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

Date of Decision: 9th January, 2018

\+ **RFA 100/2007**

S.K.OBEROI ..... Appellant

Through: None

versus

UCO BANK & ORS. .... Respondents

Through: Mr Sarfaraz Khan, Advocate for R / UCO Bank

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J. (Oral)</u>

1. This appeal is on the `Regular Board' since 4th July, 2011. On 17th July, 2007, it has been recorded that the decretal amount has already been deposited in RFA 90/2007 and has also been received by Respondent No. 1 bank/Plaintiff *(hereinafter, 'Plaintiff').* Hence, stay of execution was granted.

2. On 28th July, 2011 there was no appearance for the Appellant/Defendant No.4 *(hereinafter, 'Defendant No.4')* and the appeal was dismissed. Thereafter, applications were filed by Defendant No.4 for restoration and on 2nd March, 2012 the appeal was restored to its original number. The matter has been on the regular board ever since.

3. This appeal is old and is of the year, 2007. It impugns judgment and order dated 16th November, 2006, by which the suit filed by the Plaintiff for

recovery of sum of Rs. 8,90,791/- against the Defendants was decreed in its favour but to the extent of Rs. 2,61,375/- (Rs. 1,50,000/- as principal amount plus Rs. 1,11,375/- towards interest) along with pendente lite and future interest @ 9% p.a. from date of filing of the suit till realisation, and costs of the suit. The Trial court held all Defendants i.e., Defendant Nos. 1, 2, 3, and 4 in the suit, jointly and severally liable for the decretal amount.

Brief Background

4. The Plaintiff was a nationalised bank under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970. M/s Chemical Supply Agency at G-173, Naraina Vihar, New Delhi *(hereinafter, 'Defendant No.1')* is a partnership firm and is carrying on activities of trading in all kinds of chemicals. That while tallying the statement of accounts of Defendant No.1, the Plaintiff came to know that certain wrong and fraudulent entries were made in the account of Defendant No.1, amounting to a sum of Rs. 1,50,000/-. It was alleged that Shri. S.K. Oberoi/Defendant No. 4, in connivance with Respondent No.2/Defendant No. 2 *(hereinafter, 'Defendant No.2')* and Respondent No.3/Defendant No.3 *(hereinafter, 'Defendant No.3')*, made the fraudulent entries, thereby causing loss to the Plaintiff. The Plaintiff urged that the modus operandi adopted was that Defendant No.4 made an excess debit of Rs. 8 lakhs in the account of the Service Branch of the Plaintiff, out of which a sum of Rs. 1,50,000/- was credited to the account of Defendant No. 1. It was alleged by the Plaintiff that the said entries were detected by the Plaintiff and thereafter a suit for recovery of Rs. 8,90,791/- including interest @17.85% p.a. with quarterly rests was filed.

5. A joint written statement was filed by the Defendant Nos. 1 – 3, in which preliminary objection was taken in the ground that the suit is barred

by limitation. It was denied that any wrong credit of Rs. 1,50,000/- was made to the account of Defendant No. 1. It was also claimed that the Plaintiff had filed suit bearing O.A. No. 404/198 before the Debt Recovery Tribunal, and thus cannot file two separate proceedings qua the same transaction. In light of this, they cannot be called upon to pay the sum of Rs. 8,90,791/-. Defendant No.4, in his separate written statement denied any collusion between himself and Defendant Nos.2 and 3, in respect of any alleged fraudulent entries made in the account of Defendant No.1

6. In the suit the following issues were framed on 27th September, 2005:-

> *1. "Whether the suit is barred under Order II Rule 2 CPC? OPD*
> *2. Whether the suit is barred by limitation? OPD*
> *3. Whether the Plaintiff is entitled for the recovery of suit amount, if so, for what sum and from whom? OPP*
> *4. Whether the Plaintiff is entitled for the interest, if so, at what rate, for which period and from whom? OPP*
> *5. Relief "*

Issue No.1

7. The submission of the Defendants before the trial court was that the suit is barred under Order II Rule 2 of the CPC as the Plaintiff had filed OA No.404/1998 before the Debt Recovery Tribunal (hereinafter `DRT') wherein the amount claimed in the present suit was also included. After perusal of OA No.404/1998, the Court held that the application filed before the DRT cannot be treated as a civil suit and, hence, Order II Rule 2 of the CPC would not be applicable.

8. The provisions of Order II Rule 2 of the CPC apply only in respect of suits and not in respect of proceedings before the Debt Recovery Tribunal. Thus, the application under Order II Rule 2 of the CPC has been rightly

rejected by the Trial Court.

Issue No.2

9. The second issue is the question of limitation. Defendant No. 4 claimed that the knowledge of the wrongful and fraudulent entries was acquired by the bank as on 8th January, 1996, which was the date when he was suspended. On the other hand, the Plaintiff submitted that the wrong and fraudulent entries were detected only in the month of February, 1996 and thereafter the suit was filed.

10. The suit was filed on 1st February, 1999. The Trial court came to the conclusion that from a perusal of the record, the alleged fraudulent entries for the sum of Rs.1,50,000/- were detected only in the month of February, 1996. Apart from the suspension order, there was nothing on record to support the plea that the Plaintiff had acquired knowledge prior to February, 1996.

11. Since there is no support to the plea of Defendant No.4 that specific knowledge of the fraudulent entries was acquired on the day when he was suspended, it cannot be held that the suit is barred by limitation.

Issue No.3.

12. The Plaintiff led the evidence of Sh.S.S. Pokhriyal, PW-1. He was posted as the Senior Manager at the Naraina Branch of the Plaintiff. He has deposed that on 4th February, 1996, it was detected that two wrong credit entries were made on 9th November, 1990 for a sum of Rs.1 lakh and Rs.50,000/- in the account of Defendant No.1. Accordingly, notices were issued to the Defendants on 27th January, 1999. The legal notice and postal receipts have been exhibited PW-1/3 and 1/4.

13. PW-3, Shri. Hawa Singh, who was the Assisstant Manager at the

Naraina Branch of the Plaintiff, deposed that Defendant No.4 had also made an excess debit of Rs.8 lakhs in the account of the service branch of the Plaintiff. Accordingly, he deposed that the Plaintiff is entitled to a sum of Rs.8,90,000/- which is due and outstanding in the accounts of the Defendant No.1 alongwith interest. He has also specifically deposed that during the investigation, the wrong credit entries and the excess debit was detected. Accordingly, a prayer for recovery alongwith interest is also made.

14. A perusal of the Trial Court Record reveals that the original copy of the statement of accounts of the Plaintiff relating to Defendant No.1 has been filed on record for the period 6th April, 1989 to 1st September, 1992. The incorrect credits given on various dates are also visible. On behalf of the Defendant, DW-1 – Sh.Pradeep Gupta deposed before the Court. He submitted that there were wrong entries to the tune of Rs.1,50,000/- and further that the CBI had initiated proceedings against Defendant No.4. Defendant No.4 also deposed before the Trial court as DW-2, and stated that he had not committed any fraud.

15. The original documents are on record. The legal notices issued by the Plaintiff have gone unreplied apart from a mere denial. The Trial court has clearly came to the conclusion that there were no supporting documents to show on what basis the amounts of Rs.1,50,000/- were deposited in the account of Defendant No.1. In fact these amounts were withdrawn by the Defendants. The Defendants after withdrawal of the amount had also closed their account. In view of this, the Court held that the sum of Rs.1,50,000/- is recoverable from the Defendants. The said finding is upheld.

16. Mr Sarfaraz Khan, Advocate on behalf of the Plaintiff confirms to the court that the entire decretal amount has been received by the Plaintiff.

Issue No.4

17. The Plaintiff has prayed for interest @ 17.85% with quarterly rests. However, the Trial Court found that the Plaintiff had not shown any documents in support of this interest amount. The suit was, therefore, decreed by the Trial court with simple interest @ 9%. The interest granted by the impugned judgment is just and reasonable and the same is accordingly upheld.

Issue No.5

18. The decree in favour of the Plaintiff and the principal sum of Rs.1,50,000/- with of Rs.1,11,375/- towards interest alongwith pendente lite and future interest @ 9% p.a. from the date of filing of the suit till its realisation is accordingly upheld.

19. Since the decretal amount has already been received by the Plaintiff as recorded in the order dated 17th July, 2007, no further orders are called for. There is no perversity or illegality. The appeal is, accordingly, dismissed on merits. The judgement and decree dated 16th November 2006 is upheld.

20. The Trial court record be sent back after retaining a scanned copy of the same. All pending applications are disposed of.

PRATHIBA M. SINGH
(Judge)

JANUARY 09, 2018
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