NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 147 of 2002

Judgment reserved on : 10.07.2018

Judgment delivered on : 24.07.2018

BANK OF BARODA, a Nationalised Bank under the Banking Companies Acquisition and Transfer of Undertakings Act, 1970 having its Head Office at Bombay and Branch Office at Pandri Trai, Raipur (C.G.).

---- Appellant

Versus

SHYAMLAL G. Aswani, age not mentioned, S/o Gella Ram Agrawal, Resident of Shankar Nagar, Raipur (C.G.)

---- Respondent

For Appellant	:	Mr. Y.C. Sharma, Advocate
For Respondent	:	None appeared.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This first appeal is preferred under Section 96 (I) of the Code of Civil Procedure, 1908 against judgment/ decree dated 23.07.2002 passed by District Judge, Raipur, (C.G.) in Civil Suit No. 16-B/1999 wherein the said court decreed the suit of the respondent for recovery of Rs. 50,000/- with interest.

2. The respondent/plaintiff is having cloth business at Pandri, Raipur. One saving bank account bearing No. 143 has opened in the appellant bank by the respondent and from that account Rs. 50,000/- was withdrawn on 25.05.1987 by Suresh Wadhwani who was worker in the respondent office, misused his position and on the basis of forged signature of the respondent withdrew the said amount. Signature of the respondent was not tallied by the bank authorities and negligently paid Rs. 50,000/- to the above mentioned Suresh Wadhwani.

3. Learned counsel for the appellant submits that as per evidence of Goutam Chand Baid, DW-1, it is established that there being no proof of forgery, the amount was delivered against the cheque, therefore, finding of the trial court is perverse.

4. From evidence of Goutam Chand, DW-1, it is clear that passing officer of cheque was one Arya but Arya was not examined before the trial court. In absence of evidence of said passing officer, it was not established that specimen signature of the respondent was tallied by the said passing officer before paying the amount. It is clear from the evidence that the amount was paid on the basis of withdrawal form or cheque in which the respondent has not signed. The signature in withdrawal form or cheque are not tallied by the passing officer and as such, the authority of the bank was negligent. When the signature is forged, the amount cannot be paid and negligence on the part of the bank officer and the bank is liable to pay the amount to account holder.

5. The ground raised by the appellant is not acceptable in view of the evidence laid by both sides and in absence of evidence of passing officer. The finding of the trial court is based on proper appreciation of oral and documentary evidence and the same is not liable to interfere.

6. Considering the facts and circumstances of the case and the material available on record, this Court of the opinion that the trial Court is right in awarding the decree in favour of the respondent and the same is not liable to be interfered with invoking jurisdiction of the appeal.

7. Accordingly, the decree in favour of the respondent and against the appellant is passed on the following terms and conditions:

   (i) The appeal is dismissed with cost.

(ii) Parties shall bear their own cost.

(iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.

(iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun