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

\+ **W.P.(C) 4641/2016 and C.M.No.19284/2016 (stay)**

PRS HYGIENE LTD. ..... Petitioner

Through: Mr. Pallav Saxena, Advocate.

versus

AXIS BANK LTD. & ORS. ..... Respondents

Through: Mr. Lovleen Goyal, Advocate for R-1.

Mr. Naresh Kumar Joshi, Advocate for R-5.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **17.10.2019**

1. This is a petition challenging an order 1st February, 2016 of the Debt Recovery Appellate Tribunal ('DRAT'), disposing of the Petitioner's Appeal No.338/2014.

2. The background facts are that the Petitioner/Company, of which Respondent Nos. 2 to 4 are Directors, maintains an account with the Respondent No. 1/Bank. Apparently, the Petitioner and Respondent No.5 had certain business dealings. According to the Petitioner, Respondent No.5 was to manage the central stock point of the goods manufactured and traded by the Petitioner. The Petitioner further claims that it had been agreed with Respondent No. 5 that upon returning the goods lying in its godown or

warehouse to the Petitioner, the Petitioner would refund to Respondent No. 5 the security deposit of Rs. 25 lakhs.

3. The Petitioner claims that without settling the accounts with it, the Respondent No. 5 got a cheque (cheque no. 577505) dated 25th February, 2010 for a sum of Rs.25 lakhs issued from the Petitioner's current account maintained with Respondent No.1 at its Branch office at Panchkula, Haryana. According to the Petitioner, on 24-25th May, 2010 the said cheque was presented to the Respondent No. 1/Bank by ICICI Bank Ltd., the bankers of Respondent No. 5. Admittedly, on that date the credit balance in the Petitioner's account was insufficient to honour the said cheque.

4. On those very dates i.e. 24-25th May, 2010, Respondent No. 1 is stated to have been undergoing some software up-gradation. The cheque was therefore not processed on the day it was presented. Consequently, it was not returned dishonoured within the prescribed period to the presenting bank i.e. ICICI Bank Limited. Under the Uniform Regulations and Rules for Bankers' Clearing Housed, if the drawee bank does return a dishonoured advice within the stipulated period, the presenting bank, in this case, the ICICI Bank Limited, is entitled to assume that the cheque has been duly honoured and can proceed to give credit of the proceeds thereof to the payee. Accordingly, ICICI Bank Limited credited the entire cheque amount to the account of Respondent No. 5 maintained with it. Soon thereafter, Respondent No. 5 is stated to have transferred the said amount to another account maintained by it with HDFC Bank.

5. Respondent No. 1 by a letter dated 7th June, 2010 called upon ICICI Bank

Ltd. to refund the amount for which the cheque in question had been issued. This request was declined by the ICICI Bank Ltd., pointing out that proceeds of the cheques have been since transferred by Respondent No. 5 to another account maintained by it with HDFC Bank.

6. Thereafter, Respondent No. 1 turned to the Petitioner and Respondent Nos. 2 to 4 to refund the said sum of Rs.25 lakhs and issued letters dated 28th September, 2010 and 21 October, 2010. Following this, Respondent No. 1 instituted an original application No. 109/2012 against the Petitioner and Respondent Nos. 2 to 5 before the Debt Recovery Tribunal-II, Delhi ('DRT').

7. By the order dated 9th March, 2015, the DRT allowed the said O.A. As far as the Petitioner was concerned, the DRT directed it to pay a sum of Rs. 34 lakhs with interest @ 18% per annum. The O.A. as against Respondent Nos. 2 to 5 was dismissed.

8. Against the above order, the Petitioner filed Appeal No. 338/2014 before the DRAT which came to be dismissed by impugned order dated 1st February, 2016. The DRAT reversed the finding of the DRT as regards the officials of Respondent No. 1/Bank not having acted negligently. Specifically, the DRAT held the Respondent No. 1 responsible for the negligence "to some extent, not fully, leading to payment". However, it was observed that the Petitioner could not be allowed to escape liability "for issuing cheque fully knowing there was no mount lying to honour the cheque". Respondent No. 1/ Bank was held entitled to recover the sum of Rs.25 lakhs instead of the amount allowed by the DRAT.

9. This Court has heard submission of learned counsel for the Petitioner as well as the Respondents.

10. The submission by learned counsel for the Petitioner that it was Respondent No. 5, which was the beneficiary of the payment, which ought to have been held liable, cannot in the circumstances, be accepted since in these proceedings the claim by Respondent No. 1/Bank is essentially against the Petitioner. The Court enquired from counsel for the Petitioner whether the Petitioner has instituted any proceeding against Respondent No. 5 for recovering the sum of Rs. 25 lakhs, which according to the Petitioner was wrongly encashed by Respondent No. 5. The counsel for the Petitioner was unable to show any document to indicate that soon after the said cheque was issued in favour of Respondent No. 5, the Petitioner wrote to Respondent No. 5 stating that the said cheque had been taken from it by coercion or that the Petitioner instructed Respondent No. 5 in no uncertain terms in writing that the cheque was not meant to be presented. Further counsel for the Petitioner also claimed not to know whether the Petitioner had initiated any criminal proceedings against Respondent No. 5 for the alleged criminal intimidation under which the Petitioner is supposed to have issued the cheque to Respondent No. 5.

11. As far as the claim by Respondent No. 1 against the Petitioner is concerned, the Court finds no reason to interfere with the concurrent findings of the DRT and DRAT, holding the Petitioner to be liable for the wrong credit given in respect of the said cheque in favour of Respondent No. 5. Indeed the Petitioner, knowing fully well that the balance in its

account with Respondent No. 1 was not sufficient to honour the cheque, could not have possibly issued such cheque in favour of Respondent No. 5.

12. It may be noticed at this stage that this Court had at one stage of the present proceedings recorded in its order dated 16th July, 2018 that the Petitioner would be depositing the entire principal amount, less the amount already deposited with DRT, in three equal monthly instalments commencing from 16th August, 2018. Learned counsel for the Petitioner informed the Court that due to financial constraints the Petitioner was unable to honour the above undertaking given to this Court.

13. In the circumstances, the Court finds no reason to interfere with the impugned order of the DRAT. The petition is dismissed. The interim order stands vacated and the application is disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 17, 2019
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