IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

202 **CWP-18690-2014**

Date of Decision: 06.07.2023

KARUR VYSYA BANK LTD

... Petitioner

VERSUS

M/S DRT STEEL PVT LTD

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

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Present: Mr. Nitin Grover, Advocate
for the petitioner.

Mr. Navneet Singh, Advocate
for the respondent.

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<u>VINOD S. BHARDWAJ, J. (ORAL)</u>

Challenge is to the Award dated 03.02.2014 (Annexure P-5) passed by respondent No.2- Permanent Lok Adalat (Public Utility Services), Gurugram.

The facts in brief as narrated in the petition are that respondent No.1-applicant had availed CC Limit from the petitioner Bank, bearing Account No.4201.221.149 against book debts and had also availed limit vide account No.4201.223.229 i.e. limit against the stocks. As per the normal banking business practices, the limit in the over draft account, once sanctioned, is valid for a period of one year and is subject to review of the performance of the business of the borrower. In the event of the drawing power falling below the sanctioned limit, a fresh decision is required to be taken.

It is further averred that the respondent No.1-applicant submitted a cheque bearing No.442633 dated 07.08.2008 for a sum of Rs.1,55,769/- in his account No.4201223000000229. The abovesaid amount was provisionally reflected to the credit of the account of the petitioner subject to clearance thereof. However, as per the accounts statement appended alongwith the present petition as Annexure P-2, the abovesaid cheque was returned on 15.11.2008 and a debit entry was made thereafter. The said cheque was presented again by the respondent No.1-applicant in the abovesaid account on 26.11.2018, whereupon a provisional credit entry was reflected in the account of the respondent No.1-applicant, however, upon the same being returned again without being honoured, a reverse debit entry was reflected in the abovesaid account statement on 28.11.2008. The cheque in question was presented yet one more time on 20.12.2008 and the same was returned on 23.12.2008. Accordingly, a debit was reflected again in the account statement of the respondent No.1-applicant. On account of cheque being presented repeatedly and the services having been availed and its repeated dishonour, certain bank collection charges became payable by the respondent No.1-applicant. Additionally, based upon the review of account of respondent No.1-applicant, the interest and other charges on the CC limit also accrued against respondent No.1-applicant which were also recovered by the petitioner bank. The abovesaid account was closed by respondent No.1-applicant on 14.12.2011 and all other documents and details were returned as per the banking norms. Thereafter, an application under Section 22-C of the Legal Services Authorities Act, 1987 was filed by the respondent No.1-applicant on 21.05.2012 claiming that the abovesaid charges were recovered wrongfully and that he is entitled to a credit of the abovesaid amount as also repayment of the interest of Rs.9897/- and Rs.5485/-

levied/deducted by the petitioner bank. Penalties and compensation for harassment were also claimed by the respondent No.1-applicant.

It was also alleged in the abovesaid application by the respondent No.1-applicant that there was deficiency in services on the part of the petitioner Bank and that it has misappropriated the deposit. The credit of said deposit has not been given to him. Aggrieved of the gross deficiency of service, the respondent No.1-applicant had closed his account with the petitioner Bank. A legal notice was also sent by the respondent No.1-applicant, which was not responded to and thus compelled the respondent No.1-applicant to approach the Permanent Lok Adalat (Public Utility Services), Gurugram.

The petitioner bank had entered appearance before the Permanent Lok Adalat (Public Utility Services), Gurugram and submitted its response averring the facts noticed above and also objecting to the maintainability of the application on the ground that it was barred by limitation. The cheque in question was returned on 23.12.2008 and the respondent No.1-applicant was fully aware of the same. Limitation, if any, qua the above said claim would survive only till 22.12.2011. The application having been filed on 21.05.2012 was clearly barred by limitation and was liable to be dismissed on the abovesaid ground itself. Further, details of the CC limit and the charges leviable were also mentioned alongwith the demand of collection charges.

Efforts were made by the Permanent Lok Adalat to amicably resolve the dispute between the parties, however, the same failed to yield any result. Consequently, the matter was adjudicated on merits in exercise of the power under Section 22-C (8) of the Legal Services Authorities Act, 1987. Upon consideration of the rival claims and contentions raised by the parties, the application of the respondent No.1-applicant was allowed by the Permanent Lok Adalat (Public Utility Services), Gurugram by observing as under:

> *"4. Repeated efforts were made for conciliation but the same was not affected. So we have heard Ld. Counsel for the parties and have gone through the pleadings and the documents. First of all it may be mentioned that the version of the complainant regarding this fact that the complainant presented cheque of Rs. 1,55,769/- to the respondent bank for collection on 07.08.2008 and crediting of this amount in the account of the complainant on the same day is also not disputed. But it has transpired from the version of the complainant contained in para no.2(a) of the complaint that this amount was debited from the account of the complainant on 15.11.2008 by the respondent bank after a gap about 100(hundred) days and when this fact came to the knowledge of the complainant he contacted the Branch Manager and then debit entry was corrected and the amount was again credited in the account of the complainant on 26.11.2008. But it is also pertinent to mention that again on 28.11.2008 this amount was debited from the account of complainant and then again on 20.12.2008 the same was credited in the account of the complainant. It is further the version of the complainant that this amount was again debited from the account of complainant on 23.12.2008. The complainant wrote a letter to the Branch Manager on 22.01.2009 asking him to credit the said amount. The complainant also sent reminders on 22.01.2009, 02.02.2009, 14.05.2009 and 28.05.2009 but to no effect. These averments made by the complainant in para No.2(a) of the complaint are not specifically denied by the respondent in the reply filed as such these averments are admitted as correct by the respondents. Contention of Ld. Counsel for the respondent to this effect that claim of the complainant is time barred is without any merit because the complainant has been writing time and again to the respondents and last reminder was given by the complainant on 28.05.2009. Legal notice has also been served upon the*

respondents. The facts alleged in the legal notice dated 23.02.2012 are not refuted by the respondents. Rather receipt of the notice is admitted in so many words. The present complaint has been instituted in this court on 21.05.2012. It has transpired from the pleading and documents that there has been gross deficiency on the part of the respondents who have been causing harassment to the complainant. It is also pertinent to mention that in para no.1 of the reply filed by the respondents pertaining to background of the history of the complainant is mentioned that the respondent bank reliably came to know that the drawer of said instrument paid approx. a sum of Rs. 91,335/- to the complainant by way of cheque no. 86 on 16.10.2008. These submissions go to reveal that the respondents are acting at the instance of Gupta Auto India drawer of the cheque in question. When once the amount has been credited in the account of the complainant by the respondents it was not desirable that part of the respondents to help the drawer of the cheque in question exceeding their norms and limits. Even otherwise, it is revealed from the copy of the letter dated 07.02.2001 marked as R1 and photocopy of the cheque marked as R2 etc. that the version of the respondent does not find corroboration. It is also revealed from the perusal of the copies of the documents which is marked as A to M by us today that the version of the complainant finds corroboration and there is no justification on the part of the respondents in retaining the amount of cheque in question. It is also revealed that the respondents have wrongly debited the amount of Rs.9897/- and Rs.5485/- on 27.04.2009 and 29 12.2009 respectively from the account of the complainant without any justification. The respondents could not produce any cogent document in support of their version. It is not revealed from any document that the cheque which was submitted by the complainant for collection was dishonored on account of insufficiency of funds etc. and that the complainant was informed about dishonoring of the cheque in question of Rs.1,55,769/- which was issued by Gupta Auto India in his favour.

5. Ld. Counsel for the complainant has also pressed for the relief of Rs.50,000/- for harassment, mental torture etc. apart from litigation expenses etc. The complainant has also claimed amount of Two Crores of rupees on account of financial loss and injury sustained by the complainant due to forfeiture of their earnest money to obtain tender and due to non-return of the documents by the respondent bank to the complainant. In our considered opinion, these matters require evidence. Both the parties are to be afforded an opportunity to lead evidence and in summary proceedings this case cannot be decided. These reliefs cannot be granted to the complainant by this court except that we are directing the respondents to pay a sum of Rs.10,000/- (Ten Thousand) as compensation on account of mental torture and harassment and also as litigation expenses to the complainant. For the remaining redress, complainant may move civil court or appropriate forum for his redress.

6. As a result of above discussion, we direct the respondents to pay a sum of Rs.1,55,769/- (Rs. One Lac Fifty Five Thousand Seven Hundred and Sixty Nine only) and a sum of Rs. 9897/- (Rs. Nine Thousand Eight Hundred Ninety Seven only) and also a sum of Rs. 5485/- (Rs. Five Thousand Four Hundred Eighty Five Only) and a sum of Rs.10,000/- (Rs. Ten Thousand only) as compensation, total Rs.1,81,151/- (Rs. One Lac Eighty One Thousand One Hundred Fifty One Only) to the complainant within forty five days from today failing which respondents will be liable to pay interest @ 9% per annum from the date of institution of the present application till payment. Complainant may move civil court or appropriate forum for his remaining redress if any if he so desires. The complaint is allowed and disposed of accordingly. File be consigned to record room."

Aggrieved of the same, the present petition has been filed.

Notice in the present petition was issued to the respondents-applicants, whereafter, respondent No.1-applicant entered appearance on 03.07.2015 and sought time to file reply. The matter was adjourned on various dates to enable the respondent No.1-applicant to file his reply, however, the same was not done. Consequently, defence of respondent No.1-applicant was ordered to be struck off vide order dated 09.03.2023 and the case was adjourned for arguments.

Counsel for the petitioner has vehemently argued that the Permanent Lok Adalat (Public Utility Services), Gurugram has committed an error in allowing the application notwithstanding that the said cheque No.442633 in question was dishonoured and the amount in question was never received to the credit of the account of respondent No.1-applicant. In the absence of the respondent No.1-applicant establishing that the abovesaid amount was actually debited from the account of the drawer of the cheque, there can be no presumption against the record which is maintained by the bank in normal course of its business. Hence, the veracity and admissibility of such record cannot be dispelled or disbelieved. Besides, the respondent No.1-applicant does not dispute that he was aware of the amount having been returned and debited to his account in December 2008 itself. Thereafter, the respondent No.1-applicant claims that he submitted a representation on 12.01.2009. Hence, once the knowledge of the abovesaid debit is admitted and acknowledged by the respondent No.1-applicant, limitation would commence and the application having been filed in May, 2012, the same was undisputedly barred by limitation. He further argued that the charge of misappropriation/ embezzlement of the amount cannot be established unless the abovesaid amount is proved to have been debited to the account of the drawer. Failure of the respondent No.1-applicant to lead the primary evidence, which was in his possession and could have been easily led by him to prove his case before the Permanent Lok Adalat (Public Utility Services), Gurugram, would lead to an inference against respondent No.1-applicant. His claim, if any, would lie against the drawer of the cheque and not against the petitioner-Bank. He further contends that the respondent No.1-applicant has chosen not to implead the drawer of the cheque as a party to the present proceedings and had it been so done, the abovesaid fact could have been duly verified.

Per contra, counsel for the respondent No.1-applicant has argued that all the aforesaid circumstances have been duly noticed by the Permanent Lok Adalat (Public Utility Services), Gurugram in its Award and it was specifically noticed that the respondent No.1-applicant sent various letters/representations against the illegal deductions/debit made from the account of the respondent No.1-applicant and that the petitioner-Bank chose not to respond to the same. He further argued that the dishonoured cheque was never returned to him. It is also argued that the deductions had been wrongfully made and the charges were levied by the petitioner Bank without assigning any reasons or communicating the dishonour of the cheque. He further submits that in the absence of the communication having been sent to him, the limitation cannot foreclose his rights since it would start operating from the date when information is established.

I have heard the learned counsel for the respondent parties and have gone through the documents and record available on case file with their able assistance.

It is evident from a perusal of the statement of account which has been attached as Annexure P-2 that the aforesaid cheque No.442633 dated 07.08.2008 was presented in the aforesaid account on three different occasions and for the first time, it was presented in August 2008. Debit entry thereof was made in November 2008 on its dishonour. The same was presented again on 26.11.2008 and the debit entry was again reflected in the accounts statement on 28.11.2008 after the dishonour. The third presentation of the aforesaid cheque was made on 20.12.2008 which was again dishonoured on 23.12.2008. The respondent No.1-applicant further claims that he had submitted a representation with the petitioner Bank for credit of the aforesaid amount. There is no averment in the aforesaid application that the dishonoured cheque had not been received by him. In the absence of any such averment having been made in the application filed before the Permanent Lok Adalat or an arguments advanced, there can be no presumption that the cheque in question was not returned by the petitioner Bank to the respondent No.1-applicant.

Further, since the respondent No.1-applicant sent a notice to the petitioner, the inference which flows from above is that the applicant had knowledge of the entry and the cheque being returned. There was also no occasion or reason for the respondent No.1-applicant to have not contacted the drawer of the cheque and to verify the status of the payment. It is ordinary prudence that whenever a cheque is dishonoured, the drawee of the cheque would immediately contact the drawer and seek reasons for such dishonour. If the intimation regarding the dishonour is incorrect, ordinarily every drawer shall furnish to the drawee the requisite proof of the amount having been debited from his account. Surprisingly, the respondent No.1-applicant chose not to lead any such evidence in the proceedings before the Permanent Lok Adalat (Public Utility Services), Gurugram. He did not even tender any affidavit of the drawer or his account statement which would have clinched the issue and establish the movement of funds. The antecedents of the drawee fail to inspire any confidence. The cheque having been dishonoured twice earlier before its third return in December 2008, the probabilities support the petitioner Bank.

Further, it would be necessary to refer to certain pleadings made in the writ petition. The same are extracted as under:

> *"(i) – (ii) XXX XXX XXX*
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> *(iii). That the respondent no. 1 submitted a cheque bearing no. 442633 dated 07.08.2008 for a sum of Rs. 155769/- in his account no. 4201223000000229 and the said amount was credited against clearance and on later the same amount was debited from the account of respondent no. 1 as the said cheque was returned. It is pertinent to mention here that the information regarding the return of the said cheque was also intimated to the respondent no. 1.*
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> *(iv) That on the request of respondent no. 1, the said cheque was again presented for clearance on 26.11.2008 and the amount credit was shown against clearance and later on the said amount was debited from his account on 28.11.2008 as the said cheque was again returned unpaid and that fact was duly intimated to respondent no. 1 and again on the request of the respondent no. I the said cheque was again represented for clearance on 20.12.2008 and credit was shown in the account against clearance and once again the said cheque was returned unpaid and the amount was debited from the account of respondent no. 1 on 23.12.2008. (The statement of account is enclosed herewith as Annexure P-2).*
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> *(v) – (vii) XXX XXX XXX*

(viii) That the petitioner filed a reply to the Application denying all the allegation as alleged in the Application filed by the respondent no. 1 (Reply is annexed as Annexure P-4). It was stated in the reply that the petitioner never rendered the deficient services to the respondent no. I and further submitted that the operation in clearing activity is completely computerized and centralized in tune with stipulation of RBI. Since software installed by the petitioner bank therein and software installed by RBI in clearing house, no question of misappropriation of any cheque proceed would arise. Moreover all the transactions of credit and debit were reflected in the statement of account and nothing was concealed by the petitioner. It was further submitted in the reply that the said cheque was, on the request of the respondent no.1/complainant, presented from time to time and the same was returned unpaid which was duly intimated to the respondent no.1/complainant. It was further mentioned in the reply filed before the respondent no. 2 that from the reliable source, the petitioner came to know that the drawer of the said cheque/ instrument paid approximately a sum of Rs.91,335/- to the respondent no.1/complainant by way of cheque no.86 on 16.10.2008.

(ix) – (xii) XXX XXX XXX"

Despite having availed as many as twelve opportunities including the last opportunity, the respondent No.1-applicant chose not to file its reply to controvert the pleadings.

Having chosen not to respond to the assertions made in the petition, the same have remained unrebutted and uncontroverted leading to an adverse inference against the respondent-applicant.

An account holder is entitled to claim a credit for an amount only if such amount has been transferred from the account of the drawer for his account and claim for the above credit and/or allegation of misappropriation could be presumed legal and valid. In the absence thereof, no presumption can be drawn against the petitioner Bank especially when the bank accounts are being maintained under the standard banking norms. A presumption of truth and admissibility is attached to such account statement that is maintained by the petitioner Bank in the normal course of business. The burden lies on the person who disputes such accounting transaction/statement. Once such evidence is brought before the Court, primary onus is discharged and the burden would thereafter shift on the petitioner Bank to establish its record. However, the respondent No.1-applicant failed to discharge his primary onus.

Apparently, there was no material available to the Permanent Lok Adalat (Public Utility Services), Gurugram to conclude that the amount in question had ever been debited from the account of the drawer and was required to be credited to the account of the respondent No.1-applicant. The rationale adopted by the Permanent Lok Adalat (Public Utility Services), Gurugram was clearly misconceived and is not supported from the objective consideration of the material available on record. It has drawn a presumption against the Bank solely because the credit was shown at 3 different occasions and ignoring the debit entry. A record has to be accepted as a whole and once its correctness is not being disputed or established to be wrong, it does not lie for the Permanent Lok Adalat (Public Utility Services), Gurugram to be selective in reading the entries. Such presumption of legality and validity would then also apply for the said debit entries as well. A bank or a banking institution is only a service provider and does not become liable to give credit unless its failure is duly established.

The Permanent Lok Adalat (Public Utility Services), Gurugram thus clearly erred in appreciating the evidence with objectivity, rationale and in light of established law. The impugned Award thus suffers from improper appreciation of the evidence. Exercise of discretion is not based on sound legal principles. The same is accordingly bad and liable to be set aside.

In view of the above, the present petition is allowed and the impugned Award dated 03.02.2014 (Annexure P-5) passed by respondent No2-Permanent Lok Adalat (Public Utility Services), Gurugram in Application No.467 of 2012 titled as 'M/s DRT Steel Pvt. Ltd. Versus The Chief Manager, Karur Vysya Bank Ltd. and others' is hereby set aside.

(VINOD S. BHARDWAJ)
JUDGE

JULY 06, 2023
rajender

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No