

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

+ **RFA No. 272/2018**

% **Reserved on: 19th March, 2018**
Pronounced on: 22nd March, 2018

JAIN EXPORTS PVT. LTD. Appellant

Through: Mr. Kuljeet Rawal, Advocate.

versus

STATE BANK OF SAURASHTRA & ANR. Respondents

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

CM No. 10619/2018 (Exemption)

1. Exemption allowed subject to just exceptions.

CM stands disposed of.

RFA No. 272/2018

2. This Regular First Appeal is filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) by the plaintiff in the suit impugning the judgment of the trial court dated 21.11.2017 by which the trial court has dismissed the suit for recovery of Rs. 33,80,316/- against respondent no. 1/defendant no. 1/State Bank of Saurashtra. It

is noted that the suit was originally filed as an order XXXVII CPC suit and there were two defendants in the suit, with the defendant no. 2 being Sh. R.P. Mathur, the sole proprietor of M/s. Radhika Leather Fashion who had issued the subject two cheques in favour of the appellant/plaintiff. Since the defendant no. 2 did not file an application seeking leave to defend, the suit as against him was decreed in terms of the order dated 1.4.1997 of the trial court for the suit amount along with interest. The issue to be decided in the present appeal therefore is only the entitlement/claim of the appellant/plaintiff for the amount as against the respondent no. 1/defendant no. 1/State Bank of Saurashtra.

3. The facts of the case are that the respondent no. 2/defendant no. 2 was having his account with the respondent no. 1/defendant no. 1/State Bank of Saurashtra. As per the plaint it is pleaded that respondent no. 2/defendant no.2 approached the appellant/plaintiff for a loan of Rs. 50 lacs and this loan was advanced by the appellant/plaintiff to the respondent no. 2/defendant no. 2 for six months. In discharge of his liability the respondent no. 2/defendant no. 2 had given two cheques dated 1.9.1994 and 1.9.1995. In the plaint it is pleaded that the Manager of the respondent no. 1/defendant no.

1/State Bank of Saurashtra in terms of his two letters dated 3.3.1994 issued confirmation for honouring the cheques. Since respondent no. 2/defendant no. 2 committed default in payment of the loan amount because only part of amount of Rs. 26 lacs was paid, therefore the subject suit was filed.

4.(i) The only issue to be decided, and as argued on behalf of the appellant/plaintiff before this Court is that whether the respondent no. 1/defendant no. 1/State Bank of Saurashtra is liable on account of the fact that the two subject cheques which were dishonoured were assured for payment in terms of two letters dated 3.3.1994 issued by the Manager of the respondent no. 1/defendant no. 1/State Bank of Saurashtra. This issue is issue no. 3 which was framed by the trial court and trial court has decided this issue in favour of the respondent no. 1/defendant no. 1/State Bank of Saurashtra by firstly holding that the two letters were not authorized to be issued by the respondent no. 1/defendant no. 1/State Bank of Saurashtra through its Chief Manager and that these letters were issued without any authority becomes clear as it is seen that the letters do not bear any reference number. Trial court has further held that such letters issued by the Manager of the

Bank can only make the respondent no. 1/defendant no. 1/State Bank of Saurashtra liable if the respondent no. 1/defendant no. 1/State Bank of Saurashtra had become a guarantor for payment of the amount of the cheques, but these two letters dated 3.3.1994 cannot be construed as letters of guarantee issued by the respondent no. 1/defendant no. 1/State Bank of Saurashtra.

(ii) To the aforesaid conclusions of the trial court I would like to add that even assuming the two letters both dated 3.3.1994 were authorized to be issued by the Manager of the respondent no. 1/defendant no. 1/State Bank of Saurashtra, yet these letters would only require the respondent no. 1/defendant no. 1/State Bank of Saurashtra to pay the cheques as if presented in and around the dates of the cheques. These letters dated 3.3.1994 cannot be construed as fastening the liability upon the bank for all times to come even if the cheques are not presented in and around the dates of the cheques but many months later.

5. The relevant observations of the trial court to dismiss the suit by holding the issue no. 3 against the appellant/plaintiff is

contained in paras 12 to 22 of the impugned judgment and these paras read as under:-

“Issue no. 3: Whether defendant no. 1 has nothing to do with the subject money transaction?”

12. It is the case of the plaintiff that he had advanced the amount of Rs. 50,00,000/- to the defendant no. 2 on the basis of a guarantee/assurance given by the defendant no. 1. In this regard, Id. Counsel for the defendant heavily relied on two letters dated 03.03.1994 (Ex. PW1/4 & Ex. PW1/5). The said two letters are very crucial and accordingly their contents are reproduced as under:-

Letter no. 2 (Ex. PW1/5)

“This is to confirm that cheque no. 784052 dated 01.06.1994 for Rs. 4,50,000/- (Rupees Four Lac Fifty Thousand only) issued by M/s Radhika Leather Fashion in your favour will be honoured when presented at our Bank on due date.”

Letter no. 2 (Ex. PW 1/5)

“This is to confirm that cheque no. 784052 dated 01.06.1994 for Rs. 4,50,000/- (Rupees Four Lac Fifty Thousand only) issued by M/s. Radhika Leather Fashion in your favour will be honoured when presented at out Bank on due date.”

13. In the instant case, the plaintiff has impleaded the State Bank of Saurashtra as the defendant no. 1 by claiming that two aforesaid letters Ex. PW1/4 and Ex. PW1/5 were issued by defendant no. 1 through its Chief Manager. The defendant no. 1 denied the execution of the said letters and it is alleged that the said letters were forged and fabricated by the plaintiff in collusion with defendant no.2. It is also argued that the said letter do not bear any official reference number.

14. On the other hand, the plaintiff has placed on record the said documents and the PW-1 Sh. Raj Kumar Jain deposed repeatedly in his examination, cross-examination and in rebuttal that the said letters were issued by the then Chief Manager in his presence. Although the execution of the said letters were denied by the defendant no. 1 in the written statement but the said denial is not forceful assertion. Defendant no. 1 has also not produced any relevant record of the relevant time despite demanding the same in the cross-examination of the DW-1. It is however, argued on behalf of defendant no. 1 that said letters did not bear any reference number.

15. When evidence has been led by the PW-1 proving the execution of the said documents, it was upon the defendants to rebut the said evidence but no such rebuttal has been done. Accordingly, I hold that the plaintiff proved execution of the said two letters issued by the then Chief Manager of the defendant no.1 but at the same time a further crucial

question arises as to whether the said letters were executed by the then Chief Manager on behalf of his bank/defendant no. 1 or not. The argument of the Ld. Counsel for the defendant no.1 on the point of having no reference number on the said letters becomes important on this score.

16. In this context, ld. Counsel for the defendant no. 1 also relied on the judgment of Hon'ble High Court of Delhi in case of 'M/s SRP Industries Ltd. vs. Kay Bee & Co. & Ors.' dated 12.09.2012, wherein it was held by Hon'ble Justice Valmiki J. Mehta as under:

"The defendant no. 4- bank has further pleaded that it could not have co-accepted the bill, because guarantees, pay orders, drafts, bills, etc. of the value of more than Rs.10,000/- are necessarily to be signed by two officers of the bank, whereas the Bill of Exchange dated 30.03.1994 is signed only by one person. In para -6 of the written statement, defendant no. 4- bank has pleaded that similar suits have been filed by one M/s Jain Export Pvt. Ltd. being CS(OS) No. 1433/1995 and another by one Mr. Madan Mohan Lal being CS(OS) No. 1845/1997 showing that frauds were perpetrated by defendant nos. 1 to 3. The defendant no. 4 has also pleaded that there was no reason why the bank would co-accept the Bill of Exchange inasmuch as if the bank wanted to give loan, the bank would have itself given the loan and earned from this commercial transaction.

Let me for the sake of arguments assume that Ex. PW1/1 to Ex. PW1/9 have been proved on behalf of the plaintiff. However, even if, we look at the documents, the case of the plaintiff is not proved. The letters dated 24.03.1994 and 30.03.1994 alleged to be issued by the defendant no. 4-bank do not contain reference numbers and serial numbers and which aspect are found normally on the authorised letters of the banks. The plaintiff should have immediately been put to caution when these letters dated 24.03.1994 and 30.03.1994 were given to it. In fact, the plaintiff has been a victim of its own lack of prudence inasmuch as once the defendant nos. 1 to 3 are said to have financial limits with the defendant no. 4 the plaintiff bank ought to have taken the letter showing the sanction of the financial limits by the defendant no. 4-bank to the defendant no. 2 and 3. Plaintiff however failed to do the needful."

17. The aforesaid observations squarely apply to the present case also. Accordingly, I hold that the said two letters were not executed on behalf of the defendant no.1 as the defendant no. 2 was not authorized to perform such unofficial act.

18. Apart from the execution of the said letters, a further issue arose on the point whether the said two letters constitute a 'guarantee' for repayment of loan of defendant no. 2 or not. As per Section 126 of the Indian Contract Act, a 'contract of guarantee' is a contract to perform the promise, or discharge the liability of a third person in case of his default.

The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called the 'principal debtor', and the person to whom the guarantee is given is called the 'creditor'.

19. From the said definition, it is clear that before constituting liability of the guarantor/surety, there should be a valid contract of guarantee to perform the promise or discharge the liability of third person. In the said two letters, there is no stipulation that the Chief Manager of the Bank had promised to discharge the liability of third person/defendant. Secondly, a contract can be entered into by a competent person personally or through agent. The Chief Manager of the defendant no. 1 was an agent of his employer/master and therefore it is also required to be seen whether he was authorized as an agent of the defendant no. 1 to enter into a contract of guarantee which may bind the defendant no. 1 or not.

20. As per the Section 2(h) of the Indian Contract Act, an agreement enforceable by law is a contract. In other words, as per Section 2(g) of Indian Contract Act, an agreement not enforceable by law is said to be void. Accordingly, it is required to be seen whether the said two letters constitute a valid contract in the eyes of law or not. The Ld. Counsel for the plaintiff vehemently contended that the defendant no.1 did not prove on record any document of the relevant time or the guidelines or the statute, regulation etc. to show that the then Chief Manager of the defendant no. 1 was not competent or/authorized to issue said two letters. No doubt there is no said evidence produced on record by the defendant no. 1 but the DW-1 Sh. Bharat Dubey, General Manager of the Central Bank of India categorically deposed in his examination in chief that it is not the business of the defendant no. 1 to issue such letters and that commitments of the bank by way of bank guarantee are issued on the approved format of the requisite stamp paper. I find substance in the said deposition of DW-1 since letters Ex. PW1/4 & Ex. PW1/5 have not been issued like a guarantee/contract and rather their terminology only refers to a statement about honoring of cheques on their presentation on the due date.

21. In the ordinary course of business, it is the duty of the bank to honor cheques drawn on from it on their presentation on the due date and only said process had been confirmed in the said two letters and nothing else. There is no stipulation which can be said to be a guarantee/promise to discharge the liability of defendant no. 1.

22. Most importantly it is also seen that the said cheques were not issued by the defendant no. 1 or by its Chief Manager as a drawer of the cheques and therefore their assurance about honoring of the said cheques has nothing to do with respect to liability of the defendant no.2."

(underlining added)

6. I do not find any illegality whatsoever in the aforesaid discussion, findings and conclusions of the trial court because the Manager of the respondent no.1/defendant no.1/bank who issued the letters obviously did so without authority and appellant/plaintiff should have been straightway put to notice on account of there being no reference numbers in the two letters. The appellant/plaintiff is not a layman but a commercial entity being a Private Limited Company and would therefore be otherwise aware as to how letters are issued by the bank. Also, a bank only makes payment of monies in its hands of the customers and the bank incurs no liability if the cheque of customer is dishonoured. Liability of a bank is only if the bank issues a bank draft/pay order or the bank stands as a guarantor. Trial court has rightly discussed and held the respondent no.1/defendant no.1/bank not to be a guarantor with respect to the transaction and the two instruments are admittedly only cheques issued by the respondent no.2/defendant no.2 from his account and these instruments are not pay orders/bank drafts. Also, additional reasoning is given by this Court that the letters issued by the bank on 3.3.1994 will only at best make the bank liable in case the cheque was presented in and around

3.3.1994 when the letter was issued by the manager of the respondent no.1/defendant no.1/bank whereas in the present case the cheque dated 1.9.1994 was dishonoured on 7.12.1994.

7. In view of the above discussion, I do not find any merit in the appeal. Dismissed.

MARCH 22, 2018
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VALMIKI J. MEHTA, J

