

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.01.2019

Date of Decision : 29.01.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.167 of 2011

Indian Bank,
rep by its Deputy General Manager
Mr.A.Kamatchi
No.66, Rajaji Salai,
Chennai-600 001.

.. Plaintiff

Vs.

Oriental Insurance Company Ltd.,
rep by its Senior Divisional Manager,
D.O.VIII, Pankaj Complex,
II Floor,
No.69, Perambur Barracks Road,
Vepery,
Chennai-600 007.

.. Defendant

This Civil Suit is preferred under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Civil Procedure Code seeking for a judgment and decree against the defendant to pay the plaintiff (a) the sum of Rs.1,04,51,803/- together with quarterly compounding interest at the rate of 16% p.a. with effect from the date of plaint, i.e., 2nd March 2010 till the date of realisation in full; (b) cost of this suit; (c) that this Hon'ble Court may pass such other order/s as this Hon'ble Court may deem fit and thus render justice.

For Plaintiff : Mr.M.S.Murali
for M/s.R&P Partners

For Defendant : Mr.Venkatraman
for M/s.Nageswaran & Narichania

JUDGMENT

This suit was presented in this Court on 02.03.2010, almost 9 years ago. Indian Bank which is a creature of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 is the plaintiff and Oriental Insurance Company Limited, a public sector undertaking, is the sole defendant.

2 It is necessary to set out the factual matrix of this case at the outset, for better appreciation of this judgment.

3 If the factual matrix of this case were to be stated in a typical nutshell and if it were to be put in one sentence, it can be said 'plaintiff bank which had taken a Banker's Indemnity Insurance Policy with defendant insurance company, suffered loss to the tune of little over Rs.1.04 Crores owing to some bad transactions in its Purulia Branch, made a insurance claim stating that it is owing to dishonesty of its Branch Manager, defendant insurance company rejected the claim saying that it is a case of negligence and not dishonesty on the part of Bank's employees, resulting in the instant suit by the Bank claiming the loss of little over Rs.1.04 Crores.'

4 Aforementioned one sentence is a birds eye view of the facts and a thumbnail sketch of the factual matrix of the suit. Considering that this is final disposal of the suit, little more elaboration is necessary and the same is done infra in paragraphs that follow.

5 Plaintiff is a nationalised bank which is a creature of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.

Plaintiff is governed by the Banking Regulation Act, 1949. In the course of its business, plaintiff had taken an insurance policy with defendant insurance company which goes by the name 'Banker's Indemnity Insurance Policy' which has been marked as Ex.P.2. A perusal of Ex.P.2 reveals that policy number is 411800/0/0/MISC./B1/0002/2007, it is dated 31.03.2006 and it is for a sum of Rs.40 Crores. The period of insurance cover under Ex.P.2 is 01.04.2006 to 31.03.2007. In other words, it is for the financial year 2006-07. It is not in dispute that this policy was renewed for a further period of one year, i.e., upto 31.03.2008.

6 According to plaintiff, during the subsistence of Ex.P.2, policy, loss was caused to the plaintiff bank due to dishonest and criminal actions of an employee of plaintiff one Mr.Ranjan Mukopadhyaya, who was then serving as Branch Manager of Purulia Branch of plaintiff Bank.

7 It is plaintiff bank's case that the said Branch Manager had given credit facilities to some of bank's customers beyond his power / limits, allowed credit against various cheques lodged for collection, such cheques were ultimately dishonoured, resulting in loss of Rs.1,04,51,803.00 to the plaintiff bank. Said Branch Manager was suspended with effect from 28.8.2006, a police complaint was lodged and he was ultimately dismissed from service after departmental proceedings, is what can be gathered from plaintiff averments.

8 Plaintiff Bank submitted that it made a claim under Ex.P.3 = Ex.D.1 with defendant on 11.08.2007 owing to aforesaid loss and the claim was rejected by defendant insurance company vide its letter dated

03.03.2009 under Ex.P.4, stating that the claim is not covered under Ex.P.2 policy, as according to insurance company, it falls under one of the exceptions, i.e., Exception (b) which talks about loss resulting wholly or partially from any negligent act or omission of the insured employee. To be noted, Exception (b) in Ex.P.2 reads as follows :

“(b) losses resulting wholly or partially from any negligent act or omission of the insured employee.”

9 Plaintiff bank asserted that its claim does not fall under exception (b), but under insurance covenant 'D' captioned 'Dishonesty', which reads as follows :

“ **D.DISHONESTY**

by reason of the dishonest or criminal act of the employee(s) of the insured with respect to the loss of Money and/or Securities wherever committed and whether committed singly or in connivance with others.”

10 In between the plaintiff bank's claim (Ex.P.3 = Ex.D.1) and defendant insurance company's rejection dated 03.03.2009 (Ex.P.4), two events are of immense relevance. One is, the bank had initiated departmental disciplinary proceedings against the Branch Manager concerned. The report of the Enquiry Officer was given vide report dated 21.10.2008 (Ex.D.6). Thereafter, the insurance company appointed a Surveyor to go into the matter and the Surveyor gave a detailed report dated 29.02.2008 (Ex.D.7). To be noted, the Surveyor had taken into account the findings of the Enquiry Officer Ex.D.6 in giving his report Ex.D.7. Defendant insurance company

which has filed a detailed written statement dated 23.11.2011 (presented on 24.11.2011), took the stand that rejection of plaintiff bank's claim by defendant insurance company on 03.03.2009 vide Ex.P.4 is correct, as according to the surveyor's report Ex.D.7 which is a very detailed report, the loss is not owing to dishonesty and criminal intent of plaintiff bank's employee, but due to collective negligence on the part of plaintiff bank's employees. This much about elaboration of factual matrix.

11 It may be necessary to set out the trajectory of the suit. As mentioned supra, suit was presented on 02.03.2010 before constitution of Commercial Division in this Court. After constitution of Commercial Division in this Court with its first court sitting from 04.12.2017, this suit was transferred to this Commercial Division and jurisdiction of this Commercial Division was determined on 02.01.2018. Suffice to say that this suit was held to be a commercial dispute arising out of insurance, besides arising out of an ordinary transaction of a banker. In other words, the suit was held to be a commercial dispute within the meaning of sub clauses (i) and (xx) of section 2(1)(c) of 'The Commercial Courts Act, 2015' ('said Act' for brevity). It was held to be of specified value within the meaning of section 2(1)(i) read with section 12 of said Act, as the suit is valued at Rs.1,04,51,803.00. To be noted, all this was prior to 3.5.2018. Therefore, specified value had to be more than Rs.1 Crore and the value is little over Rs.1.04 Crore. On this basis, it was held that this suit is a commercial dispute of specified value and therefore, this Commercial Division has jurisdiction to entertain this suit under

12 In any event, prior to 02.01.2018, issues had been framed and oral / documentary evidence had been let in on both sides. Therefore, both sides filed written arguments in accordance with Order XVIII Rule 2 sub-rules 3(B) to 3(F) of 'The Code of Civil Procedure, 1908' ('CPC' for brevity). Thereafter, oral arguments were heard by this Commercial Division.

13 Mr.M.S.Murali, learned counsel of M/s.R&P Partners (Law Firm) on behalf of plaintiff Bank and Mr.Venkatraman, learned counsel of M/s.Nageswaran & Narichania (Law Firm) on behalf of defendant insurance company were before this Commercial Division and they argued on behalf of respective parties.

14 Before I advert to the arguments, it is necessary to set out the issues that were framed. Four issues were framed on 07.09.2012 and two additional issues were framed on 25.02.2013. While the four issues framed on 07.09.2012 are in numerical series, two additional issues framed on 25.02.2013 have been given alpha series, namely (a) and (b). For the sake of convenience, two additional issues which were given alpha series, i.e., (a) and (b) are put in continuous sequential numerical series and therefore, additional issues (a) and (b) became issues 5 and 6 respectively. In this view of the matter, the six issues are as follows :

“1.Whether the plaintiff is entitled to the sum of Rs.1,04,51,803/- together with quarterly compounding interest at the rate of 16% p.a. with effect from the date of plaint i.e. 02.03.2010 till date of realisation in full?

2.Does the Bankers indemnity Policy covers losses caused due to the dishonest behavior of the employees of the Plaintiff?

3. Whether the act of the plaintiff employee resulted to loss to the plaintiff due to the dishonest intention or due to the collective negligence of a particular employee who indulge in dishonest act or not?

4. To what relief?

5. Whether the person who has signed and verified the plaint is competent/authorized to represent the plaintiff?

6. Whether the claim falls under exception (b) of the Bankers indemnity policy issued by the defendant?"

15 Though there are six issues, rival submissions centered around only two aspects of the matter. While the first aspect of rival submissions touches upon whether the person who had signed and verified the plaint is competent / authorised to represent the plaintiff Bank, the second aspect is whether the claim of plaintiff bank qua Ex.P.2 policy falls under insurance claim 'D' captioned 'Dishonesty' or under exception 'b', both of which are contained in Ex.P.2 and both of which have been extracted and reproduced supra in this judgment.

16 This Commercial Division is of the considered view that if the aforesaid two rival submissions are examined and answered, answering all six issues will be a matter of necessary sequitur. Therefore, first aspect of the matter pertaining to whether the person who had signed and verified the plaint is competent / authorised to represent the plaintiff is taken up.

17 Before I advert to that, it is necessary to set out that after framing of aforesaid six issues, one witness on the side of plaintiff

(Deputy General Manager K.Ravichandran) was examined as P.W.1 and

Exs.P1 to P7 were marked on the side of plaintiff. On the side of defendant, two witnesses, i.e., D.W.1 (Divisional Manager S.Nedunchezian) and D.W.2 (Surveyor R.G.Verma) were examined and seven exhibits, i.e., Exs.D.1 to D.7 were marked.

18 Be that as it may, with regard to first question as to whether the person who had signed and verified the plaint is competent and authorised to do so on behalf of plaintiff bank, a perusal of plaint reveals that it has been signed and verified by one A.Kamatchi, who had been described as Deputy General Manager of plaintiff bank. Learned counsel for defendant pointed out that no document has been filed along with plaint or at the trial to show that Kamatchi has been authorised by plaintiff to verify and sign the plaint.

19 Responding to this, learned counsel for plaintiff bank submitted that plaintiff bank being a nationalised bank, which is a creature of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 is governed by Banking Regulation Act, 1949, qualifies as a corporation within the meaning of Order XXIX Rule 1 of CPC and submitted that pleadings can be signed and verified on behalf of Corporation by the Secretary or by any Director or any other principal officer of the Corporation, who is able to depose to the facts of the case.

20 No further discussion in this regard would have become necessary if the person who had verified and signed the plaint has deposed as P.W.1, but unfortunately that is not the case. As mentioned supra, one K.Ravichandran has deposed as P.W.1. In this regard, learned counsel

submitted that the plaint is dated 02.03.2010, whereas evidence was let in on behalf of plaintiff by filing proof affidavit of P.W.1 on 16.11.2012 nearly three years later and cross examination of P.W.1 was ultimately completed on 13.6.2013. On this basis, learned counsel submitted that P.W.1 K.Ravichandran is the successor Deputy General Manager of plaintiff Bank. In other words, on the date of signing and verifying the plaint A.Kamatchi was the Deputy General Manager. On the date of filing proof affidavit / chief examination, i.e., 16.11.2012, Kamatchi had been replaced / succeeded by K.Ravichandran. In other words, learned counsel for plaintiff submitted that if Kamatchi had continued as Deputy General Manager for another three years, he would have deposed as P.W.1. It is also his say that the person holding office as Deputy General Manager has in any event deposed. Further more, learned counsel for plaintiff pressed into service a judgment of Hon'ble Supreme Court being ***United Bank of India Vs. Naresh Kumar*** reported in ***AIR 1997 SC 3 = (1996) 6 SCC 660***. A perusal of ***Naresh Kumar*** case reveals that on facts, it is a case where bank filed a suit against a defaulter, who failed to repay loans and succeeded successively in three fora, namely, trial court, first appellate court and High Court (Second appeal). When the matter was carried to Supreme Court, the only question before Hon'ble Supreme Court was whether the plaint was duly signed and verified by a competent person. In ***Naresh Kumar*** case, Supreme Court held that public interest should not be permitted to be defeated on a mere technicality and procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause.

21 Further more, Hon'ble Supreme Court applied an inferential process and held that the person who signed and verified the plaint in that case, namely one Sri L.K.Rohatgi should be held to be competent as the suit continued in trial for about two years, bank had paid the court fee, besides letting in documentary and oral evidence. Most importantly, after trial court, the bank had filed first appeal in the District Court, second appeal in the High Court and therefore, Supreme Court came to the conclusion that the Bank should be held to have ratified the signing and verification of plaint by Sri L.K.Rohatgi, which would not have happened if Sri L.K.Rohatgi was not competent to verify and sign the plaint.

22 This factual aspect of the matter is absent in the instant case, because this Commercial Division is the Court of first instance. However, the plaint which was presented on 02.03.2010, has been carried upto arguments stage over a period of nearly 9 years now. Documentary evidence has been let in and as many as seven exhibits have been marked on plaintiff's side which includes documents such as, insurance policy, claim made thereunder and most importantly, enquiry officer's report of the Bank, all of which would have been filed only by some one who was authorised to do so by the Bank. Therefore, though **Naresh Kumar** case is distinguishable on facts, going by the general principle laid down by Hon'ble Supreme Court in **Naresh Kumar**, i.e., public interest should not be permitted to be defeated on technicality, it can be safely inferred that in the instant case, A.Kamatchi, Deputy General Manager of plaintiff bank who verified and signed the plaint was competent to do so. However, this Commercial Division is of the view

that this entire inferential process could have been easily avoided by the plaintiff bank by filing an authorisation in favour of A.Kamatchi, because a specific issue (issue No.5) had been framed in this regard. Once an issue is framed, plaintiff bank could have easily dispelled or disabused the whole issue by filing authorisation or requisite document to show that A.Kamatchi was authorised to sign and verify the plaint on behalf of plaintiff bank. As the plaintiff is a nationalised bank, which is dealing with public money, Court has applied this inferential process and come to the safe inference / conclusion that the person who has signed and verified the plaint was competent to do so on behalf of plaintiff bank, particularly because insurance claim copy and insurance policy itself have been filed through him by plaintiff Bank. It is desirable that plaintiff bank dealing with public money avoids such situations. It would be desirable that plaintiff bank is diligent and careful in future particularly because it is dealing with public money. Before I proceed to the next point, for the purpose of completion of facts and for the purpose of comprehensively capturing the trajectory of hearing before me, it is necessary to set out that learned counsel for defendant pressed into service a judgment of Hon'ble Supreme Court in ***State Bank of Travancore Vs. Kingston Computers India Private Limited*** reported in ***(2011) 11 SCC 524***, wherein Supreme Court held that a company was liable to be non suited as it did not produce any evidence to prove that the individual (Shri Ashok K. Shukla in that case) was a Director in the company and that company had authorised him to file the suit. In that case, the company in question is a private limited company, namely Kingston Computers India Private Limited. Learned counsel

for plaintiff bank pointed out that in the instant case, plaintiff bank being a nationalised bank and creature of the statute dealing with public money stands on different footing and therefore, **Kingston Computers India Private Limited** principle is distinguishable on facts. It was also pointed out that **Naresh Kumar** case was not referred to in **Kingston Computers India Private Limited** case. While this distinction is acceptable and while this distinction being accepted enures to the benefit of plaintiff in the instant case, it also brings into sharp focus the level of huge responsibility cast on the plaintiff bank as it distinguishes itself from a private limited company and submits that it is nationalised bank being the creature of statute dealing with public money. In this view of the matter, it is necessary that it acts with diligence. In other words, inferential process and nuanced distinctions being accepted in this case to enure to the benefit of plaintiff bank should not be pressed into service as precedent in other matters as it would amount to giving nationalised banks like plaintiff a passport to become complacent and pursue suits without required levels of diligence, more so, when a specific technical issue in this regard has been framed.

23 It was also pointed out by learned counsel for plaintiff that while cross examining P.W.1, defendant had never asked P.W.1 whether he is an employee of the Bank. In other words, it was submitted that P.W.1 was not confronted with a question / suggestion in cross examination that he is not an employee of plaintiff bank.

24 This takes us to the second question which is the bone of contention in this lis and which can be aptly described as the crux and

gravamen of this lis. This next point is whether the claim of the plaintiff bank falls under 'D' of Ex.P.2 or under exception 'b' of Ex.P.2. To put it pithily, the question is whether it is a case of dishonesty of plaintiff bank's employee or negligence on the part of employees of plaintiff bank.

25 The answer to this question turns heavily on Surveyor's report being Ex.D.7. A careful scrutiny of Ex.D.7 Surveyor's report reveals the following aspects:

(a) Surveyor has been appointed by defendant insurance company.

(b) Surveyor has taken into account the internal enquiry report of plaintiff bank (Ex.D.6)

(c) Surveyor has come to the categorical conclusion that plaintiff bank has in fact suffered loss to the tune of little over Rs.1.04 Crores.

(d) Surveyor has opined that plaintiff's bank employee cannot be said to be dishonest in causing the aforesaid losses, but it can be said to be negligence in performance of duty.

26 A perusal of the aforesaid salient features of Ex.D.7

Surveyor's report shows that the last feature is clearly a clincher / decider. Referring to the last feature of Surveyor's report, learned counsel for plaintiff submitted that surveyor exceeded its authority in giving an opinion that bank employees may not be said to be dishonest in causing loss, but they may only

be said to be negligent in performing their duties while relying on the report with regard to loss caused to the bank. Learned counsel for plaintiff bank seriously disputed this opinion.

27 Responding to this, learned counsel for insurance company submitted that a Surveyor is appointed under Section 64-UM of the Insurance Act, 1938 and the surveyor so appointed under Section 64-UM of the Insurance Act, 1938 is governed by a set of regulations which goes by the name 'The Insurance Surveyors and Loss Assessors (Licensing, Professional Requirements and Code of Conduct) Regulations, 2000' (hereinafter referred to as 'Insurance Surveyor Regulations' for the sake of brevity). To be noted, the Insurance Surveyor Regulations is a set of regulations which have been made by the Insurance Regulatory and Development Authority in consultation with the Insurance Advisory committee in exercise of such regulations making powers conferred on such authority inter-alia by Section 42-D , 64-UM and 114-A of the Insurance Act, 1938, besides Section 26 of the Insurance Regulatory and Development Authority Act, 1999. This is set out only to drive home the legal position that Insurance Surveyor Regulations is a regulation which is in the form of a subordinate legislation and therefore, has the sanctity of the statute.

28 Referring to Insurance Surveyor Regulations and particularly, to Regulation No.13, which is an enumeration of duties and responsibilities of the Surveyor, learned counsel for defendant insurance company submitted that a Surveyor under Regulation 13(2)(xiv) has duty and a responsibility to give reasons for repudiation of a claim in case the claim is

not covered by policy terms and conditions. It is necessary to extract Regulation 13(2)(xiv) of the Insurance Surveyor Regulations and the same reads as follows :

“13(1).....

(2)The following shall, inter alia, be the duties and responsibilities of a surveyor and loss assessor:-

(i) to (xiii)

(xiv)giving reasons for repudiation of claim, in case the claim is not covered by policy terms and conditions;”

29 As already alluded to supra, insurance regulations has the sanctity of a statute and therefore, there is no difficulty in accepting the submission of learned counsel for defendant insurance company that the Surveyor certainly has the authority to give an opinion qua repudiation of a policy, but what is of relevance is the same is not beyond the scope of judicial review.

30 Now that the suit is filed by the Bank, Surveyor having statutory powers to give opinion in his report does not denude this Court of its power to examine his opinion and come to its own conclusions regarding the opinion in trying and deciding the suit.

31 This takes us to the Surveyor's report (Ex.D.7). A perusal of Ex.D.7 reveals that it has relied heavily on Ex.D.6 which, as mentioned supra is the internal enquiry report of the bank dated 21.10.2008 in the proceedings against the Branch Manager concerned. A perusal of this report reveals that as many as 18 charges have been framed against Branch Manager. A perusal of charges 1 and 6 which were dealt with together,

charge No.4, charge No.7, charge No.11, Charge Nos.12 and 17 leave the Court with the considered opinion that it may not be a mere case of negligence, but it would certainly point towards certain element of dishonesty on the part of Branch Manager concerned. Besides this, plaintiff Bank has also given a criminal complaint inter-alia under Section 156(3) of the Code of Criminal Procedure, 1973, vide M.P.No.155 of 2006 in the Court of Chief Judicial Magistrate, Purulia. This complaint has been marked as Ex.D.4. The complaint reveals that the nature of offence complained of are under Sections 406, 409, 420, 120B and 34 of Indian Penal Code. In this case, though Branch Manager has not been cited as an accused, he has been cited as a witness and a perusal of the complaint reveals that the entire loss has been occasioned to the Bank by customers in connivance with Branch Manager. Though it would have been desirable that the Bank had cited Branch Manager as an accused, this being a civil suit, degree of proof required is preponderance of probability and not proof beyond doubt. Applying the degree of proof required in civil suit, namely preponderance of probability, this Commercial Division has no difficulty in coming to the conclusion in the light of the internal enquiry report and criminal complaint, both of which have been relied on by the Surveyor in his report Ex.D.7, that there were certain elements of dishonesty on the part of Branch Manager in causing loss to the Bank.

32 I deem it appropriate to extract relevant charges and findings of enquiry officer vide Ex.D.6 which read as follows :

Charge : 01

The CSO allowed excesses frequently over the sanctioned

limit and ad hoc limit in the accounts of M/s. Arun Sarkar and his group accounts beyond his discretionary power without informing the Higher Authorities. He allowed the excesses and ad hoc without due appraisal and assessment. He failed to get the excesses adjusted.

Charge No.6

CSO failed to report the true position of the account of Arun Sarkar and his group accounts in the Monthly Audit Control Returns and failed to report the frequent excesses allowed in AUD-1 and AUM statements.

IA findings: It is clear that the account of M/s.Arun Sarkar was opened and credit facilities were sanctioned by CSO's predecessor. The facilities to other group firms were sanctioned by CSO. The nexus of the charge is allowing of the excesses in the referred accounts beyond the powers conferred on CSO as BM of Scale II branch and failure to report such excess to Higher Authorities through the prescribed reporting system. As evident from the statement of accounts, excesses were allowed in all the accounts referred on various dates. The excesses allowed are also found to be beyond the powers conferred on the BM of a Scale II branch.

>For allowing excesses branch has to follow the procedure of obtaining request from customer, to obtain permission from competent authority before allowing the excess or to obtain confirmation for excess allowed. The excess allowed is to be adjusted within the period as laid down which has not been adhered to.

>>CSO produced an evidence of having submitted one report on 20.03.2006 (DEX-1 a to DEX-1d). No other record is produced/available to prove that the procedure is followed on all other occasions. CSO argued that the reporting through the letter dt 20.03.2006 and in the proposal submitted for sanction of real estate loan to M/s.Arun sarkar, the position of the

accounts was clearly mentioned and Circle office accorded sanction and thus Circle Office is aware of the excess allowed in the referred accounts.

>>The Audit control Returns were submitted by the Loan Officer and statements were reported by the Desk Officers.

>>It is inferred from the above, that the branch has not submitted reports for having allowed the excesses in these account except on one occasion and through the proposals submitted. The bank's procedures for reporting these excesses / adhoc limits; obtaining confirmation for such acts which are beyond the powers conferred and recovery of the excesses in the prescribed formats were not followed. Reporting the position to Accounts Department for the purpose of quick data and reporting the position while recommending for credit facilities does not tantamount to the reporting under the control / monitoring measures prescribed by the bank. The alleged oral permissions are to be followed up by the branch for confirmation from concerned authorities in the formats prescribed. There is no record to show such reporting and confirmation. Hence the charges stand proved giving credence to the extent that CSO reported the excess on one occasion.

Charge No.10 :

The CSO authorized a cheque No.779656 dt. 11.08.06 for Rs.30 lakhs for cash payment wherein the amount is written as Rs.Thirty thousand in words and Rs.Thirty lakhs in figures. As per Manual of instruction iv "if the amount written in words and figures is different, the same may be brought to the notice of presenter, informing him that the amount written in words only is payable. If the presenter is not prepared to accept the amount written in words, he may have to take back the cheque" The CSO failed to comply with the manual of instructions and have authorized the cheque payment for Rs.Thirty lakhs.

IA FINDINGS

>An examination of the cheque no.779656 dt.11.08.06 show that the amount in words is clearly written as "Rs thirty thousand only" while in figures it is written as Rs.30,00000/- The five zeroes later to the comma are joined together as to denote the amount as Rs.thirty lakhs. The discrepancy is observable during a normal examination.

>CSO informally says that there is reason to believe that the customer has used some chemicals while presenting the cheque to the bank. This was not brought in the proceedings of enquiry either in his own deposition or through a cross examination of the witnesses, Mr.Bijoy Krishna Biswas. Thus this is only a pass by remark.

>In the instant case, the adamant argument that the cheque was in order in all aspects exhibits the desperate attempt to escape the charge. This is also not acceptable and it is proved that CSO passed the instrument for payment with the discrepancy. His argument that the cheque was debited and entered in token register by ledger clerk and paid by cashier is not an excuse since he, as BM and passing officer is bound to examine the instrument before passing. I hold the CSO responsible for the violation and hold that the charge is proved.

Charge No.12

From the operation of the account of Arun Sarkar and his group accounts, it is apparently clear that advance has been sanctioned purely to accommodate them with liquid funds without business consideration

IA FINDINGS

>CSO deposed that the facilities were sanctioned to M/s.Arun Sarkar and Associates with due business Considerations. But the way of conduct of the accounts; allowing huge excesses over the sanctioned limits and heavy cash withdrawals; not conducting proper inspection of the goods hypothecated;

purchase of a local cheque of high value with discrepancies and allowing cash withdrawal, and not analyzing and assessing the proper end use are indicative of the dilution and deviations in procedural guidelines of bank for conduct of such business and these lead to the fact that the operations were allowed to accommodate the borrowers with liquid funds. No record is available for having assessed the business needs at any point of allowing excess or heavy cash withdrawals. Deposition of CSO need to be given some consideration. So I hold that the charge is partially proved.

Charge No.17

CSO allowed to operate the accounts of Arun Sarkar and his group accounts when the security held for advances by the Bank are defective

IA FINDINGS

>The contention of CSO needs to be verified in respect of enforceability of EM of flats alleged to be under the possession of Mr.Aru Sarkar and Mrs Bubu Sarkar.

>In the a/c M/s.Arun Sarkar, whether the gift deed in favour of Mr.Arun Sarkar was obtained or not is to be confirmed.

>No record is available for having obtained the RIP for Rs.7.00 lakhs.

>the other claims, i.e. collateral of Rs.0.50 lakhs of RIP for M/s.Sanku Traders and Availability of OTD in the name of Mr Arun Sarkar in IBHL account is to be got confirmed.

>>In the absence of the above, the charge can not be concluded.

33

There is one another feature which has to be alluded to and that is bankers' indemnity claim form. Plaintiff bank has filed a photo copy of bankers indemnity claim form and the same has been marked as Ex.P.3 as

mentioned supra. Obviously, plaintiff bank could only mark a photocopy, as the original claim form would have been kept with the insurance company. Insurance company which has the original has marked the same as Ex.D.1. Mr.Venkatraman, learned counsel for defendant insurance company invited this Commercial Division to make a careful comparison between Ex.D.1 and Ex.P.3 which are original and photocopy of the same claim form filed by defendant insurance company and plaintiff bank respectively. He further submitted that a careful perusal and comparison of the same reveals that column 5 is 'State when and under what circumstances the discovery took place or suspicion was aroused'. In the original, it has been handwritten that 'After Bouncing of cheque of of MKGB', whereas in the photocopy besides this, the name of 'Ranjan Mukhopadhyay' in all capital letters has been added. This certainly is a very disturbing feature is learned defendant counsel's say.

34 With regard to discrepancy between Ex.P.3 and Ex.D.1, i.e., name of Ranjan Mukhopadhyay being interpolated in the photocopy (Ex.P.3) filed by plaintiff bank as it is not there in the original submitted to defendant insurance company which is being marked by insurance company as Ex.D.1, as the court of first instance, the two exhibits were closely and carefully compared / analysed as part of appreciation of documentary evidence by a Court of original jurisdiction / court of first instance. A perusal of the same reveals that Ranjan Mukhopadhyay in capital letters has definitely been written / interpolated after submission of the claim form (Ex.D.1) to defendant insurance company. While there is no doubt on this aspect, a closer and analytical scrutiny of the two exhibits reveals that the name has

not been interpolated for the purpose of column 5 (to be noted, column 5 says 'State when and under what circumstances the discovery took place or suspicion was aroused'), but has been interpolated for the purpose of column 6(i), which reads 'Name and address of the employee'. In other words, plaintiff bank has not attempted to improve its case with regard to circumstances under which suspicion was aroused, as alleged by defendant insurance company. On the contrary, while filling up column 6(i), address of Ranjan Mukhopadhyay being '41C, Banerjee para street, P.O. Uttarpara, Dist-Hooghly, West Bengal' has been written clearly. There is no change with regard to this address. Obviously, while column 6(i) asks for name and address, the person in the plaintiff bank, who filled the claim form, has omitted to give the name and left out the same. On realising this, as column 6(i) asks for name and address of the employee, the name has been interpolated. The fact that there is no change in the address reveals that it is a clerical error, wherein the form asks for name and address of the employee, but only address was given. Subsequently, the name has been given without changing the address. Therefore, this Commercial division has no doubt in its mind that interpolation of Ranjan Mukhopadhyay which is seen in Ex.P.3 (absent in Ex.D.1 original) is certainly not an attempt on the part of plaintiff bank to improve its case with regard to the circumstances under which the discovery took place / suspicion was aroused, so as to bring it directly under dishonesty or in other words to move it away from the realm of negligence and bring it under umbrella of dishonesty. Therefore, while having no two opinions that a large nationalised bank like plaintiff bank has to be careful and cautious in filling the claim form

and should not allow such clerical errors to creep in, it cannot be gainsaid by defendant insurance company that it was done with the intention of bringing the claim directly under dishonesty as internal departmental enquiry was initiated against Ranjan Mukhopadhyay.

35 Having said this, in the light of all that have been alluded to supra, it does not go as far as non suiting the bank. This view is more so because plaintiff bank is dealing with public money. However, though it does not go as far as non suiting the plaintiff bank, it certainly does not entitle the plaintiff bank to make good the loss with future interest which is the plaintiff prayer. In other words, plaintiff bank, considering that they deal with public money, will be entitled to have the loss of little over Rs.1.04 Crores made good, but in the light of the discussion supra, it will not be entitled to future interest on the same. The reason is simple. If bankers' indemnity claim form had been submitted with required level of diligence, if the Branch Manager had been cited as an accused in the criminal complaint, defendant insurance company may well have settled the claim without repudiating / rejecting the same, compelling the bank to file the instant suit. In other words, insurance company cannot be held to be completely at fault in repudiating / rejecting the claim, as it had considered the insurance policy terms very strictly and it did not have the benefit of exemplified details as available before this Commercial Division.

36 As mentioned supra, answering these two issues answers all six issues. In other words, answer to the first question / aspect

(regarding competence of person acting on behalf of bank) answers issue No.5 in favour of plaintiff bank and against defendant. Answering of second question regarding whether it is dishonesty or negligence, answers issue Nos.1,3 and 6 in favour of plaintiff bank and against the insurance company. Answer to issue No.1 being a sequitur, answers issue Nos.3 and 6. Issue No.2 is not in dispute as both parties agree that dishonesty of plaintiff bank employee is certainly covered under the insurance policy. Issue No.4 is residuary in nature and other answers encompass answer to the same.

37 **Conclusion :**

Owing to all that have been set out supra, this Commercial Division comes to the conclusion that plaintiff bank will be entitled to suit claim of Rs.1,04,51,803.00, but without interest. Plaintiff bank will also not be entitled to costs of the suit.

38 **Decision :**

Suit is decreed for a sum of Rs.1,04,51,803.00 without interest and without costs.

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29.01.2019

Speaking order

Index : Yes

vvk

M.SUNDAR, J.

vvk



judgment in
C.S.No.167 of 2011

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