IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1097 OF 1996

The Abhyudaya Co-operative Bank
Limited, Mumbai – 400 010 …. Appellant
v/s.
M/s. Punamchand Brijlal Rawal and Co.,
and ors. …. Respondents

Mr. K.B. Adyanthaya for the Appellant.
None for the Respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 17th NOVEMBER, 2022.

P. C. :-

. The Appellant has challenged the judgment and decree dated 22/12/1995 passed by the learned Judge, City Civil Court, Bombay in S.C. Suit No.4913/1982. By the impugned judgment, the learned Judge decreed the suit and directed the Appellant and Respondent No.3 jointly and severally to pay to Respondent No.1 – Plaintiff an amount of Rs.16,000/- with interest @ 18% p.a. on Rs.13,625/- from 23/08/1982 till final realization. The Appellant was directed to reimburse the Respondent No.3 in the event of recovery of the decreetal amount from the defendant no.3 in execution of the decree or otherwise.

2. The Respondent No.1, a partnership firm was the Plaintiff in the suit and shall be hereinafter referred to as 'the Plaintiff'. The Plaintiff is a dealer in grocery, grains and oils. The Plaintiff had purchased a Demand Draft bearing No.DL/Am-046408 for Rs.13,625/- from the Defendant No.3 – State Bank of India in favour of Respondent No.4 (Defendant No.4), a partnership firm, dealer in edible oils. The said draft was made payable to 'Payees Account' only. The Plaintiff forwarded the said Demand Draft to Defendant No.4 under their covering letter No.184 dated 03/09/1981. The Defendant No.4 did not receive the Demand Draft. The Plaintiff informed the Defendant No.3 (State Bank of India), Igatpuri that the said demand draft was not received by the Defendant No.4 – payee and requested to stop payment and to issue duplicate draft in lieu thereof. Subsequently, the Defendant No.3 informed the Plaintiff that the said draft for Rs.13,625/- was presented by the Appellant (Defendant No.1) through clearing and was paid on 09/09/1981. The Plaintiff learnt that Defendant No.1 had collected an amount of Rs.13,625/-. The Plaintiff inquired with Defendant No.4 and sought name and address of the person on whose behalf the said Demand Draft was collected. The Appellant declined to give such information and hence, criminal

complaint came to be registered against the Defendant No.1.

3. By notice dated 06/03/1982, the Plaintiff called upon the Defendant No.1 to pay Rs.13,625/- being the value of the demand draft with interest @ 18% p.a. The Defendant No.1 – Bank informed the Plaintiff that the proceeds were credited to the account of M/s. Rasik Oil Trading Company but declined to divulge further details. The Plaintiff subsequently learnt that in collusion with Defendant No.2, the Defendant No.1 permitted Defendant No.2 – Rasiklal Manubhai Shah to open an account in a false and fictitious name of M/s. Rasiklal Oil Trading Company and paid the said amount to the Defendant No.2. The Plaintiff alleged that the said account was opened only to collect the money. The Defendant No.1 malafidely and negligently allowed Defendant No.2 to withdraw the said amount.

4. The Defendant No.1 admitted having collected the amount from the State Bank of India. The Defendant No.1 also admitted having deposited the said amount in the account of Defendant No.2. The Defendant No.1 has stated that the account in the name of Defendant No.2 was recommended by one of its old clients and the account was opened at Darukhana Branch with due and proper care. Defendant

No.1 contended that it had merely acted as collecting agent for Defendant No.2 and therefore denied its liability to pay the amount.

5. Learned Judge after analyzing the evidence, held that the Plaintiff had proved that the demand draft was received by the Defendant no.1 – Bank and it was paid to the Defendant No.2. Learned Judge failed to exercise due care and caution in permitting the Defendant No.2 to open the account and withdraw the amount. Learned Judge, therefore, held that the Defendant No.1 is liable to repay the said amount of Rs.13,625/- to the Plaintiff with interest. Being aggrieved by this judgment, the Defendant No.1 has preferred this Appeal.

6. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

7. It is not in dispute that the Plaintiff had purchased Demand Draft of Rs.13,625/- from the Defendant No.3 which was payable to Defendant No.4. It is also not in dispute that the demand draft payable to Defendant No.4 was received by Defendant No.1 and the said amount was paid to Defendant No.2. The Trial Court has analyzed the evidence in depth and has held that the Appellant – Bank was negligent

in allowing the Defendant No.2 to open an account in a fictitious name. It is further held that the Defendant No.2 was allowed to open the said account without verifying the signature. Learned Judge rejected the plea of exercise of due care and caution and attributed negligence to Defendant No.2 in opening the account and making the payment to Defendant No.2. The findings recorded by the Trial Court as regards negligence on the part of the Appellant – Bank do not warrant any interference.

8. Under the circumstances, I do not find any merit in the Appeal and is accordingly dismissed. The amount deposited by the Appellant – Bank, be paid to the Plaintiff with interest accrued thereon.

PREETI H JAYANI

Digitally signed by PREETI H JAYANI
Date: 2022.11.30 11:26:05 +0530

(SMT. ANUJA PRABHUDESSAI, J.)