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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 17th July, 2018

Date of Decision: 16th October, 2018

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W.P. (C) No. 6778/2016 & C.M. No.27868/2016

M/S ADYA GLOBAL EXPORT INC. & ANR Petitioners

Through: Mr.Hashmat Nabi and
Ms.Farah Naaz, Advocates.

versus

CANARA BANK

..... Respondent

Through: Mr.Vivek Kumar Tandon and
Ms.Mamta Tandon,
Advocates

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

1. This writ petition assails the order dated 09.10.2014 passed by the Debts Recovery Appellate Tribunal, Delhi ('Appellate Tribunal', for short) in Appeal No.185/2014 arising from O.A. No.08/2010 (DRT-III), Delhi.
2. Briefly stated, case of the petitioners is that the petitioner No.1, 'M/s Adya Global Export Inc.', is proprietorship concern of petitioner No.2, Mrs. Sweety Kumari and was engaged in the business of exporting basmati rice.
3. On 12.10.2007, the petitioner No.2 had opened a current account with Canara Bank, the respondent-bank, at 433, Behra Enclave, Paschim Vihar branch.
4. The petitioners, on 31.10.2008, had deposited with the respondent-bank

Cheque No.375380 dated 24.10.2008 for US\$ 62,400 issued by the Jacques Admiralty Law Firm, P.C. 645 Griswold, Swite 1370, Detroit, Michigan, USA and drawn on Bank of America, Troy, Michigan, USA. On 08.12.2008, Rs.31,45,696/- was credited in the current account of the petitioners with the respondent-bank.

5. Petitioners state and claim that the aforesaid cheque was for export of rice to a party based in Uganda. Satisfied with credit of Rs.31,45,696/-, the petitioners had exported the consignment of rice to the customer in Uganda on 08.01.2009.

6. Subsequently, on 25.08.2009, the petitioners were served with the legal notice issued on behalf of the respondent-bank to remit/refund Rs.31,45,696/- as they had been intimated by their Foreign Department that the corresponding/collecting bank in USA vide letter dated 05.08.2009 had informed that the cheque was "Altered Cheque". Accordingly, payment of Rs.31,45,696/- was reversed. Petitioners had contested the notice stating and highlighting the above facts and also asserted that Foreign Inward Remittance Certificate ("FIRC") had been issued on 27.02.2009 by the respondent-bank.

7. On 31.10.2009, a criminal complaint was lodged by the respondent-bank against the petitioners with the Economic Offence Wing, New Delhi stating that the aforesaid cheque was returned as "Altered Cheque" and that earlier another cheque had been returned being a "Counterfeit Cheque".

8. On 31.12.2009, the respondent-bank filed Original Application No.08/2010 before the Debt Recovery Tribunal-III, Delhi ('Tribunal' in short) for recovery of Rs.31,95,860/- with *pendente lite* and future interest against the petitioners. Original Application was allowed vide the order dated 10.05.2013 by the Tribunal directing the petitioners to pay Rs.31,45,696/- to the respondent-bank within a period of 30 days with simple interest @ 14% p.a.

from the date of filing of the Original Application till its realization.

9. Aggrieved, the petitioners preferred Appeal No.185/2014 before the Appellate Tribunal along with an application under Section 21 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 seeking waiver of pre-deposit of 75% of the awarded amount.

10. On 21.03.2014, the Appellate Tribunal had directed the petitioners to pre-deposit 40% of the amount awarded by the Tribunal. Aggrieved, petitioners had filed WP(C) No.2886/2014 before this High Court. Without commenting on merits, a Division Bench of this Court vide order dated 09.05.2014 had set aside the direction to pre-deposit 40%, with the direction to the Appellate Tribunal to hear the appeal on merit.

11. The Appellate Tribunal heard the Appeal No.185/2014 on merits and vide the impugned order has dismissed the appeal.

12. The petitioners had challenged the impugned order by filing Writ Petition No.1429/2015 before this Court along with an application for stay of proceeding before the Recovery Officer. By the order dated 08.04.2015, proceedings pending before the Recovery Officer were stayed. However, vide the order dated 29.02.2016, the writ petition was withdrawn due to deficiency in pleadings with liberty to file a fresh writ petition.

13. It is in these facts that the petitioners have preferred the present writ petition. We have heard learned counsel for the parties and have gone through the record of the case.

14. Learned counsel for the petitioners submits that the Appellate Tribunal had not taken into account the fact that the petitioners were informed by the respondent-bank that the cheque was doctored or altered after approximately 10 months of deposit. The amount was credited in the account of the petitioners by the respondent-bank on 08.12.2008. If the respondent-bank had informed the

petitioners about the altered cheque well in time, the petitioners would not have shipped/exported the goods to the party in Uganda.

15. Learned counsel for the petitioners also relies on Section 131 of the Negotiable Instruments Act, 1881 ('Act', for short). It is submitted that the cheque deposited with the respondent-bank was sent to the corresponding/collecting bank in the USA and that the respondent-bank was under an obligation to take "due diligence" and "ordinary care". This care and diligence is also enunciated and mandated by the Reserve Bank of India in relation to such transactions. Even after the amendment of the Act, introducing Explanation II in Section 131, the onus was on the respondent-bank to show that it acted in good faith and without negligence and, therefore, the respondent bank was liable and not entitled to recover the amount.

16. To buttress his arguments, learned counsel for the petitioners relies on ***United Bank of India v. M/s. AT Ali Hussain & Co. a firm & Ors.***, AIR 1978 Cal 169 and ***Indian Overseas Bank v. Industrial Chain Concern***, (1990)1 SCC 484.

17. Learned counsel for the respondent-bank refutes the said contentions and submits that the respondent-bank had acted in good faith as well as with due care and diligence and states that there was no negligence on its part and thus claims protection under Section 131 of the Act.

18. Section 131 of the Act reads:

"131. Non-liability of banker receiving payment of cheque.—A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment."

Explanation I.—A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

Explanation II.—It shall be the duty of the banker who receives payment based on an electronic image of a truncated cheque held with him, to verify the prima facie genuineness of the cheque to be truncated and any fraud, forgery or tampering apparent on the face of the instrument that can be verified with due diligence and ordinary care.”

19. Section 131 of the Act applies when the true owner of the crossed cheque initiates proceedings against the collecting bank that had received payment on behalf of their customer/client. This customer/client would be a third person and not the true owner who has sued the collecting bank. The collecting bank that has credited or made payment to the customer/client can defend the proceedings initiated against them by the true owner by showing that they had acted in good faith and were not negligent when they had credited and made payment to their customer/client. Strictly, Section 131 of the Act applies when the collecting bank is sued by the true owner and not when the collecting bank sues its customer/client to recover the amount paid. Section 131 of the Act is a protection and shield meant for the collecting bank that had received and had made payment. Since the collecting bank acts as an agent of its customers/clients, it is not expected to take direct responsibility for the cheque crossed, generally or specially, to the true owner when it acts in good faith and without negligence. In such cases the collecting bank is not liable to the true owner by reason of only having received payment.

20. In the present case, payment was made and credited to the account of the petitioners. The petitioners are not aggrieved by the credit and payment made. They accepted and admitted that the credit was to the petitioner's benefit. They are defending the recovery proceedings initiated by their bank. Further, as elucidated below the cheque in question was an altered one and the name of the holder as well as the amount was changed and altered as payable to the petitioners. Clearly the petitioners were not the true owners.

21. Assuming that Section 131 of the Act applies, we would examine the expressions "good faith" and "without negligence" and consider whether the respondent-bank was liable and cannot recover the money paid to the petitioners under the forged cheque presented to them for payment by the petitioners. The said elucidation would be also relevant when we consider the contention of the petitioners that even if Section 131 of the Act was not applicable, the petitioners were entitled to defend the proceedings for recovery initiated by the respondent-bank on the ground of negligence and lack of due diligence on the part of the respondent-bank.

22. In ***Brahma Shum Shere Jung Bahadur and Another v. Chartered Bank of India, Australia and China and others***, AIR 1956 Cal 399, an account-holder had brought a suit for recovery, *inter alia* against his own banker for the wrongful loss suffered as a result of the account having been debited against a cheque presented by another person after its fraudulent alteration into a cheque for a large sum of money. The bank contested the claim essentially claiming protection under Section 131 of the Act, also seeking to attribute the negligence of the customer. Claim against the bank was rejected holding that it was entitled to debit the amount from the account of the plaintiff since the cheque at the time of presentation for encashment did not disclose any traces of alterations or obliterations, payment being in due course and

according to the apparent tenor of the cheque, the mere circumstance of a different handwriting appearing in the body of the cheque not being one “which could have aroused suspicion in the minds of the officials of the bank”, it was observed, in the context of Section 131, as under:-

"73. The section therefore makes it clear that when a banker receives from its customer a cheque crossed in its favour for collection and received payment of the amount in its customer's behalf, the fact that the customer's title to the cheque is defective does not render the banker liable to the true owner, (see 'Morison v. London County and Westminster Bank Ltd.', (1914) 3 KB 356 (R).

74. But the section affords protection to the banker if the banker has received payment in good faith and without negligence, otherwise the bank which receives payment on a forged cheque or a cheque to which the customer has no title or only defective title is liable in action for conversion to the true owner, 'Matheissen v. London & County Bank', (1879) 5 C.P.D. 7 (S), See also Paget-Banking, 5th Edn. (1947) - pages 229-2301 and cases to footnote (g), at page 230). See also (1924) 1 K.B. 775 (D)."

23. The Calcutta High Court in the above-mentioned case, further added that the question as to whether a bank is guilty of negligence depends on the particulars of each case, *albeit* the onus of proving good faith and absence of negligence is on the banker.

24. In *Indian Overseas Bank v. Industrial Chain Concern* (supra), which has been relied upon by the petitioners on the issue of “standard of care”, the Supreme Court has held as under:

“23. In Capital and Counties Bank v. Gordon 1903 AC 240, the House of Lords accepted the position that a bank acts basically as a mere agent or conduit pipe to receive payment of the cheques from the banker on whom they are drawn and to hold the proceeds at the disposal of its customer. Unless crossed the banker himself is the holder for value. He may be a sum collecting agent or he may take as holder for value or as holder in due course. As an agent of the customer for collection he is bound to exercise diligence in the presentation of the cheques for payment within reasonable time. If a banker fails to present a cheque within a reasonable time after it reaches him, he is liable to his customer for loss arising from the delay. A banker receiving instruments paid in for collection and credit to a customer's account may collect solely for a customer or for himself or both. Where he collects for the customer he will be liable in conversion if the customer has no title. However, if he collects in good faith and without negligence he may plead statutory protection under Section 131 of the Act.

....

25. To enable a bank to avail the immunity under Section 131 as a collecting banker he has to bring himself within the conditions formulated by the section. Otherwise he is left to his common law liability for conversion or for money had and received in case of the person from whom he took the cheques having no title or

defective! title. The conditions are: (a) that the banker should act in good faith and without negligence in receiving a payment, that is, in the process of collection, (b) that the banker should receive payment for a customer on behalf of him and thus acting as a mere agent in collection of the cheque and not as an account holder (c) that the person for whom the banker acts must be his customer and (d) that the cheque should be one crossed generally or especially to himself. The receipt of payment contemplated by the section is one from the drawee bank. It is settled law that the onus of bringing himself within the section rests on the banker. In Capital and Counties Bank v. Gordon, (supra) as we have seen, the conception of a collecting banker was that of “receiving the cheque from the customer, presenting it and receiving the money for the customer, and then, and not till then, placing it to the customer's credit, exercising functions strictly analogous to those of a clerk of the customer sent to a bank to cash an open cheque for his employer.” If the bank performs these functions in course of his business, in good faith and without negligence he will be within Section 131 of the Act.”

25. Learned counsel for the petitioners has also relied upon ***United Bank of India v. M/s. AT Ali Hussain & Co. a firm & Ors.*** (supra), wherein it was held as under:

“14. Upon the consideration of the principles of law as noticed above, it seems to us that so long as the status quo is maintained and the payee has not changed his position to his detriment he must repay the money back to the payer. If, however, there has been a change in the position of the payee who, acting in good

faith, parts with the money to another without any benefit to himself before the mistake is detected, he cannot be held liable. Equity disfavours unjust enrichment. When there is no question of unjust enrichment of the payee by reaping the benefit of an 'accidental windfall' he should not be made to suffer, for he would be as innocent as the payer who paid the money acting under a mistake.

15. In the instant case, the defendant bank was merely a 'conduit pipe' through which money was passed to the defendant No. 1. After the money was received by the defendant bank it intimated about the same to the defendant No. 1 who, in his turn, delivered the goods to the alleged representatives of the Metal Alloy Co., acting on a bona fide belief that the cheque was a genuine one, for otherwise it would not have been encashed by the plaintiff bank. Both the defendant No. 1 and the defendant No. 2 changed their position for worse before the mistake was detected by the plaintiff and communicated to them. Neither the defendant No. 1 nor the defendant No. 2 can be said to have derived any benefit from the mistake committed by the plaintiff bank."

26. In *Kerala State Co-operative Marketing Federation v. State Bank of India & Ors.*, II (2004) BC 1 (SC), the Supreme Court had on the principles governing the liability of a collecting banker held:-

"(1) As a general rule the collecting banker shall be exposed to his usual liability under common law for conversion or for money had and received, as against the 'true owner' of a cheque or a draft, in the event the customer from whom he collects the cheque or draft has no title or a defective title.

(2) The banker, however, may claim protection from such normal liability provided he fulfils strictly the conditions laid down in Section 131 or Section 131A of the Act and one of those conditions is that he must have received the payment in good faith and without negligence.

(3) It is the banker seeking protection who has on his shoulders the onus of proving that he acted in good faith and without negligence.

(4) The standard of care to be exercised by the collecting banker to escape the charge of negligence depends upon the general practice of bankers which may go on changing from time to time with the enormous spread of banking activities and cases decided a few decades ago may not probably offer an unfailing guidance in determining the question about negligence today.

(5) Negligence is a question of fact and what is relevant in determining the liability of a collecting banker is not his negligence in opening the account of the customer but negligence in the collection of the relevant cheque unless, of course, the opening of the account and depositing of the cheque in question therein form part and parcel of one scheme as where the account is opened with the cheque in question or deposited therein so soon after the opening of the account as to lead to an inference that the depositing the cheque and opening the account are interconnected moves in a integrated plan.

(6) Negligence in opening the account such as failure to fulfill the procedure for opening an account which is prescribed by the bank itself or opening an account of an unknown person or non-existing

person or with dubious introduction may lead to a cogent, though not conclusive, proof of negligence particularly if the cheque in question has been deposited in the account soon after the opening thereof.

(7) The standard of care expected from a banker in collecting the cheque does not require him to subject the cheque to a minute and microscopic examination but disregarding the circumstances about the cheque which on the face of it give rise to a suspicion may amount to negligence on the part of the collecting banker.

(8) The question of good faith and negligence is to be judged from the stand point of the true owner towards whom the banker owes no contractual duty but the statutory duty which is created by this section and it is a price which the banker pays for seeking protection, under the statute, from the otherwise larger liability he would be exposed to under common law.

(9) Allegation of contributory negligence against the paying banker could provide no defence for a collecting banker who has not collected the amount in good faith and without negligence."

27. Thus, a collecting bank, in order to avail of the statutory protection of Section 131 of the Act, must show and establish that it had acted in good faith and no negligence can be attributed to it at the time of "receiving" the payment. The test to determine and decide whether the bank had acted in good faith and with due diligence, depends upon general practice of the banks. In some cases it could extend to opening of accounts in which the cheque was deposited. However, the bank is not required to subject the cheque to minute and microscopic examination. On the face of it, the instrument should give rise to

suspicion. Lastly, contributory negligence it has been observed is of no consequence.

28. It is pertinent to note that in ***Indian Overseas Bank v. Industrial Chain Concern*** (supra), the Supreme Court, while holding the bank to be “not negligent”, had observed as under:-

"37. ..that expansion of the banker's liability and corresponding narrowing down of the banker's protection under the provision of Section 131 of the Act may make the banker's position so vulnerable as to be disadvantageous to the expansion of banking business under the ever expanding banking system. This is because a commercial bank, as distinguished from a Central bank, has the following characteristics, namely (a) that they accept money from, and collect cheques for, their customers and place them to their credit; (2) that they honour cheques or orders drawn on them by their customers when presented for payment and debit their customers accordingly; and (3) that they keep current account in their books in which the credits and debits are entered. The receipt of money by banker from or on account of his customer constitute it the debtor of the customer. The bank borrows the money and undertakes to repay it or any part of it at the branch of the bank where the account is kept during banking hours and upon payment being demanded. The banker has to discharge this obligation and normally the banker would not question the customer's title to the money paid in. Applying the above principles of law to the facts of the instant case we are not inclined to hold that the Bank was negligent either in collecting

the cheques and drafts or allowing Sethuraman to withdraw the proceeds."

29. In ***London Joint Stock Bank, Limited v. Macmillan & Arthur***, [1918] A.C. 777, it was held by the House of Lords that if the customer chooses to dispense with ordinary precautions because he has complete faith in his clerk's honesty, he cannot claim to throw upon the banker the loss which results. No one can be certain of preventing forgery, but it is a simple thing to take reasonable and ordinary precautions while drawing a cheque against forgery. If owing to the neglect of such precautions a dishonest person indulges in forgery, the customer must bear the loss as between himself and the banker. The banker is bound to make inquiries when there is anything to arouse suspicion that the cheque is being wrongly dealt with while being paid into the customer's account. The banker, however, is not called upon to be "abnormally suspicious" as was held in ***Penmount Estates Limited v. National Provincial Bank Limited; Stanley Moss & Pilcher (Third Party)*** 5 LDAB 418.

30. The Appellate Tribunal, while relying on Section 72 of the Indian Contract Act, 1872, has held that the Section makes no distinction between the mistake of facts or mistake of law. Money paid under a mistake induced by fraud of third party may be recovered. The legislative object of Section 72 of the Contract Act is to prevent unjust enrichment and ensure restitution. The principle of unjust enrichment requires that the defendant has been enriched by the receipt of the benefit and that the enrichment is at the expense of the plaintiff, and lastly, that retention of enrichment is unjust. In the present case, there is no doubt that the payment was made to the petitioners under a mistake of fact, that it was due when actually it was not due. The respondent-bank did not know that the cheque was altered. The petitioners have certainly been enriched at the expense of the respondent-bank and the retention of this

enrichment is unjust. The payment in the present case was made by mistake due to fraud. Since respondent-bank was merely a collecting agent, what is to be considered in such a case is whether there was any negligence on its part in making the payment and what was the cause of delay, and legal effect of the delay.

31. Test of negligence for the purpose of Section 131 of the Act is whether the transaction of paying in any given cheque, coupled with the circumstances antecedent and present is so out of the ordinary circumstances, that it ought to arouse doubts in the bankers' mind and cause him to make enquiries. We are unable to find any material to demonstrate lack of good faith or failure to exercise due diligence or ordinary care when the cheque was presented for collection. Impugned order reveals that the drawer of the cheque had earlier tampered a cheque, which fact was known to the petitioners. The petitioners were aware given the past conduct that there was a probability that the cheque in question could be tampered. They should have been more vigilant and should have exercised care before exporting rice. This was the risk taken by the petitioners. The respondent-bank could not have entertained any doubts as to the genuineness of the cheque at the time of receiving the cheque from the petitioners or for making it over to the drawee bank for collection. The tampering could not have been deduced by the respondent-bank. The petitioners had presented the instrument as the true owners.

32. The Appellate Tribunal has relied upon the judgment of **Kelly v. Solari**, (1841) 9M and W54, wherein it was observed as under:

"I think that where money is paid to another under the influence of a mistake, that is, upon the supposition that a specific fact is true, which would entitle the other to the money, but which fact is untrue, and the money would not have been paid if it had been

known to the payer that the fact was untrue, an action will lie to recover it back, and it is against conscience to retain it; though a demand may be necessary in those cases in which the party receiving may have been ignorant of the mistake. The position that a person so paying is precluded from recovering by laches, in not availing himself of the means of knowledge in his power, seems, from the cases cited, to have been founded on the dictum of Mr. Justice Bayley, in the case of Milnes v. Duncan and with all respect to that authority. I do not think it can be sustained in point of law. If, indeed, the money is intentionally paid, without reference to the truth or falsehood of the fact, the plaintiff meaning, to waive all Inquiry into it, and that the person receiving shall have the money at all events, whether the fact be true or false, the latter is certainly entitled to retain it; but if it is paid under the impression of the truth of a fact which is untrue, it may, generally speaking, be recovered back, however careless the party paying may have been, in omitting to use due diligence to inquire into the fact. In such a case the receiver was not entitled to it, nor intended to have it."

33. In ***Imperial Bank of Canada v. Bank of Hamilton***, 1903 AC 49, the Privy Council has followed the rule laid down in **Kelly's** case (supra). In this case, cheque for a certain amount certified by the bank's stamp was fraudulently altered to a bigger amount and paid by the respondent to the appellant, a holder for value under a mistake of fact, which was not discovered till the next day. Privy Council held that the respondent was entitled to recover from the appellant-bank. Thus the rule laid down in **Kelly's** case (supra) is that

if a person acting under a mistake pays money to another, the latter must repay the same.

34. On the question whether the respondent-bank was negligent on account of delay in intimating the petitioners that the cheque given by the foreign party was an altered cheque and consequently on credit of Rs.31,45,969/- the petitioners had exported the consignment of the rice to the foreign party, the Appellate Tribunal has observed as under:-

“Having considered the submissions made before me, I am clear in mind that apparently no negligence neither is being attributed nor can be attributed to the bank. The respondent in this case acting as a collecting agent of the appellants for the cheque they have deposited. The submission by the counsel for the appellants that on an earlier occasion the bank had pointed out certain defects in a cheque which was given by the same importers on 3.9.2008 for an amount of Pound 89000 which was deposited with the bank on 15/16.9.2008. This cheque was found counterfeit cheque and the same was received back within 20 days of its deposit. The appellants contend that accordingly they had never exported the goods. The counsel would plead that if the bank had been vigilant enough to detect any alteration in the present cheque, the present situation could have been avoided. This can equally and truly apply to the conduct of the appellants as well. The appellants was also well aware that the same importer had earlier given them a counterfeit cheque which they had deposited with the bank, when it was found to be counterfeited one and returned. This would have been enough for the appellants to put themselves to a proper notice, but still they continued to deal with

the same importer. This time cheque was not found counterfeit, but had been altered. This was for an amount of US\$ 59.29 and was altered to \$62400. Once the appellants had received the cheque they were also required to ensure that this was a genuine one and could have easily detected If any alteration was visible to naked eye for which they are holding the bank responsible. The mere fact that the cheque was encashed and the money received would show that there, perhaps, could not be any negligence on the part of the bank. It is subsequently that the alteration was detected and the amount which was received was called back. Under such circumstances, the appropriate remedy for the appellants is to take action against the importer to whom rice had been exported. In equity or law no reasons can be made out for which the bank can be asked to suffer this loss. The respondent bank was only a collecting agent and certainly is not required to bear this heavy loss on account of fraud having been played which may be by the importer or even could be on the part of the appellants as well. The counsel for the bank is justified in pleading that so far as the appellants had not taken any action against the importer for alteration of the cheque either to recover this amount or to proceed against him for any other liability in accordance with law. The bank has on its part has not only sought recovery of this amount, but has also filed a complaint with the Economic Wing which statedly is in process.

The other submission made by the counsel for the appellants that the amount sought to be recovered by the bank is not covered under the definition of 'debt' was never raised before the Tribunal

below and is being raised for the first time in the appeal at the stage of arguments. Though in support counsel has made reference to the judgment passed by this Tribunal in Axis Bank Ltd., Satna vs. Bhanu Oil and Dal Mills & Ors., III (2013) BC 8(DRAT) where it is observed that transaction of wrong clearance of cheque cannot be said to be a debt. These observations were made by the Tribunal in the facts of the said case where amount recovered during the course of business activities was held to be not falling within the definition of debt. Present one is not a case of any wrong payment and the liability in this case arises in the course of business activities between the bank and the appellants. In my view, the wide definition of 'debt' contained in section 2(g) of the RDDBFI Act would cover such transaction as well. I, therefore find no merit in the appeal and would dismiss the same."

35. To decide the controversy, the following facts have to be noticed. Cheque bearing No.375380 for US\$ 62,400 drawn on Bank of America was sent by the respondent bank for collection through their Foreign Department. The cheque was thereafter sent to the United State of America and presented for encashment through J.P. Morgan Chase Bank. Thereafter, funds were received by the Foreign Department in US value on 17.11.2008. In these circumstances, after the waiting period was over, the respondent bank had credited proceeds of Rs.31,45,696/- in the current account of the petitioner on 8.12.2008. Subsequently, on 21.1.2009, Bank of America had written and forwarded their claim to J.P. Morgan Chase stating that the cheque in question was an altered one. Firstly, the name of the original payee Genaro G. Mautinez had been altered to Adya Global Export Inc. i.e. the petitioner No.1. Secondly,

the original amount of US\$ 59,29 had been altered to US\$ 62,400. The Bank of America had enclosed letter of Jaques Admiralty Law Firm regarding cheque fraud claim with an affidavit regarding altered status of the cheque. The Bank of America, therefore, had issued certificate dated 21.1.2009 for adjustment/recovery to J.P. Morgan Chase Bank through whom the cheque was presented for encashment. J.P. Morgan Chase Bank had thereupon made payment of US\$ 62,400 to the Bank of America as per Article 4-208 of the Uniform Commercial Code. J.P. Morgan Chase Bank had stated that they had accepted the item for deposit and presented it for payment under certain warranties, which had been breached. Thereafter, the Foreign Department had informed the respondent bank and letter dated 5.8.2009 was issued for remission of Rs.31,45,696/-.

36. It is clear from the aforesaid correspondence placed on record that initially the cheque was not objected to by the foreign bankers and credit was made/forwarded. Accordingly, the payment was credited to the account of the petitioners. Subsequently, it came to light that the cheque was altered in respect of the name of the payee as well as the amount payable. Consequently, Bank of America had raised the claim, which was forwarded to J.P. Morgan Chase Bank and then to the Foreign Department of the respondent-bank. The cheque was altered and this had come to light and knowledge after the Bank of America had made claim vide letter dated 21.1.2009. Clearly, the respondent-bank was not negligent when they had credited Rs.31,45,696/- to the account of the petitioners earlier on 08.12.2008. It is also pertinent to note that the respondent-bank had only credited the amount after clearance from its Foreign Department. The respondent-bank would have acted contrary and against the law if they had not credited Rs.31,45,696/-. Subsequently and in terms of the international banking norms, US\$ 62,400 had to be refunded/paid back to the

Bank of America in view of the claim made on 21.01.2009. Therefore, the petitioners were liable to refund and repay the amount credited and now debited. The respondent-bank cannot be held liable/responsible for the payment/credit. Notably, the petitioners did not suspect that the cheque in question was altered and tampered with. Neither had the respondent-bank noticed the alleged tampering. Indeed, even the foreign bankers had no reason to suspect alteration. In these circumstances, we would hold that the petitioners would be liable, and the liability cannot be transferred and fastened on the respondent-bank, which had acted as an agent to collect the money. The respondent-bank had acted as per the banking norms, rules and regulations and it was for the petitioners to familiarise themselves with the norms.

37. In the present case, we do not find any circumstance or reason which could have caused any doubt in the mind of a prudent bank to initiate inquiries, rather the facts of the case demonstrate that the respondent-bank and the petitioners were in the same position. The mere fact that the collecting bank has made a payment to its customer who deposited the tampered cheque does not raise an estoppel against the paying bank if later on it is found that the cheque is forged. The respondent-bank was not called upon to be overtly suspicious. The standard of care expected from a banker in collecting the cheque did not require him to subject the cheque to a minute and microscopic examination. The collecting bank has its remedies against its clients for indemnification by asking them to return the money. In turn the clients, i.e., the petitioners have remedies against the drawer of the cheque or her customer to recover the amount from them as per law. The judgments relied upon by learned counsel for the petitioners, as discussed hereinabove, are of no help to the petitioners, in view of the factual matrix.

38. In view of the aforesaid discussions, we do not find any flaw or infirmity in the impugned order passed by the Appellate Tribunal. Hence, we do not find any merit in the writ petition and the same is dismissed. Pending application is also dismissed. However, the parties are left to bear their own costs.

CHANDER SHEKHAR, J

SANJIV KHANNA, J

OCTOBER 16, 2018

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