IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3665 of 2012
Date of Decision.17.01.2018

State Bank of Patiala .....Appellant

Vs

M/s Amit Engineers and another .....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikas Chatrath, Advocate
for the appellant.

Mr. Sachin Rai Vaid, Advocate
for the respondents.

-.-

AMIT RAWAL J.(ORAL)

C.M. No.9787-C of 2012

For the reasons stated in the application, delay of 93 days in re-filing the appeal is condoned.

Application is allowed.

C.M. No.9786-C of 2012

Application is allowed.

Permission is granted to make good the deficiency of court fee.

RSA No.3665 of 2012

The appellant-Bank is aggrieved of the concurrent finding of fact seeking recovery of amount of ₹1,69,134/- on account of principal amount and interest applied upto 13.12.2003 and other incidental costs, charges, expenses etc. along with costs of the suit, interest *pendente lite* and further at the rate of 11.60% per annum with quarterly rests, from the date of filing of the suit till the actual and final realization of the suit amount under Order 34 read with Order 7 Rule 1 and Section 26 CPC, has been dismissed.

PANKAJ KUMAR
2018.02.02 11:44
I attest to the accuracy and
integrity of this document

Mr. Vikas Chatrath, learned counsel appearing on behalf of the appellant-plaintiff submits that the aforementioned suit was filed against M/s Amit Engineers and Shri Kewal Krishan son of Chhota Ram, sole proprietor of M/s Amit Engineers on the premise that the aforementioned firm had an account with the appellant-Bank and it had sanctioned credit facilities to defendant No.2 in the name of defendant No.1 vide letter dated 21.11.1988. While enjoying the aforementioned credit facilities, the defendants made a withdrawal of ₹2 lacs out of their Cash Credit (hypothecation) loan account vide cheque No.00482901 on 09.12.2000 i.e. after a lapse of more than two and half months. The plaintiff-Bank was informed by the defendants through letter dated 26.2.2001 that the aforementioned cheque was not from the cheque book issued to them by the Bank and there was some mistake in the entry. The plaintiff-Bank thereupon enquired into the matter and informed the defendants that the signatures on cheque in question and that of standard signatures were one and the same. Simultaneously, an FIR bearing No.15 with police station Sector 19 was also registered. It is in this backdrop of the matter, recovery of the amount had been sought.

The evidence of the plaintiff-Bank was closed, which was assailed before this Court and this Court vide order dated 2.12.2009 granted one opportunity to lead evidence subject to costs of ₹5000/- . In pursuance of the aforementioned opportunity, reference was made to the zimni orders extracted in the memorandum of appeal to establish that all efforts were made to produce cheques in question for the purpose of claiming the amount by apportioning the liability upon the defendants, the orders dated 26.02.2010 and 10.03.2010, which read as under:-

"Present: Sh. R.K. Aggarwal, counsel for the plaintiff.

Sh. Nitin Sood, counsel for defendant.

PANKAJ KUMAR
2018.02.02 11:44
I attest to the accuracy and
integrity of this document

Today the case was fixed for evidence of plaintiff in compliance of order dated 2.12.2009, whereby it was ordered that one effective opportunity to lead evidence be granted to the plaintiff. In pursuance of that order, plaintiff produced S.I. Chandi Ram of Police Station, Sector 20, Panchkula who made a statement that the summoned record is attached in FIR No.15/01 and is pending in the Court of Ms. Madhu Khanna, learned JMIC, Pkl for 18.3.2010. His statement in this regard has been recorded.

In view of the statement made by S.I. Chandi Ram, let a court notice to Criminal Ahlmad of the Court of Ms. Madhu Khanna be issued for today itself to produce the summoned record.

Sd/- Raj Gupta
CJ(SD) Pkl. 26.2.2010"

Order dated 26.02.2010

Present: Sh. R.K. Aggarwal, counsel for the plaintiff.

Sh. Nitin Sood, counsel for the defendant.

In pursuance of court notice, Nitin Yadav, Additional Ahlmad to the Court of Ms. Madhu Khanna, Learned JMIC, Pkl appeared and brought the summoned record and also made a statement that in case titled State Vs. Julious FIR No.15/01 under Section 420 IPC, Police Station Sector 19, the original cheque No.482901 dated 9.12.2000 amounting to Rs.2 lacs is not available. Original file seen and returned to him. In view of the above instructions, let court notice be issued to the investigating officer for 10.3.2010 to be served through Naib Court.

PANKAJ KUMAR
2018.02.02 11:44
I attest to the accuracy and
integrity of this document

Sd/- Raj Gupta
CJ(SD) Pkl. 26.2.2010

Order dated 10.03.2010.

Present: Sh. R.K. Aggarwal, counsel for the plaintiff.

Sh. Nitin Sood, counsel for the defendant.

Notice issued to the concerned Investigating Officer received back un-served with the report that he has expired.

Learned counsel for the plaintiff moved an application seeking necessary permission to lead secondary evidence in order to prove the genuineness of the cheque in question. Original cheque in question was stated to be with the police as case FIR No.15/01 under Section 420 IPC, Police Station Sector 19, Panchkula was also registered against the defendant. Original file was summoned from the concerned to the Ahlmad, who appeared in the Court and made a statement on 26.02.2010 to the effect that the original cheque is not available in the concerned file, where upon, court notice to the Investigating Officer was sent but as stated above, his notice received back with the report that he has expired. Since the Court has no other means to obtain the original cheque and since opportunity has been given to the plaintiff to prove the genuineness of this document, therefore, learned counsel is advised to seek further guidance from the Hon'ble High Court in compliance of order dated 2.12.2009 passed by the Hon'ble High Court of Punjab and Haryana.

Now, to come up on 19.3.2010 for further proceedings.

Sd/- Raj Gupta
CJ(SD) Pkl. 10.3.2010"

PANKAJ KUMAR
2018.02.02 11:44
I attest to the accuracy and
integrity of this document

He further submitted that without affording opportunity to prove the cheque in dispute by leading secondary evidence, the trial Court closed the evidence causing great prejudice to the appellant-Bank. Had the opportunity of leading secondary been given, the appellant-Bank would be able to prove the liability of the defendants and therefore, both the Courts below abdicated in not affording the opportunity, resulting into illegality and perversity.

Per contra, learned counsel appearing on behalf of the respondents-defendants submitted that two cheques of two firms viz; Amit Engineers and M/s PD Steels were encashed by some miscreants and for the purpose of claiming a declaration about cheque of Rs.10 lacs encashed from the CC Account of PD Steels, they had filed a suit titled as "M/s PD Steels Vs. State Bank of India" which was decreed by both the Courts below, however, reached to this Court in RSA No.1578 of 2012 at the instance of the State Bank of India, which had been dismissed vide order dated 04.04.2012. Certified copy of the same has been shown to this Court and the same has attained finality, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Chatrath. The genesis of the dispute was on account of the fact that the cheque had not been issued by the defendants and therefore, the same were withdrawn from the CC limit causing loss to the bank. The original cheques did not see light of the day. They had a direct bearing to prove whether the cheques were actually issued by the defendants or not and in the absence of direct and cogent evidence, I am of the view that the appellant-bank was not consistent in leading evidence, much less, had not placed on record relevant and material documents despite having given number of opportunity including the opportunity to lead secondary evidence as noticed above. Therefore, in my view, the Bank has

PANKAJ KUMAR
2018.02.02 11:44
I attest to the accuracy and
integrity of this document

failed to discharge onus as per Section 101 of the Indian Evidence Act. The finding rendered by the courts below in the suit titled as "M/s PD Sales Vs. State Bank of India" has attained finality, which is also not disputed.

In view of the above, findings rendered by the Courts below are based upon preponderance of evidence and cannot be faulted with. No ground for interference is made out, much less, no substantial question of law arises for determination by this Court.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

January 17, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No

PANKAJ KUMAR
2018.02.02 11:44
I attest to the accuracy and
integrity of this document