

\$~R-14

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of hearing and Order: 29th August 2017.

+ RFA 70/2009
STANDARD CHARTERED BANK

..... Appellant

Through: Mr. Sanjay Gupta, Mr. Ateev Mathur,
Ms. Jagriti Ahuja, Advocates

versus

SBI & ANR.

..... Respondent

Through: Ms. S.L. Gupta, Advocate for SBI

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

% 29.08.2017

P.S. TEJI, J. (ORAL)

1. Aggrieved by the judgment and decree dated 31.10.2008, passed by the learned Additional District Judge, Delhi, the appellant has preferred this present appeal.

2. The facts as enumerating from the record are that the plaintiff/respondent had filed a suit for recovery of Rs.10,63,180/- against the defendant/appellant bank. The plaintiff/respondent bank had a current bank account of National Thermal Power Corporation (NTPC) and the NTPC during the course of reconciliation of their said current bank account, mentioned four forged cheques, namely- No.566603 for Rs.3,08,000/-, No.566623 for Rs.1,48,000/-, No.566634 for Rs.2,80,000/- and No. 566610 for Rs.2,67,000/-, which were not issued

by them and all the said cheques were drawn in favour of one Mahesh Divedi, and had been debited to their said account and the said forged cheques were collected in clearing by the defendant/appellant bank. The defendant No.2 is alleged to have approached the defendant/appellant bank, posing himself as Mahesh Divedi for the purpose of opening a saving bank account around 16th November, 1999. The defendant/appellant bank allegedly, without making any inquiry as to the credentials of defendant no.2 opened the said account, thereby not following the requirement as laid down under Section 35A of the Banking Regulation Act, 1949. The defendant no.2 is said to have made an initial deposit in his bank account, which was withdrawn subsequently in part and soon thereafter, the four cheques mentioned above were all given to the defendant/appellant bank for collection, which the defendant/appellant bank permitted the withdrawal of the four cheques by the defendant no.2. It is further alleged that the customer of the plaintiff/respondent bank, NTPC had stated clearly that all the said four cheques were forged and had not been issued by the NTPC or under its authority.

3. The defendant/appellant bank in its written statement has stated that one Mahesh Divedi opened a savings account with them. The said account was opened in pursuance of the compliance of RBI guidelines and in accordance with the prevalent banking norms and practices. Mr. Mahesh Divedi, subsequently deposited the said four cheques which were sent for clearing by the defendant/appellant bank in their normal course of banking business. The said cheques were said to have been first cleared by the payee bank which is the plaintiff/respondent bank in

the present matter. Upon receiving a clearance by the payee bank, the account of Mahesh Divedi was said to have been credited with the proceeds of the said four cheques. Subsequently, Mahesh Divedi withdrew the amount of the cheques so credited to his account. The defendant/appellant bank has categorically stated in its written statement that opening of a bank account and the clearing of a cheque are two different issues and the same cannot be clubbed together. Furthermore, the defendant/appellant bank was well within its duty of opening the bank account of Mahesh Divedi as it followed all the necessary guidelines prescribed by the RBI and thus it cannot be held responsible by the plaintiff/respondent bank which is the payee bank in this case with respect to wrongful clearing of the cheque.

4. Replications to the written statements were filed on behalf of the plaintiff/respondents. On the basis of pleadings of the parties, following issues were framed by the Court below:

(a) Whether the present suit has been filed by a duly authorized person? OPP

(b) Whether the plaintiff is entitled to claim the suit amount? If so, against whom? OPP

(c) Whether the plaintiff is entitled to claim interest? If so, at what rate, on what amount and for which period? OPP

(d) Whether this court has no territorial jurisdiction to try and decide the present suit? OPD-1

(e) Whether the defendant is liable to pay the suit amount to the plaintiff on account of any negligence? OPP

(f) Whether the suit is bad for non joinder of parties? OPD

(g) Relief

5. To prove its case, the plaintiff/respondent bank examined PW1-P.G.Tayal, PW2-K.C.Goel, PW3-Rakesh Mohan Chaudhary and PW4-Rajinder Kumar and on the other hand, the defendant/appellant bank examined only one witness being DW1-Ramesh Kumar Wahi.

6. All the issues framed by the court below were decided in favour of the plaintiff/respondent bank and against the defendant/appellant. Accordingly the impugned judgment and decree dated 31.10.2008, was passed in the suit. Being aggrieved by the said judgment and order this instant appeal is preferred.

7. The defendant/appellant bank has alleged that the NTPC had informed the plaintiff/respondent bank that the four cheques in question had not been issued by NTPC. Furthermore, NTPC alleged negligence at the ends of appellant/defendant bank and the same was admitted at the banks instance. It is the submission of the defendant/appellant bank that it was infact NTPC's money which was paid into the account of Mahesh Divedi and it was thus, NTPC which was put at a loss. It was further contended on behalf of the defendant/appellant that the account holder - Mahesh Divedi was not made a party to the suit. Further, the defendant/appellant bank has contended that it was protected under Section 131 of Negotiable Instruments Act. It was submitted by the defendant/appellant bank that it is not disputed that cheques were presented to the plaintiff /respondent and cleared by the same. The proceeds of the said cheques were collected in good faith and without

negligence by the defendant/appellant bank, thus the appellant bank was entitled to protection under Section 131 of Negotiable Instruments Act.

8. Learned counsel appearing on behalf of the appellant referred the judgment of this court in W.P. (C) No. 6201/2014 titled as *Axix Bank vs. Punjab National Bank & Anr*, decided on 20.03.2015 to contend that if the defendant/appellant bank happened to be negligent then the appellant is equally negligent. Therefore, the decree should have been passed keeping in view the contributory negligence about the entire sum. The argument advanced by counsel is contrary to the pleadings before court below. As per the defendant/appellant he had followed the procedure regarding opening of account as per normal business norms and the amount collected from the plaintiff/respondent bank and credited in the account of the customer. Therefore, there was no plea or finding of the court below that there was contributory negligence on the part of the parties. Four cheques, being - No.566603 for Rs.3,08,000/-, No.566623 for Rs.1,48,000/-, No.566634 for Rs.2,80,000/- and No. 566610 for Rs.2,67,000/-, which were cleared in bonafide believe that the same has been sent by the financial institution, i.e. the bank and subsequently it was found that the cheques were forged against which the payments were made.

9. I have heard the submissions made on behalf of counsel appearing for both the sides and perused the material placed on record as well as the impugned judgment.

10. After hearing both the sides, this court observes that the main grouse of the defendant/appellant bank is that it had been working as a

Financial Institution under the bonafide practice of the bank and in the same capacity it opened the said account of Mahesh Divedi. The defendant/appellant bank cannot be said to be negligent for opening the account and neither for the amount collected from the plaintiff bank which was debited to the account of their customer Mr. Mahesh Divedi. Ultimately he is a beneficiary, so the present appellant cannot be made to suffer a loss on account of the day to day business transactions being taken place under the bonafide practice of the bank.

11. The admitted fact in the present case is that the cheques were deposited by Mr. Mahesh Divedi who happened to be the customer of the defendant/appellant bank and if a wrong claim with respect to the forged cheques or documents by Mr. Mahesh Divedi is made, then the bank need not suffer in that respect. It has emerged during the course of arguments on the basis of the record that Mahesh Divedi was known to the appellant bank and as per the NTPC, it was under no obligation to pay any amount to Mr. Mahesh Dwivedi nor to the State Bank of India, i.e., the plaintiff/respondent. In such a scenario, this court, on the basis of the case of the defendant, is of the view that the defendant bank should not be made to suffer on account of any payment debited to the account of Mahesh Divedi or released to him. As a result, the appellant would always be at a liberty to claim the decretal amount or to sue Mahesh Divedi for the loss suffered by the appellant on account of payment of this decretal amount with respect to the release of payment to him.

12. So far as the impugned judgment and decree passed by the trial court, this court observes that in view of the aforesaid discussion, the

issues have been rightly decided by the Court below in favour of the plaintiff/respondent bank and against the defendant/appellant. There is no error in the judgment and decree passed by the trial court and the same is accordingly upheld.

13. The present appeal stands disposed off.

AUGUST 29, 2017
pkb

P.S.TEJI, J