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

\+ CS(OS) 3417/2015

SONIA SYAL ..... Plaintiff
Through Mr.V.K.Ohri, Advocate.

versus

STANDARD CHARTERED BANK & ANR ..... Defendants
Through Mr.Ateev Mathur with Mr.Amol Sharma and Ms.Jagriti Ahuja, Advocates.

Reserved on : 2nd August, 2017
% Date of Decision : 21st August, 2017

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

<u>J U D G M E N T</u>

<u>MANMOHAN, J</u>:

<u>I.A. 12477/2016</u>

1. Present application has been filed under Order 7 Rule 11 CPC by the applicant/defendant-bank for rejection of the plaint.

2. Learned counsel for applicant/defendant-bank stated that the crux of the plaintiff's cause of action was unauthorized withdrawal of Rs. 3,60,00,000/- from her account maintained with the applicant/defendant-bank. He stated that a bare perusal of the statement of account filed by the plaintiff herself along with the plaint

would reveal that on 29th September, 2009, there were three investments of Rs. 1,50,00,000/-, Rs. 1,50,00,000/- and Rs. 60,00,000/- made on behalf of the plaintiff with three Mutual Fund Houses, i.e., Fortis Flexi Debt, Franklin Templeton and HDFC, respectively. He pointed out that the same statement of account filed by the plaintiff further reflected that all these investments in the mutual funds had either matured or were redeemed by the plaintiff prematurely. He stated that the statement of account also reflected that all these redemptions were duly credited in the account of plaintiff along with profits generated on the mutual funds. Consequently, according to learned counsel for the plaintiff, the plaintiff had invested funds in the mutual funds which she had redeemed with profits.

3. He further submitted that the claim of the plaintiff was liable to be rejected for the reason that the plaintiff had not even disclosed these redemptions and earning of profit in the entire plaint and had tried to mislead this Court by stating that there had been an embezzlement of funds from her account.

4. He submitted that the present plaint was barred by limitation. He stated that the investments made by the plaintiff in the mutual funds were in the year 2009 and all the redemptions were made by the plaintiff from 11th July, 2011 till 16th October, 2012. Therefore, according to him, the cause of action, if any, in favour of the plaintiff, arose on the last date of such redemptions, i.e., 16th October, 2012, whereas the present plaint had been filed on 3rd December, 2015, which was clearly barred by limitation as it was filed beyond the period of three years.

5. Learned counsel for the applicant/defendant-bank lastly stated that the plaintiff had also filed two similar suits against Mutual Fund Houses, i.e., CS (OS) No. 539/2015 and CS (OS) No. 538/2015 and one of the said suits, i.e, CS (OS) No. 539/2015 had already been dismissed by a Coordinate Bench of this Court on the ground of limitation.

6. Per contra, learned counsel for the plaintiff stated that the plaintiff had never reinvested and was not even conscious about the alleged transactions. He stated that the applicant/defendant-bank was alleging reinvestment by the plaintiff without producing the records for alleged reinvestment which they knew were forged and fabricated.

7. He stated that the redemption/switch over requests made prior to 7th October, 2015 were forged as the debit entries in the statement of account, supplied by the applicant/defendant-bank were admittedly without supporting vouchers and therefore the present application was liable to be rejected.

8. He stated that the applicant/defendant-bank was in the habit of making false documents to show the presence and knowledge of the plaintiff. He stated that the applicant/defendant-bank had produced false documents dated 5th March, 2010 and 9th March, 2010 stating that the "customer signed in presence of the officials of the defendant", which meant that the plaintiff was present in the bank at the time of transaction; whereas on 5th March, 2010 the plaintiff was in Dubai as evident from the seals of Dubai Airport Immigration showing entry of the plaintiff on 5th February, 2009 and departure on the 3rd April, 2010.

9. Learned counsel for the plaintiff submitted that this suit filed on 4th December, 2015 was within limitation as the plaintiff had came to know about the misappropriation in her account only on 14th March, 2015, when she had received the statement of account from the applicant/defendant-bank. He also relied upon Section 10 of the Limitation Act, 1963 which reads as under:-

> *"**10. Suits against trustees and their representatives.**— Notwithstanding anything contained in the foregoing provisions of this Act, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time. Explanation.—For the purposes of this section any property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose and the manager of the property shall be deemed to be the trustee thereof.*

10. He lastly submitted that the order of the learned Single Judge dismissing the plaintiff's similar suit was pending challenge before the Division Bench in an appeal.

11. Having heard learned counsel for the parties and having perused the paper book, this Court finds that the statement of account filed by the plaintiff herself along with the plaint reveals the following entries:-

S. No	Invest-ment	Folio No.	Date of Investment	Amount (Rs. in Lacs)	Redemption	Redeemed Amount	Entry on the page no. in the statement of a/c filed by the Plaintiff
1.	HDFC	5878019/58	29.09.2009	60	11.07.2011	6308902.26	46
2.	Franklin Templeton	4014573464	29.09.2009	150	16.10.2012	16840500	63
3.	Fortis AMC	900000337847	29.09.2009	150	25.02.2010 30.03.2010	4600000 10691071.68	34 36

12. Even assuming that all the investments were made by the applicant/defendant-bank without the consent of the plaintiff, admittedly no loss has been caused to the plaintiff. In fact, the plaintiff has earned a profit on the impugned transactions.

13. In the words of Asquith J in ***Victoria Laundry (Windsor) LD. Vs. Newman Industries LD., (1949) 2 K.B. 528***, *"It is well settled that the governing purpose of damages is to put the party whose rights have been violated in the same position, so far as money can do so, as if his rights have been observed."* The primary aim or principle of the law of damages for a breach of contract is to place the plaintiff in the same position he would have been in if the contract had been fulfilled, or to place the plaintiff in the position he would have occupied had the breach of the contract not occurred. When this is accomplished, the primary aim or principle of law of damages has been fulfilled. [See ***Murlidhar Chiranjilal Vs. Harishchandra, AIR 1962 SC 366***].

14. Damages are given by way of compensation for the loss suffered by the plaintiff and not for the purpose of punishing the defendant for the breach. Motive for and the manner of breach are not taken into account because generally "punitive damages are not recoverable for breach of contract."

15. It has been pointed by this Court, following earlier High Court decisions, that Section 73 of the Indian Contract Act, 1872 does not give any cause of action unless and until the damage is actually suffered.

16. In fact, in a contract for the supply of sleepers to the railway administration there were a number of clauses including that irrespective of whether the Government suffered any loss or not on account of the contractor's failure to supply, the Government was entitled to damages. The contractor failed to supply, but the railways did not suffer any loss. Consequently, an action for damages instituted against the contractor was disallowed. [See ***Union of India Vs. Tribhuwan Das Lalji Patel, AIR 1971 Delhi 120***]

17. Similarly, where a seller of land suffered no loss from the buyer's refusal to perform, and, on the contrary, made a huge windfall profit by selling the land to another person, he was not permitted to forfeit the buyer's advance and that in spite of the fact that the land remained vacant till the new buyer was found. [See ***Mohanlal Vs. Dayaldas & Co., AIR 1976 Raj 68***].

18. Consequently, as the plaintiff in the present case has suffered no loss, the plaint fails to disclose any cause of action against the defendants.

19. Moreover, a Coordinate Bench of this Court in CS (OS) 539/2015 has rejected a similar plaint filed by the plaintiff on similar reasoning. The relevant portion of the order dated 16th September, 2016 passed in CS (OS) 539/2015 is reproduced hereinbelow:-

> *"10. The Court is satisfied that the plaint fails to disclose any valid subsisting cause of action against the Defendant and that the plaint is liable to be rejected on that score. Given the dates of the transactions in question, which again have not been rebutted by the Plaintiff, the suit is also barred by limitation.*
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> *11. The application is accordingly allowed and the plaint is rejected. This, however, will not preclude the Plaintiff from pursuing any other legal remedy she may have in accordance with law.*
>
> ***CS (OS) No.539/2015***
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> *12. In view of the order in IA No. 19312/2015, the suit is dismissed."*

20. Admittedly, there is no stay in the appeal filed by the plaintiff challenging the said order dated 16th September, 2016.

21. Consequently, present plaint is rejected both on the ground of lack of cause of action and limitation. This, however, will not preclude the plaintiff from pursuing any other legal remedies she may have in accordance with law.

MANMOHAN, J

AUGUST 21, 2017
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