

PETITIONER:
BANK OF MAHARASHTRA

Vs.

RESPONDENT:
RICE SHIPPING & TRANSPORT CO. PVT. LIMITED & ANR.

DATE OF JUDGMENT 16/02/1995

BENCH:
AGRAWAL, S.C. (J)
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AGRAWAL, S.C. (J)
FAIZAN UDDIN (J)

CITATION:
1995 AIR 1368 1995 SCC (3) 257
JT 1995 (3) 175 1995 SCALE (1) 785

ACT:

HEADNOTE:

JUDGMENT:

S.C. AGRAWAL, J.:

1. Leave granted.
2. We have heard learned counsel for the parties.
3. Bank of Maharashtra, hereinafter referred to as the appellant-bank, is a nationalised bank having a branch providing banking facilities at Nariman Point at Bombay. Rice Shipping and Transport Co. Pvt. Limited, respondent No. 1 therein, has been operating Current Account No. 318 at the said branch of the appellant bank. As per the mandate of respondent No. 1 the said account is to be operated jointly by G.L. Bhatia and Ashok Chattopadhyay, the Managing Director of respondent No. 1. One bearer cheque bearing No. 425395 dated August 26, 1992 for a sum of Rs. 1,95,000/- was drawn on the appellant-bank. The said cheque was encashed at the said branch of the appellant-bank on August 26, 1992 and the amount of Rs. 95,000/- was debited to the account of respondent No. 1. The case of the appellant-bank is that the said amount was paid to one Jadhav, whose signatures were appended at the back of the cheque, and who was an employee of respondent No. 1. The said cheque admittedly contains the signature of G.L. Bhatia. The other signature purports to be of Ashok Chattopadhyay, the Managing Director of respondent No. 1. The said signature is on the face of the cheque as well as on the back. Respondent No. 1 claims that the said signature is not of Ashok Chattopadhyay and the same is forged. This fact was brought to the notice of the appellant-bank by respondent No. 1 on September 3, 1992. Thereupon the appellant-bank lodged a First Information Re-
177

port with regard to the alleged forgery, as claimed by respondent No. 1, at Police Station at Cuffe Parade, Bombay on September 4, 1993 and the matter is being investigated by the police. It is not disputed that the said cheque is from the Cheque Book issued to respondent No. 1 by the appellant-bank. Respondent No. 1 claimed reimbursement of the said

sum of Rs. 95,000/- from the appellant-bank on the basis that the signature of Ashok Chattopadhyay on the cheque was forged and thus the appellant-bank was liable to reimburse the said amount paid by the appellant-bank from the account of respondent No. 1 against the said cheque. The said claim of respondent No. 1 was contested by the appellant-bank on the ground that the question whether the signature of Ashok Chattopadhyay on the said cheque was forged was still under investigation and till the said signature is found to be forged there was proper mandate for payment on the basis of the said cheque. Thereupon the respondent on April 21, 1993 filed a Writ Petition (Writ Petition No. 1245 of 1993) in the Bombay High Court wherein it has been prayed as under:

"(a) Writ of mandamus or a Writ or Order or direction in the nature of mandamus under Article 226 of the Constitution directing the Petitioner bank to reverse the debit entry dated 26.8.1992 for Rs. 95,000/- in their Current A/C No. 318 or direct the petitioner Bank to make payment of the respondent No. 1 Company herein of a sum of Rs. 95,000/- with interest thereon at the rate of 18% from the date of the said amount had been withdrawn from the account.

(b) to direct the Petitioner herein to credit a sum of Rs. 95,000/- in the current account No. 318 during the pendency of the Writ Petition on the respondent no. 1 herein furnishing an indemnity for the same."

4. In the said Writ Petition an affidavit dated July 6, 1993 of Rajiv V. Pinglay, who is employed as Advance Ledger Posting Machine Operator with the appellant bank, was filed on behalf of appellant bank. In the said affidavit it is stated:

"I say that the employees of the Petitioner No. 1 company regularly visited the Branch for the banking transactions, and one of such employees is one Mr. Jadhav. On 26th of August, 1992 a cheque bearing No. 425395 for Rs. 95,000/- was presented for cash withdrawal. I thereupon asked the said Mr. Jadhav, who had come to collect the pay in front of me, which was duly done by him. I say that I had seen the said Mr. Jadhav on few other occasions prior to 26th August, 1992. I say that on cheque being signed as aforesaid by the said Mr. Jadhav, as per the normal usual banking practice, I posted the cheque and sent it for further process in accordance with the usual practice in that behalf. I say that the aforesaid signature of the said Mr. Jadhav appears on the copy of the cheque' being Exhibit "B" to the petition."

5. The said Writ Petition was placed for preliminary hearing before a Division Bench of the High Court on July 7, 1993 and the following order was passed on that date :

"P.C. : Rule. The Respondents are directed to credit sum of Rs. Ninety Five Thousand only in the Current Account No. 318 of the Petitioners forthwith.

The Petitioner through their Counsel

178

gives undertaking to bring back the amount if Court so desires.

We have perused all papers and prima facie we

are satisfied that the Bank did not take precautions before making payment of large amount. The fact that cheque was forged is not in dispute and the complaint filed by the Manager before the police nowhere claims that payment was made to any employee of the petitioners. The affidavit filed by R.V. Pinglay the cashier appears to be prima facie false and an after-thought. "

6. In accordance with the said order of the High Court the appellant-bank credited a sum of Rs. 95,000/- to the account of respondent No. 1 on July 9, 1993. From the counter-affidavit of Capt. Ashok Kumar Aggarwal filed on behalf of respondent No. 1 it appears that respondent No. 1 has withdrawn a substantial part of the said amount leaving a balance of about Rs. 6001.65.

7. Feeling aggrieved by the said order of the High Court, the appellant-bank has filed this appeal.

8. Shri Rana, the learned counsel for the appellant-bank, in the first place, has urged that the dispute between the parties relates to the liability of the appellant-bank to reimburse respondent No. 1 the sum of Rs. 95,000/- debited to the account of respondent No. 1 on the basis of cheque No. 425395 dated August 26, 1992 that was encashed by the appellant-bank which is claimed to be forged in the sense that the signature of Ashok Chattopadhyay, the Managing Director of respondent No. 1, on the said cheque is forged. The learned counsel has urged that the said liability is being fastened on the appellant-bank on the basis of the law governing banking operations and that the proper remedy for enforcing the said liability is to file a civil suit and that it is not a matter which can be agitated through a writ petition under Article 226 of the Constitution. It has also been urged that the matter involves adjudication of disputed questions of fact inasmuch as the appellant-bank disputes that signature of Ashok Chattopadhyay on the cheque is forged. The learned counsel for the appellant-bank has submitted that the learned Judges of the High Court were not right in proceeding on the basis that the appellant-bank did not take precautions before making payment of large amount and the fact that cheque was forged is not in dispute and that the affidavit filed by R.V. Pinglay appears to be prima facie false and an after-thought. It has been pointed out that in the correspondence with respondent No.1 the appellant-bank did not accept the contention of respondent No.1 that one of the signatures of the joint signatories, namely, Ashok Chattopadhyay, the Managing Director of respondent No. 1, was forged and further that the case of the appellant-bank is that the payment of the cheque was made in the ordinary course of business and that the procedure for honouring the cheque by the bank officials was correctly followed in the matter of encashment of the cheque. The appellant-bank has also denied the allegations made by respondent No. 1 that there was collusion of bank staff with an outside unknown person for payment of the cheque and it was asserted that it was obvious negligence on the part of respondent No. 1 not to keep the Cheque Book in the proper custody and that the respondent No. 1 was making false allegations against the appellant-bank. The submission of the learned counsel was that various questions that arise in the case can be properly de-

179

termined only on the basis of evidence that is adduced and that such determination cannot be made in a writ petition and it can be more appropriately adjudicated in a regular

civil proceeding.

9. Shri P.H., Parekh, the learned counsel appearing for the respondents, has, on the other hand, urged, that this appeal is directed against the interim order only and the main Writ Petition is still pending adjudication before the High Court and the question of maintainability of the Writ Petition would be gone into by the High Court in the light of the objections that are raised by the appellant-bank. Shri Parekh has, however, urged that in view of the fact that the signature of one of the joint signatories on the cheque is forged the appellant-bank is liable to reimburse respondent No. 1 the sum of Rs. 95,000/- that has been paid from the account of respondent No. 1 on the basis of said cheque which was a nullity. In support of his aforesaid submission Shri Parekh has placed reliance on the decisions of this Court in *Bihta Co-operative Development Cane Marketing Union Ltd. & Anr. v. The Bank of Bihar & Ors.*, (1967) 1 SCR 848 and *Canara Bank v. Canara Sales Corporation & Ors.*, 1987 (2) SCR 1138.

10. Since the Writ Petition is still pending in the High Court and the question of maintainability of the Writ Petition has yet to be considered we do not propose to go into the said question. All that we wish to say at this stage is that the objections that have been raised by the appellant-bank against the maintainability of the writ petition are not such that they may be disregarded as lacking in substance. This is a factor which has a bearing on the exercise of discretion by the Court while passing the interim order in the writ petition.

11. By the interim order the High Court has directed the appellant-bank to credit a sum of Rs. 95,000/- in the current account No. 318 of respondent No. 1. The High Court has recorded that respondent through their counsel had given an undertaking to bring back the amount if the Court so desires. The said interim order, in substance, grants the relief which the respondent would have been given at the final stage in the event of their writ petition being allowed by the High Court.

12. Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations, [See : *Assistant Collector of Central Excise, West Bengal v. Dunlop India Ltd & Ors.*, 1985 (1) SCC 260 at p. 265; *State of Rajasthan & Ors. v. M/s Swaika Properties & Anr.*, 1985 (3) SCC 217 at p. 224].

13. In the instant case since there is serious dispute on facts it cannot even be said that a prima facie case had been made out for grant of an interim order in favour of the respondents which enables them to have the reimbursement of the sum of Rs. 95,000/- that was debited to their account in view of the encashment of the cheque in question. We are of the view that this was not a case in which the High Court while admitting the Writ Petition should have passed an interim order giving such a direction. In the circumstances we are unable to uphold the said interim order

180

14. The appeal is, therefore, allowed, the interim order passed by the High Court regarding crediting the sum of Rs. 95,000/- in the current account No. 318 of the respondents is set aside. Since the appellant-bank has already deposited the said amount of Rs. 95,000/- in the current account of respondents in pursuance of the said directions of

the High Court it is directed that the respondents will refund the said amount to the appellant-bank within a period of one month and on their failure to do so the High Court will take steps to enforce the undertaking that has been furnished by the respondents in pursuance of the said interim order. It will be open to the learned counsel for the parties to request the High Court for an early disposal of the Writ Petition and the High Court will give due regard to such a request if made. No order as to costs.

181

JUDIS