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

Date of decision: 24th May, 2018

\+ **RFA 349/2014, CM APPL. 29236/2017, 29237/2017 & 29238/2017**

PUNJAB NATIONAL BANK ..... Appellant

Through: Mr. K.K. Malviya, Advocate with Mr. B. Sharma. (M-9717039099)

versus

KAMLESH TREHAN & ANR ..... Respondents

Through: Mr. Mukesh Anand, Advocate. (M-9810001582)

WITH

\+ **RFA 350/2014, CM APPLs. 32295/2017, 32296/2017 & 32297/2017**

PUNJAB NATIONAL BANK ..... Appellant

Through: Mr. K.K. Malviya, Advocate with Mr. B. Sharma. (M-9717039099)

versus

GARIMA ENTERPRISES & ORS ..... Respondents

Through: Mr. Mukesh Anand, Advocate. (M-9810001582)

AND

\+ **RFA 351/2014, CM APPLs. 29220/2017, 29221/2017 & 29222/2017**

PUNJAB NATIONAL BANK ..... Appellant

Through: Mr. K.K. Malviya, Advocate with Mr. B. Sharma. (M-9717039099)

versus

RAMAN CHAWLA & ORS ..... Respondents
Through: Mr. Mukesh Anand, Advocate. (M-9810001582)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM APPL. 29237/2017 & CM APPL. 29238/2017 in RFA 349/2014
CM APPL. 32296/2017 & CM APPL. 32297/2017 in RFA 350/2014
CM APPL. 29221/2017 & CM APPL. 29222/2017 in RFA 351/2014

1. These are the applications for condonation of delay in filing and re-filing the appeal. For the reasons stated in the applications, the delay is condoned.

2. CMs are disposed of.

RFA 349/2014
RFA 350/2014
RFA 351/2014

3. The Punjab National Bank (*hereinafter, 'PNB'*) is aggrieved by the impugned judgment dated 24th May, 2014 passed in several suits by the learned Additional District Judge. By the impugned order, the Trial Court has dismissed all the suits filed by PNB on the ground that the said suits are not maintainable.

4. In brief, the allegation of PNB is that one Shri B.K. Kalra, who was employed with it as a Special Assistant in its branch office in Rani Bagh, New Delhi from 2nd July, 1992 to 6th March, 1998, was involved in large scale bungling and improprieties by which a huge sum of money was moved from the imprest account of PNB. According to the Bank, the *modus*

operandi adopted by him was to get bank accounts opened in the names of relatives and friends, including his father and his brother, and in connivance with such persons, amounts were moved from the imprest account of PNB to the said account of his relatives/friends and were transferred/withdrawn. PNB discovered this during a routine investigation and thereafter filed criminal proceedings as well as 24 civil suits. The total amount which was alleged to have been transferred/withdrawn, according to Mr. K.K. Malviya who appears on behalf of the Bank, is approximately Rs.4,00,00,000/- (Rupees Four Crores). The present suits were filed against various Defendants in whose names such bank accounts were opened. In the said suit, Mr. Kalra was also made a party. Written statement was filed by the various defendants as also by Mr. Kalra. After pleadings were completed in the matter, the following issues were framed by the Court: -

> *"1. Whether the suit is bad for the suppression of material facts? OPD*
> *2. Whether the suit is bad for the lack of cause of action? OPD*
> *3. Whether the suit is barred U/o 2 rule 2 CPC? OPD*
> *4. Whether the suit is barred by limitation? OPD*
> *5. Whether the suit is bad for non joinder and misjoinder of necessary parties? OPD*
> *6. Whether the plaintiff is entitled for the interest if so at what rate and for which period? OPP*
> *7. Whether the plaintiff is entitled for the interest if so, at what rate and for which period? OPP*
> *8. Relief."*

5. A perusal of the suit records reveals that in all the three suits, after framing of issues, evidence was in the process of being recorded. In all the three suits, the Plaintiff's witnesses had filed their affidavits and their cross-

examination was in progress. At this stage, on 30th April, 2014, in the suit subject matter of RFA 351/2014, the following order was passed: -

> *"**Suit No.95/2014***
> *30.04.2014*
> *Present: Shri Kishore Kumar Malviya, Advocate counsel for plaintiff.*
>
> *Witnesses Shri Brij Mohan Aggarwal and Shri Jai Bhagwan Gupta in person.*
>
> *Shri Vishwa Bhushan Arya, Advocate counsel for defendant No.1 with defendant No. 1.*
>
> *Shri Narender Nath Anand, Advocate counsel for defendant No. 3.*
>
> *Shri Sewa Ram, Assistant Ahlmad Posted in the Court of Shri Neeraj Gaur, Ld. ACMM, Rohini Courts, Delhi in person.*
>
> *A strange thing has revealed while examining the plaintiff's witness in a connected matter.*
>
> *It has been revealed that plaintiff has unilaterally created liability of both the defendants without their being any order of any Court in their favour fixing the liability of the defendants presuming regarding sub-judice matter that the amount has been transferred by them and they are liable to pay the money.*
>
> *It is submitted by counsel for Plaintiff that 12 suits have been filed regarding the matter are pending adjudication before this Court.*
>
> *Reader is directed to call all the matters of Punjab National Bank which are listed for other dates to explain how the liability has been created, how the*

account of the plaintiff bank has been filed and what has been audited.

Put up for arguments on the maintainability of the plaint on 24.05.2014, to be taken up 11:30 a.m. onwards.

Sd/-
(D.K. MALHOTRA)
ADJ: Central-14: THC : DELHI.
30.04.2014"

6. In the other two suits, the following orders was passed on 3rd April, 2014: -

*"**Suit No.593/2014***

Suit received by way of transfer. It be checked and registered.

Present: Shri Kishore Kumar Malviya, Advocate counsel for plaintiff.

Witnesses Shri Brij Mohan Aggarwal and Shri Jai Bhagwan Gupta are present in person.

Shri Vishwa Bandhu Arya, Advocate counsel for defendantNo. 1 with defendant No. 1.

Shri Narender Nath Anand, Advocate counsel for defendant No. 2 with defendant No. 2 in person.

Shri Kishore Kumar Malviya, Advocate states that cross-examination was deferred due to summoning of the witness. When he has summoned the witnesses on the date examination-in-chief was recorded, particularly he is not sure that the attendance in all the dates on which the cross-examination continued, he is given an opportunity to produce the original record and photocopies as exhibited that does not mean he has been exempted from producing the original record on all the dates and examination is *completed.*

It is submitted that original record is with the criminal court. He has not taken any steps, at the most he can request since the Court is deferring on counts of the defendants, they should pay the diet money and steps have to be taken for summoning the witnesses and to produce the original record since it is required to be looked into at the time when the Court is continuing. If the cross-examination of the witness is not complete because of any act on the part of plaintiff his testimony will not be read.

The Counsel for plaintiff states that Court should instruct the Advocate because he wants to summon the witness putting a list of witnesses on record. Let steps be taken.

Put up on 08.05.2014 till the Court time is concluded.

It is made clear that witnesses is to be summoned by the plaintiff since there is no request till date that witnesses to be summoned at the cost of defendant.

Sd/-
ADJ: Central-14: THC :DELHI.
03.04.2014"

*"**Suit No. 214/2014***
03.04.2014
Present: Shri Neeraj Dahiya, Advocate counsel for plaintiff. Shri Narender Nath Anand, Advocate counsel for defendant.
Witness Shri J.B. Gupta and Shri B.M. Aggarwal present in person, discharged un-examined.
Ld. Presiding Officer is on leave in the Pre-lunch session today.
As per instructions of Ld. Presiding Officer, put up on 15.05.2014"

7. A perusal of the above order reveals that during the time when cross-examination of the Plaintiff's witnesses was recorded, the Trial Court abruptly directed that all the matters of PNB listed on various dates be listed together. The PNB was called upon to explain as under:

"Reader is directed to call all the matters of Punjab National Bank which are listed for other dates to explain how the liability has been created, how the account of the plaintiff bank has been filed and what has been audited."

8. It thereafter appears that on 24th May, 2014, all the 12 suits have been dismissed, including the three suits subject matter of the present appeals. A perusal of the impugned judgment reveals that the Court has rendered findings on all the issues which were framed in the matter without awaiting completion of recordal of the evidence.

"11 The entire conduct as pleaded that <u>it is a transaction which seems not in the account pertaining to nationalized bank a road side vendor doing his business making some entries here and other entry there without realizing what entries are made</u>. Their pleas that they can raise liability against anybody without pleading the facts as to how these liabilities have been raised, exonerating their account holder to whose account they credited the same amount in question that think to whom these accounts have been credited is as per their own pleadings. The plaintiff bank Manager in order to absolve himself of the liability and then passing officer without whose signature the voucher would not have been passed and the money would not have been transferred in the account of defendant No.l, has fixed the liability by pointing out finger towards the conduct of small clerk making the Boss of the bank and converting 'the passing officer' as a rubber stamp. Such a conduct does not require even any enquiry. <u>It is visible to a man who is not deprived of the facility of the visibility and who has been provided with the divine facility by the God that it is not the clerk even if he prepares a fraudulent voucher, document who can pass the payment due under the voucher without it being passed</u>

by the passing officer of the bank officer, what was the role of the branch Manager, why he made a endorsement as a passing officer. What is pleaded in the plaint is that it was not annexed with the documents mentioned in the voucher. Why he did not see the document mentioned in the voucher before passing the voucher and signing it as a passing officer which as a effect of clearing voucher and under which authority of that the amount was credited in the account of defendant No.1. It is the act of criminal negligence on the part of Bank Manager and the passing officer, if the case of the plaintiff as pleaded in the plaint is admitted which has resulted the money going out of the plaintiff bank.

12 If the Assistant in the bank are to be held responsible for everything, what is need for having a system of endorsement approved i.e. mentioned on the voucher by passing officer signature if he has to act in a mechanical manner (initial appending on voucher) or to use the word of Mr. Anand, Adv., i.e. 'not even a head but Ghuggiwala who affixes ghuggi mechanically on everything without seeing and charging the salary many times that of the Assistant and on whose shoulder the entire work of the bank has been left by the Head office. Such pleadings and such averments make the court wonder whether the provisions of Bankers Book of Evidence Act wherein it is stated that if the statement of account are carrying certificate of Bankers under the Bankers Book of Evidence Act of the Branch Manager and should be taken as sufficient, fix the liability, entry in the statement of account are correct as per record and is sufficient to fix the liability, if the entries in the statement of account are to be made like this giving a go by to all the rules of accounting which no bank has a power to change i.e. the double entry system being followed to maintain the accounts in the country and it is prerogative of the Board of governing *council of Chartered Accountant under the Chartered Accountant Act to make any amendment or change, make any modification and double entry system in the country and no such change has been recommended to the best of the knowledge of the Court and a Bank Manager sitting in the small branch at bank at Rani Bagh cannot decide for himself which way the account will be maintained. <u>Naturally if a fraud alleged have been found during the investigation, it must have been brought the rumblings at the top of the court and has a reason to believe that this was a cover up operation having the sanction of top Management and how their enquiry officer has cleared and exonerated the man responsible for clearing the instrument and permitting to raise liability against the defendant No.l. and 2.</u>*

13 The case of the plaintiff as framed and as pleaded supported by its own document have not only bigger holes then any responsible prudent man can accept but for the unfortunate position if one has to reach that where there is a visible the Manager of the plaintiff bank has signed and verified the plaint. I do not know on the basis of what facts or it is just like other the way, he has put 'a ghuggi'/initial while clearing the account while signing the plaint also. The drafting of plaint as it is and fixing the liability, on the basis of notional account security as it is raised serious doubt about the functioning of the bank, it being public institution entrusted with the funds of the public. The court was wandering why it is taking so long to lead simple evidence perhaps an attempt on the part of the bank was to get exoneration for all by getting the case dismissed supported by no evidence. Even if the evidence would have been led, it could not have been beyond the pleading through the evidence has not to be pleaded in the plaint but the basic fact which are the basis of the case of the plaintiff need to be specifically pleaded. For those who have to answer those pleadings *at the cost of it being used against them as admitted pleading not even specifically pleaded as per the law of the pleading. It is submitted by the Bank Manager who has attended the case, he has retired about the 14 years ago. Thank's God he has retired. If such is the state of affair of the knowledge and level of the Branch Manager who just put everything under the carpet putting every responsibility on the Clerk, if these proceedings are allowed to be carried out, the day is not far when some of the officials of the bank will raise a notional credit in their account clear the chest of the banks of entire payment and then ran away without 'ghuggiwala' (passing officer) noting. The case of the plaintiff is based upon assumption and presumption and raising serious doubt about the functioning of the banking institution which are supposed to follow certain norms and strangely there the subsequent inspecting team did not find anything wrong in it. What has been done in this case by the plaintiff bank. If liability can be raised and person exonerated like this then there is no need for any court of law to determine liability. This is not only misuse of the process of court and raises serious doubt upon the capacity of the lawyer who has drafted the plaint or the only other presumption is that the situation was so worse that he could not have done otherwise protect the interest of his appointment authority i.e. the Bank Manager who has put him on the panel and a serious question as to the supervision power inspection has been done by the Reserve Bank of India and whether anybody sees or any auditor which audits the account which is statutory requirement to be done what is happening a auditor is supposed to be but check whether all the laws are to be followed. I do not know whether this plaint is a cover up operation to put in the cold storage that is to say that all concerned whose roles may be questioned get retired neither the bank can do anything and not, it may be feasible to carry out further investigation and* *find out their actual role and conduct."*

9. The Trial Court has made completely unwarranted observations and passed derogatory remarks which were totally uncalled for. The remarks against the bank are sweeping in nature to say the least. The trial court has not gone by the pleadings and evidence on record. The Trial Court has passed general observations against PNB and even held that the same construed acts of criminal negligence on the part of the Bank Manager when evidence was still being recorded by the Plaintiff Bank and was only partially done. The manner in which the recordal of evidence was suddenly halted and the files of 12 suits were called for and proceeded to final decision completely defies all procedural norms. Such a procedure could not have been followed by the Trial Court. The impugned judgment is liable to be set aside on this sole ground.

10. Mr. Mukesh Anand submits that PNB has now moved an application seeking impleadment of the legal heirs of Mr. Kalra, who has since passed away during the pendency of the appeal.

11. It is his submission that the legal representatives are not liable to be impleaded inasmuch as the allegations against Mr. Kalra, being allegations *in personam* against him, his legal representatives cannot be held responsible for the acts of Mr. Kalra.

12. He relied upon two judgments of this Court in ***Nirmal Jain vs. Ahuja Impex AIR 2017 Del 34***, as also ***Natho Devi vs. Nand Kishore [CM (M) 1070/2010 decision dated 30th August, 2012]***. He further relies on the following judgments:

- ***Puran Singh v. State of Punjab AIR 1996 SC 1092***;

- ***M. Veerappa v. Evelyn Sequeira and Ors AIR 1988 SC 506;***
- ***Bhai Analijit Singh v. Mitsui and Co. Ltd [FAO (OS) No. 433/2008 decision dated 19th December, 2008]***

13. The question whether the legal representatives of Mr. Kalra deserve to be impleaded or not has to be determined by the Trial Court. PNB submits that all the three accounts were opened in the names of relatives of Mr. Kalra and the other accounts were in the name of friends of Mr. Kalra. It is further submitted that the allegations against Mr. Kalra are that he had control of the cheque books of all persons in whose names bank accounts were opened and he used the cheques of his relatives and friends to withdraw the amounts from their accounts. By using the withdrawn amounts, he purchased various assets, which are now with his family. These facts, have to be established in evidence by PNB, if permitted in law. PNB is yet to conclude its evidence in these suits. Since the procedure adopted by the Trial Court is completely abrupt, hasty and contrary to law, the judgment is liable to be set aside.

14. Mr. Anand representing the legal representatives of Mr. Kalra submits that the issue being of breach of fiduciary duty of Mr. Kalra, his legal representatives cannot be held responsible for his conduct. The question as to whether the legal heirs would have to be held responsible for the conduct of Mr. Kalra would depend upon whether any benefits have been derived by them or not. Any observation by this Court at this stage should not affect the case of the either party and this Court is refraining from any observation in this behalf. The legal position enunciated in the various judgments as relied upon by Mr. Anand would be open to be placed before the Trial Court at the time of the final decision in the suit. The test that applies to abatement of

criminal proceedings would not be always applicable to proceedings in the present case, which is civil in nature, as PNB alleges that relatives and friends of Mr. Kalra were directly involved in opening of bank accounts and withdrawal of sums.

15. The impugned judgment is accordingly set aside. PNB is permitted to move applications for impleadment of legal representatives before the Trial Court. The Defendants shall be permitted to lead their evidence. The issue as to the liability or otherwise of the legal representatives shall be considered in the final decision of the Trial Court once evidence is led by both sides. The suits are restored to their original position and shall continue from the stage at which they were dismissed.

16. No observations made in this order would be construed as binding in the final decision. All the three suits shall be restored to the position that they were prior to the passing of the impugned judgment. PNB shall be permitted to lead its evidence in terms of the affidavits already filed.

17. All the three appeals are allowed in the above terms and all pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

MAY 24, 2018/*Rekha*