

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.4485 of 2013 (O&M)

Date of Decision: October 25th, 2016

Punjab and Sind Bank

...Appellant

Versus

M/s H.S.Traders, Amritsar & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.A.B.S.Sidhu, Advocate,
for the appellant.

Mr.Amar Vivek, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby suit for recovery of ₹5,30,000/- along with interest, has been dismissed.

Mr.A.B.S.Sidhu, learned counsel for the appellant-plaintiff submits that defendant No.1, being a proprietorship concern and defendant No.2 proprietor of defendant No.1, opened the current account bearing No.1039 at Tunda Talab Branch, Amritsar in the name of defendant No.1 and was operating the account. On 7.5.1998, defendant No.1 through defendant No.2 represented two drafts of ₹2,70,000/- and ₹2,60,000/- bearing No.171677 and 171678 prepared by Tunda Talab Branch, Amritsar for crediting the same in the account of defendant No.1 and on the same date, defendant No.1 withdrew the amount. Later on, the aforementioned drafts were found to be forged and fabricated as the leaves of the drafts were stolen. FIR qua the loss of the leaves has, already, been lodged. In fact,

leaving the drafts, the same were credited, though it was required to verify before crediting in the account of defendant No.1. Special messenger was sent by the plaintiff- bank to the RCC Chowk Phawara, Amritsar for collection of the proceeds and on receiving the advice from the said Bank, amount of ₹5,29,300/- was credited after deducting the commission of ₹700/-. FIR was registered under Sections 465, 467, 471 and 120-B IPC against the defendants with Police Station D-Division, Amritsar bearing No.39 of 1998. No doubt, the accused have been acquitted, but the civil case would be decided on preponderance of evidence as the observations, of the criminal court would not be binding on the civil court. All these factors have not been noticed by both the Courts below. Even the defendants' stand in the written statement has not been proved as he alleged to have sold the goods to the person from whom the drafts were received. He further submits that the circular Ex.D1 has been proved on record, thus, there is illegality and perversity.

Per-contra, Mr.Amar Vivek, learned counsel for respondent-defendant Nos.1 and 2 submits that the circular Ex.D1 was circulated amongst all the branches with regard to the loss of the leaves and in case the leaves were found in the category of loss, the same should have been verified from the bank for crediting the amount. Extra amount of ₹700/- was charged for crediting the amount. It was the duty of the bank to verify the genuineness of the same. Having failed to do so, the plaintiff-bank cannot succeed in a suit. In fact, plaintiff has failed to discharge the onus with regard to the averments in the plaint. He further submits that in the criminal proceedings, it has transpired that the person, with whom the defendants had done the dealing, was found to be close relative of Branch

Manager Mandeep Singh from where the leaves of the drafts were stolen and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submission of Mr.Sidhu, for, circular Ex.D1 has been proved on record. Despite the knowledge of the same, the appellant-bank credited the drafts in the account of the defendants. It is also a matter of record that in the aforementioned criminal case, the defendants have been acquitted. Be that as it may, it was incumbent upon the appellant-bank to verify regarding the authenticity and genuineness of the drafts. I am of the view that the bank cannot take the benefit of mistaken belief as it charged ₹700/- for immediately encashment of the same. Both the Courts below, being the last Court of fact and law, have appreciated the oral and documentary evidence and found that the appellant-plaintiff has miserably failed to prove the onus of recovery of the amount. It is not the fact that the defendants were instrumental in procuring the forged drafts. He had undertaken a transaction with a person, who had given them drafts. Realising and believing the same as correct, presented the same.

For the foregoing reasons, I do not intend to differ with the concurrent findings of fact, which are based on appreciation of oral and documentary evidence, much less no substantial question of law arises for determination by this Court.

Appeal stands dismissed.

October 25th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No