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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA 454/2014 & CM APPL. 4062/2016

IDBI BANK

..... Appellant

Through: Mr. Amol Sharma, Advocate
(M: 9958609042)

versus

M/S SHREE GANPATI TRADERS & ANR. Respondents

Through: Mr. Chander M Maini, Mr.
Mayank Maini, Mr. Anmol
Chadha, Advocates for R-1
(M:9711718716)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

03.07.2023

MINI PUSHKARNA, J.

1. The present Regular First Appeal has been filed under Section 96 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) against the judgment and decree dated 23.05.2014 passed in Suit bearing *CS No. 267/2014 (Old Suit No. 179/05)* passed by the Court of Additional District Judge (ADJ) – 17 (Central), Tis Harazi Courts. By way of the impugned judgment and decree, the Id. Trial Court has decreed the suit for recovery filed on behalf of respondent No.1. The appellant along with respondent No.2 herein has been held to be jointly and severally liable to pay an amount of Rs.6,03,083/- as principal amount, along with interest @12% per annum from the date of filing of the suit by respondent No.1 till the date of realisation of the decretal amount.

2. The facts in brief that emerge from the pleadings are that the



respondent No.1 filed a suit for recovery against the appellant bank and respondent No.2. The suit was filed by respondent No.1 on the premise that the respondent No.1 suffered huge monetary losses on account of gross negligence on the part of the appellant bank in opening the bank account of respondent No.2 in the fictitious name of respondent No.1, by not verifying the background of respondent No.2; and further failing to scrutinise the supporting documents submitted by respondent No.2 at the time of submission of account opening form to the appellant bank.

3. As per the plaint, respondent No.1 is a proprietorship firm and has been doing trading business since long, dealing in food grains and pulses etc. through Sh. Ramanand Jain as the proprietor of the said proprietorship firm.

4. *M/s Pawan Kumar Mukesh Kumar* having its office at Kolkata sent a cheque bearing No.000073 dated 14.09.2004 drawn on Hongkong and Shanghai Banking Corporation in favour of respondent No.1 firm for an amount of Rs.5,06,420/-, in discharge of its financial liability. *M/s SP Rai and Company* also sent two drafts bearing Nos. 979923 and 979924, both dated 14.09.2004 for an amount of Rs.48,000/- and Rs.47,663/- respectively in the name of respondent No.1 firm, issued by State Bank of India, in discharge of its financial liability towards respondent No.1 firm.

5. The aforesaid cheques and demand drafts were sent from Kolkata to the office of respondent No.1 in Delhi through a courier agency, namely, Vayu Courier Service. However, in transit to Delhi, the said instruments were stolen along with other parcels from the



custody of Vayu Courier. The matter was reported at Police Station Lahori Gate by way of registration of First Information Report (FIR) dated 16.09.2004 under Sections 379/411/420/468/471/120-B of Indian Penal Code, 1860 (IPC).

6. During the course of investigation, it was found that one of the accused in the FIR, i.e., respondent No.2 herein, had opened a fake bank account on 17.09.2004 in the name of *M/s Ganpati Traders* acting as a sole proprietor of the firm. He deposited the two stolen demand drafts and Rs.5,000/- cash on the same date. Thereafter, the respondent No.2 submitted the stolen cheque on 20.09.2004. On the next day, i.e., 21.09.2004 he withdrew Rs.3.5 Lakhs and subsequently on 24.09.2004, he withdrew Rs.2.5 Lakhs by giving two self cheques.

7. Upon discovery of the aforesaid facts during the course of its investigation, the police arrived at the appellant bank and seized the self cheques and account opening form of respondent No.2. Subsequently, on gaining knowledge of the aforesaid facts, respondent No.1 herein sent a legal notice dated 30.11.2004 to the appellant bank for recovery of its losses claiming that respondent No.2 was assisted by one of the employees of the bank, Mr. Ashish Goyal to open the account, which shows collusion. Further, the bank had accepted fake or forged documents without an introducer, which showed the negligence of the bank. However, by its reply dated 22.12.2004, the appellant Bank claimed that it had opened the account as per Reserve Bank of India (RBI) norms and that it was just a collecting banker and hence was not liable. Thus, suit for recovery was filed by respondent No.1 against the appellant bank as well as respondent No.2 herein.



8. It was averred in the plaint by respondent No.1 herein that appellant while opening the account of respondent No.2 did not follow the RBI Guidelines and thus, the appellant was liable to compensate the amount of loss to the tune of Rs.6,03,083/- for the alleged negligence in opening the account of respondent No.2.

9. The appellant in its written statement before the Id. Trial Court stated that the account of respondent No.2 was opened in terms of the RBI guidelines and documents with respect to KYC (Know Your Customer) were also obtained. The instruments were collected by the appellant in good faith and without negligence. Thus, it was averred on behalf of appellant bank that it was protected under the provisions of Section 131 and 131A of the Negotiable Instruments Act, 1881 (NI Act).

10. The respondent No.2 was proceeded *ex parte* and did not file any written statement or lead any evidence.

11. The learned Trial Court framed the following issues as recorded in its order dated 22.05.2007:

“6.

1) Whether the suit is bad for non-joinder of the necessary parties? OPD.

2) Whether the defendant no.1 as an collecting banker was negligent in collecting the amount of the cheque in the present case? If so, its effect? OPD.

3) Whether the plaintiff is entitled to recover the amount as claimed? If so, from which of the defendants? OPP.

4) Whether the plaintiff is entitled to recover any amount on account of interest? If so, at what rate, for



what amount and to which period? OPP.

5) Relief.”

12. The respondent No.1, as plaintiff, examined its sole proprietor Sh. Ramanand Jain as PW-1. Further, Sh. Rakesh Goel, proprietor of *M/s Vayu Sewa Courier Service* was examined as PW-2. The appellant, as defendant No.1 in the suit, examined its Relationship Manager and constituted attorney, Sh. Akshay Agnihotri as DW-1.

13. After hearing the parties, the learned Trial Court decreed the suit in favour of respondent No.1 thereby holding that the bank had failed to discharge the onus placed upon it to show that it acted in good faith and without negligence. Thus, the appellant along with respondent No.2 herein was held jointly and severally liable to pay the decretal amount of Rs.6,03,083/- along with interest @12% per annum from the date of filing of the suit till realisation. Hence, the present appeal has been filed.

14. On behalf of the appellant, it is contended that the Id. Trial Court did not appreciate the fact that the account opening form of the appellant bank clearly mentioned the list of documents, which were required for opening the account of the proprietorship firm at the relevant point of time. It is submitted that the account opening form along with the documents which were obtained for the purpose of KYC, are already available in the court file. Thus, the following documents were obtained for the purpose of account opening from respondent No.2:

- i. Self cheque or cash deposit



- ii. Pan Card
- iii. Chartered Accountant's (CA) Certificate
- iv. Rent Agreement

15. It is contended on behalf of the appellant that bare perusal of the aforesaid documents would show that the account, which was opened by the appellant for respondent No.2, was duly compliant with the KYC norms in accordance with the policies of the appellant bank. It is submitted that respondent No.1 as plaintiff in the suit, had failed to lead any evidence or to suggest any question that the account, which was opened by the appellant, was not in accordance with the RBI Guidelines. Further, no suggestion was put to DW-1 that the documents which were obtained were not in terms of the bank policies or could not have been taken as the same were against the RBI Guidelines.

16. It is further contended that during the course of cross-examination, the witness of the appellant bank had deposed that in case where KYC norms were complete, no introducer was necessary. It is further contended that *M/s Pawan Kumar Mukesh Kumar* and *M/s S.P. Rai and Company*, who had purportedly issued cheques in favour of respondent No.1, were never produced in the witness box. Thus, it was not proved by the respondent No.1/plaintiff that the alleged cheques in favour of respondent No.1, were ever sent by the said persons or whether the said instruments were sent through Vayu Courier. It is, therefore, contended that the Trial Court has presumed that the aforesaid cheques were sent through Vayu Courier.

17. It is further contended that the learned Trial Court has wrongly



relied upon the Supreme Court judgment, as mentioned in its impugned judgment and decree, as the facts in the said case were totally different from the case in hand. Thus, it is prayed that the judgment and decree passed by the Trial Court be set aside.

18. On the other hand, on behalf of the respondent, it is contended that there was gross negligence by the appellant bank in opening the fictitious account of respondent No.2 in the name of respondent No.1. It is submitted that the account opening form of respondent No.2 clearly shows that it is mentioned in the hand writing of one of the bank employees that cell number as mentioned therein by respondent No.2 was wrong and not in existence.

19. It is further contended that the CA Certificate is a sham and bogus document, which is without any date and any particulars. Further, the date of the Rent Agreement is 17.09.2004, which is the same date as that of opening of the bank account, which implies that the alleged Rent agreement was made just to open the said bank account.

20. It is further submitted on behalf of respondent No.1 that the testimony of DW-1, Sh. Akshay Agnihotri dated 15.03.2011 was illustrative of carelessness and lack of due diligence on the part of the appellant bank. The bank employee, namely, Ashish Goel who was instrumental in the account opening of respondent No.2, was never examined as a witness by the appellant bank nor was any enquiry conducted by the appellant bank pertaining to his role in the said act.

21. It is further contended that the protection as available to banks under Section 131 of the NI Act, cannot be afforded to the appellant



bank, as it has not acted in good faith.

22. Reliance is placed by the respondent No.1 on the judgment in the case of the ***Kerala State Cooperative Marketing Federation Vs. State bank of India and Others¹***.

23. I have heard learned counsels for the parties and have perused the pleadings and documents placed on record.

24. The facts on record clearly show that one cheque and two demand drafts collectively for a sum of Rs.6.05 lakhs approximately, were sent in the name of respondent No.1 from Kolkata through *Vayu Sewa Courier Agency* on 14.09.2004. Subsequently, a criminal complaint dated 16.09.2004 was filed by the owner of Vayu Courier Agency at Police Station Lahori Gate stating about the theft of the said cheque and demand drafts from the custody of his employee, leading to registration of FIR No. 322/2004 on 17.09.2004. During the course of investigation by the Police, it came to the fore that the cheque and the demand drafts as mentioned hereinabove, were presented by respondent No.2 after opening an account on 17.09.2004 in the name of respondent No.1 company.

25. The undisputed fact is that after opening of the account by respondent No. 2 on 17.09.2004, the two demand drafts, as aforesaid, in the name of respondent No.1 company were deposited by respondent No.2 with the appellant bank on 17.09.2004. Subsequently, the cheque in the name of respondent No.1 company was also deposited by respondent No.2 in the appellant bank on 20.09.2004. The very next day, i.e., 21.09.2004, the respondent No.2



withdrew an amount of Rs.3.5 Lakhs, by giving a self cheque. Thereafter, respondent No.2 withdrew further amount of Rs. 2.5 Lakhs on 24.09.2004, again by giving self cheque.

26. Perusal of the account opening form of respondent No.2 with the appellant bank shows that the same is dated 17.09.2004. The Rent Agreement that was submitted on behalf of respondent No.2 was also dated 17.09.2004. Thus, it is apparent that the date of the Rent Agreement, as deposited by respondent No.2 with the appellant bank at the time of opening of his account in the name of respondent No.1, is the same as that of the date on which the account was opened. Similarly, perusal of the certificate from the CA, as deposited by respondent No.2, shows that the same is not only undated, but also is totally bereft of any details as regards the respondent No.1 company and without any particulars with respect to the turnover of the respondent No.1 company or the details of tax paid thereupon. Thus, it is apparent that had the appellant bank been a little circumspect and diligent in discharging its banking obligations, the account by respondent No.2 in the name of respondent No.1, would not have been opened in the first place. The documents, as deposited by respondent No.2 at the time of opening of the account with appellant bank, on the face of it were not credible. Had the bank been vigilant, it would have verified the documents as submitted by respondent No.2. The appellant bank cannot simply disregard its duty in following a proper procedure at the time of opening of the bank account.

27. The learned Trial Court has rightly relied upon the judgment in

¹ 2004 SCC OnLine SC 136.



the case of ***Kerala State Cooperative Marketing Federation (Supra)***, wherein it has categorically been held by the Supreme Court that negligence in opening the account, such as failure to fulfil the procedure for opening an account, which is prescribed by the bank itself or opening an account of an unknown person or non-existing person or with dubious introduction, may lead to cogent proof of negligence. Thus, in the said case of ***Kerala State Cooperative Marketing Federation (Supra)***, Supreme Court has held as follows:

6. In the case of Indian Overseas Bank v. Bank of Madura Ltd. [(1992) 75 Comp Cas 481 (Mad)] the receiving banker was held guilty of negligence and lack of good faith inasmuch as it had allowed the opening of an account with a small amount and shortly thereafter i.e. within nine days allowed withdrawal of a sum of Rs 9500. It was held that the opening of the account, the presentation of the draft and withdrawal of the amount were part of one integral scheme. The fact that the person who introduced the account-holder had not been examined in the suit was held against the Bank.

7. In the case of Syndicate Bank v. United Commercial Bank [(1991) 70 Comp Cas 748 (Kant)] it was held that the appellant Bank had to prove that it had acted in good faith and without negligence. It was held that the fact that the customer had just opened the account and had only one transaction with the Bank, namely, the encashment of the cheque, showed that the Bank had not acted in good faith and without negligence.

8. In the case of Brahma Shum Shere Jung Bahadur v. Chartered Bank of India [AIR 1956 Cal 399] it has been held that the onus of proving “good faith” and “absence of negligence” is on the banker



claiming protection under Section 131 of the Negotiable Instruments Act. It is held that in deciding whether a collecting banker has or has not been negligent, it becomes necessary to take into consideration many factors such as the customer, the account and the surrounding circumstances. It is held that if the cheque is of a large amount, then the bank has to be more careful unless the customer was a customer of long-standing, good repute and with great personal credit and was one who regularly deposited and withdrew cheques of large amounts.

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11. *The principles governing the liability of a collecting banker have also been extracted in the impugned judgment. They read as follows:*

“(1) As a general rule the collecting banker shall be exposed to his usual liability under common law for conversion or for money had and received, as against the ‘true owner’ of a cheque or a draft, in the event the customer from whom he collects the cheque or draft has no title or a defective title.

(2) The banker, however, may claim protection from such normal liability provided he fulfils strictly the conditions laid down in Section 131 or Section 131-A of the Act and one of those conditions is that he must have received the payment in good faith and without negligence.

(3) It is the banker seeking protection who has on his shoulders the onus of proving that he acted in good faith and without negligence.

(4) The standard of care to be exercised by the collecting banker to escape the charge of negligence depends upon the general practice of bankers which may go on changing from time to time with the enormous spread of banking activities and cases decided a few decades ago may not probably offer an unfailing guidance in determining the question about negligence today.



(5) *Negligence is a question of fact and what is relevant in determining the liability of a collecting banker is not his negligence in opening the account of the customer but negligence in the collection of the relevant cheque unless, of course, the opening of the account and depositing of the cheque in question therein form part and parcel of one scheme as where the account is opened with the cheque in question or deposited therein so soon after the opening of the account as to lead to an inference that the depositing the cheque and opening the account are interconnected moves in a integrated plan.*

(6) *Negligence in opening the account such as failure to fulfil the procedure for opening an account which is prescribed by the bank itself or opening an account of an unknown person or a non-existing person or with dubious introduction may lead to a cogent, though not conclusive, proof of negligence particularly if the cheque in question has been deposited in the account soon after the opening thereof.*

(7) *The standard of care expected from a banker in collecting the cheque does not require him to subject the cheque to a minute and microscopic examination but disregarding the circumstances about the cheque which on the face of it give rise to a suspicion may amount to negligence on the part of the collecting banker.*

(8) *The question of good faith and negligence is to be judged from the standpoint of the true owner towards whom the banker owes no contractual duty but the statutory duty which is created by this section and it is a price which the banker pays for seeking protection, under the statute, from the otherwise larger liability he would be exposed to under common law.*

(9) *Allegation of contributory negligence against the paying banker could provide no defence for a collecting banker who has not collected the amount in good faith and without negligence.*



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28. Emphasizing that banks should act prudently and make proper preliminary enquiries before opening an account, Supreme Court in the case of ***Indian Overseas Bank Vs. Industrial Chain Concern***², has held as follows:

“8. It is, however, necessary to bear in mind that this question is often associated with the question of negligence in collecting cheques, etc. for the customers paid into the account. This is because till an account is opened no banker-customer relationship exists between the bank and the person proposing to open an account. Once the account is opened, that relationship is created and with it mutual rights and obligation between the banker and the customer are created under law. Opening an account by cash is a little different from opening an account by a cheque as in that case the Bank has to act according to the tenor of that instrument and its collection and payment involves the Bank's duty owed to its real owner if the proposer happens not to be its real owner. Even when an account is opened by depositing cash but so soon after the opening of the account any cheque is paid into it as to make it part of the same transaction with the opening, the same duty may be implied by law.

9. What is the standard of care to be taken by a bank in opening an account? In the Practice and Law of Banking by H.P. Sheldon, 11th edn., in chapter 5 at page 64 it is said:

“Before opening an account for a customer who is not already known to him, a banker should make proper preliminary inquiries. In particular, he should obtain references from responsible persons with regard to the identity, integrity and reliability of the proposed

²(1990) 1 SCC 484



customer.

If a banker does not act prudently and in accordance with current banking practice when obtaining references concerning a proposed customer, he may later have cause for regret.”

10. M.L. Tannan in Banking Law and Practice in India, 18th edn. at page 198 says:

“Before opening a new account, a banker should take certain precautions and must ascertain by inquiring from the person wishing to open the account, if such person is unknown to the banker, as to his profession or trade as well as the nature of the account he proposes to open. By making necessary inquiries from the references furnished by the new customer, the banker can easily verify such information and judge whether or not the person wishing to open an account is a desirable customer. It is necessary for a bank to inquire, from responsible parties, given as references by the customer, as to the latter's integrity and respectability, an omission of which may result in serious consequences not only for the banker concerned, but also for other bankers and the general public.”

11. One of the tests of deciding whether the bank was negligent, though not always conclusive, is to see whether the Rules or instructions of the banks were followed or not. We may accordingly consult those instructions. Ex. B-6 contains the general instructions regarding constituent accounts for bank. Mark II deals with opening of accounts. It says:

“Except at large branches where the sub-agent or accountant may be authorised to open Current Accounts, no new Current Account shall be opened without the authority of the agent manager who is solely responsible for all Current Accounts being opened in the proper manner. A written application on the appropriate form must be submitted and will be



initialled by the agent at the top left corner after he has satisfied himself of the respectability of the applicant(s). It is important that every party must be introduced to the Bank by a respectable person known to the Bank, who must normally call at the Bank and sign in the column specially provided for the purpose in the account opening form. In all cases his signature must be verified with the specimen lodged and attested. The agent or accountant may introduce constituents to the Bank provided they are known to him personally and in such cases he should sign the application form at the appropriate place in his personal capacity. When the introduction of any other member of the staff is accepted, the agent must invariably make independent inquiry and record his findings on the account opening form for future reference if the need arises....”

12. Mark IV deals with accounts of proprietary concerns. It says:

“An individual trading in the name of concern should fill in Form F.S. 5 and sign it in his personal name and also affix his signature on behalf of the concern as proprietor in the space provided.”

If the banker was negligent in following up the references given at opening of account and subsequently cheques etc. are collected for the customer paid into that account and those happened to be of someone else the Bank may be liable for conversion, unless protected by law. In the instant case, Sethuraman having been known to the Manager who gave the introduction, there was no violation of any instruction or rules.

13. It was held in *Commissioners of Taxation v. English, Scottish and Australian Bank* [1920 AC 683], that a negligence in collection is not a question of negligence in opening an account, though the circumstances connected with the opening



of an account may shed light on the question whether there was negligence in collecting a cheque.

14. In Ladbroke & Co. v. Todd [(1914) 30 TLR 433 : (1914) 111 LT 43 : 19 Com Cas 256] , the plaintiff drew a cheque and sent it to the payee by post. The letter was stolen and the thief took it to the defendant, a banker, and used it for the purpose of opening an account for the purpose of which he forged the payee's endorsement. The defendant accepted believing him to be the payee. He was not introduced to the bank and no references were obtained. The defendant opened the account and the cheque was specially cleared at the request of the thief, and he drew out the proceeds on the next day. On the discovery of the fraud the plaintiff brought an action against the defendant for conversion. One of the main questions raised was whether the account having been opened by payment in all the cheques to be collected the defendant could be properly regarded as having received payment for a customer. It was held that as account was already opened when the cheque was collected, payment had been received for a customer. The drawer thereupon sent another cheque to the real payee and took an assignment of his rights in the stolen cheque and, as holders of the cheque or alternatively as assignees, brought an action against the bank to recover the proceeds collected by the bank as money had and received to their use. Evidence was given that it was the general practice of bankers to obtain a satisfactory introduction or reference. It was held that the banker had acted in good faith, but was guilty of negligence in not taking reasonable precautions to safeguard the interests of the true owner of the cheque and that therefore he had put himself outside the protection of Section 82 of the Bills of Exchange Act, 1882. Bailhache, J. also said that the banker would have been entitled to the protection of the section as having received payment for a customer, but had lost it owing



*to his want of due care. It was also held that the relation of banker and customer began as soon as the first cheque was handed in to the banker for collection, and not when it was paid.
xxx xxx xxx”*

29. Considering the aforesaid law, this Court cannot turn a blind eye to the apparent negligence committed by the appellant bank in not only opening the bank account of respondent No.2 in the name of respondent No.1, but also allowing the withdrawal of huge amounts of sums leaving the account with negligible deposit, within days of opening of the account.

30. Further, the learned Trial Court has rightly held that the transaction of depositing of the cheque and the demand drafts and opening of the account are interconnected moves in one integrated plan. Thus, the learned Trial Court has come to a categorical finding that the opening of the account, the depositing of the two demand drafts and cheque, withdrawal of the amount of Rs.3.5 Lakhs on 21.09.2004 and withdrawal of Rs.2.5 lakh on 24.09.2004 form part and parcel of one scheme. Thus, the learned Trial Court has held as follows:

“29. As stated and discussed herein above by me, it is not in dispute that the defendant no. 2 opened account no. 037102000011219 with the defendant no. 1 bank on 17.09.2004 acting as the proprietor of Shree Ganpathi Traders. It is not in dispute that the defendant no.2 deposited two demand drafts bearing nos. 979923 and 979924 both dated 14.09.2004 for an amount of Rs. 48,000/- and Rs. 47,663/- and a cheque bearing no. 000073 dated 14.09.2004 drawn on HSBC for an amount of Rs. 5,06,420/- in the said account. It



is not in dispute that the defendant no.2 withdrew an amount of Rs. 3.5 Lacs from the said account on 21.09.2004 and an amount of Rs. 2.5 Lacs on 24.09.2004 from the said account. It is not in dispute that an FIR bearing no. 322/04 U/s 379/411/420/468/471/120B IPC with PS Lahori Gate against the defendant no.2 and others with regard to the theft of the said cheque and two demand drafts.

30. *It is crystal clear from the abovesaid admitted facts that the account was opened on 17.09.2004 and the amount was withdrawn on 21.09.2004 and 24.09.2004. If the law as laid down by the Hon'ble Supreme Court of India in the authority cited as **2004(2) CC Cases (SC) 233** and the law as laid down in various other cases discussed herein above is applied, I am of the opinion that it becomes evidently clear that the opening of the account, the depositing of the abovesaid two demand drafts and the cheque, the withdrawal of the amount of Rs. 3.5 Lacs on 21.09.2004 and withdrawal of the amount of Rs. 2.5 Lacs on 24.09.2004 form part and parcel of one scheme. I am of the opinion that it is writ large on the face of the said transaction that the depositing of the cheque and the demand drafts and opening of the account are interconnected moves in one integrated plan.*

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31. The contention on behalf of the appellant bank that it has not been proved by the respondent No.1 that the cheques in question were sent through Vayu Courier, holds no water. The FIR dated 17.09.2004 was filed by the owner of the Vayu Courier Agency at Police Station Lahori Gate clearly mentioning about the cheque and demand drafts in favour of respondent No.1. It is undisputed that the fact regarding



opening of the bank account by respondent no.2 in the name of respondent No.1 and encashing the demand drafts and cheque drawn in favour of respondent No.1, was revealed at the time of investigation carried out by the police pursuant to FIR dated 17.09.2004.

32. Further, the respondent No.1 as plaintiff in the suit examined Sh. Rakesh Goel, proprietor of *M/s Vayu Sewa Courier Service* as PW-2. He has clearly stated in his deposition as PW-2 that he knew the respondent No.1 firm since long time back as he was delivering couriers/packages in his general course of business. This Court also notes that respondent No.2 was proceeded ex parte before the Trial Court and he neither appeared before the Trial Court nor filed any reply/evidence therein. The aforesaid fact coupled with the established facts as regards the circumstances of opening of the bank account by respondent No.2, withdrawing large sums of amounts from the said account after encashing the demand drafts and cheque in the name of respondent No.1, not operating the said account thereafter and simply disappearing afterwards, clearly point that the contentions raised on behalf of appellant bank to the contrary, are totally baseless and unjustified. The negligence on the part of the bank in allowing the opening of bank account by respondent No.2 in the name of respondent no.1 on the basis of untrustworthy documents, by not following the proper procedure and allowing withdrawal of huge sums within days of opening of the said account, is clearly established.

33. This Court also notes that in the Account Opening Form, as attached in the Trial Court Record, at the bottom of the page in which mobile phone number is mentioned, it is recorded by the bank that,



‘Cell no. is wrong not in existence.’ This clearly shows that mobile number given by respondent No. 2 in the Account Opening Form was non operational and invalid at the time of the opening of the said account. This also points to the negligence of the bank in not verifying the mobile number at the time of opening of the bank account. The appellant bank was certainly not diligent and cautious and displayed absolute recklessness in opening the bank account of respondent No. 2.

34. In view of the aforesaid detailed discussion, the present appeal is found without any merits and is dismissed.

35. Accordingly, the amount deposited by the appellant with the Registrar General of this Court, along with interest accrued, is directed to be released in favour of respondent No.1 upon respondent No.1 making an application to the Registry of this Court in this regard.

(MINI PUSHKARNA)
JUDGE

JULY 03, 2023

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