04.07.2023.
Item no. 15.
Court No. 13
ap

F.A. No. 9 of 2011

UCO Bank & Ors.
Versus
Sk. Rahamat Ali

Mr. Dilip Kumar Kundu,
Mr. Arjun Basu.
...For the Appellants.
Mr. Golam Mastafa,
Mr. T. Samanto,
Mr. Arshad Hussain.
...For the respondent.

1. The appeal is directed against the judgment and decree dated 18th March, 2010 passed by the learned Judge, 7th Bench, City Civil Court at Calcutta in Title Suit No. 495 of 2006.

2. The facts relevant for the instant appeal are that the respondent Sk. Rahamat Ali filed a suit being Title Suit No. 495 of 2006 claiming a sum of Rs.3,00,000/- from the defendant/appellant UCO Bank.

3. The respondent/plaintiff is stated to have opened a Savings Bank Account with the Debhog Branch of the appellant at Balasore in Odisha on 9th February, 2001 being Savings Bank Account No. 3189. There was allegedly a credit balance of sum of Rs.3,00,000/- as revealed from the passbook.

4. Subsequently, the plaintiff/respondent opened an account with the Barasat Branch of the UCO Bank in West Bengal being No. 13235. The

respondent/plaintiff requested the Bank to transfer all sums of money lying in Savings Bank Account No. 3189 at Debhog Brach to Savings Account No. 13235 at Barasat Branch.

5. The respondent/plaintiff produced a passbook issued by Debhog Branch indicating a sum of Rs.3,00,000/- lying to his credit. The Barasat Branch of UCO Bank addressed a communication to Debhog Branch asking for transfer of funds.

6. The Debhog Branch of the Bank replied that there is a serious discrepancy between the amount stated in the respondent's passbook and the actual ledger in Debhog Branch. The Branch had only a sum of Rs.30,000/- lying to the credit of the plaintiff/respondent. The plaintiff was informed as such by letter dated 06.04.2001 by the Barasat Branch.

7. The UCO Bank refused to pay a sum of Rs.3,00,000/- to the plaintiff/respondent.

8. The plaintiff filed a writ petition before this Court that was disposed of by a judgment and order dated 7th September, 2005 being W.P. No. 19265 (W) of 2001. The Writ Court permitted the plaintiff/respondent to withdraw a sum of Rs.30,000/- that was lying deposited with this Court. The plaintiff/respondent was further directed to file a civil suit since disputed

questions of fact could not be adjudicated under Article 226 of the Constitution of India.

9. Accordingly, the plaintiff/respondent filed a suit. The Bank also filed a written statement. The plaintiff examined one witness and the Bank has examined one witness, who was the Branch Manager of Debhog Branch in Balasore District of Odisha.

10. The learned Court below found that the evidence of the Bank's witness unreliable because its sole witness could not identify the name of the person, who had made entries in the passbook of the plaintiff.

11. The Court below also found as follows:-

a) The plaintiff/respondent was a rustic citizen.

b) The cash deposit slip produced by the bank was not believable.

c) The bank witness has deposed childishly since he could not identify the person who issued the passbook.

d) The first page of the passbook was admittedly issued by the bank so the entirety of the passbook is sacrosanct.

e) The Court could not accept that some pages of passbook were torn.

f) The person who signed on the pay in slip Rs.30,000/-, the entry makers in the ledger, cash receipt book and cash scroll book have not been produced by the bank, as witnesses.

g) The same person who made entry in the passbook of Rs. 3 lacs has also made entries in the bank's ledger for Rs.30,000/-.

h) There is no interpolation in the passbook.

i) There are no computerized entries in the Debhog Branch passbook as there are in the Barasat Branch passbook.

j) There are unexplained red marks in the cash receipt register of the bank.

k) There is a different ink used in the last column showing entry of Rs.30,000/-.

l) The cash scroll register shows page nos. 38 and 39 missing.

m) The bank's witness has named two different persons as introducers to the Debhog Branch account of the plaintiff/respondent.

12. What appears to have been vitally ignored by the Court below is that some portions of the passbook, have been torn out, the only entry in the entire passbook apart from the opening page is an alleged credit entry of Rs.3,00,000/-.

13. The ledger of the Debhog Branch of the Bank has been produced in evidence. The ledger indicates only one entry in the plaintiff's account of a cash deposit and a balance of Rs.30,000/-.

14. The cash receipt book and the cash transfer scroll book clearly indicate only an entry of

Rs.30,000/-. The difference in ink in the subject entry with other entries; non-identification of the issuer employee of the passbook; non-production of the person who made the entries in the pay in slip of Rs.30,000/- the cash receipt and scroll books may at best indicate minor irregularities on the part of the appellant bank. They would not prove the case of the plaintiff/respondent.

15. Bank employees are transferable. It may not be possible for a manager of the year 2010 to remember the name of a clerk who made entries in the pay in slip and ledgers in the year 2001. The trial judge therefore erred in holding the above omissions against the bank and accepting the claim of the plaintiff.

16. The trial judge further erred in holding the entire passbook sacrosanct merely because the first page was official and valid. An entry in a manually written passbook is valid only if it matches with the corresponding ledgers in the bank. There is overwhelming evidence on the part of the appellant bank that the plaintiff/respondent only had Rs.30,000/- in his account at Balasore, that too deposited in cash. The plaintiff is a trader in prawns. By no stretch of imagination can it be said that he is rustic. There is no evidence to indicate that he is illiterate. Even as on 2001 most rural branches of many bank had manual entries. It is possible that the

name of the introducer could not recollected by the bank's witness. There is no evidence on record as to the source of the funds of the plaintiff.

17. This Court has carefully scrutinized the original ledger, cash receipt book and cash scroll book of the Bank. The red pen entries in the cash receipt book and scroll book are made by supervising officers or auditors both internal and external. This is normal banking practice.

18. As already stated hereinabove the above minor omissions cannot lead to the defense of the bank being rejected or make the claim of the plaintiff sacrosanct.

19. The ld. Trial Judge appears to have been swayed away by the observations of the High Court in the order dated 7th September, 2005 being W.P. No. 19265 (W) of 2001.

20. In the backdrop of the above, this Court is of the unequivocal view that the plaintiff has not proved his case in the Court below. The vital evidence produced by the Bank has not been effectively assessed or taken into consideration by the Court below. All the ledger entries of the banks clearly indicate the transactions inconsistent with a credit entry of Rs.3,00,000/-. A mistake or some foul play in entry in the passbook produced by the plaintiff/respondent cannot be ruled out.

21. The decree impugned in the instant appeal, therefore, cannot be sustained.

22. There is yet another question that comes to the mind of this Court. The plaintiff/respondent has impleaded the General Manager (Operation-II), UCO Bank, 10, Brabourne Road, Kolkata – 700 001. Admittedly the Headquarter of UCO Bank is also located at the same address.

23. Merely because a Head Office of the bank of a defendant is located in Kolkata, it cannot confer territorial jurisdiction in respect of a suit on a Court. No part of the cause of action of the plaintiff as pleaded in the plaint has occurred within the territorial jurisdiction of the City Civil Court at Calcutta. If at all, the competent Court to receive, entertain and try the suit is the District Court at Barasat which has territorial jurisdiction. The decision of the Supreme Court in the case of **Morgan Stanley Mutual Fund Vs. Kartick Das** reported in **(1994) 4 SCC 225** is relevant in the facts of the case.

24. This Court does not wish to pronounce upon territorial jurisdiction as the decree itself has been found to be erroneous and unsustainable on merits.

25. In view of the above, the impugned judgment and decree dated 18th March, 2010 passed by the learned Judge, 7th Court, City Civil Court at Calcutta

in Title Suit No. 495 of 2006 shall stand set aside. Title Suit No. 495 of 2006 shall stand dismissed.

26. UCO Bank shall be entitled to apply before the learned Registrar General of this Court to withdraw the entire decretal amount together with any accrued interest. If any such application is made in terms of this decree within a period of ten days from this date, the learned Registrar General of this Court shall make payment to an Authorized Officer of the UCO Bank within a month thereafter.

27. With the aforesaid directions, the instant appeal is allowed and disposed of.

28. Interim orders, if any, shall stand vacated.

29. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(*Rajasekhar Mantha, J.*)

(*Supratim Bhattacharya, J.*)