

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

RSA No. 1421 of 2016 (O&M)

DATE OF DECISION : 09.10.2017

Kashmir Giri

.... APPELLANT

Versus

M/s UTI Bank Limited, now Axis Bank Limited, through its Branch
Manager and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. J.S. Bhandohal, Advocate,
for the appellant.

* * *

AVNEESH JHINGAN, J.

Defendant No.3 Kashmir Giri is in Regular Second Appeal against the judgment and decree dated 29.10.2015, whereby the learned first appellate court dismissed the appeal and upheld the judgment and decree dated 21.10.2013 passed by the learned trial court decreeing the suit of the plaintiff (respondent No.1 herein) for recovery of ₹ 7,03,463/- along with pendente lite interest at the rate of 9% per annum and future interest at the rate of 6% per annum till realisation of the decretal amount. The defendants were held jointly and severally liable to pay the same. Both the courts below held that the amount withdrawn from the current account should be paid to the plaintiff bank.

Respondent No.2/defendant No.1 had a current account with

the plaintiff/respondent No.1 bank. In the said account, on 11.01.2007, RTGS Centre, Mumbai, inadvertently credited ₹ 80 Lacs, which belonged to some other account. This fact was in the knowledge of the defendants. Out of the said amount of ₹ 80 Lacs, a sum of ₹ 7 Lacs was withdrawn by the defendants. ₹ 5 Lac were withdrawn through cheque, which beared the signatures of the appellant/defendant No.3. On detection of error by the bank, while reversing the entries, it was found that amount of ₹ 6,87,141/- was due to the bank. The bank wrote letters and served legal notices, but the said amount was not deposited. Therefore, suit for recovery of ₹ 7,03,463/- was filed by the bank.

Notice was issued. Defendants No.1 and 2 were proceeded ex-parte. The appellant – defendant No.3 filed written statement. Thereafter, issues were framed by the trial court.

In support of its case, the plaintiff/respondent No.1 bank examined its attorney holder Harpreet Singh Lohaniwal as PW1, who deposed by way of affidavit Ex. PA. Statement of account and notices were exhibited. PW.2 Rajdeep Singh, Officer of the bank, was examined as PW.2. He brought on record the account opening form, true print of Finacle Software and snapshots of transactions of account of the defendants. Even the print out form Finacle regarding issuance of ATM card was also brought on record.

Appellant/defendant No.3, on the other hand, himself deposed as DW.1. In his cross-examination, he denied his signatures on all the

documents, including the power of attorney in favour of his counsel. DW.2 Sukhpal Singh, an official from Water Supply and Sewerage Board was examined as DW.2. He was a formal witness regarding identification of signatures of SDO on Bill. Kamal Singh, another official from Water Supply and Sewerage Board, was examined as DW.3. He brought on record the cash book of respondent No.2 - defendant No.1.

After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court decreed the suit for recovery of ₹ 7,03,463/- along with pendente lite interest at the rate of 9% per annum and future interest at the rate of 6% per annum till realisation of the decretal amount. The defendants were held jointly and severally liable to pay the same.

The appellant – defendant no.3 felt aggrieved and filed the first appeal, which was dismissed by learned Additional District Judge, Ludhiana, vide judgment and decree dated 29.10.2015. The judgment and decree passed by the trial court was upheld. Hence, this Regular Second Appeal at the hands of defendant No.3.

I have heard learned counsel for the appellant and perused the paper book.

The dispute before this court is that defendant No.1 (as before the trial court and respondent no.2 in this appeal) was maintaining a current account with the plaintiff bank since 16.10.2006. The appellant/defendant no.3 was the authorised person to operate the said current account. The

current account was wrongly credited by an amount of ₹ 80 Lac. Out of the said amount, a sum of ₹ 7 Lac was withdrawn. Out of this withdrawal amount, amount of ₹ 5 Lac was withdrawn by way of cheque, on which there were signatures of the appellant/defendant No.3. It is not the case of the appellant that the said withdrawn amount was not the amount, which was wrongly credited to the current account. The proprietary concern and the proprietor were proceeded ex-parte before the trial court and their service was dispensed with before the first appellate court. They are not before this court in Regular Second Appeal. The present appeal has been filed only by defendant No.3, who was the authorised person operating the account.

In the present appeal, the following three questions of law have been raised :-

- (i) Whether appellant/defendant No.3, who is only POA, has not been held liable for recovery wrongly ?
- (ii) Whether the learned courts below have committed an error, while decreeing the suit?
- (iii) Whether the judgments and decrees passed by the learned courts below are not based on wrong appreciation of evidence on record ?

However, while arguing the appeal, learned counsel for the appellant has pressed only question No.1. He submitted that since the

appellant was only a power of attorney holder, who was operating the bank account, therefore, the recovery should not have been ordered against him.

During the arguments, learned counsel has not challenged the fact that the plaintiff bank was entitled to get back the amount of ₹ 7 Lac, which was wrongly credited to the current account. The conduct of the appellant is such that before the trial court, he denied his signatures not only on the cheque but on all other documents, including the power of attorney which was given by him to his counsel. No evidence was led to substantiate his denial. Rather a case has been set up that the appellant was doing the work for defendant No.1, for which defendants No.1 and 2 owed ₹ 6,65,000/- to him, therefore, he had the right to settle his accounts. From the arguments raised, it is evident that the appellant is accepting withdrawal of the amount and his stand is that since he had a sum of ₹ 6,65,000/- due against defendants No.1 and 2, therefore, recovery should not be made from him. It has neither been pleaded nor argued that the amount withdrawn by the appellant out of the wrongly credited amount was actually handed over by him to his principals. Though even such an averment may not have bailed him out. But the fact remains that no such averment has been made.

The issue in the present appeal is that the plaintiff bank has been deprived of its amount of ₹ 7 Lac, which is to be reimbursed to it. The fact that out of ₹ 7 Lac, a sum of ₹ 5 Lac was withdrawn by the appellant/defendant No.3 through cheque and his signatures on the cheque tallied even to a naked eye, as has been recorded by the courts below. Before this

court, even the signatures have not been denied.

The issue which needs determination is that the dispute may be between defendants No.1 and 3, but the amount due towards the plaintiff bank cannot be withheld. So far as the plaintiff bank is concerned, the amount along with interest has to be reimbursed. The courts below have rightly allowed the plaintiff bank to recover the amount from the defendants jointly and severally. It would be inter-se between the defendants to settle as to who has to pay the amount. No grievance can be raised by the appellant – defendant No.3 in this regard.

The first appellate court has rightly relied upon a decision of the Madras High Court reported as *M/s Shaw Wallace and Company Versus Union of India*, 2005 (1) RCR (Civil) 178, wherein while dealing with Sections 230, 222 and 223 of the Contract Act, 1872, it has been held as under :-

“On going through those statutory provisions and the materials placed, we are satisfied that both the principal and agent are equally responsible and liable to indemnify the loss caused to the plaintiff.”

In the present case also, the agent and the principal are equally liable to indemnify the loss caused to the plaintiff bank.

Keeping in view the totality of the facts and circumstances of the case, learned first appellate court reconsidered and re-appreciated the facts and evidence available on record in its right

perspective. A cogent and convincing finding has been recorded by the learned first appellate court.

During the course of hearing, learned counsel for the appellant could not point out any illegality or perversity in the impugned judgment passed by the learned first appellate court. He could not refer to any question of law much less substantial question of law which is sine qua non for this court to exercise its appellate power under Section 100 of the CPC.

No other argument was raised.

Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any substance, thus it must fail.

Resultantly, the instant second appeal is dismissed, however, with no order as to costs.

October 09, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes