.4 was also known to him. The building owned by plaintiffs was in possession of bank on rental basis. In the intervening night of 26th/27th September 1998, a fire broke out in the building. The exact cause/reason of fire was not known to him. A case was registered against defendant no.4 and a separate FIR was lodged with respect to the occurrence of fire. Defendant no.4 was dismissed from service on account of him having committed fraud with bank accounts. Another defendants' witness, namely, Rayaz Ahmad Shah, the then Manager, Grameen Bank, deposed that plaintiffs were known to him. In the month of September 1998, he was posted as Branch Manager, Grameen Bank, Pringal. Defendant no.4 was posted

as Cashier-cum-Clerk in the said branch. The occurrence took place on Saturday. The witness was aware of fact that charge sheet was presented in the court of law against defendant no.4, which was with respect to embezzlement. Another defendants' witness, namely, Syed Bashir Ahmad, deposed that plaintiffs were known to him. Fire broke out in the building in the year 1998. Another appellants/defendants' witness, namely, Syed Bashir Ahmad, stated that plaintiffs/ respondents were known to him. Fire broke out in 1988. Bank received information about said occurrence. A committee was constituted to visit spot and then informed higher authorities about occurrence. He was member of the said committee. Defendant no.4 was dismissed from service for embezzlement. The said defendant was not involved in setting the building in question on fire. During cross examination he stated that he did not know whether investigation of the case by police was completed or not. After considering rival contentions of the parties as also evidence adduced by them, the Trial Court vide judgement impugned decree the suit of respondents/plaintiffs directing appellant-bank to pay damages in the sum of Rs.2.00 Lacs along with interest @ 8% per annum from the date of institution of present suit.

11. There is no dispute about suit property let out to appellant bank. There is also no dispute about the loss of damage to the demised premises due to fire accident. When the fire took place, the demised premises was admittedly in occupation and possession of appellant bank. It also came to fore before the Trial Court that respondent no.5 herein was facing inquiry as to embezzlement of certain bank accounts. Even after occurrence of fire a criminal case was registered against respondent

no.5. Investigation thereof concluded in finding respondent no.5 liable for offences of criminal breach of trust by a public servant/banker, forgery of valuable security and mischief by fire with an intent to destroy the house etc.

12. There is no gainsaying to the fact that appellant bank was in control and occupation of the demised premises as it was running a branch office therein. It was during bank's occupation and possession that fire broke out. It is thus deducible that occurrence of fire took place only due to negligence of officials of appellant-bank. Charge sheet had obviously been filed against respondent no.5, alleging putting building on fire. Nevertheless, the Trial Court has made it clear that demised premises was in exclusive occupation and possession of appellant-bank when occurrence of fire took place. The Trial Court has discussed all aspects of the matter comprehensively, which includes provisions of Evidence Act and the law on the subject, which need not to be elaborate herein again to unnecessarily prolix the instant judgement. If that being the position, impugned judgement and decree does not call for any interference.

13. For the reasons discussed above, the appeal in hand is **dismissed**.

Interim direction, if any, shall stand vacated.

14. Copy be sent down.

(Vinod Chatterji Koul)
Judge

Srinagar

24.12.2024

Ajaz Ahmad, Secy.

Whether approved for reporting? Yes/No.