HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

C.C.C.A. No.156 of 1999

JUDGMENT :

The unsuccessful plaintiff in O.S. No.596 of 1987 on the file of III Additional Judge, City Civil Court, Secunderabad maintained against two defendants viz., Vijaya Bank, local head office, Secunderabad and one Rakesh Rishi, for recovery of damages of Rs.1,70,000/- with interest at 18% per annum and costs, aggrieved by the dismissal of judgment and decree dated 03.05.1997, preferred the present appeal.

2) The brief averments made in the plaint are, that the plaintiff is a sole proprietory concern dealing with mining equipment, water well drilling rigs DTH, hammers, button bits and accessories etc and 1st defendant bank was a licensed person to plaintiff's business prior to 1985. After 1985, plaintiff's business shifted to Ahmedabad; that plaintiff has opened a current account No.362 with 1st defendant Bank and plaintiff operated the account by issuing cheques; that was honoured by 1st defendant and since the plaintiff's business is increased, he felt it necessary to take help of 2nd defendant and authorized to operate the bank account in the matter of plaintff's business and for ensuring the speedy payments to customers to handover the pass book and cheque book with specific instructions to the 1st defendant bank to honour all cheques as and when presented by said 2nd defendant under the counter signature of plaintiff, but the 2nd defendant parted with the bank account indiscriminately by drawing the amounts from the bank for his personal requirements and there from plaintiff addressed a letter dated 14.11.1983 to the 1st defendant bank that was received by the bank and entered as No.1539 in the inward register. In the year 1986, the plaintiff visited 1st defendant bank, ascertained as to the bank balance and therefrom he came to know that only Rs.490/- is the credit balance to his shocking and therefrom he requested the 1st defendant by letter dated 29.05.1986 to furnish statement of account and also photostat copy of cheques issued

from the month of November, 1983 till April, 1986. The 1st defendant bank having received the letter did not supply the documents. Then plaintiff got issued notice through advocate dated 21.07.1986 to 1st defendant bank for which they issued reply dated 26.07.1986 saying that it is not possible for them to furnish photostat copies of 65 cheques that were issued during the year 1983-86 and plaintiff can inspect the same and plaintiff got issued another notice to furnish copies of said letters else to take legal recourse. The plaintiff, therefrom made the claim for Rs.1,70,000/- saying despite instructions not to honour the cheques, the 1st defendant bank allowed the cheques without counter signatures of plaintiff for the 2nd defendant to draw the amounts. The bank failed to furnish the copies of the cheques drawn and honouring of said cheques by 1st defendant bank without counter signature of plaintiff, when presented by the 2nd defendant is in violation of express instructions communicated to them, the plaintiff wanted to recover the loss caused to it. By saying 1st defendant furnished the information only on 12.09.1986 and that is the starting point of limitation to say suit claim is within time.

3) The 2nd defendant remained exparte originally and later as per order passed in I.A. No.527 of 1984, the exparte order was set-aside and he filed written statement contesting that he is only proforma party to the suit as relief sought was against the defendant No.1 bank, that 2nd defendant has been doing business in several lakhs to the development society representing Natraj Borewell Services as proprietory concern with good market for rigs spending the energy and time fully and also to develop the business spent in lakhs and the plaintiff—Suresh Kumar Sanlani and one Arun Kumar Jairam Suratkal on seeing the 2nd defendant's business is lucrative by claiming as partners and to share profits or commission wanted to join 2nd defendant as partner and in the absence of 2nd defendant while he was on tour out of State, the said persons in collusion dispossessed to 2nd defendant from H.No.72/8,

East Maredpally, Secunderabad his office-cum-residential premises and seized all the records and caused obstruction to the 2nd defendant to enter into the premises and through the land lady cause filed police report against 2nd defendant and also engaged goonds to do away the 2nd defendant. The Water Development Society, having no other alternative than to recognise the 2nd defendant alone as their dealer, even the claim made by Arun Kumar Jayaram Suraktal and Suresh Kumar Saklani for not unjustified, did not recognize them as dealers and in the Indian Express News Paper Bombay dated 01.09.1984 they have proclaimed the 2nd defendant as their dealer with no any basis in order to create a fabricated document in their favour and on 20.08.1984, the 2nd defendant was kidnapped by a group of gangstars engaged by Arun Kumar Jairam Suratkal and Suresh Kumar Saklani and was taken away to a railway quarter at private road in Pune allotted to the father of Arun Kumar Jayaram Suratkal and kept him there under illegal confinement for five days and assaulted the 2nd defendant badly and threatened him to life and refused to leave him unless he signs on all blank white papers, blank stamp papers and typed papers and some hand written material and extorted the signatures by threat to life of 2nd defendant at dagger and pistol points and by not allowed to leave unsigned. There is another suit O.S. 601 of 1987 where the documents filed are fabricated and they threatened to do away if chosen to give any police complaint or approaching any police station and out of fear the 2nd defendant by preparing a police complaint, handed over to a person to deliver it in police station but later did not dare to come to Pune to pursue the same by fearing of Arun Kumar Jayaram Surtkal and Suresh Kumar Saklani.

4) It is the contest that 2nd defendant is not a licensed person to plaintiff or his business as claimed. It is the contest of 2nd defendant that he started Natraj Borewell Services and used to camp at Sukh Nivas, Rashtrapathi Road, Secunderabad. Later Arun Kumar Jayaram Surtkal

and Suresh Kumar Saklani came in contact with him because their desire to join him and joined by showing interest to participate in the business and started pressurizing the 2nd defendant to associate with them. The said Arun Kumar Jayaram Surtkal was running a canteen business in Pune S.T Stand, he has given up his avocation and made to believe the 2nd defendant, so also plaintiff—Suresh Kumar Saklani, who was an officer as Geologist in Government of Gujarath and made him to believe that he resigning the job from Gujarath Government and ultimately with those false promises fooled the 2nd defendant.

5) It is the contention of the 2nd defendant that he is having account in Syndicate bank for Natraj Borewell Services and the said two persons in the year 1983 as per their game induced the 2nd defendant to close his account at Syndicate bank and open an account at Vijaya Bank, West Marredpally saying they could get some financial accommodation facilities from the bank and by making believe by giving up their avocations and joined 2nd defendant as partners, from which the 2nd defendant sent plaintiff to open an account at Vijaya Bank in the name of Nataraj Borewell Services. However, contrary to it, plaintiff opened the account in his name showing it is done so for the business, they want to start jointly in the name of M/s.Mining and Drilling Equipment Corporation for which there is no approval of Water Development Society and the plaintiff played the trick with signatures of 2nd defendant in cause opened the bank account with Vijaya bank describing himself as proprietor of M/s.Mining and Drilling Equipment Corporation and some time thereafter pretending as one of the partner has executed after settling the terms of account converted into partnership account and started operating. When 2nd defendant questioned as to how plaintiff would operate the account saying the money in his name he said sorry saying he gave authorization letter on 16.08.1983 to the bank in favour of 2nd defendant to operate the account and premised to get the money for

investment and become a partner. Later plaintiff started misappropriating the money though all the money invested in the account belongs to 2nd defendant that was processed and derived from Natraj Borewell Services and the entire amount lying in the account belongs to the 2nd defendant. Since authorization already given to the bank to operate the account by 2nd defendant, plaintiff is disentitled to make any complaint over 2nd defendant and it is misreading to state all cheques issued by 2nd defendant were honoured because he took the assistance of plaintiff or on account of increase of business. That plaintiff is not at all a partner of M/s. Mining and Drilling Equipment Corporation and it is only a co-ordinating unit to the Nataraj Borewell Services of the 2nd defendant and the money lying in the Vijaya bank account belongs to 2nd defendant and not of plaintiff in seeking to dismiss the suit claim.

6) The 1st defendant bank filed written statement contending that plaintiff wrote a letter dated 03.04.1984 to the 1st defendant clearly stating that "instructions give for Rakesh Rishi to withdraw the amount may kindly be withdrawn" and there is no reference to earlier mandate with the alleged counter signature to be withdrawn nor does this letter refer to joint operation of account, hence the account was validly operated earlier. Earlier to the letter dated 03.04.1984, the defendant No.1 admitted that a letter was addressed on 14.11.1983 stating that all the cheques to be encahsed henceforth may be realized by atleast two signatories i.e., plaintiff and 2nd defendant.

7) It is also contended that the plaintiff was attending to the business and aware of the bank operations and never raised objections and plaintiff having received the amount from the bank it is a plan if at all hatched by plaintiff and 2nd defendant to issue wrongful gain even the suit amount paid or in the cheques from 26.11.1983 to 23.02.1984. The plaintiff came to know that after he went to bank for the first time in 1986 regarding operations is false and the claim is barred by time and the

cause of action set up is untrue and unsustainable and that no way saves any time for the barred claim and if at all, it is the plaintiff is negligent in allowing the cheques in the hands of 2nd defendant being the plaintiff did not want the cheques to be honoured that counter signatures he should have taken proper care for deemed preservation and safety of cheques against misuse by 2nd defendant and it is the plaintiff's negligence if at all in allowing the 2nd defendant and the claim against the bank is unsustainable but for if at all against 2nd defendant as it is 2nd defendant that withdrawn the amount under 10 cheques from the account that was allowed to operate and there is no fault of the 1st defendant bank in this regard in acting as bonafide as per the letter of mandate dated 14.11.1983. The further contest is 1st defendant is entitled to indemnify by 2nd defendant if he wrongly encashed the cheques and sought for dismissal of the suit.

8) It is from the respective contest, the trial Court framed the issues as to the letter dated 14.11.1983 of plaintiff with express instructions to 1st defendant bank to honour the cheques presented by 2nd defendant which are with counter signature of plaintiff and if so, the bank acted negligently in honouring without such signatures and whether the suit is collusive between the plaintiff and 2nd defendant and otherwise the suit claim is barred by limitation and the Court fee paid is not correct and to what relief?

9) In the course of trial, plaintiff was examined as PW.1 and placed reliance on Exs.A1 to A9 on behalf of plaintiffs and DW.1 employee of 1st defendant bank and DW.2 is 2nd defendant were examined and Exs.B1 to 16 are marked on behalf of defendants. It is therefrom while answering the issues, the trial Court held that plaintiff failed to establish that he is proprietor of M/s.Mining and Drilling Equipment Corporation and that he is not entitled to recover any damages against the bank; apart from suit claim is barred by limitation for

every cheque constitute an independent cause of action for counting the period of limitation from that day and there is
mis-joinder of cause of action and the court fee to be payable is for every cheque amount and not in lumpsum apart from plaintiff is, as stated, not entitled to recover the amount against the 1st defendant.

10) Impugning said dismissal judgment and decree of trial Court, the appeal is filed by unsuccessful plaintiff with contentions in the grounds of appeal that the Court below erred in not framing the issue on the aspect as to defendants cause damage to the interest of plaintiff for giving the finding and not given full opportunity to the plaintiff for cross examination of defendants' witnesses and ought to have declined to mark Exs.B5 & B6 for same are not covered by plea in the respective written statements and the trial Court failed to understand the law in relation to Negotiable Instruments Act and Banking Regulation Act and the practice and procedure with reference to circulars and erred in dismissing the suit by ill appreciation of facts and law. The further contest in the appeal is that the trial Court should have seen that the documents filed in some other Court in some other suit have no relevance to the issue in the suit. The trial Court should have seen that the cause of action or commencement of limitation from date of knowledge of plaintiff after furnishing of the statement of account on 12.09.1986 and not before and thereby the suit claim is within the limitation and not at all barred by time as per Article 113 of Limitation Act, which speaks that when the right to sue accrues to count three years there from and that the bank being a public institution violated the norms cannot be sheltered for avoiding damages as per the suit claim to prevent substantial injustice caused to the plaintiff from the acts of the bank and thereby sought for allowing the appeal by decreeing the suit claim setting aside the dismissal decree.

11) Heard learned counsel for appellant and even the 2nd respondent notice through paper publication by substitute service ordered for earlier shown avoiding for non service, failed to attend and thus taken as heard. The 1st respondent representing by advocate did

not submit arguments though several opportunities have been given, hence taken as heard to decide on merits. Perused the material on record.

12) As per the very facts of plaintiff pleaded in the plaint vis-à-vis in the evidence of PW.1, the plaintiff has given the signed cheques to operate the bank account by 2nd defendant initially it was going on. It subsequently in saying there is another letter given not to allow 2nd defendant to operate the account without counter signature of plaintiff. It is therefrom finding fault with the 1st defendant bank as dereliction of duty and liability for damages in honouring the cheques subsequent to the letter, without counter signature of plaintiff having given the cheque book with signed cheque leaves by plaintiff undisputedly to the 2nd defendant to operate the account and given the original authorization, even subsequent to that mere giving of letter to the bank is not enough without further duty of the plaintiff to take back the unused cheque leaves from 2nd defendant, if at all, he intends not to operate. It is not even his case by that letter of stop payment and not to honour the operation of the bank account by 2nd defendant by presenting the cheques, but for in saying according to him without his counter signatures not to honour. As pointed out in the written statement of the 1st defendant bank by letter dated 03.04.1984 of plaintiff to 1st defendant, that instructions given for 2nd defendant to withdraw the amount may kindly to withdraw. Therefrom, there is no reference to earlier mandate and the alleged counter signature to be withdrawn nor does this letter referred to joint operation. The bank therefrom rightly contends that the account was validly allowed to be operated as earlier, that is prior to the earlier letter dated 03.04.1984 vide Ex.B3 pursuant to letter dated 14.11.1983 vide Ex.B2 with reference to Ex.B1—letter dated 16.08.1983. In fact the said letter in question what the plaintiff stated is all cheques to be encashed henceforth may be released by atleast two signatories that of plaintiff and defendant No.2.

The bank rightly therefrom contends that there is nothing to say minimum two signatories required to operate the account to draw the cheques. What it says to the signatories to mean the account holder plaintiff, who is signatory already there for presenting the cheques, pursuant to the earlier letter and to encash by operating the account by defendant No.2. When the letter is vague and also in saying there is a mistake in mentioning which is the fault of the plaintiff. Thus, he cannot blame the 1st defendant bank, that too, when it is the duty if at all of the plaintiff to call back the unused cheques from the 2nd defendant and he should have atleast was verifying the bank account operations to ask the bank to stop payments by not honouring the cheques. It is not his case of any further letter given with any verification even subsequently by rectifying his mistakenly mentioned or faultly mentioned latter supra. In the absence of which and for his fault or self-inflicted sufferance and hardship, he cannot blame much less the bank to mulk it with liability for damages, for nothing of any violation by the bank that could be shown even therefrom, much less to made liable for damages but for, if at all, the remedy is solely against the 2nd defendant.

13) Now coming to the claim of 2nd defendant, it is his evidence that all the amounts with the Vijaya Bank account standing in the name of plaintiff is outcome of the amounts remitting that of 2nd defendant's business a proprietory concern from plaintiff and another person cause closed. The original bank account of 2nd defendant in allowing him to operate the bank account for the purpose of business and when such is the case, the question of plaintiff's entitlement to the relief against defendant No.2 also does not arise. Apart from, what the plaintiff claimed in the suit is not for granting of relief against the defendant No.2, but against the defendant No.1. From the discussion (supra), when the defendant No.1 bank cannot be made liable on the merits. Even taken for arguments sake of any entitlement of the relief, the suit claim of the plaintiff for Rs.1,70,000/- respective amount of the cheques honoured is

hopelessly barred by limitation beyond three years by the date of suit filed on 23.03.1987. As all the cheuqes in question from the statement of account are for three years prior to the date of suit and the limitation of three years commences from respective date of the cheque presented and withdrawn. Even to say, the bank was negligent in allowing the withdrawal, the claim commences from that day and not from plaintiff sleeping over for some time and to make a claim after wake up and asking about account, much less to say from furnishing of statement of account limitation to Court. It is within his deemed knowledge of every transaction of his live account. In fact, the trial Court elaborately discussed the same in dismissing the suit claim also on the ground of mis-joinder of cause of action, insufficiency of Court fee and for the suit claim is barred by limitation, apart from the factum of 1st defendant cannot be mulked with liability for damages. Thereby, the trial Court is right in dismissing the suit and for this Court while sitting in appeal, there is nothing to interfere from re-appreciation of the material as discussed supra.

14) Accordingly and in the result, the appeal is dismissed with no costs.

15) Miscellaneous Petitions pending, if any, in this Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

01.04.2016
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