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

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Reserved on: 17th August, 2018

Date of Decision: 12th September, 2018

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W.P. (C) No. 6681/2016 & C.M. No.27328/2016

VIJAY SINGH RANA

..... Petitioner

Through: Mr.Javed Ahmad, Advocate

versus

ICICI BANK LTD.

..... Respondent

Through: Mr. Punit K. Bhalla, Ms. Chetna
Bhalla & Ms. Jasleen, Advocates

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

This writ petition impugns order dated 06.01.2016 passed by the Debts Recovery Appellate Tribunal, Delhi (in short the 'Appellate Tribunal') in Appeal No. 257/2015 arising from O.A. No. 275/2012 (DRT-II) titled as "ICICI Bank Limited vs. Vijay Singh Rana". The impugned order allows the appeal filed by M/s ICICI Bank Limited ('respondent-bank') and holds that the O.A. filed by them for recovery against the petitioner was not barred by limitation.

2. The brief facts, required to be noted, are that the respondent-bank had advanced a loan of Rs. 16.50 lacs to Vijay Singh Rana ('petitioner') by way of overdraft facility vide a credit arrangement letter dated 09.02.2006 for a period of 12 months, from 08.02.2006 till 09.02.2007. The facility was

thereafter extended from time to time on request made by the petitioner with the respondent bank, as per the terms and conditions in the credit arrangement letters. The rate of interest was also stipulated in these letters.

3. The petitioner having failed to repay the loan amount, the respondent bank had sent a Legal Notice dated 27.06.2012 requiring the petitioner to pay Rs. 26,59,178.12/- with interest @ 12.50% p.a. and costs. When the petitioner failed to make the payment, the respondent-bank on 14.09.2012 had filed O.A.No.275/2012 seeking recovery of the said outstanding amount of Rs. 26,59,178/- along with *pendente lite* and future interest.

4. The petitioner in the written statement filed on 18.01.2013 raised the defense of fraud and forgery. It was also pleaded that the O.A. was barred by limitation. However as after filing of the written statement the petitioner failed to appear and contest the proceedings an *ex parte* judgment dated 20.08.2013 was pronounced, holding that the respondent bank was entitled to recover Rs. 26,59,178/- along with *pendente lite* and future interest.

5. Thereafter, the petitioner moved an application under Order IX, Rule 13 of the Code of Civil Procedure, 1908 ('CPC') for setting aside the *ex parte* judgment, which application was dismissed by the Debts Recovery Tribunal-II ('Tribunal') vide its order dated 13.02.2014. However, the appeal preferred before the Appellate Tribunal was allowed by order dated 15.12.2014 and the *ex parte* judgment was set aside for fresh decision of the O.A. Thus, began the second round of litigation.

6. The petitioner had thereafter submitted evidence by way of an affidavit. Consequent to an application filed, the petitioner was permitted and allowed to cross examine the witness produced by the respondent bank. The petitioner, in particular, had challenged entries dated 29.12.2009,

31.12.2009 and 07.01.2010 in the statement of accounts filed by the respondent-bank claiming that they were false and fabricated.

7. Accepting the defence raised by the petitioner, the Tribunal dismissed O.A. No.275/2012 on the ground that it was barred by limitation. As noticed above the Appellate Tribunal has reversed the said finding that the O.A. was barred by limitation and has directed the Tribunal to decide the O.A. on merits.

8. The primary issue is whether the entries dated 25.07.2008, 29.10.2008, 29.12.2009, 31.12.2009 and 07.01.2010 in the statement of account produced and relied upon by the respondent bank are forged, fabricated and fictitious. For the sake of convenience we are reproducing the relevant entries of the statement of account, which are as under:

Tran date	Value date	Particulars	Location	Chq No.	Withdrawals	Deposits	Balance
29-10-2008	29-10-2008	Ac xfr from gl 05057 to 05050	Mount road, Che			16,25,524.94	0.00
29-12-2009	29-12-2009	By cash, Punjabi Bagh, New Delhi	Punjabi Bagh, N			50,000	17,49,002.12 Dr
31-12-2009	31-12-2009	By cash, Punjabi Bagh, New Delhi	Punjabi Bagh, N			50,000	16,99,002.12 Dr
7-1-2010	7-1-2010	TRFR From Bhopal Singh Negi/009539	Preet Vihar			75,800	16,49,890.12 Dr
7-1-2010	7-1-2010	TRFR From Bhopal Singh Negi/009540	Preet Vihar			5,50,000	10,99,890.12 Dr

9. The petitioner has disputed deposits of Rs. 16,25,524.94/- on 29.10.2008, Rs. 50,000/- on 29.12.2009, Rs. 50,000/- on 31.12.2009 and

Rs.75,800/- and Rs.5,50,000/- on 07.01.2010 as reproduced in the entries and states that these deposits were not made by them and have been manipulated in the sense that they were made by the respondent-bank to extend the period of limitation under the Limitation Act, 1963.

10. Learned counsel for the petitioner also made reference to the statements of Mr. Anuj Jain, an officer of the respondent-bank who in his cross-examination stated that he had no knowledge of the said entries. Therefore, it was urged that the entries dated 29.12.2009, 31.12.2009 and 07.01.2010 were forged and fictitious.

11. The Appellate Tribunal rightly observed that the Tribunal had erred in not appreciating the proviso to Section 4 of the Bankers' Books Evidence Act, 1891 ('Act' for short), which stipulates that a certified copy of any entry in a banker's books shall in all legal proceedings be received as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise. Under this Section, the copy of accounts certified in accordance with Section 2(8) of the Act is *prima facie* evidence and does not require proof by production of cheques and vouchers etc. relating to each entry. Such a copy must be received as *prima facie* evidence not only of existence of such entries but also for the matters, transactions and accounts therein recorded.

12. In the present case, certified copies of the respondent-bank's statement of accounts had been filed. The certified copies were *prima facie* evidence which in context of the present case must be accepted. Therefore reliance

placed on the lack of personal knowledge of Mr. Anuj Jain in respect of the entries made in the books is immaterial.

13. At this stage we would refer to the case of *Mobarik Ali Ahmed versus The State of Bombay*, 1958 SCR 328, which holds that proof of genuineness of a document is proof of authorship of the document and is proof of a fact like any other fact. Relevant paragraph of the said judgment reads as under :-

“11. Most of the letters from the appellant relied upon bear what purport to be his signatures. A few of them are admitted by the appellant. There are also a few letters without signatures. Both the complainant and Jasawalla speak to the signatures on the other letters. The objection of the learned counsel for the appellant is that neither of them has actually seen the appellant write any of the letters nor are they shown to have such intimate acquaintance with his correspondence as to enable them to speak to the genuineness of these signatures. Learned trial Judge as well as the learned Judges of the High Court have found that there were sufficient number of admitted or proved letters which might well enable Jasawalla and the complainant to identify the signatures of the appellant in the disputed letters. They also laid stress substantially on the contents of the various letters, in the context of the other letters and telegrams to which they purport to be replies and which form the chain of correspondence, as indicating the genuineness of the disputed letters. Learned counsel objected to this approach on a question of proof. We are, however, unable to see any objection. The proof of the genuineness of a document is proof of the authorship of the document and is proof of a fact like that of any other fact. The evidence relating thereto may be direct or circumstantial. It may consist of direct evidence of a person who saw the document being written or the signature being affixed. It may be proof of the handwriting of the contents, or of the signature, by one of the modes provided in Sections 45 and 47 of the Indian Evidence Act. It may also be proved by internal evidence afforded by the

contents of the document. This last mode of proof by the contents may be of considerable value where the disputed document purports to be a link in a chain of correspondence, some links in which are proved to the satisfaction of the court. In such a situation the person who is the recipient of the document, be it either a letter or a telegram, would be in a reasonably good position both with reference to his prior knowledge of the writing or the signature of the alleged sender limited though it may be, as also his knowledge of the subject matter of the chain of correspondence, to speak to its authorship. In an appropriate case the court may also be in a position to judge whether the document constitutes a genuine link in the chain of correspondence and thus to determine its authorship. We are unable, therefore, to say that the approach adopted by the courts below in arriving at the conclusion that the letters are genuine is open to any serious legal objection. The question, if any, can only be as to the adequacy of the material on which the conclusion as to the genuineness of the letters is arrived at. That however is a matter which we cannot permit to be canvassed before us."

14. It is apparent that the petitioner has a running account evident from the withdrawals and deposits made in due course of business. The deposits are not on one but on different dates and the amounts deposited are not in the hundreds but on occasion as high as Rs. 16 lacs and Rs. 5.50 lacs on 29.10.2008 and 07.01.2010, respectively. As per the statement, two deposits of Rs.50,000/- each were made on 29.12.2009 and 31.12.2009 and Rs. 75,800/- was deposited on 07.01.2010. Pertinently the petitioner had also made withdrawals after these deposits were made. Ex facie, the statement of accounts including the quantity of deposits made is sufficient to reject the contention that the deposits were made by the respondent bank from its own

sources. The entries were made in October 2008, December 2009 and January 2010. The O.A. was itself filed in August 2012.

15. In view of the facts noticed above, the statement of accounts itself is reliable and negate the assertion on fraud and forgery made by the petitioner, which is far-fetched and unworthy of acceptance. The entries are also duly corroborated by the conduct of the petitioner who has on different dates, even after making the deposit, continued to make withdrawal transactions.

16. The findings of the Appellate Tribunal are cogent and reasonable. Accordingly, the order of the Appellate Tribunal remitting the O.A. to the Tribunal for adjudication on merits is justified and in accordance with law. The parties are directed to appear before the Tribunal on 17.09.2018 at 10:00 am, with a direction to the Tribunal to decide the O.A. No. 275/2012 as expeditiously as possible, and as per law.

17. The writ petition is accordingly dismissed. Pending application is also dismissed. There is no order as to costs.

**CHANDER SHEKHAR, J**

**SANJIV KHANNA, J**

SEPTEMBER 12, 2018

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