

CASE NO.:
Appeal (civil) 1619 of 2005

PETITIONER:
UNIT TRUST OF INDIA

RESPONDENT:
RAVINDER KUMAR SHUKLA, ETC. ETC.

DATE OF JUDGMENT: 19/09/2005

BENCH:
S. N. Variava & Dr. AR. Lakshmanan

JUDGMENT:

JUDGMENT

O R D E R

WITH

(CIVIL APPEAL NOS. 4247/2004, 1659/2005, 1657/2005, 4282/2004, 4248/2004, 1660/2005, 1652/2005, 4284/2004, 4283/2004, 4279/2004, 1651/2005, 4275/2004, 1661/2005, 1663/2005, 1665/2005, 4278/2004, 4280/2004, 4281/2004, 1662/2005, 1664/2005, 4276/2004, 4277/2004, 1654/2005, 1658/2005, 1655/2005, 1656/2005, 1653/2005, 1620/2005, 1621/2005, 4285/2004, 4286/2004, 4287/2004, 4288/2004, 1623/2005, 4289/2004, 4290/2004, 1624/2005, 1622/2005, 4291/2004, 4292/2004, 4293/2004, 1626/2005, 1627/2005, 4294/2004, 1625/2005, 1628/2005, 4295/2004, 4296/2004, 4297/2004, 4298/2004, 4299/2004, 4300/2004, 4304/2004, 4305/2004, 1629/2005, 1630/2005, 1631/2005, 1632/2005, 1633/2005, 1634/2005, 4308/2004, 4309/2004, 1636/2005, 1635/2005, 4310/2004, 1637/2005, 1638/2005, 4311/2004, 1639/2005, 1640/2005, 4249-4250/2004, 4251-4252/2004, 4265-4266/2004, 4255-4256/2004, 4261-4262/2004, 4257-4258/2004, 4267-4268/2004, 1649-1650/2005, 4263-4264/2004, 1643-1644/2005, 4253-4254/2004, 1647-1648/2005, 4259-4260/2004, 1645-1646/2005, 1641-1642/2005, 4269-4270/2004, 4271-4272/2004 and 4273-4274/2004)

S. N. VARIAVA, J.

All these Appeals can be disposed of by this common Order as the issue involved is the same.

Briefly stated the facts are as follows.

The Appellant is a statutory corporation established under Section 3 of the UTI Act, 1963. As part of its activities the Appellants float various schemes. Under the various schemes from time to time, the Appellant issue cheques towards maturity amount of the units purchased and/or towards repurchase value. It appears that the Appellant normally draw Account Payee, Non-transferable and Not Negotiable cheques and send them to the payee by registered post.

The Appellant started receiving a large number of complaints from unit holders alleging non-receipt of the cheques. In all 1600 unit holders had not received cheques of the value of app. Rs. 3 Crores 35 lakhs. All these cheques were intercepted, new accounts opened in Banks/Post Offices in the names of payees of the cheques and thereafter the moneys were withdrawn leaving a minimum balance in the accounts. In respect of this colossal fraud, F.I.Rs. have been lodged, investigations and prosecution are in progress.

As the unit holders had not received the money, they filed complaints in various District Forums. The District Forums have held that the Appellants are bound to pay the amounts to the unit holders. Most of the Appeals and/or Revision Petitions have been dismissed. Against the dismissal of the Appeals/Revisions by the National Consumer Disputes Redressal Commission, these Appeals have been filed.

The Consumer Forums have held that there was negligence on the part of the Appellant. It has been held that the post offices were agents of the Appellant and, therefore, the loss, if any, has to be borne by the Appellant. It has been held that as the Appellant had not paid the unit holders, the unit holders are entitled to receive the money from the Appellant.

The question before this Court is whether the loss is to be borne by the unit holder payee and/or by the Appellant. The answer to this question would depend on whether the post office was acting as an agent of the unit holder and/or the Appellant.

In the case of *The Commissioner of Income-Tax, Bombay South, Bombay vs. Messrs. Ogale Glass Works Ltd., Ogale Wadi*, reported in 1955 (1) SCR 185, the question was whether the Respondent therein, which was a non-resident company, could be said to have received payment in India for the purposes of Indian Income Tax Act. On the request of the assessee, the amounts of the bills were sent to them by means of cheques which were drawn in Delhi. It was held that as the assessee had requested that the amounts be sent by post, the post office became the agent of the assessee. It was held that as the post office was in Delhi the assessee had received the amounts in Delhi.

In the case of *H. P. Gupta vs. Hiralal*, reported in (1970) 1 SCC 437, the Appellant was a Director of a company. The Respondent had filed a complaint under Section 207 of the Companies Act on the ground that the dividends declared by the company had not been paid within the prescribed time. This complaint was filed at Meerut where the complainant resided. The question was whether the Magistrate at Meerut had jurisdiction to try the complaint. This Court held that Section 207 of the Companies Act casts an obligation on the company to pay the dividend, which is declared, to the shareholders within 42 days from its declaration. It was held that the offence under Section 207 is the failure to pay dividend. It was held that the failure to pay will arise when the warrant is not posted. It was held that the offence was failure to post and not the non-receipt of the warrant by the shareholders. It was held that the obligation to pay, therefore, arises at the place where it is to be performed, i.e., at the post office where the cheque is to be posted and not at the address at which the cheque is to be delivered. It was, therefore, held that the Magistrate at Meerut did not have jurisdiction as the post office was in Delhi. It was held that it is only the Magistrate at Delhi who would have jurisdiction. It must be mentioned that in coming to this decision this Court implied an agreement/request from the dividend holder to send the dividends by post.

Thus the law is that in the absence of any contract or request from the payee, mere posting would not amount to payment. In cases where there is no contract or request, either express or implied, the post office would continue to act as the agent of the drawer. In that case the loss is of the drawer.

We, therefore, asked Mr. Bhat whether in any of the matters there was any proof of any contract that the amounts could be sent by post or any proof that any request had been made by any of the payees that the amount be sent by post. Mr. Bhat was also asked whether there was any proof of any practice from which it can be implied that the payee had requested/consented to have the cheques sent by post. Time was taken from this Court on two occasions in order to ascertain whether in any of the matters any such proof had been filed. After making inquiries and taking inspections of the papers from the lower Forums, Mr. Bhat very fairly stated that there was no proof in any of these matters.

Mr. Bhat next argued that these are not the matters in which the Consumer Forum had jurisdiction to adjudicate. He submitted that there was no deficiency of service as there was no negligence on the part of the Appellant. All the Forums have on facts held that there was an obligation to send the amounts and that there was negligence. These are questions of facts. We see no reason to interfere on

questions of facts.

Under the circumstances, the Appeals stand dismissed. There will be no order as to costs.

JUDIS