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

\+ **W.P.(C) 2144/2016**

GULSHAN GERA & ANR ..... Petitioners

Through: Ms. Amrit Kaur Oberoi with Ms.Sonali S.S. and Ms.Akshita, Advocates.

versus

AXIS BANK LTD. ..... Respondent

Through: Mr.Bharat Sood and Mr. P.S Sudheer, Advocates

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **22.10.2019**

1. This writ petition is directed against an order dated 28th January, 2016 passed by the Debt Recovery Appellate Tribunal ('DRAT') dismissing the Petitioner's Appeal No. 431 of 2015 filed against an order dated 16th February, 2015 passed by the Debt Recovery Tribunal-II ('DRT') allowing TA No. 5 of 2014 filed by the Respondent/Axis Bank Ltd.

2. The background facts are that Petitioner No.2 Gulshan Gera is the sole proprietor of Web Pro System and Services, New Delhi, which is Petitioner No.1 herein. Petitioner No. 2 opened a current account in the name of Petitioner No.1, with the Respondent/Bank on 2nd January, 2004.

3. In July, 2006, in connection with the supply of 1,000 hard disks, the Petitioners received a cheque for the sum of Canadian Dollar ('CAD') 59000.81 from Nile Traders Uganda Ltd. The said cheque was drawn on

Royal Bank of Canada. The Petitioners deposited the said cheque with the Respondent, which honoured it on 29th August, 2006.

4. The Petitioners state that after the cheque was realised, they purchased a thousand hard disks from M/s Mask Marketing Pvt. Ltd. in the value of Rs.20,50,000/-, against two invoices of Rs.10,25,000/- each. The said consignment was dispatched to Nile Traders Uganda Ltd. on 4th September, 2006 and was also delivered there.

5. On 21st October, 2006, the Petitioners received a letter from the Respondent that the aforementioned cheque issued in their favour by Nile Traders Uganda Ltd., drawn on Royal Bank of Canada, was found to be forged and that the cheque had been returned as per the national clearing rules of Canada. The account of Petitioner No.1 was also frozen.

6. The Respondent lodged an FIR against Petitioner No.2 and his sister Ms. Ritu Gera under Sections 420, 406, 467, 468 and 471 of IPC in the Economic Offences Wing ('EOW') on 25th April, 2007. According to the Petitioners, the police investigation revealed that no wrongful gain was made by the Petitioners. It is stated that the police submitted a final report in this regard in the said FIR in the Court of the Additional Chief Metropolitan Magistrate in July, 2011.

7. Meanwhile, on 23rd September, 2009, the Respondent filed OA No. 105 of 2009 before the DRT against the Petitioners and Ms. Ritu Gera, seeking a recovery certificate in the sum of Rs.37,86,854.69 along with interest at the

rate of 18 per cent from 23rd September, 2009 till realisation.

8. This OA was filed under Section 19 of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 (RDDBFI, Act). In para 22 of this application, it was stated that the Respondent/Bank had been defrauded by the Petitioners and Ms. Gera by depositing a forged cheque, pursuant to which, the aforementioned sum of Rs.22,85,538/- was credited to their account.

9. The said OA came to be allowed by the DRT on 16th February, 2015. The DRT concluded that the OA was not barred the limitation and that there was no negligence or deficiency in the services provided by the Respondent/Bank in dealing with the cheque in question.

10. It was held that the Respondent was entitled to recover the amount as claimed in the OA from both Petitioners. However, the OA was dismissed as far as the Respondent's claim against Ms. Ritu Gera was concerned.

11. Aggrieved by the above order by the DRT-II, the Petitioners filed Appeal No. 431 of 2015 before the DRAT. While directing notice to issue in the said appeal, the DRAT directed the Petitioners to deposit 50% of the principal amount payable. That order was challenged in this Court by a writ petition being W.P.(C) No.6261/2015. While disposing of the said writ petition by an order dated 5th August, 2015, this Court directed the Petitioners to deposit Rs.10 lakhs in two instalments, which was to be kept in a fixed deposit.

12. It was contended by the Petitioners before the DRAT that the investigation in the criminal case against them clearly negated the allegations of fraud made against the Petitioners. The DRAT, by the impugned order, upheld the order of the DRT and declined the prayer of the Petitioners for recording additional evidence on the basis of the closure report filed in the FIR.

13. The Petitioners also placed reliance on the decision of the Supreme Court in ***Indian Overseas Bank Ltd. v. Industrial Chain Concern (1991) 1 SCC 484*** to urge before the DRAT that in light of Section 131 of the Negotiable Instruments Act, 1888 (NI Act), the bank should be held to have been negligent in collecting the cheque presented to it.

14. The DRAT held that this was not a case of an odd cheque deposited by the Petitioner which was found to be dishonoured. In all, seven cheques had been deposited in various banks and all were returned dishonoured, whereas the cheque in question was cleared. The DRAT concluded that there was no want of due diligence on the part of the bank when the first cheque which was cleared was returned on 29th September, 2006 for the reason, "no account found on this location". Subsequent cheques that were deposited were dishonoured by the accepting banks themselves.

15. It was held that the banker was not expected to be abnormally suspicious and that if he in good faith and without negligence received payment for a customer and the cheque was one that was crossed generally, he would be able to avail the immunity under Section 131 of the NI Act. The DRAT was

of the view that in the present case, the bank was collecting the cheque merely as an agent of the customer and was entitled to the immunity of under Section 131 of the NI Act.

16. The DRAT also negated the plea of the Petitioners that under Section 72 of the Contract Act, 1872, the Petitioners having parted with money in procuring material which they supplied to the company issuing the forged cheque, cannot be saddled with the liability arising therefrom. In advancing this contention, the Petitioners had placed reliance on the decision in ***Mahabir Kishore v. State of Madhya Pradesh AIR (1990) SCC 313***.

17. The DRAT rejected the above plea by noting that Section 72 of the CA had to be read subject to the doctrine of estoppel. According to the DRAT, once the foreign bank had demanded the money back, the Respondent had no option to honour such a request. The mere fact that the cheque was encashed and money was received would not allow the Petitioners to escape liability.

18. This Court has heard the submission of Ms. Amit Kaur Oberoi, learned counsel appearing for the Petitioner and Mr.Bhart Sood, learned counsel for the Respondent.

19. At the outset, it is required to be noticed that while issuing notice in the present petition on 14th March 2016, this Court noted that the Petitioners had already deposited Rs. 10 lakhs with the Respondent and accordingly, stayed the impugned order.

20. Ms. Oberoi again referred to Section 131 of the NI Act to urge that the bank was not entitled to avoid liability, as the bank was negligent in accepting the cheque in question without conducting due diligence. She submitted that on his part the Petitioner No.2 acted bonafide and had no reason to suspect that the cheque was forged or fabricated.

21. Ms. Oberoi further contended that the Petitioner had parted with goods purchased for valuable consideration utilising the payment so received. She relied on Section 72 of the Contract Act to urge that no liability could be passed on to the Petitioner on account of the negligence of the Respondent/Bank.

22. This Court is unable to accept the above submissions. In present case, the Petitioner is not able to dispute the fact that the cheque in question is a forged one. A cheque that is forged cannot possibly result in valid credit being given to the person in whose favour the cheque is issued, even if the said cheque was mistakenly honoured. Section 118 of the NI Act makes this position abundantly clear. A forged cheque is akin to a forged currency note. The mere fact that it was received bonafide by the person who has supplied the goods will not somehow enable such a person on equitable grounds to retain the proceeds once it is found that the cheque is forged or fabricated.

23. Learned counsel for the Petitioners informs the Court that Nile TradersUganda is untraceable. Indeed, the remedy of the Petitioners is only against the buyer who has duped the Petitioners by paying for the goods supplied by a forged cheque which has no validity in the eye of law. The

bank cannot be made suffer for the loss arising out of honouring such forged cheque.

24. Section 72 of the Contract Act cannot come to the rescue of the Petitioners because the cheque in the present case is a forged instrument, which cannot form the basis of any valid payment. The fact that the Petitioners may have acted bonafide in accepting the cheque would not constitute a valid defence in the facts and circumstances of the case.

25. It may also be noted here that, today, by a separate order passed in W.P.(C) Nos. 3549/2014 and 11334/2015, the Court has in similar circumstances negatived the pleas of the Petitioners in the said petitions, which are no different from the ones raised in the present petition.

26. For the all the above reasons, the Court finds no error having been committed by the DRT or the DRAT in deciding against the Petitioners.

27. The petition is accordingly dismissed. The interim order dated 14th March, 2016, as confirmed on 12th July, 2017, is hereby vacated. No order as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 22, 2019
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