IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.11.2021

PRONOUNCED ON : 08.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

A.S.NO.956 OF 2008

(Through Video Conferencing)

The Central Bank of India,
Royapettah Branch,
Represented by its Senior Manager,
Chennai - 600 014. ... Appellant/Plaintiff

.Vs.

1. R.K.Sales Enterprises,
   Represented by its
   Proprietrix Chintamani Devi,
   Chennai - 600 014.

2. Ms.Chintamani Devi,
   R.K.Sales Enterprises,
   5, Chella Pillaiyar Koil Street,
   II Lane, Royapettah,
   Chennai - 600 014. ... Respondents/Defendants

PRAYER:-

This Appeal Suit has been filed under Section 96 of CPC, against the Judgment and decree, dated 25.02.2008 made in O.S.No.270 of 2007, by the III Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.S.Patrick
For Mr.K.Rajasekaran Associates

For Respondents Nos.1 & 2 : Mr.K.V.Bhashyam Chari

JUDGEMENT

1. This Appeal Suit has been filed, against the judgement and decree, dated 25.02.2008 made in OS.No.270 of 2007 by the III Additional Judge, City Civil Court, at Chennai.

2. The case of the Plaintiff, as set out, in the plaint is that the Plaintiff is the Commercial Bank and the 1st Defendant is the Proprietrix Firm and the 2nd Defendant is its Proprietrix. The 1st Defendant is maintaining a Current Deposit Account, bearing 101002 A/c.No.101002 with the Plaintiff. On 28.04.2006, the Defendants had presented a cheque, bearing No.1759061 drawn on Credit Industrial et-Commercial, issued by one M/s.DOU-DA Trading Company Limited, Kampala, Uganda, for a sum of Euro 14,800/- payable at Paris, stating that the said cheque was given towards the sale consideration of Samsung Monitors. The cheque amount of Rs.8,62,000/- was credited to that account, under Reserve, on 05.06.2006. When the Plaintiff had sent the cheque to the International Bank, namely, Banca Nazionale Del Lavero. Ero.Ali, BNL H.O, Rome, the cheque was returned on the ground of "Fraudulent Use" and it was immediately was informed to the Defendants through Phone call and a letter dated, 24.06.2008. There was a debit balance of Rs.7,56,000/-, which was earmarked by the Plaintiff as the credit balance in the account on 24.06.2006. The amount of Rs.7,50,000/- was credited to the Defendants' account as "credit under reserve". So, the defendants had to repay the amount of Rs.8,10,529.70/- with interest to the Plaintiff. In spite of many reminders sent to them, the Defendants did not come forward to pay the said amount. Hence, a legal notice, dated 16.08.2006 was issued to the Defendants, to which a reply was sent with false allegations. In such circumstances, contending that even if the amount was credited to the account of the defendant, it may be reversed or deducted from the account, in case if there is any dishonour of cheque for any reason, the suit had been filed, for recovery of a sum of Rs.8,10,529.70/- with interest of 12% p.a.

3. The case of the Defendants, as set out in the written statement, is that the Defendant Concern is having a Current Account in the Plaintiff Bank, bearing Current Account No.101002. The cheque was presented on 28.04.2006 with the Plaintiff for encashment. The Defendants did not avail any loan from the Plaintiff or any reserve credit amount towards the cheque sent for collection and they presented the cheque for encashment under the normal procedure. On 05.06.2006, the Plaintiff had given credit to their account for a sum of Rs.8,59,219/-. Between 05.06.2006 and 19.06.2006, there was no communication from the Plaintiff. A communication dated

24.06.2006, alleging that the instrument presented by them was dishonoured, was received from the Plaintiff. The Plaintiff did not return the original instrument or the memo, specifying the reason for the alleged return to follow the issue with the Importer based in Uganda. The Plaintiff did not reply for their letter dated, 11.08.2006. The Plaintiff Bank had encashed the cheque and now coming out with a different story to make a false claim against them. Because of the negligent act of the Bank Officials, the Defendants were put to loss of consignment, loss of value of the cheque, loss of reputation, loss towards demurrage, freight and handling charges. The Officials of the Plaintiff Bank, having realised their negligent acts and lapse committed by them, in order to avoid their personal liability for the loss caused to the Defendants, the suit had been filed, making a frivolous claim. The averment that the cheque was returned for the reason "Fraudulent Use". They never sought for crediting of the amount under reserve. The Plaintiff Bank had manipulated the accounts and claimed that there was a debit balance of Rs.7,56,000/- In such circumstances, the suit is liable to be dismissed.

4. On the pleadings of the Parties, issues were framed by the Trial Court. Before the Trial Court, on the side of the Plaintiff, Ex.A.1 to Ex.A.11 were marked and PW.1 was examined. On the side of the Defendants, Ex.B1 to Ex.B10 were marked and DW.1 was examined. Since, the Trial Court had dismissed the suit, this Appeal Suit has been filed by the Plaintiff.

5. This Court heard the submissions of the learned counsel on either side.

6. The learned counsel for the Appellant has submitted that the cheque presented by the Defendants was encashed and credited to the Account of the Defendants and that later, it was found that the said cheque was a fraudulent cheque, which was immediately intimated to the Defendants and that if for any reason the cheque was dishonoured, the beneficiary of the cheque is liable to the pay the cheque amount with interest and hence, the court below ought to have decreed the suit, as prayed for.

7. The learned counsel for the Respondents would submit that they were not informed immediately, because of the negligence on the part of the Bank Officials, which resulted in loss of consignment, loss of value of the cheque, loss of reputation, loss towards demur rage, freight and handling charges and that only to safe guard their Officials, they had made a false claim and that the Defendants did not seek any credit under reserve from the Bank. He would further submit that though they received the information about the returned cheque on 08.06.2006, intimation was given to them only on 24.06.2006 and

that if they would have intimated earlier, the Defendants would not have suffered much loss and that the Plaintiff, having encashed the cheques has come with a new story and in such circumstances, he would pray for dismissal of the suit. He would rely on the decisions reported in AIR 2014 SC 3206 (Metro Exporters Pvt. Limited Vs. State Bank of India) and AIR 1978 Calcutta 169 (United Bank of India Limited Vs. M/s.A.T.Ali Hussain and Co.).

8. This Court considered the rival submissions of the learned counsel on either side and also perused the materials available on record.

9. It is not in dispute that the Defendants had maintained a Current Account, bearing A/c.No.101002, with the Plaintiff Bank. As per Ex.A2, the Defendants had deposited Ex.A1 cheque on 28.04.2006. Admittedly, it was cleared and a sum of Rs.8,59,219/- was given credit in Account No.101002 on 05.06.2006 and the said amount was also withdrawn by the Defendants. Ex.A7 is the remittance challan, dated 29.04.2006, sent to the Foreign Bank at Rome, along with the said Cheque. Ex.A9 is the email, dated 08.06.2006 received from the Banca Nazionale Del Lavord, Rome, stating that the cheque was unpaid for the reason "Fraudulent Use". By letter dated, 24.06.2006, the Defendants were informed that they said cheque was dishonoured, with an endorsement "Fraudulent Use".

10. According to the Plaintiff, the Defendants are liable to pay the suit claim with interest, since if for any reason the cheque was dishonoured, they are entitled to recover the said amount deposited under reserve, from the beneficiary of the cheque. It is the stand of the Defendants that they did not sought any amount under reserve credit and since the Plaintiff had encashed it, the claim made by them is false.

11. It is pertinent to note that public money is involved in this case. After analysing the entire evidence, the court below had found that the cheque in question was a fraudulent one. However, finding so, the court below had held that the Plaintiff did not prove that the said cheque in question was sent for collection and consequently, dismissed the suit. Such a conclusion, in the opinion of this Court, is erroneous, since as per Ex.A9, email, it is established that the cheque Ex.A1 was returned for the reason "Fraudulent Use'. Having received the cheque amount from the Plaintiff Bank and when it was not realised by the Plaintiff Bank, for the reason that the cheque was returned with an endorsement "Fraudulent Use", the Defendants are liable to pay the suit claim with interest as prayed for. The court below has miserably failed to consider the said aspect and erroneously dismissed the suit, without

considering the said evidence and hence, the impugned judgement is liable to be set aside. However, it is for the Defendants to proceed against the Firm, which issued the fraudulent cheque, in accordance with law.

12. In fine, this Appeal Suit is allowed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Srcm

To

The III Additional Judge,
City Civil Court,
Chennai.

+1cc to Mr.K.V.Bhashyam Chari, Advocate, S.R.No.8121

A.S.NO.956 OF 2008

PPA(CO)
PBS/17/05/2022