IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK

CS-COM/769/2024
IA NO: GA/3/2012 (Old No: GA/372/2012),
GA/5/2016 (Old No: GA/1246/2016)
THE PEERLESS GENERAL FINANCE & INVESTMENT CO. LTD
VS
UCO BANK

For the plaintiff	:	Mr. Mr. Rahul Karmakar, Advocate Mr. Tapan Nag Chowdhury, Advocate
For the defendant	:	Mr. Sailesh Mishra, Advocate
Reserved on	:	17th September, 2024
Delivered on	:	30th April, 2025

JUDGMENT

Bivas Pattanayak, J. :-

1. This is a suit for declaration and a decree for a sum of Rs.14,01,732/- of the plaintiff against the defendant along with other reliefs.

2. The plaintiff's case, in brief, is as follows:

(i) The plaintiff is an existing company within the meaning of the Companies Act, 1956 having its registered office at Peerless Bhavan No.3, Esplanade East, Kolkata-700069 and regional and branch offices in several parts situated at Kancharia Towers, 1-7-143/143A, Golkonda 'X' Roads, Mursheerabad, Hyderabad.

(ii) The business of the plaintiff-company comprises of offering various small savings schemes to the public at large. Under the schemes, the subscribers have to pay in lump sum or in installments to the plaintiff-company over a contractually stipulated period of time and the subscribers would get back deposited amount along with guaranteed accretions/bonus as per contract at the end of a contractually stipulated term. The plaintiff is a residuary non-banking company in terms of the Residuary Non-Banking Companies (Reserve Bank) Directions, 1987.

(iii) At the time of repayment of maturity amount to the certificate holders, such payment is made through account payee cheques/pay orders/drafts or manager's cheques issued by the bank. Manager's cheque is considered to be the most convenient and secure mode of repayment which is mostly used by the plaintiff-company for payment of maturity amounts.

(iv) In between 2002 and 2003, the plaintiff-company had requested the UCO Bank, Abids Circle Branch, Hyderabad to draw manager's cheques in favour of large number of certificate holders of the plaintiff-company for the purpose of payment of maturity value of their certificates. The entire requisite amount for the purpose of issuance of manager's cheques along with list of certificate holders in whose favour the cheques were to be made out were deposited with the UCO Bank, Abids Circle Branch, Hyderabad sufficiently ahead of the due date and/or the maturity date. The said branch of the UCO Bank drew several numbers of manager's cheques in favour of the certificate holders and handed over the said manager's cheques to the plaintiff-company.

(v) The said manager's cheques were dispatched to the parties/certificate holders by way of payment of maturity of their certificates at their respective recorded addresses.

(vi) Subsequently, it transpired that a large number of certificate holders did not present the manager's cheques to the bankers for encashment nor did they send them back to the company for revalidation and the said manager's cheques have remained uncashed for a long period of time and have become invalid and/or stale and no money can be realized on the basis of the said manager's cheques. However, despite non-encashment of the manager's cheques, the amount paid by the plaintiff company to the account of UCO Bank for purchase of manager's cheques was not debited till date. The total amount covered by such unpresented/uncashed manager's cheques as on date is Rs.8,41,500/-.

(vii) By a letter dated 15th July, 2006, the defendant bank informed the plaintiff-company that from the bank's record, it is observed that an amount of Rs.8,41,500/- covering about 599 instruments/ manager's cheques are lying unpaid for more than three years. The bank requested the plaintiff to present the manager's cheques or furnish Indemnity Bond of Rs.100/- for payment of the manager's cheques so that the entire amount can be credited to the current account of the plaintiff-company then numbered as 718 (now numbered as 14410200000228). It was further intimated that since the manager's cheques is lying unpaid for more than three years, the bank would be forced to transfer the entire amount to the Head Office immediately unless the manager's cheques are presented or Indemnity Bond of Rs. 100/- is furnished to the bank and a fortnight's time was given to the plaintiff-company for response.

(viii) In response to the aforesaid letter dated 21st July, 2006, the Officer-in-Charge, Regional Maturity Cell of the plaintiff-company wrote to the Chief Manager of the defendant-Bank, Abids Circle Branch, Hyderabad requesting him to kindly provide the plaintiff-company the *proforma* of indemnity bond to be executed on a non-judicial stamp paper of Rs.100/- for claim of Rs.8,41,500/-. However, no such *proforma* of Indemnity Bond was provided to the plaintiff-company, thereby, constraining the plaintiff-company to write again to the Chief Manager of the defendant bank on 6th September, 2007 with similar request.

(ix) On 20th September 2007, the Manager, UCO Bank, Mubarak Bazar, Abids Circle Branch, Hyderabad wrote to the Zonal Officer of the Bank to pay the amount covered by the outstanding manager's cheques which had not been encashed or presented for encashment without production of physical instrument by taking Indemnity Bond.

(x) No intimation was received from the defendant bank. The plaintiff-company wrote two letters dated 12th March, 2008 and 29th May, 2008 requesting the bank for arrangement of credit of Rs.8,41,500/- together with interest from the date of submission of the claim till the date of payment.

(xi) Despite the aforesaid letters, no intimation was received and on 19th September, 2008, the Director (Operations) of the plaintiff-company wrote a letter to the Chairman and Managing Director, UCO Bank for credit of Rs.8,41,500/- in account of the plaintiff-company then numbered as 718 (now numbered as 14410200000228).

(xii) It was informed by the Chief Officer, UCO Bank that the complaint of the plaintiff-company had been referred to the Zonal Office of the Bank at Hyderabad for redressal. Again, on 20th September, 2008 and 11th November, 2008, the plaintiff-company reiterated its request for crediting of the amount covered by the manager's cheques.

(xiii) On 23rd January, 2009, it was informed by the Chief Manager, UCO Bank, Mubarak Bazar, Abids Circle Branch, Hyderabad to the plaintiff-company alleging that the bank is liable to the holders of the manager's cheques for value and unless the cheques are presented by the holders for value, the bank is not liable to pay any amount to any other person and as such, the amount of the manager's cheques for Rs.8,41,500/- cannot be paid to the plaintiff-company which is the purchaser of the manager's cheques even on the basis of the Indemnity Bond executed on non-judicial stamp paper as there is no consent of the holders of the manager's cheques to pay the amount to the plaintiff.

(xiv) The plaintiff-company through its learned advocate on 5th March, 2009 sent a letter to the Chief Manager, UCO Bank, Mubarak Bazar, Abids Circle Branch, Hyderabad requesting for immediate credit for a sum of Rs.8,41,500/- along with simple interest @ 15% per annum which was followed by another letter dated 16th March, 2009.

(xv) In reply to the aforesaid advocate's letters, the learned advocate for UCO Bank, Mubarak Bazar, Abids Circle Branch, Hyderabad contended in its letter dated 26th May, 2009 that the defendant-bank cannot consider the claim of the plaintiff-company in the absence of furnishing original manager's cheques and without written consent of the holders of the manager's cheques as the validity periods of the said cheques have expired and that the defendant-bank has no obligation to proceed the manager's cheques to the purchasers when the same were not encashed by the beneficiary in the absence of furnishing original or consent from the beneficiary.

(xvi) Hence the plaintiff company prayed as follows:

> *"a) Declaration that the stand of the Defendant as contained in the said letters dated 23rd January, 2009 and 26th May, 2009 is wrongful and void and the same letters dated 23rd January, 2009 and 26th May, 2009 are void, inoperative and of no effect;*
> *b) The letters dated 23rd January, 2009 and 26th May, 2009 of the defendant may be adjudged to be void and the same may be directed to be delivered up and cancelled;*
> *c) A decree for a sum of Rs.14,01,732/- in favour of the Plaintiff and against the Defendant as stated in Paragraph 29 above;*
> *d) A decree for interest in favour of the Plaintiff and against the Defendant as stated in Paragraph 30 above;*
> *e) Ad-interim and further interest;*
> *f) Receiver;*
> *g) Injunction;*
> *h) Attachment;*
> *i) Costs;*
> *j) Further and other reliefs."*

3. The defendant-bank keenly contested the instant suit by filing its written statement contending, *inter alia*, as follows:

(i) Since no part of cause of action arose within the jurisdiction of this Hon'ble Court, the plaint filed in the said suit is liable to be rejected as this Hon'ble Court lacks both territorial and pecuniary jurisdiction to try and entertain the said suit.

(ii) The plaint in the said suit does not disclose any cause of action against the defendant-bank and is barred by limitation.

(iii) The plaintiff purchased several manager's cheques from the defendant bank in favour of several persons being their customers/clients/depositors for the purpose of remitting certain amount of money (maturity value of the deposits with the plaintiff) to their respective customers/clients/depositors and dispatched the same to the respective persons. Out of the said manager's cheques, some were not presented to the defendant-bank for encashment for a long time.

(iv) The manager's cheques (also known as banker's cheques) are a payment instrument which is used by banks to settle payment obligations on behalf of their customers. The said instrument (manager's cheque) is guaranteed by the bank for its full value and is a pre-paid negotiable instrument, wherein the drawee bank undertakes to make payment in full when the instrument is presented by the payee for payment. In order to obtain payment, the beneficiary has to either present the instrument directly to the branch concerned or have it collected by his/her bank through clearing mechanism. In practice, these instruments are payable at the branch of issue and are used for payment within the local clearing jurisdiction. Once the said instrument is handed over to its beneficiary, the issuer's/bank's obligation to pay against such instrument is to the beneficiary of the said instrument and not to the purchaser of the said instrument.

(v) The sum of money which is payable against the said instruments are held by the bank in trust on behalf of the payees/beneficiaries till the date of encashment of the said instrument by the respective beneficiaries and the said sum of money cannot be used by the bank for any other purpose.

(vi) In case a manager's cheque is not encashed for a long time which is above three years in the present case, the sum of money which is payable against the instrument is to be transferred from the respective bank to its Head Office for further recourse.

(vii) After receiving information from the defendant-bank that certain manager's cheques were not presented to the bank for encashment, the plaintiff-company disclosed that the said instruments were dispatched to the respective beneficiaries, however, it wrongfully insisted to pay the money-in-question to the plaintiff-company, without having any written consent of the said beneficiaries.

(viii) The manager's cheques amounting to Rs.8,41,500/- were not presented for payment and the same are outstanding in favour of the respective payees who have not encashed the said manager's cheques.

(ix) The defendant issued a letter dated 15th July, 2006 considering that the plaintiff-company was holding the original manager's cheques and the same was not handed over to the respective beneficiaries of the said manager's cheques and, accordingly, requested the plaintiff to present the manager's cheques or furnish an Indemnity Bond indemnifying the defendant-Bank against any further claims. Once the manager's cheques are handed over/dispatched to the respective beneficiaries/rightful owners, the payees of such instruments can only be the beneficiary/rightful owners of such instruments for the amounts covered by such instruments and the plaintiff-company shall not get any entitlement to receive the said amount without the consent of the payees.

(x) Admitting the communication of the plaintiff-company seeking for *proforma* of Indemnity Bond, the plaintiff-company was advised to present original manager's cheques, if any held by the plaintiff-company, or the written consent of the payees if sent/dispatched to the beneficiaries, as the said money could only be credited in favour of the plaintiff-company in case the said instruments/manager's cheques were held by the plaintiff-company and not been dispatched to the owners of the said manager's cheques, or the plaintiff-company has written consent of the beneficiaries of the said manager's cheques.

(xi) The letter dated 20th September, 2007 was a part of internal correspondence of the defendant-bank from branch level to Zonal level for seeking permission of Zonal Office to pay the outstanding manager's cheques amount to the plaintiff-company. The purpose of the said correspondence was to clarify its legal position in the instant matter and the same cannot be treated as obligation or admission on part of the defendant-bank to pay the amount in question to the plaintiff-company. The plaintiff-company has not referred to the said letter in the plaint and also not disclosed the source of receipt of copy of the said letter.

(xii) The plaintiff-company has no right to claim outstanding amount in absence of the original manager's cheque and/or concurrence of the respective payees.

(xiii) Although the plaintiff-company by letter dated 19th September, 2008 complained to the Chairman & Managing Director of the UCO Bank for crediting the amount of Rs.8,41,500/- to its current account, however, since the plaintiff-company was not the rightful owner of the amount covered by the manager's cheque, the Abids Circle Branch by its letter dated 23rd January, 2009 expressed its inability to accede to the request of the plaintiff-company.

(xiv) The amount outstanding against the manager's cheques being Rs.8,41,500/- is held by the defendant-bank in favour of the payees of the manager's cheques. The plaintiff-company has received the flow of consideration for the money paid to the defendant-bank by way of manager's cheques for value in favour of respective payees/ beneficiaries and thereafter the said flow of consideration has been passed on to the respective payees towards maturity proceeds of the certificates immediately after the dispatch of the said instruments by the plaintiff-company to the beneficiaries. Under such circumstances, consideration can be claimed either by the payees directly or by the purchaser by cancellation of the same with the written consent of the payees.

(xv) The defendant-bank is holding money on behalf of the payees of the manager's cheques and the ownership of the said amount has already been passed on to respective payees by dispatch of the said manager's cheques and thus defendant bank is holding the said amount in trust on behalf of the payees and not on behalf of the plaintiff-company. The *prima facie* contract between bank and beneficiaries as instrument holders has to be honoured under the banking laws.

(xvi) In view of above, the defendant-bank prayed for dismissal of the suit with exemplary cost.

4. Upon considering the pleadings of the parties, following issues were framed:

> *"1. Whether this Hon'ble Court has territorial and pecuniary jurisdiction to entertain the instant suit?*
> *2. Is the suit barred by the laws of limitation?*
> *3. Whether the Defendant Bank is under any obligation to pay monies admittedly paid by the plaintiff to the defendant for issuance of the Manager's cheques in question when the said Manager's cheques have not been presented by the beneficiaries thereof to the Bank for encashment within their validity periods after the said cheques were dispatched to the beneficiaries?*
> *4. Whether the obligation of issuers of Manager's cheque/bank to pay against such instrument is towards the beneficiaries of the said instrument, or is towards the purchaser of the said instrument, after the said instrument being dispatched by the purchaser to the respective beneficiaries?*
> *5. Whether the Defendant Bank has any liability towards the beneficiaries of Manager's cheques issued by it after the expiry of the validity period of such cheques?*
> *6. Whether the plaintiff or the beneficiaries of the Manager's cheques are entitled to claim any interest as claimed in paragraph 26 of the plaint?*
> *7. Whether the plaintiff is entitled to the reliefs prayed for by it in the suit?*
> *8. To what other reliefs, if any, is the plaintiff entitled?"*

5. The plaintiff-company in order to establish their case examined one witness and proved the following documents:

(i) Letter of Chief Manager, UCO Bank dated 15th July, 2006- **Exhibit A.**

(ii) Letter of Officer-in-charge, Regional Maturity Cell dated 21st July, 2006- **Exhibit B.**

(iii) Letter of Regional Maturity Cell dated 6th September, 2006-**Exhibit C.**

(iv) Letter dated 20th September, 2007 of Manager, UCO Bank-**Exhibit D.**

(v) Letter of S. Dasgupta, Senior Manager, Peerless General Finance & Investment Co. Ltd dated 12th March, 2008- **Exhibit E.**

(vi) Letter of S. Dasgupta, Senior Manager, Peerless General Finance & Investment Co. Ltd dated 29th May, 2008- **Exhibit F.**

(vii) Letter of B.Lahiri, Director (Operations), Peerless General Finance & Investment Co. Ltd dated 19th September, 2008- **Exhibit G.**

(viii) Letter of Chief Officer, UCO Bank dated 29th September, 2008 – **Exhibit H**

(ix) Letter of S. Dasgupta, Sr. Manager (Recovery) dated 20th October, 2008 – **Exhibit I**

(x) Letter of S. Dasgupta, Chief Manager, Peerless General Finance & Investment Co. Ltd dated 11th November, 2008 – **Exhibit J**

(xi) Letter of Chief Manager, UCO Bank Ltd. dated 23rd January, 2009 – **Exhibit K**.

(xii) Acknowledgment due card with letter of T.K. Dutta, Advocate dated 16th March, 2009 – **Exhibit L (collectively)**.

(xiii) Letter of R. V. Subba Rao, Advocate dated 26th May, 2009 with envelope **Exhibit M (collectively)**

(xiv) Xerox Petition and order dated 25th March, 2013 – **Exhibit N (collect.)**

6. Although the defendant-Bank produced one witness (DW1), however since after part cross-examination the said witness failed to appear, the evidence of DW1 was expunged from the record vide order dated 9th May 2024 and it was observed the DW1 is deemed to have been not examined.

7. Mr. Rahul Karmakar, learned advocate for the plaintiff-company submitted that the plaintiff-company carries the business of offering various small savings schemes to the public at large and under those schemes, the subscribers are required to pay either in lump sum or in installments, over a contractually stipulated period of time, to the plaintiff-company and upon completion of the stipulated period the subscribers would get back deposited amount along guaranteed accretions/bonus as per contract. In between the year 2002 and 2003, the plaintiff-company for the purpose of repayment of maturity amount of the certificates, requested the UCO Bank, Abids Circle Branch, Hyderabad to draw manager's cheques in favour of large number of certificate holders of the plaintiff-company and the entire requisite amount for the said purpose along with list of certificate holders in whose favour the cheques were to be made out were deposited with the UCO Bank, Abids Circle Branch, Hyderabad sufficiently ahead of the due date and/or the maturity date. The said branch of the UCO Bank drew several numbers of manager's cheques in favour of the certificate holders and handed over the same to the plaintiff-company, which in turn were dispatched to the parties/certificate holders by way of payment of maturity of their certificates at their respective recorded addresses by the plaintiff-company. However, it transpired subsequently that a large number of certificate holders neither did present the manager's cheques to the bankers for encashment nor did they send them back to the plaintiff-company for revalidation and the said manager's cheques remained uncashed for a long period of time and have become invalid and/or stale and no money can be realized on the basis of the said manager's cheques. Despite non-encashment of the manager's cheques, the amount paid by the plaintiff-company to the account of UCO Bank for purchase of manager's cheques was not debited till date. The total amount covered by such unpresented/uncashed manager's cheques is Rs.8,41,500/- covering about 599 instruments/manager's cheques which was informed by the defendant-Bank. The defendant-bank further requested the plaintiff-company to present the manager's cheques or furnish Indemnity Bond of Rs.100/- for payment of the manager's cheques so that the entire amount can be credited to the current account of the plaintiff-company, failing which, the amount would be sent to the head office, since three years have elapsed. The plaintiff-company made a request to the defendant-Bank for providing the *proforma* for execution of Indemnity Bond against claim of Rs.8,41,500/-. However, no such *proforma* of Indemnity Bond was provided to the plaintiff-company. By letter dated 6th September, 2007 once again a request was made to the Chief Manager of the defendant-bank which was of no avail. Several communications were sent to the defendant-Bank for such claim together with interest but no steps were taken by the defendant-Bank. The plaintiff-company is thus constrained to file the suit for recovery of such claim.

Referring to Section 31 of Negotiable Instruments Act, he submitted that the defendant-Bank being the drawee of the manager's cheque is under statutory obligation to pay the cheque amounts when duly required so to do, in default, of such payment, it must compensate the drawer for any loss or damage caused by such default. The plaintiff-company being the drawer of the manager's cheque can sue the drawee-Bank for breach of contract. In support of his contention, he relied on the decision of Hon'ble Supreme Court passed in ***American Express Bank Ltd. versus Calcutta Steel Co. and Others***[1].

Further in view of Section 70 of the Contract Act since the plaintiff-company has lawfully delivered money to the defendant-Bank for issuance of manager's cheque in favour of the beneficiaries which has been accepted by the defendant-Bank and the amount has not been paid to the beneficiaries deeming thereby that the Bank has enjoyed the benefit thereof, in such circumstances the Bank is bound to make compensation to the plaintiff-company in respect of the money so paid. The defendant-Bank cannot be allowed to make unjust enrichment by withholding such amount to which the plaintiff-company is entitled. The aforesaid provisions prevent unjust enrichment and it applies as much to the individuals as to the corporations and Government. To buttress his contentions, he relied on the following decisions of Hon'ble Supreme Court:

(i) ***State of West Bengal versus B.K. Mondal and Sons***[2]

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[1] ***(1993) 2 SCC 199***
[2] ***1961 SCC OnLine SC 76***

(ii) ***Sahakari Khand Udyog Mandal Ltd. versus Commissioner of Central Excise & Customs***[3]

Moreover, the defence case made out in the written statement has not been supported by any oral or documentary evidence, rather the evidence of DW1 has been expunged by the Hon'ble Court on the ground of non-appearance of the witness on repeated dates. Thus, the defence case cannot be accepted.

He also indicated that pursuant to order dated 15th June 2011 passed in GA 324 of 2011, the plaintiff-company has made a fixed deposit with the defendant-Bank on 29th July 2011 of the amount of Rs.8,41,500/-.

In light of his aforesaid submissions, he pressed for passing of a decree in favour of the plaintiff-company of the amount as claimed.

8. In reply to the aforesaid contentions of the plaintiff-company, Mr. Sailesh Sharma, learned advocate representing the defendant-Bank at the outset, submitted that the suit is not maintainable before this court since the actual claim amount of Rs.8,41,500/- of the plaintiff-company is less than the minimum value of Rs.10,00,000/- fixed for pecuniary jurisdiction in the Original Side of this Hon'ble Court. The remaining claim amount pertains to the interest portion and not the actual claim. Moreso, no case of loss of interest is made out by the plaintiff-company. Further the transaction pertaining to issuance of Manager's cheque has taken place in the UCO Bank, Abids Circle Branch, Hyderabad which beyond the territorial jurisdiction of this Hon'ble Court.

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[3] ***(2005) 3 SCC 738***

The plaintiff-company purchased several manager's cheques from the defendant-Bank in favour of beneficiaries for the purpose of remitting certain amount of maturity value, of the deposits made with the plaintiff-company, to the respective beneficiaries which were dispatched to those beneficiaries. Out of the said manager's cheques, some of them were not presented to the defendant-Bank for encashment for a long period of time. The said instrument (manager's cheque) is guaranteed by the bank for its full value and is a pre-paid negotiable instrument, wherein the drawee bank undertakes to make payment in full when the instrument is presented by the payee for payment. In order to obtain payment, the beneficiary has to either present the instrument directly to the branch concerned or have it collected by his/her bank through clearing mechanism. In practice, these instruments are payable at the branch of issue and are used for payment within the local clearing jurisdiction. Once the said instrument is handed over to its beneficiary, the issuer bank's obligation is to pay against such instrument to the beneficiary of the said instrument and not to the purchaser of the said instrument. The sum of money which is payable against the said instruments are held by the bank in trust on behalf of the payees/beneficiaries till the date of encashment of the said instrument by the respective beneficiaries and the said sum of money cannot be used by the bank for any other purpose. In case a manager's cheque is not encashed for a period above three years, as in the present case, the sum of money which is payable against the said instruments is to be transferred from the respective bank to its Head Office for further recourse. The manager's cheques amounting to Rs.8,41,500/-

which were not presented for payment are outstanding in favour of the respective payees/beneficiaries who have not encashed them, however, the plaintiff-company wrongfully insisted for payment of the said amount-in-question to them, without having any written consent of the said beneficiaries. Once the manager's cheques are handed over/dispatched to the respective beneficiaries/rightful owners, the payees of such instruments can only be the beneficiary/rightful owners of such instruments for the amounts covered by such instruments and the plaintiff-company shall not get any entitlement to receive the said amount without the consent of the payees. Therefore, the claim of the plaintiff-company for recovery of the said amount is not at all sustainable and the question of making payment to the plaintiff-company does not arise. He further indicated no consent from the holders of the Manager's cheque were obtained by the plaintiff-company nor communication has been made by the plaintiff-company to the beneficiaries informing them of the unpaid manager's cheque. As per the Circular of Reserve Bank of India dated 1st July. 2015 under point No. 12.2.3, duplicate of manager's cheque can be issued in case of loss. However, no case of loss of the manager's cheque has been made out by the plaintiff-company rather the case of refund of the money against manager's cheque has been pleaded which the plaintiff-company cannot claim to be entitled to. At the same time as plaintiff-company is not entitled to the claimed amount, hence it is not entitled to any damages and interest. The witness on behalf of the plaintiff company has admitted that no loss had incurred to the plaintiff-company and the witness has also deposed that he does not know of any cause of action.

In view of his above submissions, he prayed for dismissal of the suit.

9. *Per contra*, Mr. Karmakar, learned advocate for the plaintiff-company submitted that no challenge to the jurisdiction has been made by the defendant-Bank more particularly no application under Order VII Rule 10 of the Civil Procedure Code *(hereinafter referred to as the 'Code')* was made for return of the plaint. Referring to Section 21 of the Code is submitted that the objections related to the place of suing or the competence of a court must be raised at the earliest possible opportunity and if a party fails to raise objection as aforesaid then they are generally considered to have been waived. Further section 34 of the Code does not provide for requirement of any evidence for awarding interest in decrees for the payment of money. The total claim amount in the present suit is more than 10,00,000/- and as per notification no.158 JL dated 20th March, 2020, this court has the pecuniary jurisdiction to entertain the instant suit. Moreover, the grounds taken in the written statement cannot be considered since no evidence has been adduced by the defendant-Bank in support of the defence case.

10. Having heard the learned advocates for the respective parties, let me now examine the issues involved in the present suit in the light of the submissions advanced on behalf of the respective parties as follows.

11. **ISSUE No. 1:** With regard to the territorial jurisdiction of this court, it has been pressed into service by the learned advocate for the defendant-Bank that since the transaction pertaining to issuance of manager's cheque has taken place in UCO Bank, Abids Circle Branch, Hyderabad hence this court has got no territorial jurisdiction to entertain the suit.

Further this court lacks pecuniary jurisdiction since the actual claim amount of Rs.8,41,500/- of the plaintiff-company is less than the minimum value of Rs.10,00,000/- fixed for pecuniary jurisdiction in the Original Side of this Hon'ble Court. *Per contra,* it has been strenuously argued on behalf of the plaintiff-company that such challenge to territorial jurisdiction or pecuniary jurisdiction has not been made at the earliest point of time and as per Section 21 of the Code such challenge is considered to have been waived. Moreover, the amount claimed by the plaintiff-company in the suit is more than 10,00,000/- and therefore this court has pecuniary jurisdiction to entertain the suit.

In order to appreciate the aforesaid issue, it would be apposite to reproduce the relevant provisions under Section 21 of the Code as hereunder:

> *"**Section 21 -Objections to jurisdiction**.–(1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.*
> *(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.*
> *(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice."*

Bearing in mind the aforesaid provision, upon going through the written statement filed by the defendant-Bank it is found that the defendant bank has raised the issue in the written statement that this Hon'ble Court lacks both territorial and pecuniary jurisdiction to try and entertain the suit. Thus, admittedly the objection pertaining to territorial jurisdiction and pecuniary jurisdiction has been raised prior to settlement of the issues. Therefore, the argument advanced on behalf of the plaintiff-company that the objection to the territorial or pecuniary jurisdiction has been waived by the defendant-bank does not stand to reason. Furthermore, the aforesaid provisions clearly stipulate that no objection as to the place of suing or as to the competence of a Court with reference to the pecuniary limits of its jurisdiction, shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice. Needless to say that the embargo and/or restriction to raise the objection with regard to territorial jurisdiction or pecuniary jurisdiction is created by the provisions at the stage of appeal or revision and not before the court of first instance. Therefore, the argument on behalf of the plaintiff-company that the objection to territorial or pecuniary jurisdiction stood waived in view of Section 21 of the Code falls short of merit.

Now let it be examined whether this Court has territorial jurisdiction to entertain the suit. It is not in dispute that the managers' cheque in question was issued in between 2002 and 2003 by UCO Bank, Abids Circle Branch, Hyderabad which does not fall within the territorial jurisdiction of this court. Be that as it may, it has been categorically pleaded by the plaintiff-company that despite several communications with the defendant-

Bank at its office at Hyderabad since no intimation was received, as such on 19th September, 2008, the Director (Operations) of the plaintiff-company from its registered office wrote a letter to the Chairman and Managing Director, UCO Bank at its Head Office at 10, Biplabi Trailakhya Maharaj Sarani, 8th Floor, Kolkata- 700001 for credit of Rs.8,41,500/- in account of the plaintiff-company. Similarly, on 11th November, 2008 another letter was issued by plaintiff-company from its registered office to the Head Office of the defendant-Bank. The Head office of the defendant-Bank falls within the territorial jurisdiction of this court. Thus, part cause of action arose within the territorial jurisdiction of this court. At this juncture, it would be profitable to reproduce the relevant provisions of Section 20 of the Code as hereunder for convenience of discussion.

> *"**Section 20. Other suits to be instituted where defendants reside or cause of, action arises**.–Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction–*
> *(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or*
> *(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or*
> *(c) the cause of action, wholly or in part, arises."*

Keeping in mind the aforesaid provision, since the part of cause of action has arisen within the jurisdiction of this court, it can be said that this Court has territorial jurisdiction to entertain the suit.

With regard to pecuniary jurisdiction, it is found that although the total amount of the managers' cheque is Rs.8,41,500/- but the amount claimed by the plaintiff-company is Rs. 14,01,732/- which includes the interest over the actual amount for default in making payment. As per the notification no. 158 JL dated 20th March 2020 which provides that pecuniary jurisdiction in terms of value of commercial disputes, in case of Commercial Courts within the territorial jurisdiction of City Civil Court at Calcutta of an amount (i) not less than rupees three lakh and not more than rupees ten lakh exclusively; and (ii) exceeding rupees ten lakh but not exceeding rupees one crore, concurrently with the Commercial Division of the High Court, Calcutta. Thus bearing in mind the total claimed amount in the suit, it manifest that this court has also the pecuniary jurisdiction to entertain the suit.

Hence this issue is decided in favour of the plaintiff-company.

12. <u>ISSUE No.2:</u> Although in the written statement it has been pleaded by the defendant-Bank that the suit is barred by laws of limitation, however nothing has been pressed into service during hearing argument on behalf of defendant-Bank regarding the suit being barred by limitation. Be that as it may, it is the specific case of the plaintiff-company that after several communications made with the defendant-Bank, ultimately by an advocate's letter dated 5th March, 2009 the plaintiff-company demanded such amount and the interest and the learned advocate for UCO Bank, Mubarak Bazar, Abids Circle Branch, Hyderabad by its letter dated 26th May, 2009 informed that the defendant-Bank cannot consider the claim of the plaintiff-company in the absence of furnishing original manager's cheques and without written consent of the holders of the manager's cheques as the validity periods of the said cheques have expired and that the defendant-Bank has no obligation to proceed the manager's cheques to the purchaser, when the same were not encashed by the beneficiary, in the absence of furnishing original or consent from the beneficiary. As per Article 22 of the Limitation Act, for money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker, the period of limitation is three years from the date when the demand is made. The demand for money is made on 5th March 2009. Thus, the cause of action to file the instant suit finally arose on and from 5th March, 2009 upon the defendant-Bank when the demand is made by the plaintiff-company. The suit has been filed on 24th December, 2010, which is within three years of such demand. Thus, the suit is filed within the prescribed period of limitation.

Hence this issue is decided in favour of the plaintiff-company.

13. <u>ISSUE No. 3,4 & 5:</u> Before delving into the aforesaid issues, it would be appropriate to reproduce the relevant admitted facts as follows:

(i) In between 2002 and 2003, the plaintiff-company had requested the UCO Bank, Abids Circle Branch, Hyderabad to draw manger's cheques in favour of large number of certificate holders of the plaintiff company for the purpose of payment maturity value of their certificates. The entire requisite amount for the purpose of issuance of manager's cheques along with list of certificate holders in whose favour the cheques were to be made out were deposited and the said branch of the UCO Bank drew several numbers of manager's cheques in favour of the certificate holders and handed over the said manager's cheques to the plaintiff-company.

(ii) The said manager's cheques were dispatched to the parties/certificate holders by the plaintiff-company by way of payment of maturity of their certificates at their respective recorded addresses.

(iii) Subsequently, it transpired that a large number of certificate holders did not present the manger's cheques, 599 in numbers, to the bankers for encashment nor did they send them back to the company for revalidation and the said manager's cheques have remained uncashed for a long period of time and have become invalid and/or stale and no money can be realized on the basis of the said manager's cheques. The total amount covered by such unpresented/uncashed manager's cheques is Rs.8,41,500/-.

13.1. Now the pertinent question which needs examination is whether the plaintiff-company is entitled to receive or claim the amount of the managers' cheque issued by the defendant-Bank to the certificate-holders which has not been encashed by the beneficiaries. It has been strenuously argued on behalf of the plaintiff-company that several communications were made from the side of the plaintiff-company with the defendant-Bank for crediting such amount and complain was lodged with the Head Office. Be that as it may, it is of common parlance that a party is entitled to such amount which in law he establishes belongs to him and none else. From the admitted facts as enumerated above, the amount which the plaintiff-company claims in the present suit belongs to the beneficiaries, who are supposed to receive the maturity amount against which the managers' cheque were issued. There cannot be any quarrel that a manager's cheque is guaranteed by the bank for its full value and is a pre-paid negotiable instrument and by such instrument the drawee bank undertakes to make payment in full when the instrument is presented by the payee for payment. In order to obtain payment, the beneficiary has to either present the instrument directly to the branch concerned or have it collected by his/her bank through clearing mechanism. Once the instrument is handed over to its beneficiary, the defendant-Bank is under obligation to pay against such instrument to the beneficiary of the said instrument and not to the purchaser of the said instrument. Moreover, the Bank holds the sum of money which is payable against the said instruments on behalf of the payees or beneficiaries, as the case may be, in trust till the date of encashment of the said instrument by the respective beneficiaries and the said sum of money cannot be used by the bank for any other purpose. This court finds substance in the submissions of learned advocate for the defendant-Bank in this regard. Therefore, the Bank cannot be held to be obligated to pay such amount to the plaintiff-company which has purchased the managers' cheque from the defendant-Bank for making payment of maturity amount belonging to the certificate holders/beneficiaries. Admittedly none of the holders of the managers' cheque in question has approached the defendant-Bank for its encashment.

13.2. At this juncture a question which crops up as to what happens to such unclaimed amount. Relying on the decision of Hon'ble Supreme Court in *B.K Mondal and Sons (supra)* and *Sahakari Khand Udyog Mandal* *(supra)* it has been strenuously argued on behalf of the plaintiff-company that the defendant-Bank cannot be allowed to make unjust enrichment by withholding such amount to which the plaintiff-company is entitled, which is prevented by Section 70 of the Contract Act. Accordingly, it is to be seen whether the amount held by the defendant-Bank resulted in unjust enrichment. At the outset, it is found that the defendant-Bank has made specific pleading that in case a manager's cheque is not encashed for a period above three years, as in the present case, the sum of money which is payable against the instrument is to be transferred from the respective bank to its Head Office for further recourse. As per DBR-Master Circular on Customer Service 2015 circulated by the Reserve Bank of India, produced before this court by learned advocate for defendant-Bank, it is found under point no.24 that series of procedure/guidelines have been laid down in respect of unclaimed deposits/inoperative accounts in Bank.

13.2.1. Moreover, pursuant to the enactment of the Banking Laws (Amendment) Act, 2012, Section 26A has been inserted in the Banking Regulation Act, 1949 which, *inter alia*, empowers the Reserve Bank to establish a Depositor Education and Awareness Fund (DEAF). DEAF will be credited with the amount to the credit of any account in India with a banking company which has not been operated upon for a period of ten years or any deposit or any amount remaining unclaimed for more than ten years within a period of one month from the expiry of ten years. DEAF shall be utilized for promotion of depositors' interest and for such other purposes considered necessary for the promotion of depositors' interests as specified by the Reserve Bank from time to time. However, the provisions of Section 26A do not prevent a depositor from claiming his/her deposit or operating his/her account or deposit after the expiry of the period of ten years and the banking company should pay the deposit amount and claim refund of such amount from DEAF. The Reserve Bank of India, in exercise of the powers conferred by sub-sections (1) and (5) of Section 26A of the Banking Regulation Act, 1949 (10 of 1949) and of all the powers enabling it in this behalf, has introduced the scheme called Depositors Education and Awareness Fund (DEAF) vide its notification No. DBOD No. DEAF Cell.BC.114/30.01.002/2013-14 dated May 27.05.2014. Any amount lying unclaimed at the branches either in deposit accounts or nominal accounts for a period of more than 10 years has to be transferred to the Fund along with interest accrued, if any, on monthly basis. However, despite being transferred to the DEA Fund, the depositor (or their nominee/legal heir) can still claim the amount from the bank, including any accrued interest. The RBI has also launched the UDGAM portal to help depositors locate their unclaimed deposits, including those from manager's cheques.

13.2.2. From the above guidelines been framed, the applicability of doctrine 'unjust enrichment' cannot and does not arise in the facts and circumstances of the case and at the same time the proposition of the decisions in *B.K Mondal and Sons (supra)* and *Sahakari Khand Udyog Mandal (supra)* relied upon by the plaintiff-company also does not apply to this case.

13.3. Relying on the decision in *American Express Bank Ltd (supra)* and referring to Section 31 of the Negotiable Act it has been pressed into service on behalf of the plaintiff-company that the defendant-Bank being the drawee of the manager's cheque is under statutory obligation to pay the cheque amounts when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default. Be that as it may, since it has already been held that the amount claimed belongs to the beneficiaries, the Bank cannot be obligated to make payment to the plaintiff-company who only purchased those cheques on behalf of the beneficiaries entitled to the maturity amount. Hence such argument advanced on behalf of the plaintiff-company falls short of merit.

In light of the above discussion these issues are decided against the plaintiff-company.

14. ISSUE Nos. 6,7 & 8: In view of the discussion made in the foregoing paragraph since it is held that the plaintiff-company is not entitled to the amount claimed, the aforesaid issues are also decided against the plaintiff-company.

15. In the light of the above discussion, the suit be and the same is hereby dismissed on contest. No order as to costs.

16. The plaintiff-company is granted liberty to withdraw the amount deposited along with accrued interest, with the defendant-Bank pursuant to order of this court dated 15th June, 2011 passed in GA 324 of 2011.

17. All connected applications, if any, stand disposed of.

18. Interim orders, if any, stand vacated.

19. Accordingly, the suit is disposed of.

(Bivas Pattanayak, J.)