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

Date of Decision: 18.07.2019

+ **RFA No.503/2012**

ICICI BANK LTD. Appellant
Through Mr.RaunakSatpathy, Adv.

versus

GEETA KATHURIA & ORS. Respondents
Through Ms.Anju Bhattacharya, Adv. with
Ms.DeepikaKumari, Adv. for R-1
& 2.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present appeal under Section 96 of the Code of Civil Procedure, 1908, impugns the judgment and decree dated 04.06.2012, passed by the learned Trial Court whereunder the suit of the respondents has been decreed for a sum of Rs.8,17,753/-, along with pendent lite and future interest at the rate of 10% p.a.compounded annually on the decretal amount, w.e.f. 15.09.1998 till the date of realization.

2. The admitted facts which emerge from the record and are necessary for adjudication of the present appeal may be noted at the outset. The respondent nos. 1 and 2, who were both senior citizens, approached the appellant/bank for the issuance of a Fixed Deposit Receipt (FDR) for a sum of Rs.8,00,000/-. The application for issuance of the FDR was signed by both the respondents with a specific request that the FDR be issued in their joint name. Based on their written request, on 05.05.1998 the appellant bank issued an FDR

bearing no.445466, in the joint names of the respondents which was to mature on 03.08.1998. The FDR was encashed by the appellant bank, shortly after its date of maturity, by issuing a pay order in the name of Ms. Geeta Kathuria/respondent no.1, which pay order was deposited in a new bank account opened in the said respondent's name with the Punjab & Sind Bank/respondent no.3. On 11.12.1998, the respondent no.2/husband of respondent no.1, approached the appellant bank to enquire about the interest accruing on the aforesaid FDR, which amount he required for payment of advance tax, and was shocked to learn that the said FDR had already been encashed on 14.09.1998, purportedly on the basis of an alleged authority letter dated 13.11.1998; this letter issued on his letter head was alleged to have been signed by him authorising one Mr. Satish to collect the pay order in the name of the respondent no.1. The respondents denied ever having issued any such authority letter or having opened any new bank account in the Punjab & Sind Bank and, therefore, made a representation to the appellant bank requesting that the entire FDR amount be paid to them.

3. Based on this representation, the appellant bank is stated to have made a complaint with the local police resulting in the registration of FIR No.1105/1998. It further transpires that on the request of the appellant bank, the account in the respondent no.3 Bank, in which the FDR amount had been deposited, was frozen. However, by that time, a sum of Rs.5,00,000/-, already stood withdrawn from the said account by a person unknown to the respondent.

Despite the respondents' repeated requests, the appellant bank did not pay the FDR amount to them, thereby compelling the respondents to file a suit for recovery on the ground that the appellant had been negligent in discharging its duty. This suit of the respondents has been decreed by way of the impugned judgment.

4. Before the learned Trial Court, the main plank of the appellant's defense was that once they had received a specific communication on the letter head of the respondent no.2, alongwith the original FDR, the appellant had no reason not to act on the basis of the said authority letter. It was further urged before the Court that the appellant bank had taken all steps to compare the signature of the respondent no.2 on the said letter with his specimen signature available with the bank and it is only thereafter that the amount was released to the respondents. It was further contended that once the original FDR was tendered to the Bank, it was evident that it was the respondents who had been negligent in not keeping their FDR safely and were, thus, themselves responsible for the loss caused to them.

5. Based on the aforesaid pleadings, the learned Trial Court framed the following issues:-

*"1. Whether the letter of authorization dated 13.09.98 is forged document and whether on aforesaid letter and also on FDR signatures are not of plaintiff? OPP
2. Whether defendant bank had acted diligently and had taken reasonable care while discharging the FDR? OPD*

3. Whether plaintiff is entitled to recover suit amount from defendant bank? OPP

4. Whether plaintiff is entitled to interest, if yes, at what rate and from when? OPP"

6. The learned Trial Court, after considering the respective submissions of the parties and the evidence led before it, compared the signature of the respondent no.2 on the alleged authority letter dated 13.11.1998 with his admitted signature, by exercising its power under Section 73 of the Indian Evidence Act, 1872 and came to the conclusion that there were striking differences between the two which differences were visible even to the naked eye. The relevant extracts of the findings of the learned Trial Court in Paragraph 39 of the impugned judgment are reproduced hereinbelow:-

“(i). in the specimen signatures of the plaintiff no. 2 are in respect of the horizontal line of letter 'T' the horizontal line of 'T' is covering only upto the letters "Til" of the word "Tilak" whereas in Ex. PWI/2 it extends upto the letters "Tila" and is fairly long as compared to the relative size in signatures on the Application for Term Deposits {as a part of Ex. PWI/1(Colly.)}.

“(ii). The formation of letters "aj" in the word "Raj" in Ex.PWI/2 is not tallying with the formation letters "aj" in the word "Raj" in the Application for Term Deposits {as a part of Ex. PWI/1 (Colly.)}.”

7. Based on these findings, the learned Trial Court came to the conclusion that the appellant bank had not acted

diligently and had failed to discharge its duty to act with reasonable care. The learned Trial Court, accordingly, decreed the respondent's suit for a sum of Rs.8,17,753/-,as noted hereinabove, by observing as under:-

"59.In this case, by necessary implication it is manifest on record that the loss or theft of FDR has taken place while it was in possession of the plaintiffs. Thus the negligence of the plaintiffs in securely keeping the FDR is a foregone conclusion. However the payment has to be made by the banker on the strength of the signatures on the instrument of instructions of payment matching with the specimen signatures of the customer maintained by the banker. The obligation to make payment only on the verification of signatures does not in any way get whittled down by the factum that the original FDR has accompanied the letter for payment of FDR. The bank's obligation to compare the signatures does not get waived merely for the reason that the original FDR has been produced before it for payment. The condition precedent for making payment on an instrument is tallying of the signatures of the customer with the specimen signatures kept by the bank. Thus no case of estoppel against the plaintiffs is also made out, albeit the FDR has been stolen due to their own negligence."

8. Impugning the judgment passed by the learned Trial Court in the present appeal, the learned counsel for the appellant raised three primary contentions: the first and foremost being that the learned Trial Court has erred in taking upon itself the task of examining the disputed signatures without making an attempt to take the assistance of handwriting experts. By placing reliance on the decision

in *O. Bharathan Vs. K. Sudhakaran & Anr* (1996) 2 SCC 704, he submits that the Court ought not to have compared the disputed signature on its own, without the assistance of experts, when the signature against which the disputed signature was compared, was itself not admitted between the parties.

9. The next submission of learned counsel for the appellant is that the learned Trial Court has brushed aside the appellant's plea that the respondents were not only taking contrary stands but were, even otherwise, responsible for the situation in which they found themselves as they were guilty of not taking due care in keeping the FDR in safe custody. He submits that the evidence on record clearly shows that, on the one hand, the respondent no.1 stated that she was not aware of the FDR and that it was only her husband/respondent no.2 who was dealing with the same; while on the other hand, the respondent no.2/husband initially took the stand that he was under the impression that the FDR was lying in his drawer but subsequently made a statement that he was not aware as to when the FDR was stolen.

10. The final submission of learned counsel for the appellant is that, in the present case, the appellant bank has acted with due diligence and promptitude and had even lodged a police complaint as soon as the matter was brought to its knowledge. In such circumstances, it could not be stated that the appellant bank was guilty of any negligence. He, therefore, prays that the impugned judgment and decree be set aside.

11. On the other hand, Ms. Anju Bhattacharya, learned counsel for the respondent nos. 1 and 2, while supporting the impugned judgment, submits that not only is the same based on cogent reasons, but the very admission of the appellant that the alleged authority letter was signed by only one of the joint holders of the FDR, in itself, was sufficient to show that the appellant bank had not exercised due care and diligence. The appellant's negligent conduct was evident when it encashed the FDR on the alleged request of only one of the FDR holders and unquestioningly handed over the pay order to the person named in the alleged authority letter. Ms. Bhattacharya submits that even as per the plea of the appellant bank, this authority letter was signed only by the respondent no. 2 and that, on this ground alone, the appeal is liable to be rejected. She further submits that today, the respondents are in their late 80's and are still being deprived of their hard earned money which they had deposited with the appellant bank, considering it to be a reputed bank. She, therefore, prays that the appeal be dismissed with exemplary costs.

12. I have considered the submissions of the learned counsel for the parties and, with their assistance, perused the record. Even though there may be merit in the plea of the learned counsel for the appellant that the Court should normally take the assistance of a hand writing expert before venturing into the task of examining disputed signatures on its own; but in the present case, I find that the appellant never confronted the respondent no. 2, when he appeared in the witness box as PW-1, on the aspect of his signatures on the

application for term deposit and the alleged authority letter being the same. Thus, the respondents' plea that the signatures on the authority letter were not that of the respondent no.2 remained virtually uncontroverted. In these circumstances, there was no reason for the learned Trial Court to get the opinion of a hand writing expert and, therefore, the examination of the disputed signatures by the Court itself, could not be faulted.

13. In so far as the second submission of the learned counsel for the appellant, regarding contradictions in the respondents' statements and their alleged negligence is concerned, the same needs to be noted only to be rejected. Having perused the evidence on record, I do not find any contradiction at all in the statements of the respondents as it is evident that when the respondent no.2 visited the appellant bank in December 1998, he was under the genuine presumption that the FDR in question was lying in his drawer and the factum of it being stolen came to his knowledge only subsequently. I do not find any merit in the appellant's submission that the financial loss has been caused to the respondents owing to their own negligence as the learned Trial Court rightly came to the conclusion that it is the appellant Bank which had encashed the FDR without properly comparing the signature on the alleged authority letter with the specimen signature of the respondent no. 2. It is, thus, evident that the appellant failed to exercise due care while encashing the FDR.

14. I am unable to agree with the submission of the learned counsel for the appellant that the appellant bank had

acted diligently as it filed the police complaint immediately upon receiving the respondents' representation regarding the fraudulent encashment of the FDR. In my view, the requirement to act with due diligence was at the stage of encashment of the FDR and not at the belated stage when the FDR had already been encashed fraudulently due to the appellant's negligence.

15. However, there is yet another reason as to why the appeal is liable to be rejected. In the light of the admitted position that the letter dated 13.09.1998, which is the only plank of the appellant's defence, was allegedly signed by the respondent no.2 alone, who was only one of the joint holders of the FDR; there was, admittedly, no authorisation from respondent no. 1 to encash the FDR yet the same was encashed.

16. I have put to the learned counsel for the appellant as to whether there were any rules which permitted the appellant bank to release the amount in a joint FDR, on the basis of the request of only one of the FDR holders, but received no satisfactory reply thereto from the learned counsel who submits that no such rules are available. It appears that the appellant has overlooked the fact that the fixed deposit in question was not set up to be payable to 'Either or Survivor' but had been issued in the joint name of both the respondents on the basis of a joint application signed by the both of them and, therefore, could be encashed only at their joint request. Despite this knowledge, the decision of the appellant bank to encash the FDR at the alleged request of only one of the respondents/FDR-holders, in itself, shows gross negligence

and casualness on its part. In my view, once there was a joint FDR, there was absolutely no reason as to why the appellant bank should have acted on the alleged request of one of the owners. The appellant, who claims to be a reputed bank, ought to have taken due care and could not have acted merely on the basis of an alleged authority letter signed by one of the joint holders of the FDR when the nature of the deposit was admittedly joint thereby requiring the signatures of both the FDR-holders for its encashment.

17. For the aforesaid reasons, the appeal being meritless is dismissed with no order as to costs.

18. At this stage, I am informed that though the entire decretal amount has been deposited in this Court, the respondent nos. 1 and 2 have, pursuant to the orders passed by this Court during the pendency of the present proceedings, already received a sum of Rs.5,94,865.50/- from the respondent no. 3 in February 2019, which amount would have to be set off from the decretal amount payable to the respondents.

19. In view of the aforesaid position, the learned counsel for the respondents submits that the respondent nos. 1 and 2 undertake to refund the aforesaid amount of Rs.5,94,865.50/- along with simple interest at the rate of 10% per annum to the appellant bank w.e.f. February, 2019, immediately upon receiving the decretal amount.

20. The Registry is directed to release the decretal amount, as deposited by the appellant, along with up-to-date accrued interests thereon in favour of the respondents, who will then pay the amount as set out in Paragraph 19

hereinabove to the appellant within a period of 2 weeks from the date of receiving the decretal amount.

21. The appeal is disposed of in the aforesaid terms.

REKHA PALLI, J

JULY 18, 2019/aa

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