IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.146 of 2017

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Punjab National Bank, Branch-Chandauti, P.S.-Chandauti, District-Gaya

... ... Appellant/s

Versus

Ramanuj Bharti son of Sri Bharat Bharti, Resident of A.T. Gate Kaler, Civil Aerodome Gaya, P.S.- Chandauti, District- Gaya.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Rajan Ghoshrave, Adv.
For the Respondent/s	:	Mr. Sanjay Kumar Giri, Adv.
		Mr. Mrityunjay Harsh, Adv.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

7 18-07-2024 Heard learned counsel for the parties.

This Second Appeal has been filed against the judgment and decree dated 17.08.2016 passed by District Judge, Gaya in Title Appeal No. 10 of 2001 affirming the judgment and decree dated 14.02.2001 passed by Sub-Judge-II, Gaya in Title Suit No. 15 of 2000/ 25 of 2000.

2. The suit was filed for declaration that plaintiff is entitled to operate the CA: OD A/c No. 99 after correction in the ledger sheet to the extent of entries appearing in the Pass Book together with interest thereon being charged by the defendant and also for cost of the suit.

3. The case of the defendant/respondent, is that the plaintiff is operating a current A/c No. 99 with Chandauti Branch of Punjab National Bank, the defendant is a loanee. The loan limits granted secured by Fix Deposit of the plaintiff with the defendant. The plaintiff is running general store business at

A.T. Gate (Kaler) Civil Aerodrum, Gaya from the said financial assistance from the defendant, Chandauti Branch in the District of Gaya and some time in the month of April, 1999, the plaintiff noticed irregularity in the entries of the pass book supplied and the ledger kept and maintained by the defendant, Chandauti Branch of the Bank. On 12.04.1999, the plaintiff in writing requested the Branch Manager of Chandauti Branch of the Bank to check and verify the entries both in pass book and ledger of the Bank. The total fixed deposit of the plaintiff of Rs. 2, 65,000/- with the defendant, Chandauti Branch out of which Rs. 1,00,000/- adjusted to outstanding and remaining Rs. 1, 65,000/- still lying in fixed deposit with the Bank. The defendant-Chandauti Branch of Gaya *vide* its letter dated 06.05.1999 requested to submit the inner foil of pay in slip dated 04.12.1996, 04/97, 15.12.1997, 02.04.1998 and 10.10.1998 for further inquiry, checking and verification. In reply to the said letter, the plaintiff sent a letter on 12.05.1999 stating therein that the inner foils are missing. The plaintiff did never care of retaining the same only because at the time of deposit, the Bank staff, namely, Manoj Kumar or staff on duty made entries in the pass book. The plaintiff also approached the Banking Ombudsman (Lokpal) Reserve Bank of India, Patna, Bihar for redressal of his grievance and operation of the loan account for smooth running of the general store business but to no effect. The plaintiff approached the defendant Branch at Chandauti on several occasions and requested to allow operation of OD:A/c No. 99 in his name after correcting the ledger as per entries appearing in the pass book of the plaintiff. But the Branch Manager on one pretext or another did not allow operation of the loan account as requested. On plaintiff's complaint, Bank made inquiries and also found some irregularities in other account. The details of those accounts are mentioned in the plaint.

4. The further case of the plaintiff, is that the Manager of Chandauti Branch and the defendant lodged an F.I.R. on 18.05.1999 with Chandauti Police Station as Chandauti P.S. Case No. 48 of 1999 under Sections 409, 419, 490, 467, 468, 120(B) of the Indian Penal Code. The Bank has claimed defalcation of more than Rs. 11,00,000/- in the said F.I.R.. On perusal of the said F.I.R., the allegation of plaintiff is found true. Therefore, the plaintiff is entitled to operate the loan account after correction of ledger to the extent of deposit as appearing in the pass book together with interest equal to that of the rate charged in the loan account.

5. On summons, defendant-Bank appeared and filed their written statement and placed their objection with regard to relief(s) claimed by the plaintiff. The defendant-Bank admitted that the plaintiff is maintaining a current account *vide* OD:A/c No. 99 with Chandauti Branch of Punjab National Bank as loanee. It is further pleaded that loan limit was granted to plaintiff on fixed deposit by the plaintiff with the defendant-Bank at Branch of Chandauti. It is contended that the plaintiff failed to produce counterfoil in the Bank on the pretext that the counterfoils are missing which cannot be accepted as there is no evidence of deposits on such dates available in the Bank because neither any voucher is in the record of the Bank nor any other evidence of such deposits are available in cashier log book, cash book, ledger etc. So entry into the pass book of the said dates are wrong and baseless. The pass book was kept with the complainant/plaintiff and suspicious role was played possibly in collusion with Manoj Kumar or any other person outside the Bank making fake entries in the pass book with *malafide* intention to cheat the Bank. Further case of the defendant, is that the plaintiff has wrongly stated that he had gone before the Banking Ombudsman, Patna for operation of loan account for smooth running of his business. The Bank

always allowed the plaintiff to operate the OD: A/c No. 99 as per entries in the ledger. But it is not possible for the defendant-Bank to allow the plaintiff to operate the account after correcting ledger as entries in the pass book. The defendant-Bank has no knowledge that how such entries were made in the pass book. The plaintiff has neither shown counterfoil of such entries nor any other concurrent proof regarding such entries in the pass book. Neither any voucher is in the record of the Bank nor any other evidence of such deposits are available in cashier book, log book, cash book, ledger etc. Some entries in the pass book is totally wrong and baseless. The said OD account is continuing since 13.06.1996 and during that period the plaintiff has never informed the Bank about wrong entries of the certain deposited amount on above alleged dates in the ledger and when the then dealing Clerk has been transferred from his Branch, the plaintiff filed this frivolous suit. Further, it is contended that the pass book is not conclusive evidence of the amount deposited unless and until there is counterfoil in support of such entries. The investigation of the case with regard to the defalcation of the said Rs. 11,00,000/- is still pending, till date charge-sheet is not submitted by the police. Thus, it cannot be said that the case of the plaintiff is correct and admitted one. The plaintiff cannot be entitled to operate the loan account after correction in ledger to the extent of deposit as appearing in the pass book with interest. It is further contended that the plaintiff never asked to operate OD: A/c No. 99 as per entries in the Bank ledger. The Bank has never refused to operate the OD: A/c No. 99 either on 15.01.2000 or on any dates as per entries in the ledger sheet of the Bank. The defendant always demanded counterfoil or any proof of such entries in the pass book from the plaintiff but the plaintiff always evaded to produce the counterfoil or any proof regarding such deposit.

6. The learned trial court on analyzing the materials on record and evidences adduced by the parties decreed the suit on contest and held that there was irregularities in the account of the plaintiff and there was difference of accounts in pass book and in the ledger. The defendant/Bank doesn't deny the fact that entries in the pass book were not made by the employees of the Bank. The Bank has not challenged the entries. There is difference in the entries mentioned in the pass book and in the ledger of the Bank. This fact is also accepted by the Bank concerned. The Bank was confronted on the point that there is mis-appropriation in the account of plaintiff by the Bank employee and further held that the Bank employee has mis-

appropriated the amount of plaintiff and the Bank employee Manoj Kumar had not deposited the amount of the plaintiff in the Bank. The said Manoj Kumar only mentioned the amount in the pass book of the plaintiff It is fault of the employee of the Bank, therefore, the Bank is liable to fulfill the grievance of the depositor. This fact has also been proved that the Bank has also filed a criminal case against employee Manoj Kumar. Therefore, the plaintiff is entitled to operate the Bank account mentioned in the pass book.

7. Being aggrieved by the aforesaid judgment and decree passed in Title Suit No. 15 of 2000/25 of 2000 dated 14.02.2001, the defendant/appellant filed Title Suit No. 10 of 2001 before the District Judge, Gaya, which was also dismissed by the appellate court on 17.08.2016 and the present Second Appeal has been filed against the concurrent finding of both the courts below.

8. Learned counsel for the appellant submits that due to technical problem, the direction has not been complied. Learned counsel for the appellant further submits that old OD A/c No. 99 is not operated in Core Banking System because in Core Banking System 16 digit account number is allotted.

9. In such view of the matter, the learned counsel for

the appellant suggests that if Bank is directed to open a new account in favour of the plaintiffs/respondents, the Bank would open account under new system carrying the earlier old account of the plaintiff with interest in order to comply the decree.

10. Considering the facts and findings of both the courts below, I am not inclined to interfere with the concurrent findings of the courts below. There is no question of law in as much as no substantial question of law is involved in this case. Thus, the appeal is dismissed at the stage of hearing under Order 41 Rule 11 C.P.C..

11. In view of the submissions made by learned counsel for the respondents, the Bank is directed to open a new account from old OD A/c No. 99 in Core Banking System and bring the carry forward amount with interest as prescribed under the law in the new account to be opened under Core Banking System.

12. Pending interlocutory applications, if any, shall stand disposed of.

(Khatim Reza, J)

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