

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

+ **RFA No. 286/2002**

% **16th August, 2011**

CANARA BANK

..... Appellant
Through: Mr. Pradeep Dewan, Sr. Adv.
with Mr. Anupam Dhingra,
Mr. Rahul Jain & Mr. Rajiv
Samiyaar, Advocates.

VERSUS

CITI BANK N.A. & ORS.

..... Respondents
Through: Mr. Sanjay Agnihotri & Mr.
Amiteshwar Singh, Advs. for
the respondent no.1.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? **Yes**
3. Whether the judgment should be reported in the Digest? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 is to the impugned judgment dated 29.1.2002 which has dismissed the suit of the appellant/plaintiff qua the respondent no.1 herein. The suit was filed for recovery of amounts of two cheques which were collected by the

respondent no.1 for its customer/respondent no.2/defendant no.2/Sh.Kumar Shekhar. It was found subsequently that the signatures on these two cheques of the customer of the appellant/plaintiff were forged by the respondent no.2/defendant no.2.

2. The facts of the case are that the defendant no.3/respondent no.3, M/s. Ramji Lal Ram Saroop had an account with the appellant/plaintiff. The respondent no.2/defendant no.2 wrongly obtained two cheques bearing numbers 338587 and 338595 of the respondent no.3/defendant no.3 and presented it for collection by filling the amounts of Rs.44,438/- and Rs.48,682/- respectively. When this fraud was discovered by the customer of the appellant, i.e. defendant no.3, the appellant was forced to make payment of these amounts to its customer inasmuch as a forged cheque is no mandate to pay in the eyes of the law. After paying the amount its customer, the appellant/plaintiff raised the appropriate demand on the respondent no.1, which refused to pay the amount, resulting in filing of the subject suit.

3. The only issue relevant to the disposal of the present appeal is as to whether the respondent no.1 was guilty in opening and operating the account of its customer/defendant no.2/respondent no.2. If there is no negligence in opening the account or in operating the account then the respondent no. 1 will not be liable, however, in case of negligence in opening the account or operating of the account, the respondent no. 1 would be liable.

4. The only basis by which the respondent no. 1 opened the account of its customer Sh. K.Shekhar/defendant no.2/respondent no.2 was a letter dated 12.11.1992 allegedly issued by M/s. Punjab National Bank, G.T.Road Branch, Ghaziabad, UP. This letter has been exhibited in the Trial Court as Ex.DW1/P6. Learned counsel for the appellant/plaintiff argued that there was quite clearly negligence of the respondent no.1 in opening and operating of the account of the respondent no.2/defendant no.2 on account of the following factors:-

i) The letter exhibited as Ex.DW1/P6 was not addressed to the respondent no.1 and also was not a letter, as per its contents for authorization to open a bank account.

ii) It is argued further that even assuming that this letter can be taken as an introduction for opening of an account in a bank, yet, the respondent no.1 was bound to have made follow up inquiries as to the genuineness of this letter, and admittedly, nothing has been filed on record to show that there was a confirmation taken in writing from Punjab National Bank, G.T.Road Branch, Ghaziabad, UP as to the authenticity of this letter.

iii) There was negligence in operating the account because firstly, the account was opened on 13.11.1992 with a cash deposit of Rs.6,000/-. Secondly, the first cheque credited in the account was the forged cheque of a substantial amount Rs.44,438/- and which amount was withdrawn in one go by withdrawing a cash of Rs.45,000/- within three days on 17.11.1992. Thirdly, it is argued

that even the second cheque was deposited immediately thereafter on 20.11.1992 and more or less the entire amount of this cheque was again withdrawn on 23.11.1992 i.e. by withdrawing a cash amount of Rs.47,000/-. It was therefore concluded that opening of the account by cash deposit, immediate deposit in the account of a large amount disproportionate to the amount by which the account was opened, withdrawal of the entire amount of the first cheque deposited, again deposit of a cheque of a large amount within 3 days thereafter and withdrawing of the amount of even of this second cheque immediately on the said amount being credited in the account, are all such circumstances which show that the respondent no.1 ought to have been put to caution, but it failed to exercise prudence and is therefore negligent thus making it liable to the appellant/plaintiff.

iv) The account opening form shows that though the account was opened and allowed to be operated from 13.11.1992, however, confirmation with regard to operation of the account was endorsed later on 18.11.1992, and by which date the first cheque was deposited and its amount was withdrawn.

5. Counsel for the respondent no.1, on the other hand, vehemently argued that the respondent no. 1 was not negligent in opening and operating the account, because it had acted on the letter of the Punjab National Bank, Ex.DW1/P6.

6. In my opinion, the arguments as raised by counsel for the appellant/plaintiff are correct and the appeal has to succeed. The law with respect to the liability of a collecting bank is contained in Section 131 of the Negotiable Instruments Act, 1881. Under this Section, a collecting bank has protection only if the collecting bank, in good faith and without negligence, receives payment of the customer by a cheque, i.e. if there is negligence in receiving of a cheque on behalf of the customer, the collecting bank would be liable for negligence.

7. The law in this regard is contained in the decision of the Supreme Court in the case of ***Indian Overseas Bank vs. Industrial Chain Concern 1990 (1) SCC 484***. The relevant paragraphs of this judgment are paras 9 to 11 and 33 which read as under:-

“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 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. Tanna 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....."

33. It is thus clear that the question of negligence or no negligence depends entirely on the facts of each

individual case and thus makes it difficult to judge in advance how any particular litigation involving allegations of negligence will go. In the instant case Sethuraman had in effect opened another account in the name of the plaintiff firm and operated it himself as its proprietor.”(underlining supplied)

8. A reference to the decision in the case of ***Indian Overseas Bank (supra)*** shows that a bank which opens an account is required to follow up the reference given at the opening of the account. The bank which opens an account is also required to meticulously examine the address of the customer which he gives at the time of opening of the account. Further, it is necessary for the bank depending on each individual’s case to determine the authenticity of the customer who is opening the account.

9. A single Judge of the Kerala High Court in the case of ***Central Bank of India Ltd. vs. V. Gopinathan Nair & Ors. AIR 1970 Kerala 74*** has exhaustively dealt with the earlier judgments with respect to Section 131 including the decisions of the Bombay High Court in the cases of ***Sanyasilingam vs. Exchange Bank of India AIR 1948 Bombay 1*** and ***Bapulal Pemchand vs. Nath Bank Ltd. AIR 1946 Bombay 482*** while dealing with the point of the negligence of a bank at the time of opening and operation of the account. While referring to the case of ***Sanyasilingam (supra)***, the learned single Judge of the Kerala High Court had approved the ratio that where the payment which is made by a bank in an account is or is not without negligence has to be considered in the light of the facts and

circumstances of the case as to whether such payment is out of the ordinary course so as to cause the banker to make an inquiry. While referring to the decision of the privy council in the case of ***Commissioners of Taxation vs. English Scottish & Australian Bank AIR 1920 PC 88***, a reference is made to the fact that a bank must sit up and take notice when suspicion is caused on account of cheques of unusual large sums being credited and withdrawn from the account.

10. If we refer to the facts of the present case it is shown that firstly the account was opened by means of deposit of an amount in cash and not by deposit of a cheque. Ordinarily, banks do insist, and rightly so, that accounts are opened by means of crediting of an amount in cheques or at least partially in cheque, if partially also in cash. Further, it is unusual that immediately after opening of account on 13.11.1992, immediately on the next date, a cheque of a huge amount of Rs.44,438/- was deposited in the account for collection, and which amount of the cheque was immediately withdrawn when the same was credited to the account on 17.11.1992. In fact the amount of the cheque credited in the account was Rs.44,438/- and the amount withdrawn was Rs.45,000/-. This again is out of the ordinary course of conduct in a newly opened account by which the bank should have been immediately put to caution, considering the fact that the account was not opened in a normal manner by introduction of an another customer but was opened by a letter from another banker, and which itself was

not verified as is dealt with by me later on. There remains no doubt as to negligence in opening and operation of the account because the second cheque of Rs.48,682/- was again deposited barely within two days of the first cheque being encashed on 17.11.1992 and even this cheque was for a large amount of Rs.48,682/-. This amount was also withdrawn immediately on being credited to the account for an amount of Rs.47,000/-. The supervening aspect to be noted is that there is nothing proved on the record by the respondent no.1 during trial that it took any steps to follow up with the Punjab National Bank, G.T.Road Branch, Ghaziabad, UP as to the authenticity of Ex.DW1/P6, inasmuch as there is no document proved on record of Punjab National Bank of G.T. Road Branch, Ghaziabad, UP that it had ever issued any such letter. I agree with the argument of the learned counsel for the appellant/plaintiff that the substance of the letter shows that the same was only for attesting of the signatures of the defendant no.2 and it had nothing to do with opening of an account inasmuch as the letter Ex.DW1/P6 does not make any mention with respect to the same being an introduction for opening of an account in a bank. Curiously, this letter of introduction was given at the time of opening of the account on 13.11.1992 and which account itself was verified for operation on 18.11.1992, and by which date one of the disputed cheques was not only deposited and collected, but its large amount, withdrawn.

11. In view of the aforesaid, I hold that there was negligence of the respondent no.1 both in opening of the account as also its

operation. Once there is negligence of the respondent no.1, it is not entitled to the benefit of Section 131 of the Negotiable Instruments Act, 1881 and in fact, by virtue of the said Section, liability is bound to be imposed upon the respondent no. 1 on account of having caused the fraudulent withdrawal of the two amounts of the two disputed cheques.

12. Accordingly, the appeal is accepted. Suit of the appellant/plaintiff bank for a sum of Rs.1,66,706/- is decreed alongwith interest @ 7 ½ % per annum simple pendent lite and future till payment. Decree sheet be prepared. Trial Court record be sent back. Appeal is disposed of accordingly.

AUGUST 16, 2011
ak

VALMIKI J. MEHTA, J.