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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: July 28, 2016*

+ **W.P.(C) 6549/2015**

ORIENTAL BANK OF COMMERCE
AND ORS.

..... Petitioners

Represented by: Mr.H.P.Bhardwaj, Advocate

versus

M/S. ICICI BANK LTD. AND ORS.
Represented by: None

..... Respondents

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. It is settled law that a writ Court would not re-appreciate evidence and a decision by a specialized Tribunal on a question of fact can be questioned only on the plea that either the finding returned is perverse or a material evidence has been excluded or irrelevant evidence has been included in the decision making process.

2. The petitioner has filed the instant writ petition seeking the quashing of the order dated January 09, 2015 passed by the learned DRAT in Appeal No. 30 of 2014 dismissing the appeal laying a challenge to the order dated December 11, 2013 passed by the learned Debts Recovery Tribunal allowing Original Application filed by the first respondent bank : ICICI Bank Ltd. Claim in sum of ₹10,99,650/- with costs and simple interest @ 6% per annum from date when the Original Application was filed till date of

recovery has been ordered.

3. The relevant facts are that M/s Balaji Cereal Products had an account with the petitioner bank at its Rajkot Branch. M/s Balaji Cereal Products had a business with M/s Jupiter Ferro Pvt. Ltd. which had issued two cheques No.398404 and 398405 in sum of ₹7.5 lacs and ₹2 lacs respectively, which were drawn on the Bank of Rajasthan. The said bank has now merged with ICICI Bank Ltd. M/s Balaji Cereal Products deposited the cheques for collection with the petitioner's branch in Rajkot. It was the era when, unlike today, clearance of cheques required physical movement of the cheques to the Reserve Bank of India. On April 12,1999 the branch of the petitioner at Rajkot forwarded the two cheques to its service branch in Ahmadabad because there was an office of Reserve Bank of India at Ahmadabad and therefore the service branch of the petitioner at Ahmadabad delivered the cheques to the branch of the Reserve Bank of India at Ahmadabad so that the cheques could be sent to the Reserve Bank of India at Delhi through National Clearing. Relevant would it be to note at this stage that the branch of the petitioner at Rajkot had endorsed the cheques with a stamp that money would be credited to the account of M/s Balaji Cereal Products upon realization of the cheques.

4. On April 15, 1999, the Reserve Bank of India at Delhi forwarded the cheques to the service branch of the Bank of Rajasthan at Delhi. What exactly happened on April 15, 1999 is a little blurred and we have before us no exact evidence as to what really happened. But parties are ad idem that on April 15, 1999 itself the Bank of Rajasthan returned the cheques with the endorsement 'insufficient funds', but made a procedural mistake in returning the cheques through local clearance instead of National Clearing.

The petitioner claims that the Reserve Bank of India at Delhi informed the Reserve Bank of India at Ahmadabad that the cheques were good for payment, and in respect of this assertion we find no evidence. The blurring of the evidence relates to this vital aspect of the matter, and suffice it to state that since it was an assertion of fact made by the petitioner, it had to be made good by the petitioner.

5. It is the claim of the petitioner that at the request of the customer M/s Balaji Cereal Products it purchased the two cheques and credited the money to the account of M/s Balaji Cereal Products. And we highlight that the petitioner does not claim having done so after receiving information from the Reserve Bank of India at Ahmadabad that its Delhi Branch had informed it as is being claimed by the petitioner that the cheques had been realized. The case of the petitioner is that the cheques had to be returned if there was insufficiency of funds by April 15, 1999 and because they were not returned by said date, it made the payment.

6. We highlight at this stage itself that the pleas of the petitioner are confusing and to some extent contradictory. On the one hand it claims having purchased the cheques and on the other hand it claims that since the cheques were not returned dishonoured by April 15, 1999 it credited the account of the customer.

7. On April 17, 1999 the Bank of Rajasthan on which the cheques were drawn received the cheques from the petitioner's branch at Delhi with the remark '*Branch Sort Code is required*'. Upon investigation the Bank of Rajasthan realized its mistake of returning the cheques through local clearing instead of National Clearing and informed the petitioner's branch at Rajkot via telephone and telegram that the funds of Jupiter Ferro Pvt.

Ltd. were insufficient. Petitioner's branch at Rajkot informed the branch of Bank of Rajasthan at Delhi on which the cheques were drawn that it had already purchased the cheques and released the credit in the name of the customer.

8. But curiously, and for reasons unknown and additionally in respect of which there is just no evidence on record, through the National Clearance the account of Bank of Rajasthan got debited in the sum of the two cheques and credited to the account of the petitioner.

9. Bank of Rajasthan took up the matter with the Reserve Bank of India, which expressed its inability to resolve the issue, but noted one fact very clearly : that it was only on April 20, 1999 that the branch of the petitioner at Rajkot received collection advice from the National Clearing. It also needs to be highlighted that the letter dated January 05, 2000 written by the Reserve Bank of India put the blame partially upon the Bank of Rajasthan in returning the cheques through local clearance instead of National Clearance taking note of the fact that the information regarding insufficiency of the funds in the account was intimated on April 17, 1999.

10. This led the Bank of Rajasthan to sue the petitioner and since Bank of Rajasthan merged with ICICI Bank Ltd., the proceedings have been continued by said bank.

11. Vide order dated December 11, 2013, in view of the evidence led learned DRAT held that the purchase of cheques by the petitioner on April 16, 1999 was a commercial transaction whereunder the petitioner had earned a commission i.e. took a business risk of non-payment of the cheque. In such a situation, when the cheques could not be realized on account of insufficiency of funds, the petitioner could not transfer its loss onto

Respondent no.1 which was entirely unconnected to the cheque purchase between the petitioner and its customer. Learned DRT held that it was the responsibility of petitioner to have made necessary verifications before agreeing to purchase the cheques and the failure to do so resulted in the petitioner suffering losses. Accordingly, it decreed the claim together with interest.

12. In the appeal, the petitioner, by placing reliance on the judgment reported as AIR 1978 CAL 169 United bank of India v. M/s A.T. Ali Hussain & Co., pleaded that the negligence of the respondent No.1 in returning the cheque through local clearance and not National Clearance led it to credit the account of its customer and thus the payment could not be recovered. Learned DRAT negated the contention holding that as a matter of fact the petitioner had purchased the cheques from its customer and it was not a case where upon receipt of information that the money had been realized, the amount was credited.

13. In appeal, learned counsel for the petitioner has made contradictory submissions, and we understand the handicap of learned counsel. The fault lies in the pleadings of the petitioner bank. Even in the writ petition it is categorically pleaded in paragraph 2.5 of the writ petition that petitioner's branch at Rajkot purchased the two cheques on April 16, 1999. On the one hand it claims that it purchased the cheques on April 16, 1999 after it received information from the RBI that the cheques had been cleared for payment and in the next breath it claims that because the cheques were not returned dishonoured by April 15, 1999, it made the payment. Now, either the petitioner's branch credited the account on account of notice of dishonour not being received by April 15, 1999 or because it purchased the

cheques. It could not be both. The petitioner has positively averred that the Reserve Bank of India at Delhi intimated its branch at Ahmadabad on April 15, 1999 that the cheques had been realized. But it is of no use to make such an averment because there is no evidence to establish the same. We highlight once again that there is no evidence that RBI Ahmadabad informed petitioner branch at Rajkot that the cheques had been realized.

14. The position therefore would be that notwithstanding negligence by the Delhi branch of the respondent to return the cheques by local clearance and not by National Clearance, the petitioner could not have credited the account of its customer till it received a proper advice. The argument of learned counsel for the petitioner that since the cheques were not returned dishonoured by April 15, 1999, the petitioner could presume that the cheques had been realized is sans any material on record. We could have appreciated the argument if a policy guideline of RBI or otherwise was proved that if the cheques were not returned dishonoured by April 15, 1999 through the clearing house the petitioner bank could proceed to credit the account of its customer. In this context we highlight that in its letter dated January 05, 2000 RBI has clearly recorded that the collection advice was sent to the petitioner's branch only on April 20, 1999. Under the circumstances we agree with the view taken by the learned DRT and learned DRAT that the negligence on the part of the respondent No.1 bank in despatching the cheques through local clearing instead of National Clearing is immaterial.

We see no reason to interfere with the concurrent findings returned by learned DRT and learned DRAT, which are based on evidence.

CM No.11921/2015 & CM No.24572/2016

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JULY 28, 2016
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