**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

RSA No.984 of 2012
Date of decision : 28.03.2016

Bank of India

...Appellant

Versus

M/s Indra Auto Sales Ltd. and another

...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. Ranjan Lohan, Advocate for the appellant.

Mr. Sanjeev Sharma, Advocate for the respondent No.1.

Mr. Anil K. Ahuja, Advocate for the respondent No.2.

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**AMIT RAWAL, J. (Oral)**

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby suit for recovery of amount of ₹6,34,900/- containing the element of pendente lite and future interest has been decreed.

Mr. Ranjan Lohan, learned counsel appearing on behalf of appellant-bank submits that M/s Indra Auto Sales Ltd.-defendant No.1, distributor of Tata Vehicle presented the demand draft of ₹3,75,000/- in lieu of selling of Tata Sumo to the defendant No.2. Same was got encashed but later on it was realized that demand draft bearing No.29/121, Leaf No.0344996 dated 28.01.1998 was allegedly issued by Bank of India, Sahadullapur Branch, Bihar drawn by plaintiff at his branch, Patiala was found to be forged and fabricated and in this regard, FIR was lodged. However, the accused went untraced and thus in this process filed civil suit on 01.02.2001. The trial Court on the basis of the preponderance of the evidence decreed the suit. However, the lower Appellate Court has committed illegality and perversity in dismissing the suit, whereas umpteen number of documentary evidence brought on record shows that draft was having forged signatures of authority and branch had located at Bihar and thus urges this Court to formulate substantial question of law as culled out in memorandum of appeal.

He further submits that as per the testimony of PW1 Rajesh Ranjan, Assistant Manager, it has come on record that draft bearing number aforementioned, was never issued by the concerned Branch. Dalip Kumar and Hashim Ebrahim never remained posted in any capacity in branch office, Sahadullapur and thus signatures were forged and fabricated.

Mr. Sanjeev Sharma, learned counsel appearing on behalf of defendant No.1 submits that bank has failed to discharge the onus as per Section 101 of Indian Evidence Act in essence list of employees employed at Sahadullapur Branch, Bihar, at the relevant point of time has not been brought on record to show whether the aforementioned persons were present or not. The report of expert is complete piece of evidence. Expert Report toe to the line of the party who engages them whereas on the contrary, lower Appellate Court categorically found that examination of statement of Satish Kumar Mahajan who passed the draft that signatures on the draft tallied with those and whereas other signatures were slightly different. No evidence has been brought on record to show that whether any action had been taken against erring officials or not and thus urges this Court that there is no illegality and perversity in the judgment and decree of the lower Appellate Court, much less, no substantial questions of law arises for determination.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no merit in the appeal. PW2 Dalip Kumar, in cross-examination admitted that generally ordinary person/holder of the demand draft cannot detect the forgery or irregularity in any of the demand draft as it requires the leaf of the bank on which the demand draft is issued and signatures of two or more authorized officers and all the ingredients were present in Ex.P1. As per the statement of PW3 Satish Kumar Mahajan, one of the officers, verified the signatures and submitted that specimen signatures of officers were slightly different, but yet encashed. In case there was slight difference, they could have verified through any other mode and had means to check the genuinity of the document. Having failed to do so, defendant No.1 being dealer of Tata Motors could not be burdened the liability to pay the amount which has been received in lieu of the sale of vehicle to the defendant No.2. It is matter of record that suit against defendant No.2 had been withdrawn. In my view, the bank miserably failed to prove the check being forged and fabricated as no steps has been taken to prove on record whether officials aforementioned were actually put to notice or not.

In view of aforementioned, I do not find any illegality and perversity in the judgment and decree of the lower Appellate Court. Same is accordingly upheld. Suit is dismissed.

Resultantly, RSA is also dismissed as no substantial question of law arises for determination.

**28.03.2016** **(AMIT RAWAL)**
*pawan* **JUDGE**