* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **CS(COMM) No. 1558/2016**

% **17th January, 2018**

PUNJAB NATIONAL BANK ..... Plaintiff

Through: Mr. Hashmat Nabi and Mr. Abhinav Thareja, Advocates.

versus

SENIOR EXPORTS AND ORS. ..... Defendants

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Plaintiff/bank namely Punjab National Bank has filed the present suit for recovery of Rs.1,89,66,123/- along with interest against a total of ten defendants. Suit amount is claimed on account of the fraud played upon the plaintiff/bank whereby a total amount of Rs. 1.17 crores through purported Telegraphic Transfers was credited to the bank account of the defendant no.2 in the name of defendant no.1 and thereafter such amount being fraudulently withdrawn by defendant no. 2 or used by him for payments made to defendant nos. 3 and 5 to 7. The entire suit amount is claimed from the defendant nos.

1, 2 and 4 and essentially defendant no. 2/Sh. Vijay Dixit who is the sole proprietor of defendant nos. 1 and 4. The entire amount of the suit is also claimed from the defendant nos. 8 to 10 because whereas defendant nos. 8 and 9 were employees of the plaintiff/bank at its branch at Neemuch, Madhya Pradesh and defendant no. 10 who is said to be the main conspirator. As against defendant no. 5 a sum of Rs.1,00,000/- is claimed, with a sum of Rs.15,000/- being claimed by defendant no. 6 and a sum of Rs.3919/- being claimed against the defendant no. 7.

2. The facts of the case are that plaintiff/bank pleads that it has been subjected to a fraud committed by defendant no. 2 in collusion with defendant nos. 8, 9 and 10. The case of the plaintiff/bank is that two telegraphic transfers were allegedly and falsely got issued by the defendant no. 8 from the Neemuch branch of the plaintiff/bank in Madhya Pradesh in favour of defendant no.2 who was holding account no. 3217 with the Lajpat Nagar branch of the plaintiff/bank at New Delhi. Two telegraphic transfers were received by the plaintiff/bank on 22.8.1997 for Rs.92,00,000/- and on 23.10.1997 for Rs.25,00,000/-, and amounts thereof credited in the

current account of defendant no.2 in the name of defendant no.1, and which telegraphic transfers were subsequently found to be a fraud committed upon the plaintiff/bank because the Neemuch, Madhya Pradesh branch of the plaintiff/bank had never issued these two telegraphic transfers. The amounts of the two telegraphic transfers were credited to the current account of defendant no. 2 bearing no. 3217 at the Lajpat Nagar branch, New Delhi. Defendant no. 2, with defendant nos. 1 and 4 being the sole proprietorship concerns of defendant no. 2, are pleaded to have received illegal benefit of these amounts as various amounts were withdrawn or paid by the defendant no.2 to his own account in the name of defendant nos. 1 and 4 and payments made to the accounts of defendant nos. 3 and 5 to 7. Essentially therefore plaintiff/bank pleads a fraud and seeks the benefit of the provisions of Section 70 and 72 of the Indian Contract Act, 1872, for passing of a money decree against the defendants in the suit.

3.(i) Out of the total of ten defendants in the suit the suit was initially contested by the defendant nos. 1 to 4 and defendant nos. 6 and 8. Defendant nos. 1, 2 and 4 filed a joint written statement.

Written statement was also filed by defendant no. 3. Written statement was also filed by defendant nos. 6 and 8. No written statement was filed by defendant nos. 5, 7, 9 and 10.

(ii) Though the aforesaid defendants who had filed written statement originally contested the suit, however, neither they have cross-examined the witnesses of the plaintiff/bank and nor have also not led any evidence. Defendants have been proceeded *ex-parte* in terms of the specific order of a Learned Single Judge of this Court dated 23.11.2015. By an earlier order dated 19.9.2005 right of the defendant nos. 5, 7, 9 and 10 to file written statement had been closed.

4. Plaintiff/bank has filed affidavit by way of evidence firstly of its witness Sh. Amit Kumar who was working as a Senior Manager at the Neemuch, Madhya Pradesh branch of the plaintiff/bank and who deposed as PW-1. He has deposed on the lines of the plaint and has exhibited various documents being the account opening form of defendant no.2 in the name of defendant no.1, signature cards of the defendant no.2 with respect to the current account, the disputed telegraphic transfers dated 22.8.1997 and 23.10.1997 as also the vouchers by which the amounts of

Rs.92,00,000/- and Rs. 25,00,000/- were credited in the account of the defendant no.2 in the name of defendant no.1. The relevant documents are proved and exhibited as Ex.PW1/1 to Ex.PW1/91.

5. Plaintiff/bank has also led evidence on its behalf of Sh. Ashok Kumar Kalra as PW-2, and who was the officer posted at the Lajpat Nagar branch of the plaintiff/bank at New Delhi. He has deposed on the lines of the plaint with respect to the facts pertaining to the Lajpat Nagar branch of the plaintiff/bank and he has exhibited the account form of defendant no.5 dated 19.8.1997 as Ex.PW2/1 and the certified copy of the telegraphic transfer dated 23.10.1997 as Ex.PW2/2. He has also deposed with respect to different amounts having been withdrawn by the defendant no.2 in terms of the accounts of the defendant no.2 in the names of defendant nos.1 and 4. The other documents being the telegraphic transfer register, the draft issue register and the cheque issue register have been proved along with other documents as Ex.PW2/3 to Ex.PW2/8.

6. Sections 70 and 72 of the Indian Contract Act read as under:-

"**70. Obligation of person enjoying benefit of non-gratuitous act**.—Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

72. **Liability of person to whom money is paid, or thing delivered, by mistake or under coercion**.—A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it."

7. The aforesaid provisions of the Contract Act clearly provide that if persons receive amounts with the payments being received by them not being intended to be gratuitous, or that the persons have received amounts under a mistake, then such persons are liable to refund the amounts received by them non-gratuitously or on account of mistake committed by plaintiff. In the present case it is seen that fraud was played by the defendant nos. 1, 2 and 4 with defendant nos. 8 to 10 in the suit thereby defrauding the plaintiff/bank for a sum of Rs.1,17,00,000/-. This amount of Rs.1,17,00,000/- was withdrawn by the defendant no. 2 through the defendant nos. 1 and 4 with part of the amounts being paid by defendant no. 2 to the defendant nos. 3 and 5 to 8. An amount of Rs. 1 lac is proved to be credited to the bank account of the defendant no.5 from the account of the defendant no.2/defendant no.1. An amount of Rs. 15,000/- is

similarly found credited to defendant no.6's account and an amount of Rs. 3,919/- to defendant no.7's account.

8. Plaintiff/bank, in the opinion of this Court, has been successful through its witnesses PW-1 and PW-2 in having proved the facts constituting the cause of action for the decree of the suit of the plaintiff/bank as against the defendants.

9. In view of the aforesaid discussion the suit of the plaintiff/bank is decreed against the defendants as under:-

(i) Defendant nos. 1 to 4 with the defendant nos. 8 to 10 will be liable for the suit amount of Rs.1,89,66,123/- along with *pendente lite* and future interest at 9% per annum simple.

(ii) The suit is decreed against defendant no. 5 for an amount of Rs.1,00,000/- along with *pendente lite* and future interest at 9% per annum simple.

(iii) Suit is decreed against defendant no. 6 for an amount of Rs.15,000/- along with *pendente lite* and future interest at 9% per annum simple.

(iv) Suit is decreed against defendant no. 7 for a sum of Rs.3919/- along with *pendente lite* and future interest at 9% per annum simple.

(v) Defendant nos. 1 to 4 and 8 to 10 will also be liable to pay costs of the suit.

10. The suit is accordingly decreed as stated above. Decree sheet be prepared accordingly.

JANUARY 17, 2018 **VALMIKI J. MEHTA, J**

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