IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA No.864 of 1988 (O&M) &
Cross-Objection No.24-C of 1988
Date of decision : 10.02.2016

Punjab National Bank

...Appellant

Versus

M/s Chhanga Mal Daya Nand and ors.

...Respondents

2. RSA No.865 of 1988 (O&M) &
Cross-Objection No.25-C of 1988
Date of decision : 10.02.2016

Punjab National Bank

...Appellant

Versus

M/s Chhanga Mal Daya Nand and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. R.S. Bhatia, Advocate for the appellant.
(In both appeals)

Mr. Ashok Kumar Jindal, Advocate for
Cross-Objectors-respondent Nos.1 to 3.
(In both appeals)

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AMIT RAWAL, J. (Oral)

The appellant-bank is aggrieved of the concurrent finding of fact, whereby suit claiming recovery of Rs.75,000/- plus interest Rs.12030/35 paise plus Bank Charges Rs.421/- total Rs.87,451/35/- paise on account of amount advanced to the defendant Nos.1 to 3, has been dismissed by both the courts below.

Mr. R.S. Bhatia, learned counsel appearing on behalf of Bank submits that defendant No.3-Daya Nand was carrying out the business of commission agency in foodgrains and agricultural commodities. Defendant Nos.2 and 3 presented to bank on 04.07.1975. Railway receipt bearing No.703216, 703217, 703218 dated 02.07.1975, 03.07.1975, 04.07.1975 respectively along with Hundis bearing No.1552, 1553 and 1551 drawn on defendant No.5 namely Jetha Nand and the RRs shows that defendant No.1 was the drawee of consignment of 450 bags, in essence, defendant No.1 was consignee as well as consignor of such railway receipts. The plaintiff being bonafide purchaser had actually taken the business of purchase of the goods of RR for valuable consideration. All the RRs were endorsed by defendant No.1 in favour of defendant No.2, therefore, defendant No.2 endorse the same in favour of the plaintiff. The plaintiffs for claiming the amount sent the Hundis and RR to Madurai Office for collection by presenting the same to the defendant No.5 but the same were returned with remarks that payment was not forthcoming. Legal notice to the defendant No.2, in this regard, was sent but the notice came undelivered. It is in these circumstances, the suit was filed. Both the Courts below have ignored the aforementioned facts and found that railway receipts were fake and, therefore, the bank could not stated to have purchased the receipts of goods and thus cannot recover the amount. The public money has been squandered and the Court cannot shut his eyes.

Mr. Ashok Kumar Jindal, learned counsel appearing on behalf of respondent Nos.1 to 3 submits that concurrent findings cannot be interfered until and unless substantial question of law arises for determination. Once the railway receipt has been forged, bank had no cause of action to seek recovery of the amount.

He also pressed cross-objection that both the Courts below have wrongly and erroneously decreed the suit qua defendant No.1 to 3. It was railway who has to honour the money and not defendant Nos.1 and 3.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no substance in the appeal for the reasons that during evidence, it has come on record that railway receipts have been found fake. Once the railway receipts have been found fake, defendant cannot claim amount and recovery from defendant No.4. However, suit vis-a-vis defendant Nos.1 and 3 had already been decreed against them.

Keeping in view the aforementioned observation, I am of the view that there is no substance in the appeal claiming the decree against the defendant No.4. Accordingly, judgment and decree qua defendant Nos.1 to 3 are affirmed and qua defendant No.4 is dismissed.

Appeals are dismissed as no substantial question of law arises for determination.

There is no substance in the cross-objection for the reasons that on presentation of the Hundis to the defendant No.5, he refused to make the payment as the defendant Nos.1 to 3 had given hundis and once defendant No.5 has accepted the hundis, the money which was received by the defendant was liable to be refunded to the bank. It is not the case that Hundis were forged it is only the railway receipts which is found to be fake. Even the photocopy of the same has been produced on record.

Keeping in view the aforementioned observation, Cross-objections are dismissed.

10.02.2016 **(AMIT RAWAL)**
pawan **JUDGE**