IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 217 OF 2021

Union Bank of India ….Petitioner

V/s.

HDFC Bank Ltd. …Respondent

Mr. Jamshed Ansari for Petitioner
Mr. Sandesh Shukla a/w Mr. Amit Singh i/b Abhav Nevagi & Associates for Respondent
Mr. Pradeepkumar Nair, Deputy Vice President, HDFC Bank, present.

CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ
DATED : 19th AUGUST 2022

P.C. :

1 Petitioner is impugning an order dated 7th January 2020 passed in Appeal No.282 of 2007 and order dated 26th February 2007 passed in OA No.1444 of 2000.

2 Corporation Bank Ltd, which by a scheme of merger got merged with petitioner, had issued three demand drafts through its Mylapore branch, Chennai, in favour of one V. S. Shridharan. Two demand drafts were for Rs.8/- each only and the third demand draft was for Rs.811/-. The demand drafts were issued in favour of one M/s. C.S.S. Enterprises of Mumbai. Respondent's Santacruz Branch at Mumbai, as collecting bank for said M/s C.S.S. Enterprises, presented one demand draft bearing no.121824 for Rs.8/- only, (the said demand draft) through Canara Bank, Fort Main Branch, Mumbai with whom respondent's Santacruz Bank had clearing

arrangements. Counsel clarify that the collecting bankers were originally Times Bank Ltd., which later merged with Respondent-HDFC Bank. According to petitioner, the said demand draft which was only for Rs.8/- got materially altered to Rs.8,92,200/-. According to petitioner, petitioner's drawee branch cleared the altered draft in the normal course of its business without having any reasonable doubt whatsoever and without realising the fact that the said draft was materially altered and respondent collected a sum of Rs.892200/- from petitioner's drawee branch.

3 It is petitioner's case that almost three months later, during inter branch reconciliation process sometime on or about 2nd November 1996, petitioner noticed the said alteration and realised that a fraud has been perpetrated and under the said altered draft huge amount has been collected fraudulently through respondent's branch. Petitioner thereafter filed a suit against respondent, which matter got transferred to DRT. The allegations against respondent was that the amount came to be paid due to gross negligence on the part of respondent and respondent ought to have realised that the said draft was materially altered and should not have accepted the draft or presented it for payment to petitioner. It was petitioner's case that it was this negligence on the part of respondent that petitioner suffered a loss in the sum of Rs.8,92,192/- and respondent was bound and liable to pay the same to petitioner. Of course, the amount claimed in the recovery action was Rs.12,67,808/- that included interest @ 21.25% p.a.

4 On 15th November 1996, petitioner also filed a complaint with the Economic Offences Wing of CBI and notice was also issued to respondent and respondent replied to the notice admitting having collected the amount of Rs.8,92,200/- but denied that there was negligence on its part or any amount was payable by respondent to petitioner. The suit filed by petitioner came to be transferred to the DRT in which, respondent also filed its written statement. Respondent's defence was, there was no negligence on its part and it was the duty of petitioner to take due care, caution, do proper scrutiny at the time of clearance and payment for that draft. Respondent's defence also stated the payment of that draft was cleared, made by petitioner and its amount was credited to the concerned account and petitioner to cure its own mistake cannot blame respondent.

5. Petitioner's claim before the DRT came to be rejected by an order dated 26th February 2007 which is also impugned in this petition. In the said order, the DRT, in our view, very correctly concluded that, petitioner, to prove its claim against respondent, was bound and required to prove that the loss to petitioner happened due to negligence on the part of respondent. In the application before DRT and also in this petition in paragraph 7 it is petitioner's case that it bonafidely cleared the altered draft in its normal course of business without having reasonable doubt whatsoever and without realising the fact that the said draft was materially altered. The DRT correctly concluded that by this petitioner admits that the draft did not appear to be doubtful and hence is encashed in the normal course of

business. This also indicates that at the relevant time, the draft could not have created any doubt in the mind of respondent's officers, otherwise petitioner itself would not have cleared the draft and made payment. The DRT concluded that there is nothing on record to the effect that the alleged loss to petitioner happened due to negligence on the part of respondent.

6 Petitioner impugned the said order dated 26th February 2007 before the DRAT, which dismissed the appeal and upheld the findings of the DRT. In fact, before the DRAT, petitioner has admitted that they have not been successful in proving negligence on the part of respondent because petitioner requested DRAT to remand the matter back to DRT to permit petitioner to lead evidence / additional evidence to cure its defect of not having proved negligence on the part of respondent. Having considered the order of DRT and DRAT impugned in this petition, we cannot accept Mr. Ansari's contention that there was any error in the two orders passed that required intervention of this court.

7 Another point which was raised before the DRAT was that respondent was entitled to the protection under Section 131 of Negotiable Instruments Act 1881 where a banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment. In our view, we do not have to go into this aspect since petitioner has failed to prove any negligence on the part of respondent

particularly, when petitioner itself cleared the altered draft in normal course of business without having any reasonable doubt whatsoever and without realising the fact that the draft was materially altered.

8 Petition therefore, dismissed.

9 Mr. Shukla is justified in pressing for cost. Mr. Shukla requests that petitioner be directed to pay some cost to any charity. Petitioner is directed to pay a sum of Rs.25,000/- to Kirtikar Law Library, Appellate Side, High Court, Mumbai and this amount shall be paid within four weeks from today under advise to respondent's advocate. If the amount is not paid, respondent's advocate is at liberty to move this court for directions.

(A. S. DOCTOR, J.) **(K.R. SHRIRAM, J.)**