IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.No.4104 of 2019 &
W.M.P.Nos.4604, 4608 and 4612 of 2019

M/s.Axis Bank Ltd.,
(Formerly known as UTI Bank Ltd.)
Represented by its Authorized Signatory,
J-14, III Avenue,
Anna Nagar East,
Chennai - 600 102. ... Petitioner

Vs.

1.Indian Overseas Bank,
Central Clearing Office,
(Now City Back Office),
No.762, Anna Salai,
Chennai - 600 002.

2.M/s.Orion Trading Corporation,
Rep. by its Prop. Shri.Mahendran,
Old No.1/1, New No.1, 2nd Floor,
Anna Nagar, Chennai - 600 040.

3.The Registrar,
Debts Recovery Appellate Tribunal,
4th Floor, Indian Bank Zonal Office Building,
55, Ethiraj Salai,
Chennai - 600 008. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari, to call for the records comprised in the order of proceedings dated 10.12.2018 passed by the Debts Recovery Appellate Tribunal in R.A.No.58 of 2015 and set aside the same inasmuch as the impugned order is without consideration of the relevant material on record, appreciation of facts and contrary to law.

For petitioner	:	Mr.Rahul Balaji
For respondents	:	Mr.P.Rakesh Kumar for Mr.N.K.S.Rukmangathan for R-1 No appearance for R-2

ORDER

(Order of the Court was made by R. MAHADEVAN, J.)

This writ petition has been filed praying to set aside the order dated 10.12.2018 passed by the third respondent / Debts Recovery Appellate Tribunal ("DRAT" in short), Chennai, in R.A.No.58 of 2015.

2.The facts of the case, as stated by the petitioner herein, are as under:

M/s.Axis Bank Limited, Anna Nagar, Chennai is the petitioner herein. It is a Private Bank offering various financial products to its customers and has multiple branches across the country. The second respondent-company has approached the Anna Nagar Branch, Chennai of the petitioner's Bank for opening a current account for the purpose of its business. The second respondent was introduced to the bank and a current account was opened, after complying with all the banking norms and practices prevailing, including the Know Your Customer norms ("KYC" in short), on 15.06.2005. Thereafter, during the course of its business, the second respondent presented three Demand Drafts ("DD" in short), totaling to the tune of Rs.23,81,340/- which were issued by the first respondent Bank. Subsequently, after clearance of the DDs, the second respondent withdrew a sum of Rs.15,50,000/- on various dates between 01.07.2005 and 05.07.2005. While so, the first respondent Bank vide letters dated 06.07.2005 and 07.07.2005 suddenly informed the petitioner Bank that the said instruments were counterfeit, by which time, the second respondent had withdrawn the amount. The letters also demanded that the petitioner Bank has to refund such amounts to the first respondent Bank. In its reply dated 01.08.2005 to the first respondent Bank, the petitioner Bank pointed out that the petitioner was unaware of the fact that the DDs in question were altered, forged and misused by the second respondent and that, the withdrawal of funds from the accounts being prior to the intimation given to the petitioner, they could in no stretch of imagination, be held liable for the withdrawals by the second respondent as the same were beyond its control, and finally stating that the petitioner Bank is fully protected under the provisions of the Negotiable Instruments Act, 1881 and hence, the first respondent Bank has to take up their claim with appropriate persons.

3.It is further stated in the affidavit filed in support of this writ petition that as per the Circular issued from the Indian Bank's Association vide Memo No.CIR/BOD/OP/44-38/2004-2005 dated 13.12.2004 along with Reserve Bank of India's Letter No.DBS.FrMC.765/23.04.2001/2004-05, it is the duty of the paying bank to ensure that the instrument issued is not a forged one by verifying all necessary materials, but the first respondent failed to verify the veracity of the instruments and merely issued a notice seeking refund of amount.

4.It is also stated that the petitioner Bank, on receiving such intimation that the second respondent had indulged in fraudulent activities, immediately lodged a complaint bearing No.508/2005 with Cyber Crime Branch, Chennai. Thus, according to the petitioner, they fully cooperated with Police Department at all stages for the purpose of investigation and hence, under no circumstances, the petitioner can be held liable for the fraudulent actions of the second respondent. In these circumstances, the petitioner received a legal notice dated 17.10.2005 from the first respondent Bank demanding the total payment as aforesaid, within a period of one week, for which the petitioner once again denied its liability pointing out to the general accepted practice that the Bank issuing instruments is under a *bona fide* duty to verify its security features, the signature made on it, secret marks of identification etc. Only upon receipt of information from the first respondent Bank, the petitioner Bank came to know about the fraudulent activities of the second respondent. Thereafter, i.e., after a period of three years, the first respondent once again sent a notice to the petitioner Bank repeating its averments for which the petitioner Bank has responded denying its liability and pointing out the steps taken such as immediately blocking the second respondent's account, its cooperation for investigation before CCB, Chennai including production of all documents before the police authorities as well as the first respondent Bank in order to fasten liability on the second respondent.

5.In the circumstances, the petitioner Bank was shocked to know that the first respondent Bank had approached the Debts Recovery Tribunal-II, Chennai on 27.06.2008 for recovering a sum of Rs.37,57,843.28 with interest at the rate of 16.75% per annum with monthly rests from the date of application till the date of realization and costs under Section 19(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. By order dated 08.01.2015 in O.A.No.191 of 2014, the DRT ruled in favour of the petitioner by holding that the O.A. was dismissed as not maintainable and that, the first respondent herein was not entitled to recovery certificate as prayed for. Aggrieved by the same, the first respondent Bank approached the Debt Recovery Appellate Tribunal and the Appellate Tribunal, vide order dated 10.12.2018 in R.A.No.58 of 2015, set aside the order of the DRT holding that the first respondent is entitled to recover a sum of Rs.8.41 lakhs from the petitioner herein which is lying in the account of the second respondent herein along with accrued interest and for the remaining balance amount of Rs.15.40 lakhs, the first respondent is entitled for 25% of the amount, ie., Rs.3.85 lakhs from the petitioner Bank. The petitioner states that they are greatly prejudiced by the said order, which has failed to take into consideration the fact that the amounts departed by the first respondent herein would under no circumstances form a 'debt' for the purpose of Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and that, the reason for clearance of such instruments were in fact, granted by the first respondent Bank negligently.

6. With the above background, the present writ petition has been filed by the petitioner Bank.

7.The learned counsel for the petitioner Bank has submitted that under a *bona fide* belief and without any negligence, the petitioner sent the DDs for clearance as if the second respondent is to be the true owner of the same. After knowing from the first respondent that the instruments are fraud, the petitioner has taken all steps by immediately blocking the second respondent's bank account and they have fully cooperated with the police for investigation at all stages. However, the DRAT has erroneously recorded that protection under Section 131/131A of the Negotiable Instruments Act, 1881 is not available to the petitioner herein. The learned counsel further submitted that the DRAT has failed to take note of the fact that the Original Application was barred by the principles of waiver, estoppels and acquiescence on the ground that the petitioner merely collected the aforesaid drafts from the second respondent and in good faith and without any negligence, forwarded the same to the first respondent for clearance and only after getting clearance from the first respondent Bank, the amount was credited to the second respondent's account; and that, the DRAT failed to consider the fact that the issuing bank / first respondent was at a better position to verify the veracity of the DDs since it had knowledge about all salient features of the same. It is also submitted that the DRAT failed to explain as to how the quantum of 25% of Rs.15.40 lakhs had been arrived at and there is no justification for the said liability and no rationale has been provided in arriving at the amount of Rs.3.85 lakhs payable by the petitioner. With these submissions, the learned counsel prayed for allowing this writ petition by setting aside the order passed by the DRAT.

8.Referring to the averments stated in the counter affidavit, the learned counsel for the first respondent Bank submitted that after crediting an amount of Rs.7,88,830/- by way of first demand draft to the second respondent's account, the second respondent withdrew Rs.3,00,000/- each on two occasions by cash and after depositing a sum of Rs.7,72,810/- towards second demand draft, sums of Rs.3,00,000/-, Rs.4,00,000/-, and Rs.2,50,000/- have been permitted to be withdrawn. Thus, the petitioner bank had allowed the second respondent to withdraw substantial sums within a short span of time, ie., from 01.07.2015 to 05.07.2005, in the newly opened account leaving a paltry sum in the account. The third demand draft for a value of Rs.8,19,700/- was credited in the second respondent's account on 05.07.2005 and the same was withheld by the petitioner Bank at the request of the first respondent Bank. When the first respondent Bank had sought for the introducer's details and the statement of accounts of the second respondent's account from the date of opening the account, the same was refused to be given with a view to defeat the legitimate claim of the first respondent Bank. Since the petitioner Bank had denied their liability to refund the amount of Rs.23,81,340/-, the first respondent sent the Legal Notice dated 17.10.2005 seeking refund of the same with interest and costs, for which the petitioner sent a reply admitting that they will release the frozen amount of Rs.8,19,700/- being the amount involved in the third demand draft provided the first respondent gives an indemnity for the total claim amount of Rs.23,81,340/-. However, nothing progressed. Therefore, the first respondent Bank filed O.A.No.98 of 2008 before the DRT, which was dismissed. Aggrieved by the same, appeal was filed before DRAT by the first respondent Bank and the DRAT, by order made in R.A.No.58 of 2015, held that the petitioner Bank also was negligent and hence, the first respondent Bank is entitled to receive a sum of Rs.8.41 lakhs from the petitioner Bank, which is lying in the account of the second respondent and that, for the remaining balance amount of Rs.15.40 lakhs, the first respondent is entitled to 25% of the amount, ie., Rs.3.85 lakhs, to be received from the petitioner Bank and the further remaining amount along with interest has to be recovered from the second respondent herein.

9.The learned counsel for the first respondent further submitted that opening an account on the strength of the copy of the lease agreement with address of the concern mentioned along with the name of the proprietor and Pan Card Copy of the proprietor as proof of identity, is against the guidelines issued by the Reserve Bank of India and therefore, the petitioner Bank had not ensured proper customer identification. In the account opening form, introduction was not obtained and none of the other identification documents were obtained, which gave rise to the impression that the then Bank Manager of the petitioner Bank had colluded with the second respondent in opening the account and allowing operation to commit fraud against the first respondent bank. It is also submitted by the learned counsel that even though the account was authorized to be opened on 07.07.2005, the entire fraud had been committed before that period, which could not have been possible, but only with the active connivance of the then Branch Manager of the petitioner Bank. Considering all these aspects, the DRAT has rightly concluded that protection under Section 131 and 131A of the Negotiable Instruments Act, is not available to the petitioner Bank. In support of the said submissions, reliance has been placed on the Delhi High Court Judgment in ***Axis Bank vs. Punjab National Bank and another, made in W.P.(C)No.6201 of 2014 dated 20.03.2015*** to state that the amount claimed by the first respondent is legally recoverable and hence, it is a 'debt' under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Thus, according to the learned counsel, the order impugned herein does not require any interference at the hands of this court.

10.Heard the learned counsel for the petitioner and the learned counsel for the first respondent Bank and also perused the materials available on record carefully and meticulously. Despite the service of notice, there is no representation on behalf of the second respondent.

11.The challenge made by the petitioner bank in this writ petition is to the order dated 10.12.2018 passed by the third respondent, in R.A.No.58 of 2015.

12.It is the specific case of the petitioner Bank that the second respondent customer opened a current account, after complying with all the banking norms and practices prevailing, including the Know Your Customer norms ("KYC" in short), on 15.06.2005; that, the petitioner bank was unaware of the fact that the DDs in question were altered, forged and misused by the second respondent; and that, since the withdrawal of funds from the accounts of the second respondent being prior to the intimation given to the petitioner, the petitioner bank could in no stretch of imagination be held liable for the withdrawals by the second respondent. It is further stated that on receiving the information from the first respondent, the petitioner Bank took immediate steps by immediately blocking the second respondent's account, its cooperation for investigation before CCB, Chennai including production of all documents before the police authorities as well as the first respondent Bank in order to fasten liability on the second respondent. It is also stated by the petitioner Bank that they are fully protected under the Negotiable Instruments Act; and that, as per the Circular issued from the Indian Bank's Association vide Memo No.CIR/BOD/OP/44-38/2004-2005 dated 13.12.2004 along with Reserve Bank of India's Letter No.DBS.FrMC.765/23.04.2001/2004-05, it is the duty of the bank issuing instrument to ensure that the instrument is not a forged one by verifying all necessary materials, whereas, the first respondent without verifying the veracity of the instruments, directed the petitioner bank to refund of amount for the wrong committed on the part of the second respondent customer.

13.According to the first respondent Bank, after opening of the account by the second respondent, the petitioner Bank had allowed the second respondent to withdraw substantial sums within a short span of time, ie., from 01.07.2015 to

05.07.2005, in the newly opened account leaving a paltry sum in the account. When the first respondent Bank had sought for the introducer's details and the statement of accounts of the second respondent's account from the date of opening the account with the petitioner bank, the same was refused to be given with a view to defeat the legitimate claim of the first respondent Bank. It is the further stand of the first respondent Bank that opening an account on the strength of the copy of the lease agreement with address of the concern mentioned along with the name of the proprietor and Pan Card Copy of the proprietor as proof of identity, is against the guidelines issued by the Reserve Bank of India and therefore, the petitioner–Bank had not ensured proper customer identification. Thus, according to the first respondent, in the account opening form, introduction was not obtained and none of the other identification documents were obtained, which would go to show that the then Bank Manager of the petitioner Bank had colluded with the second respondent in opening the account and allowing operation to commit fraud against the first respondent bank.

14.It is seen from the pleadings and records that for the wrong committed by the second respondent, the first respondent bank initiated the recovery proceedings before the DRT, Chennai, against the petitioner bank and the said application was dismissed in favour of the petitioner. Challenging the same, the first respondent preferred appeal before the DRAT. After due contest, the DRAT has given a finding that both the petitioner Bank as well as the first respondent Bank have been negligent on the issue. It has been held by the DRAT that the first respondent is entitled to recover a sum of Rs.8.41 lakhs from the petitioner herein which is lying in the account of the second respondent herein along with accrued interest and for the remaining balance amount of Rs.15.40 lakhs, the first respondent is entitled for 25% of the amount, ie., Rs.3.85 lakhs from the petitioner Bank. However, in the given factual scenario, we are unable to find any material to show that the petitioner Bank failed to exercise due care in presenting the three demand drafts for collection. It is further seen that though the DDs have been forged and altered, the fact that the forgery could not be detected by the first respondent Bank itself, would show that the first respondent Bank has failed to verify the security features, signature and the secret marks of identification in the Demand Drafts, before giving clearance; and that, they have not raised any doubt as to the genuineness of the drafts at the time of receiving them. It is also seen that only upon the receipt of clearance from the first respondent Bank, the petitioner Bank, in good faith, credited the amounts to the bank account of the second respondent bank. Furthermore, there is no reference to any enquiry or due scrutiny made on the officials of the clearing house representing Indian Overseas Bank. In such circumstances, it cannot be said that the petitioner Bank is liable to pay any amount to the first respondent bank, for the wrong committed by the second respondent customer. In the given circumstances, the decision in ***Axis Bank case*** (supra) relied on the side of the first respondent, is not applicable to the facts of the present case. Therefore, the finding of the DRAT that the first respondent bank is entitled to recover the alleged loss of Rs.23.81 lakhs by way of three transactions from the petitioner bank, cannot be allowed to be sustained and the same deserves to be interfered with to certain extent, in the opinion of this court.

15.In such perspective of the matter, the order of the DRAT in holding that for remaining balance amount of Rs.15.40 lakhs, the first respondent bank is entitled for 25% of the amount i.e., Rs.3.85 lakhs from the petitioner bank, is set aside. However, the portion of the order passed by the DRAT in holding that the first respondent herein is entitled to recover a sum of Rs.8.41 lakhs from the petitioner bank, which is lying in the account of the second respondent herein along with accrued interest; and that, the remaining amount has to be recovered from the second respondent by the first respondent Bank in accordance with law, stands confirmed.

16.Accordingly, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D,J.] **[M.S.Q, J.]**
24.04.2023

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Speaking (or) Non-Speaking Order
Internet : Yes.
Index : Yes /No

To

The Registrar,
Debts Recovery Appellate Tribunal,
4th Floor, Indian Bank Zonal Office Building,
55, Ethiraj Salai,
Chennai - 600 008.

R. MAHADEVAN, J.
and
MOHAMMED SHAFFIQ, J.

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