IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.414 of 2014
Date of decision :12.09.2017

Oriental Bank of Commerce ...Appellant

Versus

Darshan Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.K. Ahuja, Advocate
for the appellant.

Mr. A.B.S. Sidhu, Advocate
for respondent No.3

ANIL KSHETARPAL, J.(Oral)

Plaintiff-appellant is in Regular Second Appeal against the judgment passed by the learned Additional District Judge, Sri Muktsar Sahib.

Plaintiff-Oriental Bank of Commerce has filed a suit for recovery of Rs.4,11,000/-, which includes Rs.3,00,000/- wrongly paid to defendant No.1 on 24.05.2007 and Rs.1,11,000/- as an interest on the said amount.

Facts of the case are that Darshan Singh-defendant No.1 was maintaining a saving bank account with the plaintiff-Bank. Darshan Singh had deposited the cheque issued in his favour by defendant No.2-Santokh Singh for an amount of Rs.3,00,000/- on 23.05.2007, which was drawn on Punjab and Sind Bank, Malout (i.e. defendant No.3) for collection with the appellant-plaintiff-Bank. Plaintiff-Bank on receipt of the cheque sent it for collection. It is the case of the plaintiff that on the same day, the local cheques are sent for collection in the collection centre maintained by all the member banks. It is the case of the plaintiff that if no intimation is received from the payee banker on the same day, it is assumed that the payee bank has no objection to the payment, therefore, payment can be released. It is the case of the plaintiff that no intimation was received on 23.05.2007. It is further the case of the plaitniff that till 11.00 am on 24.05.2007 i.e. the next day, no intimation was received from the payee bank (i.e. defendant No.3) objecting to the payment. Hence, the payment was credited to the account of Darshan Singh. It is further the case of the plaintiffs that late in the evening on 24.05.2007, a peon from the payee bank-defendant No.3 came with an intimation that the cheque has been dishonored on account of insufficient funds in the account of Santokh Singh. In the meantime, Darshan Singh-defendant No.1, the account holder, withdrew the amount of Rs.3,00,000/- credited to his account.

It is on this basis that plaintiff-Bank filed a suit for recovery by impleading Darshan Singh as defendant No.1, Santokh Singh as defendant No.2 and Punjab and Sind Bank as defendant No.3.

Learned trial Court after appreciating the evidence available on the file, decreed the suit against defendant No.1.

Defendant No.1 filed an appeal. Learned First Appellate Court has accepted the appeal, on the ground that it was plaintiff-Bank, which was negligent in crediting the account of defendant No.1 without waiting for the intimation from the payee bank (i.e. defendant No.3).

In this appeal notice was issued to defendant No.1. However, defendant No.1 did not apear after service of notice hence was proceeded against ex parte.

Question of law which arise for consideration in the present case is "<u>whether a banker is entitled to recover the amount wrongfully</u>

<u>credited in the saving bank account of the account holder</u>?"

It is not in dispute that Darshan Singh-defendant No.1 had deposited the cheque drawn by Santokh Singh in his favour for collection in his own account maintained with the plaintiff bank. The aforesaid cheque has been dishonored, therefore, defendant No.1 is not entitled to the aforesaid payment. Darshan Singh has collected the payment under the cheque from plaintiff-Bank. Darshan Singh is liable to return the same. Defendant No.1 cannot retain the payment merely because plaintiff-Bank without waiting for the intimation from payee bank i.e. defendant No.3 credited the amount of the cheque in the account of defendant No.1. It is open and shut case, once the cheque, which was deposited for the collection is dishonored, defendant No.1 is liable to return the cheque amount.

Learned First Appellate Court has wrongly gone into the issue whether plaintiff-Bank was negligent or not. This is a suit for recovery. Recovery of the amount is being sought on the ground that wrongly amount has been credited in the account of defendant No.2.

In these circumstances, and in view of the discussion made above, the judgment and decree passed by the Learned First Appellate Court dated 18.07.2013 is clearly erroneous.

In view of the discussion, question posed above is answered in favour of the appellant.

Hence, the appeal is allowed and the judgment and decree passed by the learned First Appellate Court is set aside.

12.09.2017 **(ANIL KSHETARPAL)**
sheetal **JUDGE**

Whether Speaking/reasoned : Yes
Whether Reportable : Yes