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

\+ RSA 378/2016, CM APPL. 46030/2016

BANK OF BARODA

..... Appellant

Through: Mr.Amit Mahaliyan, Advocate.

Versus

STATE BANK OF INDIA & ANR.

..... Respondents

Through: Mr. U.C. Mittal and Mr.S. Rana, Advs.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% 02.01.2018

1. This appeal has been filed for setting aside the impugned judgment and decree dated 22.08.2016 whereby respondent bank (State Bank of India) was held entitled for the recovery of a sum of Rs. 1,08,758/- jointly from defendant No. 1, Mr. Vijender Aggarwal and the appellant bank (arrayed in the suit as defendant Nos. 1 and 2 respectively) with pendente-lite and future interest @ 12% per annum, with costs.

2. The case is that Savings Bank Account No. 4852 was operated for many years by one Mr. Vijender Aggarwal in the appellant bank. This account was closed on 22.10.1998 but on the same day, he opened another Savings Account No. 11102 with the same bank. At the time of opening of the latter account, no fresh documents for introduction or for establishing the identity of Mr. Vijender Aggarwal were taken by the appellant bank,

evidently, because he was known to the Bank for many years. On the latter Account Opening Form, a reference to "Natraj Plastics" with its Current Account No. 1365 was made. M/s. Natraj Plastics, a partnership firm at 4215, Lawrence Road, Rampura, Delhi-35 had two partners viz Vijender Kumar Aggarwal and Rishi Prakash Aggarwal. Its Current Account No. 1365 was opened and operational with effect from 5.3.1988. Historically, this Current Account No. 1365 was opened with Traders' Bank Limited which was subsequently taken over by Bank of Baroda.

3. As can be seen from the preceding narration that Saving Bank Account No. 11102 was opened in favour of one of the partners : Vijender Kumar Aggarwal on his application of 22.10.1998, on the basis of his being known to the bank as a partner of M/s. Natraj Plastics. The details of the latters' Current Account No. 1365 are mentioned in the new Savings Accounts Signature Card, which is part of the Lower Court Records. It bears one photograph and two specimen signatures of Mr. Vijender Kumar Aggarwal.

4. The bank did not deem it necessary to take any further details of identification from Mr. Vijender Kumar Aggarwal because he had been known to them earlier in time as a partner of M/s. Natraj Plastics as well as an account holder of Savings Bank Account No. 4852. Both of these accounts had been operational. After opening of Account No. 11102, three Demand Drafts were deposited with the appellant by the account holder which upon presentation by the Bank of Baroda to State Bank of India (SBI) – respondent, were duly honoured on 16.11.1999. The total amount of the three cheques being Rs.74,000/-, was credited to the account of Mr. Vijender Kumar Aggarwal. The said monies were withdrawn from the said account

the very next day. By a letter dated 3.12.1999, the State Bank of India informed the Bank of Baroda that the three encashed Demand Drafts were fraudulent since the relevant Demand Drafts leafs bearing No. 844501 to 846000 in the form of 15 books (total 1500 leaves) were looted from the SBI Branch of Rajgir, Bihar, regarding which FIR No. 241/99 was registered in PS Rajgir, Bihar.

5. It is the appellant's case that it is merely a clearing agency on behalf of the account holder; that upon presentation of a negotiable instrument by its account holder - Vijender Kumar Aggarwal - simply forwarded the Demand Draft to State Bank of India who in turn honored it; that there is and could be no role of the appellant bank in any malfeasance. Besides, the appellant would be protected under section 131 of the Negotiable Instruments Act. The appellant argues that the impugned order is erroneous insofar as it has gone into details of how the accounts had been opened without the relevant documents.

6. The learned counsel for the respondent has refuted the said arguments and relied upon the judgment in ***Indian Overseas Bank V. Industrial Chain Concern***, 1990 (1) SCO 484 as well as **Canara Bank Vs Citi Bank n.a. & ors.** 182 (2011) DLT 189 to contend that it was incumbent upon the appellant bank to have undertaken a thorough exercise of the applicant, Vijender Kumar Aggarwal before opening of his saving account. In particular, he relies upon the following paragraphs of ***Indian Overseas Bank*** (supra) judgment:

> *"9. What is the standard of care to be taken by a bank in opening an account? In the Practice and Law of Banking by H.P. Sheldon, 11th Edn., in chapter 5 at page 64 it is said—*

"Before opening an account for a customer who is not already known to him, a banker should make proper preliminary inquiries. In particular, he should obtain references from responsible persons with regard to the identity, integrity and reliability of the proposed customer.

Sh. M.L. Tannan In Banking Law and Practice in India, 18th edn., at page 198 says:

"Before opening a new account, a banker should take certain precautions and must ascertain by inquiring from the person wishing to open the account, if such person is unknown to the banker, as to his profession or trade as well as the nature of the account he proposes to open. By making necessary inquiries from the references furnished by the new customer, the banker can easily verify such information and Judge whether or not the person wishing to open an account is a desirable customer. It is necessary for a bank to inquire, from responsible parties, given as references by the customer, as to the letter's integrity and respectability, an omission of which may result in serious consequences not only for the banker concerned, but also for other bankers and the general public."

7. Referring to the records, counsel contends that there is nothing to show which officer authorized the opening of the account and which documents have been taken by the banker to ascertain the identity of Mr. Vijender Kumar Aggarwal. In particular, he refers to Ex. DW1/3, which is Chapter – IV of RBI's Guidelines regarding opening of Savings and Deposits. However, the Court is of the view that reliance on ***Indian***

Overseas Bank (supra) is misplaced because the judgment itself notes that ascertainment of other details of the account holder could be necessary only if the customer was not already known to the banker.

8. In the present case, Mr. Vijender Kumar Aggarwal was already known to the bank. He was maintaining an account and had been trading with the bank since 1988 and also maintaining a Saving Account no. 4852 till the opening of a new Savings Account No. 11102. Therefore, in these circumstances, the determination of his identity was never in doubt. Besides, he must have established his own individual goodwill, reliability and soundness of banking transactions with the bank. In this regard, his contesting the suit would show his bonafides and his insistence on his goodwill and identity. Interestingly, the suit was decreed only in the first appellate stage.

9. The transaction of Rs.74,000/- concerns the use of three stolen leafs in the form of forged demand drafts. The appellant had no knowledge that those three instruments were forged and it cannot be said to have any role in the alleged fraudulent transaction. The theft happened sometime in July, 1999 and the FIR concerned was registered on 11.07.1999. Ergo, the theft happened more than five months prior to the honouring of the demand drafts by the SBI. This was sufficient time for the bank to bring to the notice of all the banks concerned that the aforesaid 1500 leafs have been stolen from it.

10. Since the respondent SBI did not inform the appellant Bank of Baroda that the stolen DD leafs should be kept in mind before processing any such financial instruments for payment, there was no duty cast upon the appellant to doubt the three DDs presented for encashment. In any case the SBI, which had lost the 1500 DD leafs, was fully aware of their specific folio numbers

and was alerted of their possible misuse, therefore, it ought to have specifically checked all DDs, including the three presented by the appellant before encashing them. Having encashed them by its own admission or lapse, the SBI cannot blame the appellant.

11. In the circumstances, the Court is of the view that no liability can be fastened upon the Bank of Baroda for the alleged fraudulent act. Accordingly, the appeal is allowed and the impugned order is set aside.

NAJMI WAZIRI, J.

JANUARY 02, 2018
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