IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 93 of 1997
DATE OF DECISION :- November 13, 2019

Dalip Singh **...Appellant**

Versus

New Bank of India and another **...Respondents**

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Siddharth Grover, Advocate
for Mr. S.S. Narula, Advocate for the appellant.

Mr. Ankit Kaushal, Advocate for the respondent.

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Briefly stated the facts of the case are that plaintiff Dalip Singh had brought a suit for recovery of Rs.30,000/- against defendants i.e. New Bank of India, Tolstoy Marg, New Delhi through its Chairman and Begowal Branch of the said bank, on the assertions that plaintiff had been maintaining a saving bank account No. 902 with defendant bank Branch at Begowal. He had deposited a sum of Rs.20,000/- in that account in the month of January, 1982 and was issued a receipt in that regard but the Cashier Sh. Ram Rattan did not enter the deposit in the ledger account. A criminal case under Sections 409, 467, 420, 468, 471 IPC was registered against Cashier and Manager of the said Branch with Police Station Bholath on 21.4.1982. They were ultimately convicted and sentenced on 25.2.1986.

According to the plaintiff, he called upon the defendants to make payment of Rs.20,000/- to him with interest but to no effect as such he has filed the suit for principal amount of Rs.20,000/- with interest thereon at the rate of 0.5% per month.

On notice, the defendants appeared and filed a written statement contesting the suit raising various legal objections; to wit that, the suit was not within limitation; that the suit was bad for non-joinder of necessary parties since Sh. Ram Rattan the then Cashier to whom the plaintiff alleges to have given Rs.20,000/- has not been impleaded as defendant in the suit. On merits defendants denied that the plaintiff had deposited a sum of Rs.20,000/- in his saving bank account No. 902 by giving that amount to Sh. Ram Ratan, according to them the alleged cash receipt in possession of plaintiff seems to be forged and fictitious documents. Even otherwise if the plaintiff could establish the fact regarding handing over of Rs.20,000/- to Sh.Ram Rattan then he should recover the amount from him and not from the bank since there is no such entry in the account books of the defendants. As regard the criminal case registered against Sh.Ram Rattan, Cashier and Sh.Bhag Singh, Branch Manager, according to the defendants the same was registered on account of shortage of cash as reflected in the cash book of defendant bank and not for embezzlement of Rs.20,000/- of the plaintiff. Refuting the remaining assertions defendants prayed for dismissal of the suit. On pleading of the parties following issues were framed :-

"1. Whether the suit is within limitation?OPP

2. Whether the suit is bad for non-joinder of necessary parties?OPD

3. Whether the plaintiff has deposited the amount of

Rs.20,000 in Bank Account No. 902 with the defendant-Bank as alleged?OPP

4. Whether the plaintiff is entitled to amount in question from the defendant-Bank along with interest, if any?OPP
5. Relief."

The parties were afforded opportunities to lead their respective evidence. During the course of his evidence the plaintiff examined Sh.Bhag Singh as PW1 and got his own statement recorded as PW2. He placed on file certificate issued by the Area Office of the defendant bank as Ex.PA. In rebuttal the defendants examined Sh. Daler Singh as DW1 who placed on record Register Ex.D1 and photo copy of the cash book Ex.D2. After hearing arguments the trial Court decided issue No. 1 in favour of the plaintiff and against defendants and issue No. 2 in favour of plaintiff and against defendants, issues No. 3 and 4 in favour of plaintiff and against defendants. As regard of finding on issues vide detailed judgment dated 11.4.1994 the suit of the plaintiff was decreed for recovery of Rs.30,000/- with costs and interest at the rate of 12% per annum on principal amount of Rs.20,000/- from the date of filing of the suit till date of decree with future interest at the same rate from the date of decree till actual realization.

Feeling dissatisfied with the judgment and decree passed by the Court of Additional Senior Sub Judge Kapurthala, the defendants had brought an appeal before District Judge, Kapurthala which was accepted vide judgment and decree dated 4.12.1995. Resultantly the judgment and decree passed by the trial Court were set aside and the suit filed by the plaintiff was dismissed. Now it was turn of the plaintiff to feel aggrieved and he has knocked the door of this Court by way of filing an appeal, notice of which was given to the defendants respondents who have appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

I find that there is absolutely no merit in the appeal. The judgment passed by the trial Court was based upon wrong analysis of the factual and legal position and the suit of the plaintiff was decreed without any justification. The said wrong was set aside by learned District Judge by way of accepting the appeal. The reasons given by learned District Judge are as follows :-

1. The deposit of money by a person in the bank itself does not amount to trust since there is no obligation on the part of the bank to use the money for depositors benefit as such the bank is not trustee qua the amount of customer i.e. plaintiff in this case.

2. Under Article 22 of the Limitation Act, the limitation for filing the suit is for three years when the demand is made. In this case as per statement of Dalip Singh-plaintiff, he went to the bank in April, 1982 and came to know that the amount was not deposited in his account by Ram, Rattan, therefore, he gained knowledge in the month of April 1982 itself that a fraud had been played upon him and a sum of Rs.20,000/- had not been deposited in his account. Therefore, the plaintiff could file suit for recovery within three years thereof but suit was filed on 8.2.1990, as such was clearly time barred.

3. Ram Rattan, Cashier to whom the amount of Rs.20,000/- was allegedly paid by the plaintiff and who had allegedly issued the receipt in

his own signature was a necessary party in the suit because only he could have explained whether he had issued the receipt and if so then why the amount was not deposited in the account of the plaintiff with the bank. In case he had failed to deposit the amount in the account of plaintiff then he was personally liable for its repayment and bank cannot be made liable for the fraud committed by its cashier with the plaintiff. The suit being bad for non-joinder of necessary party deserves to be dismissed.

4. That Sh. Ram Rattan did not act as an agent of the bank when he had allegedly received a sum of Rs.20,000/- from the plaintiff that hehad done so in his personal capacity playing fraud with the plaintiff and bank cannot be held to be vicariously liable for that amount and further simply on the basis of receipt issued by Ram Rattan, Cashier by playing fraud with the plaintiff it cannot be said that the amount of Rs.20,000/- was received by defendant bank or it is liable to account for the same.

The reasoning given is proper, appropriate and plausible. The impugned judgment passed by District Judge, Kapuprthala does not suffer from any illegality or infirmity rather is based on proper appraisal, appreciation of evidence and correct interpretation of law. No substantial question of law arises in this case.

There is no merit in the appeal, therefore, the same stands dismissed with costs.

(H.S. MADAAN)
JUDGE

November 13, 2019
p.singh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No