IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Regular Second Appeal No. 1968 of 2013 (O&M)

DATE OF DECISION : February 09, 2015

Karnail Singh and anr.

.......APPELLANT(S)

VERSUS

State Bank of India and others

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE ARUN PALLI

Present: Ms. Chhavi Dhawan, Advocate, for
Mr. SS Narula, Advocate, for the appellants.

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1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO

2. To be referred to the Reporter or not? YES/NO

3. Whether the judgment should be reported in the digest? YES/NO

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ARUN PALLI, J. (Oral)

Suit filed by the plaintiff was decreed by the trial Court vide judgment and decree dated 09.12.2010. Appeal preferred against the said decree failed and was dismissed on 18.12.2012. This is how, defendants No.2 and 3 are before this Court, in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, plaintiff prayed for a decree for recovery of ₹2,76,150/- along with interest at the rate of 14% per annum. And also interest pendente lite and future interest from the date of the suit till its realization. It was averred that the plaintiff-Bank was a body corporate, constituted under the State Bank of India Act, 1955, having its Central Office at Bombay and its local office at Chandigarh. One of the branches of the plaintiff-Bank was situated at Kapurthala, which was under the administrative control of Zonal Office, Chandigarh. It was maintained that defendants No.2 and 3 were in-charge of the affairs of defendant No.1 and they were managing its business being partners/directors of the company. Defendants No.1 to 3 presented a bogus draft bearing No.0006437658 dated 04.11.1999 in their current account in Canara Bank, Kapurthala i.e. defendant No.4, for an amount of ₹2,10,000/-, for clearance, for credit to their account, on 05.11.1999. The said draft was shown to have been issued by State Bank of India, Jalandhar Branch and drawn on the plaintiff-Bank. The payment of the said draft was made by the plaintiff through transfer entry in the account of Canara Bank i.e. defendant No.4, and defendant No.4 credited this amount in the account of defendants No.1 to 3, who afterwards withdrew the same. And in keeping with the requirement of banking system, plaintiff issued a letter dated 03.08.2000 to the Deputy General Manager, State Bank of India, Jalandhar Branch, for confirmation as to whether draft No.0006437658 dated 04.11.1999, for ₹2,10,000/- was, indeed, issued by their Branch in the name of M/s Karanveer Finance (P)

Limited. In response, it was clarified that no such draft was issued by the said branch. On scrutiny, it was discovered that the said draft was, in fact, forged and fabricated and was never issued by State Bank of India, Jalandhar Branch. Therefore, defendants No.1 to 3 had cheated and defrauded the plaintiff-Bank. Further, plaintiff had lodged a complaint in this regard with the Senior Superintendent of Police, Kapurthala vide letter dated 04.08.2000, but to no avail. Subsequently, a compliant under Sections 420, 467, 468, 471, 120-B, Indian Penal Code, in the Court of Chief Judicial Magistrate, Kapurthala was made against defendants No.1 to 3, and the same was pending. Since, the amount in question was credited in the account of defendant No.4, even the said defendant was liable to indemnify the plaintiff and, thus, the liability of the defendants to pay the said amount was joint and several.

In defence, it was pleaded, inter alia, by defendants No.1 to 3, that as per banking norms and rules, if there is any defect in the instrument, the same is returned back the same evening to the concerned bank, otherwise it is presumed that the bank had accepted the instrument without there being any objection qua its veracity. Since, no such objection was received from the plaintiff-Bank, the amount was credited in the account of M/s Karanveer Finance (P) Limited. It was maintained that the defendants were neither at fault nor negligent. In fact, one Shri Randhir Singh son of Karnail Singh, resident of Village Nizampur, had obtained a loan for a sum of ₹1,70,000/- from defendants No.1 to 3 and on 04.11.1998, said

Randhir Singh settled the accounts with the defendants and ₹2,12,953/- were found due towards him. As defendants No.1 to 3 agreed to take ₹2,10,000/- only from said Randhir Singh, a draft dated 04.11.1999, issued by State Bank of India, Jalandhar Branch at the address of State Bank of India, Kapurthala, in the name of defendant No.1, was given to defendants No.1 to 3. Defendants No.1 to 3 presented the said draft in their account on 05.11.1999 and on 06.11.1999, the amount of the said draft was deposited in the account of defendant No.1. Act of defendants No.1 to 3, in the situation, was bona fide and without any malice. Thus, defendants No.1 to 3 were not liable to pay any amount to the plaintiff. In any case, it was the duty of the official in-charge of the plaintiff-Bank to verify the genuineness of the said draft and defendants could not be held liable for any negligence.

In a separate written statement filed by defendant No.4, i.e. Canara Bank, it was maintained that the said defendant merely acted in good faith, without negligence, for its customer and had received the payment for him. Plaintiff made the payment of the draft amount to defendant No.4 under the banking rules, when it was presented for payment through local clearing. On receipt of credit from the plaintiff-Bank, defendant No.4 credited the amount of draft in dispute in the current account of defendant No.1.

On an analysis of the matter in issue and the evidence on record, the courts below found that an amount to the tune of ₹2,10,000/- was withdrawn from the plaintiff-Bank by defendants No.1 to 3, through defendant No.4, by way of draft No.0006437658 dated 04.11.1999. The draft in question was, indeed, a forged and fabricated document was admitted by defendants No.1 to 3 themselves. Further, the witness examined by the plaintiff duly proved the withdrawal of the amount in dispute by defendants No.1 to 3, to which they otherwise were not entitled to. The plea that the plaintiff-Bank had already recovered the amount in issue from its employees on account of their negligence, however, was repelled. As defendants No.1 to 3, in any case, were not entitled to retain the said amount, that was withdrawn by them on the basis of a forged and fabricated document. Further, nothing was brought on record by defendants No.1 to 3 to prove that, in fact, Randhir Singh had forged the instrument. That being so, it was observed that plaintiff-Bank was fully entitled to recover the draft amount from defendants No.1 to 3. As regards liability of defendant No.4, it was observed that the said bank could not be held liable as the officials of defendant No.4 merely acted in good faith and discharged their duties. The plea of defendants No.1 to 3, that defendants No.2 and 3 being directors of the company, were not personally liable to repay the amount that was received by them, was, also, rejected as, concededly, defendants No.2 and 3 were running and managing defendant No.1 i.e. M/s Karanveer Finance (P) Limited, and the statement of account of the company (Exhibit D13) unraveled that, in fact, defendants No.2 and 3 had utilized the entire amount of ₹2,10,000/- for their personal benefit. In fact, defendants No.2

and 3 happened to be husband and wife and were the only directors of the company. Account of the company further showed that a sum of ₹35,000/- was withdrawn on 08.11.1999 by defendants No.2 and 3 and again a sum of ₹80,000/- was withdrawn by way of self cheque. Thus, the evidence on record showed that the amount in issue was fully utilized by defendants No.2 and 3 for their personal benefit and use and not for the benefit of the company or for running its affairs. That being so, it was concluded that they were personally liable to refund the amount they had received by way of forged draft. Resultantly, the suit filed by the plaintiff was decreed and, thereafter, the appeal preferred by defendants No.1 to 3 against the said decree failed and was, accordingly, dismissed.

I have heard the learned counsel for the appellant and perused the records.

Learned counsel for the appellants simply seeks to reiterate the submissions that were advanced before the courts below and rejected after due and comprehensive consideration. No other argument has been advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Concededly, demand draft No.0006437658 dated 04.11.1999, pursuant to which an amount of ₹2,10,000/- was credited in the account of defendant No.1 was a forged and fabricated document. Nothing was brought on record to prove that Randhir Singh, who purportedly gave the said draft to appellant-defendants, indeed, forged the said instrument. Both the courts below concurrently recorded that the amount that was credited in the account of defendants was indeed utilized by defendants No.2 and 3 for their personal use and benefit. Once that was so, defendants No.1 to 3 were not entitled to retain the amount in issue, that was concededly credited in the account of defendants, pursuant to a forged document.

Learned counsel for the appellant could not point out or show as to how the conclusions that were concurrently recorded by both the Courts below were either perverse or contrary to the position on record or suffered from any material illegality. That being so, no ground, least plausible in law, exists to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is, accordingly, dismissed.

FEBRUARY 09, 2015 (ARUN PALLI)
Kang JUDGE