

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH JAIPUR

JUDGMENT

M/s Punjab National Bank V/S Lalit Kumar Goyal
and others

S.B. Civil Regular First Appeal
No.13/88 against the judgment
and decree dated 14.10.1987
passed by Shri Mandal Prasad
Bohra, Additional District
Judge, Beawar in Civil Suit No.
73/1985.

Date of Judgment ::: September 22nd , 2006

PRESENT

HON'BLE MR. JUSTICE KHEM CHAND SHARMA

Mr. N.K.Maloo } for the appellants
Mr. V.K.Tamoliya}
Mr. Rinesh Gupta for the respondent

BY THE COURT:

This appeal under Section 96 CPC by the defendants arises out of the judgment and decree dated 14.10.1987 passed by the learned Additional District Judge, Beawar, whereby the learned Judge has decreed the plaintiff's suit for Rs. 44,100/- with interest at the rate of 6% p.a. From the date of filing of suit and with costs of the suit.

The plaintiff filed a suit against the defendants

for recovery of a sum of Rs. 44,140/- with the averments that on 5.11.1984, the defendant No.1 issued a demand draft bearing No. PWG 105925 of Rs. 40,500/- to the plaintiff against the value received, the payment of which was to be made by the defendant No.2 at Beawar on demand. On 7.11.84 and 9.11.1984, the plaintiff presented the above draft for payment before defendant No.2, but, surprisingly enough the defendant No.2 refused to make payment of the draft without assigning any reason. The plaintiff also made a written request vide letter dated 10.11.84 for immediate payment of draft amount, but of no avail. He then made a request for payment through telegram and also sent a copy of telegram under registered post for confirmation through his advocate. On 24.11.1984, the plaintiff sent a notice to Punjab National Bank Inspection & Central Division, New Delhi, but that exercise also proved futile. Having failed from all corners, the plaintiff was left with no option but to get served a legal notice upon the defendants and lastly filed the present suit for recovery of Rs. 44,140/- with interest.

The defendants contested the suit by filing written statement and denied the averments made in the

plaint. It the additional pleas, the defendants have taken the plea that M/s Gopi Road Lines Lvt. Ltd., the alleged purchasers of the draft had a bank account bearing No. 8874 with defendant No.1. Smt. Ratan Devi and V.K.Goyal directors of the company were authorised to sign and endorse the cheques etc., which were also to be counter signed by J.L. Jain, authorised signatory. On 30.10.84 the Bank was informed that a cheque book, which also contains cheque No. 356811 has lost/misplaced and therefore, a duplicate cheque book may be issued. One of the directors, namely V.K.Goyal presented the above cheque before defendant No.1. The cheque was 'account payee' and was drawn in favour of M/s Ashoka Internal Road Lines for Rs. 40,500/- and an endorsement at the back of the cheque was made by V.K Goyal to the effect that a demand draft in favour of Ashoka International Road Lines be issued. It is averred that the above cheque was neither signed by Smt. Ratna Devi nor it was counter signed by G.L.Jain. In this way, Shri V.K.Goyal, by fraud, obtained a demand draft of Rs. 40,500/- payable at Beawar in favour of M/s Ashoka International Road Lines. According to the defendants, the lost cheque was

misused by Shri V.K.Goyal, who played a fraud and managed to get a demand draft issued in favour of Ashok International Road Lines. The Plaintiff, proprietor of Ashok International Road Lines is the brother of Shri V.K. Goyal. The management of Gopi Road Lines when brought the above facts to the notice of the Bank on 6.11.1984, the Bank withheld the payment of draft under the instructions of M/s Gopi Road Lines.

On the basis of pleadings of the parties, the trial court framed issues and at the conclusion of trial, decreed the plaintiff's suit as stated above. Hence the present appeal.

In assailing the finding arrived at by the learned trial court, Mr. Maloo, learned counsel for the defendants has vehemently argued that the suit of the plaintiff is liable to be dismissed only on the ground that the evidence adduced on behalf of the plaintiff is contrary to what has been pleaded in the plaint and in this regard Mr. Maloo has drawn my attention to the averments made in para 2 of the plaint, wherein the plaintiff has averred that the defendant bank issued demand draft against the cash deposited with the bank, whereas the evidence adduced by the plaintiff is that

the bank issued demand draft Ex.A3 against the cheque Ex.1 presented on behalf of Gopi Road Lines.

I have considered the above argument and gone through the contents of the plaint and evidence. What is stated in para 2 of the plaint is that on 5th November, 1984 the defendant No.1 issued a demand draft for the value received. It has not been stated in specific terms that plaintiff deposited the amount of Rs. 40,500 with the bank in cash. The evidence adduced by the plaintiff is to the effect that a cheque for Rs. 40,500/- was presented on behalf of Gopi Road Lines and a request was made to the defendant bank to issue a demand draft, by charging commission separately. In any case the defendant bank has issued the demand draft for the value received, irrespective of the fact whether it was issued against the amount deposited in cash or against the cheque of the value presented. However, the fact remains that demand draft was issued for the value received. That apart, both the parties were well aware of the fact that a cheque for Rs. 40,500/- was presented for issuance of a demand draft and both the parties have led evidence to this effect. In this view of the matter, it cannot be said that any

prejudice has been caused to the defendants.

It was next contended by Mr. Maloo that the defendant Bank was legally entitled to withhold payment of the demand draft in question, inasmuch as Shri V.K. Goyal, Director of Gopi Road Lines Pvt. Ltd. misused the lost cheque of M/s Gopi Road Lines by presenting it before the defendant bank and then succeeded in getting issued a bank draft on the basis of said cheque in the name of M/s Ashok International Road Lines, whose proprietor is none other than the plaintiff, who happens to be the brother of Shri V.K.Goyal. Having come to know about the fraud committed by Mr. Goyal, the management of M/s Gopi Road Lines informed the defendant bank of the fraud and instructed it not to make payment of the demand draft. On this strength, Mr. Maloo argued that the Bank was perfectly justified in law to withhold of the payment of the draft after it received the information and instructions from M/s Gopi Road Lines. According to him, the finding arrived at by the trial court on issue No.1 is completely misconceived and based on mis-appreciation of facts and law.

I have considered the above argument. The question

that emerges for consideration is as to under what circumstances the bank can withhold payment of demand draft. Before advertiring to the question, it would be appropriate to discuss the evidence. Ex.A/3 is the cheque on the basis of which M/s Gopi Road Lines Pvt. Purchased demand draft (Ex.1) of Rs. 40500/-. A glance at the cheque shows that it was signed by Mr. Goyal and Mr. G.L.Jain, authorised signatory. The plea of the defendants that cheque book of M/s Gopi Road Lines was lost does not appear to be plausible, inasmuch as DW2 G.L.Jain in his cross examination has admitted that the cheque book in question was never lost as it was in possession of Mr. Goyal since very bigining. The evidence adduced on behalf of defendants further establishes that the day on which cheque was issued, there was sufficient fund available in the bank account of M/s Gopi Road Lines, Bombay. That apart, DW1 Mohare has admitted that cheque was not forged one and it was property issued. Thus, it can well be said that draft was purchased in the name of M/s Ashok International Road Lines.

It also need be observed that the nature of the fraud that the courts talk about is fraud of an

"egregious nature as to vitiate the entire underlying transaction". It is fraud of the beneficiary, not the fraud of somebody else. Reference may be made to a decision of the Apex Court in U.P. Co-operative Federation Ltd. Vs. Singh Consultants and Engineers (P) Ltd. (1988) 1 SCC 174. In the instant case the beneficiary is M/s Ashok International Road Lines and not somebody else.

So far as argument of Mr. Maloo that Mr. V.K.Goyal was already removed and he was no longer a director of M/s Gopi Road Lines, but still he managed to procure the demand draft on the basis of lost cheque is concerned, suffice it to observe that bank was informed of the removal of Mr. Goyal from directorship on 6th November 1984, whereas the cheque had already been presented a day prior i.e. on 5th November, 1984. That apart the dispute was inter se between M/s Gopi Road Lines and Mr. V.K.Goyal and the bank had no concern with such a dispute. Further, this disputed cannot be agitated here in this appeal because neither Gopi Road Lines nor Mr. V.K.Goyal is a party to the present proceedings.

Now comes withholding of payment of draft. In my

considered view, ordinarily, a bank issuing a draft cannot refuse to pay the amount thereof, unless there was some doubt as to the identity of the person presenting it as being or properly representing the person in whose favour it was drawn, or in other words, unless there is reasonable ground for disputing the title of the person presenting the draft. Secondly, once the draft has been delivered to the payee or his agent, the purchaser is not entitled to ask the issuing bank to stop payment of the draft to the payee on other grounds such as matters relating to consideration, and the issuing bank can thereafter pay back the amount of the draft to the purchaser of the draft only with the consent of the payee. It is thus crystal clear that payment of a draft can be withheld only if the identity of the person presenting it is doubtful or if the title of the person presenting the draft is disputed. I am fortified in my view by a Division Bench decision of M.P. High Court in Raghavendra Singh Bhadoria Vs. State of Indore and others (AIR 1992 MP 148). Here, in the instant case, neither the identity of the person presenting the draft is doubted nor the title of the person presenting the draft is disputed.

For the reasons therefore, it must be concluded that defendant bank was not entitled to withheld the payment of demand draft.

The trial court while decreeing the plaintiff's suit has considered the evidence both ocular and documentary in true perspectively. Thus the judgment impugned in this appeal being based on proper appreciation of evidence does not call for any interference.

For the reasons aforesaid, I do not find any substance in the appeal, which is hereby dismissed with no order as to costs.

(Khem Chand Sharma), J.
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