Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5358 OF 2015

Pune District Central Co-operative Bank Limited	**...Petitioner**
Versus	
Dena Bank & Anr.	**...Respondents**

WITH

WRIT PETITION NO. 8588 OF 2016

Dena Bank	**...Petitioner**
Versus	
Pune District Central Co-operative Bank Limited & Anr.	**...Respondents**

Mr. Soni Omprakash, for the Petitioner in WP/5358/15 and for the Respondent No. 1 in WP/8588/16.

Mr. Ranjeev Carvalho, a/w Pankaj Uttaradhi and Sagar Hate, i/b Ms. Sabeena Mahadik, for the Respondent No. 1 in WP/5358/15 and for the Petitioner in WP/8588/16.

CORAM : A.A. SAYED &
R.I. CHAGLA, JJ.

DATE : 1 April 2019

ORDER :

1. These are two cross Petitions impugning the order of D.R.A.T. dated 13th February 2015, whereby the D.R.A.T. in the Appeal held that both the Banks (the Petitioners in both the Petitions) are equally responsible in not taking care of discharging their official function and therefore, both the Banks are equally held to be liable. The D.R.A.T. by the impugned order modified the order dated 10th October 2006 of the D.R.T., which had allowed the Original Application filed by the Dena Bank and directed issuance of Recovery Certificate in favour of Dena Bank and against the Pune District Central Co-operative Bank Limited and Respondent No. 2-S.M. Bhosle for a sum of Rs. 9,62,414/- together with interest at the rate of 12 percent per annum from the date of the Original Application till realization of the amount.

2. The subject matter of the Petitions is a forged Demand Draft dated 14th June 1995 drawn on Dena Bank which was presented to Pune District Central Co-operative Bank Limited (hereinafter referred to as "***Pune Co-operative Bank***"). The said Demand Draft was deposited in the Pune Co-operative Bank by one Shri. S.M. Bhosle - Respondent No. 2 in these Petitions. Dena Bank - the drawer, cleared the said Demand Draft. The Pune Co-operative Bank collected the said amount and deposited the same in the account of the Respondent No. 2. In 1997, Dena Bank filed a Suit against the Pune Co-operative Bank and the Respondent No. 2 before the Civil Judge, Senior Division, Pune, claiming the aforesaid amount of the Demand Draft together with interest. In December 2005, the Suit was transferred to D.R.T., Pune. On 10th October 2006 Recovery Certificate was issued by the D.R.T., Pune in the Original Application filed by Dena Bank against the Pune Co-operative Bank and the Respondent No. 2. The Pune Co-operative Bank filed an Appeal before the D.R.A.T., wherein the impugned order dated 13th February 2015 came to be passed holding that

both the Banks are equally liable.

3. We have heard learned Counsel for the parties and perused the impugned orders of the D.R.A.T. as well as the D.R.T. The limited issue for consideration in the present Petition is which of the Banks was liable for negligence in respect of the Demand Draft which was a forged document. The D.R.T. vide the order dated 10th October 2006 had held thus:

> "13. *From the record it appears that the account was opened on 13/6/1995, the draft was deposited on 15/6/1995 and the entire amount of the draft was withdrawn in three stages upto 20/6/1995. This was the circumstances which should have been noted by defendant no. 1 especially when the account was opened in the name of trading concern.*
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> 14. *The alleged negligence of the applicant in allowing the draft to be stolen is of no consequence as contributory negligence is no defence. The claim, therefore, needs to be allowed with certain*

modification."

4. The D.R.A.T. however, while modifying the order of D.R.T. held both the Banks are equally liable and responsible for not taking care at the time of discharging their official function. In paragraphs 6 and 7, the D.R.A.T. has observed thus:

> "*6. Very short point for my consideration is that on whose default the DD has been encashed and who is responsible for the amount. From the perusal of the record, it is seen that after passing of the DD the respondent no. 1 has written a letter to the appellant on 14/08/1995. Thereafter, no action has been taken till 23/05/1997. Later on the respondent no. 1 (Dena Bank) has filed O.A. before DRT, Pune. Therefore, it is very clear even though DD has been forged by, the respondent no.1 has taken steps for recovery of amount only after two years without any explanation.*
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> *7. While considering the latter cause of the appellant, it is needless to say that once the account is opened by the banker he must satisfy*

the identification of the persons, address and relating record has to be noted of the introducer and further he bas to ascertain after fully satisfying these requirements he is expected to open an account in his bank. In this case, unfortunately and admittedly, the appellant could not have any document to show that when account was opened and on what basis it has been opened. All these aspects have not been produced before this Court. Considering these aspects this Court is of the view that both are equally responsible for not taking care at the time of discharging their official function to the satisfaction of the norms and details. Therefore, I am of the view that for an amount of Rs. 9,62,414/- both the banks are equally liable to make the payment."

5. Both the learned Counsel have referred to Section 131 of the Negotiable Instruments Act, 1881. Learned Counsel for the Dena Bank has placed reliance on the judgment of the Supreme Court in ***Kerala State Cooperative Marketing***

Federation Vs. State Bank of India & Ors.[1] and in particular paragraphs 5 and 14, which read thus:

> *"5. Section 131 of the Negotiable Instruments Act ("N.I. Act" for short) reads as follows:*
>
> > *"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."*
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> *It is thus to be seen that a banker, who encashes a cheque, in respect of which his client had no title, would become liable in conversion or for money had and received. However, Section 131 of the Negotiable Instruments Act protects the banker, provided he has received payment in good faith and without negligence of a cheque crossed generally or specially."*

1 ***(2004)2 SCC 425***

"14. *The 1st Respondent's Branch Manager gave evidence. From his evidence it is clear that the person who called himself K. Narayhanan opened an account on the introduction of an account holder by name Dharman Panicker. In the Account Opening Form the address is given only as "Kaniyarath P.O., Kallisseri". Thus an absolutely vague address was given. The Bank made no enquiries as to the credit worthiness of the said K. Narayhanan or as to his full address or even about his telephone number. Thereafter even though initially the account was opened with only Rs. 20/- the exact amount of Rs. 80/- was deposited for purposes of receipt of a cheque book. The 1st Respondent bank does not seem to have put on its guard, even when a cheque for a very large amount i.e. Rs. 1,00,000/- was deposited soon thereafter. In cross-examination the Branch Manager admits that in the Account opening form neither the name nor the occupation of the person introducing had been filled up. He admits that no enquiry was made regarding the nature of business of K. Narayhanan or where the place of business was. Even after it was found out that*

> *that a cheque had been forged and stop payment notice had been issued, no enquiry was made by the Bank with the introducer. When asked why no enquiries were made, the answer given was that the bank has no responsibility to look into it. Another factor which mitigates against the 1st Respondent Bank is that it made no attempt to lead the evidence of the person who had introduced the account holder*."

6. We have heard learned Counsel for the parties and perused Section 131 of the N.I. Act and the judgment of the Supreme Court in ***Kerala State Cooperative Marketing Federation*** (supra). So far as the issue of negligence is concerned, this was a question of fact which need not really be gone into in the writ jurisdiction of this Court. Nevertheless, to satisfy our conscience, we have examined the same. At the outset, it may be stated that Section 131 of the N.I. Act cannot be invoked in a case of negligence by a Bank. We find that the D.R.A.T. had rightly concluded that both the Banks were equally responsible for not taking care in discharging their official

functions. Pune Co-operative Bank was negligent inasmuch as it has opened the account of the Respondent No. 2 without proper particulars and verification of the account-holder and it has not done its due diligence and had not taken the required precautions necessary in opening a new account in the name of Respondent No. 2 on 13th June 1995 and the relevant documents in respect of opening of the account was stated to have been lost. The Demand Draft was deposited in the new account just two days later and the entire amount was withdrawn in three stages by 20th June 1995. Dena Bank was equally negligent inasmuch as the Demand Draft was stated to be a stolen Demand Draft from the custody of Dena Bank and despite the signature being forged, Dena Bank had cleared the payment. We have also perused the order dated 16th June 2007 of the Chief Judicial Magistrate in the criminal proceedings initiated at the instance of Manager, Dena Bank. The said order does not in any matter assist either of the Banks.

7. In the circumstances, we find no fault in the

impugned order. Hence, no interference is warranted in the writ jurisdiction of this Court. The Petition is accordingly, dismissed. No costs.

[R.I. CHAGLA, J.] **[A.A. SAYED, J.]**