IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

133 RSA-158-2021 (O&M)
Date of decision: 22.03.2021

BANK OF INDIA ... Appellant

Versus

P.N KHANNA AND ORS ... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Ranjan Lohan, Advocate for the appellant.

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ANIL KSHETARPAL, J. (Oral)

Appellant/defendant No.1-Bank of India has filed this regular second appeal against the concurrent findings of fact arrived at by the Courts below. The plaintiff-PN Khanna was having two accounts, one in the Allahabad Bank and second in the Bank of India. In the Bank of India, he had an overdraft account having a limit of Rs.20,00,000/- against a mortgage of his residential property. In order to get his mortgaged property released he decided to pay up the overdraft account in the Bank of India and accordingly, he issued a cheque amounting to Rs.8,16,000/- drawn on the Allahabad Bank for collection in the Bank of India. The counter slip for deposit of the cheque was issued and the cheque was dropped in the drop box. However, the cheque was stolen from the drop box and after making certain alterations, the cheque was encashed for a sum of Rs.28,16,000/-. This amount was credited in the account of Sh. Satnam Singh having an account in the State Bank of India. The appellant-Bank does not dispute that the cheque in question was stolen from its premises.

Keeping in view the aforesaid facts, both the Courts decreed the suit filed by the plaintiff and the defendant No.1-appellant has been made liable to pay a sum of Rs.28,16,000/- along with an interest @ 9% per annum w.e.f. 25.06.2014 till the date of judgment and a future interest @ 6% per annum on the defaulted outstanding amount till the date of actual realisation.

Learned counsel appearing for the appellant contends that the cheque in question was no doubt stolen from the drop box of the appellant-Bank, however, the remaining two banks i.e. the Allahabad Bank as well as the State Bank of India encashed the cheque although it was forged and therefore, the State Bank of India as well as the Allahabad Bank should have been held contributory liable.

This Court has considered the submissions. It may be noted here that the learned Trial Court on the basis of the pleadings of the parties, framed the following issues:-

1. Whether plaintiff is entitled for declaration as prayed for?OPP
2. Whether the plaintiff is entitled for grant of mandatory injunction as prayed for?OPP
3. Whether the plaintiff is entitled for recovery of Rs.22,55,000/- as prayed for?OPP
4. Whether plaintiff is entitled to recover damages amounting to Rs.15 lakh due to loss suffered by plaintiff?OPP
5. Whether preset suit is not maintainable?OPD
6. Relief.

The learned First Appellate Court has held that the appellant-

Bank had filed a complaint that day 2-3 other cheques were also stolen from its premises. First Appellate Court and the Court of 2nd appeal i.e. this Court is of the view that it was the appellant-Bank which was negligent in handling the cheque by failing to protect the custody of the cheque presented for encashment. Still further, the First Appellate Court has already observed that the appellant-Bank has no defence against the case of the plaintiff. However, as regards *inter se* liability, the appellant can have avail a separate remedy as already observed by the First Appellate Court. Keeping in view the aforesaid observations, this Court does not find any error in the concurrent findings of fact arrived at by the Courts below.

Dismissed.

22.03.2021 **(ANIL KSHETARPAL)**

ashok **JUDGE**

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No