

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Judgment : 26.03.2010

+ **CS(OS)No. 101/2001**

EXPEDITORS INTERNATIONAL INDIA PVT. LTD.

..... Plaintiff

Through: Ms.Manjusha Wadhwa,
Advocate.

Versus

INDUSIND BANK LTD. & OTHERS Defendants

Through: None.

CORAM:

HON'BLE MS. JUSTICEINDERMEET KAUR

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

INDERMEET KAUR, J. (ORAL)

1. The present suit has been filed by the plaintiff for recovery of money of Rs.57,03,118/- as also another some of Rs.50 lakhs as damages.

2. Plaintiff is a private limited company and carrying on the business of cargo, international freight forwarding etc. abroad and in India. Defendant company is a banking company having its registered office at Pune and a branch office at Barakhamba Road, New Delhi.

3. Plaintiff had opened a current account No.0005-102056-050 with the defendant no.1 at New Delhi as also corresponding bank accounts at Mumbai and Bangalore. Vide Board Resolution dated

01.11.1997, it had agreed that the plaintiff will have two accounts at each branch one for collection and one for operational expenses. Two authorized signatories were to jointly operate the accounts at each branch. Plaintiff vide letter dated 17.12.1997 had given clear instructions to defendant no.1 to honour the cheques and bills of exchange only if they are signed by both the authorised signatories on behalf of the plaintiff company and this would be with effect from 1.1.1998. These instructions were explained by defendant no.1 and acknowledged by defendant no.2. However, defendant no.2 against these instructions started honouring the cheques signed singly by defendant no.3 which were contrary to the revised instructions of the plaintiff dated 01.01.1998, by which defendant no.3 alone was not authorised to sign cheques on behalf of the plaintiff company.

4. Defendants no.1 and 2 continued to honour such cheques against the clear instructions of the plaintiff which caused substantial losses to the plaintiff. Plaintiff company managed to recover a sum of Rs.2,50,000/- from defendant no.3. A police complaint/FIR has also been lodged.

5. Plaintiff has suffered losses amounting to Rs.57,03,118/- which the defendants are liable to compensate. Further damages are also liable to be paid by the defendants along with interest at 24% per annum.

6. Defendant nos.1 and 2 have been served and had contested the proceedings by filing the written statement. Thereafter, the plaintiff and defendants no.1 and 2 had settled their disputes. I.A. No. 10463/2009 was jointly filed by the parties. Defendants no.1 and 2 had paid a sum of Rs.12,00,000/- to the plaintiff in full and

final settlement of the claim inter se between one another. After receipt of the aforesaid amount the plaintiff had made a statement that he does not wish to continue the suit against defendants no.1 and 2; suit against defendant nos.1 and 2 stood dismissed as withdrawn on 19.08.2009.

7. Defendant no.3 has been proceeded ex-parte vide order dated 10.12.2001.

8. Issues have been framed on 24.1.2003, which inter alia read as under: -

- (i) Whether the suit of the plaintiff is not maintainable for want of territorial jurisdiction? OPD
- (ii) Whether the suit of the plaintiff is premature for want of completion of police investigation? OPD
- (iii) Whether there is no cause of action against defendants no.1 & 2? OPD
- (iv) Whether the plaintiff is entitled to claim the damages, if so, to what amount and interest and at what rate and against which of the defendants? OPP
- (v) Relief.

9. Arguments have been heard on behalf of the plaintiff. Record has been perused. Issue-wise findings are as follows:

10. **ISSUES NOS. 1 and 2**

The onus to discharge issues no. 1 to 2 was on the defendants. Suit against defendant no.1 and 2 stands dismissed on 19.08.2009. Defendant no. 3 was proceeded ex-parte vide order dated 10.12.2001. In view of the averments made in the plaint, issues no. 1 & 2 are decided in favour of the plaintiff to which even otherwise there is no opposition.

11. **ISSUE NO.3 :**

Issue no. 3 does not survive as the matter has been settled between the defendant no. 1 and 2 and the suit against them has been withdrawn on 19.08.2009.

12. **ISSUES NO. 4**

Case of the plaintiff is that on 17.12.1997 vide Ex.-PW1/6 defendant no.1 had been given specific instructions that w.e.f. from 01.01.1998 bank account of the plaintiff company would be operated under the joint signatures of two signatories, whose signatures are attested therein i.e. of Suresh Menon (Defendant no.3) and Damodar Prabhu, further Kurt Meister was also authorized to remain as a sole signatory. Ex.PW-1/6 refers to the current account no.0008-102056-050 which was operating at the Bangalore Branch. It states that a copy of the board resolution had been appended along with; however, there is no mention of the date of the board resolution. The said board resolution relied upon by the plaintiff is Ex.PW-1/5 dated 1.11.1997. In terms of Ex.PW-1/5 it had been resolved by the plaintiff company that in each branch two accounts would be opened; one for collection and another for imprest; it was further resolved that the imprest account will be operated by joint signatures of two authorised signatories and Kurt Meister and S.N.Gupta would be the joint signatories of the collection account and the existing current account at Delhi; further Kurt Meister would be the sole signatories for all other bank accounts as well.

13. It is relevant to state that there is no mention of Suresh Menon (defendant no.3) in this board resolution. As per Ex.PW-1/5 joint signatures in the current account at Delhi would be of Kurt

Meister and S.N.Gupta; as per Ex.PW-1/6 the two authorised signatories for the current account at Bangalore would be Suresh Menon and Damodar Prabhu.

14. Defence of the defendant bank as reflected in the written statement is that instructions to the said effect had never been conveyed to the bank. The bank has not disputed that a resolution dated 1.11.1997 had been received by them, but there were no instructions that henceforth i.e. with effect from 1.1.1998 the accounts had to be operated under joint signatures of two persons; names of two persons specified in the board resolution dated 1.11.1997 were even otherwise S.N.Gupta and Damodar Prabhu; name of Suresh Menon (defendant no.3) did not find mention.

15. Attention has been drawn to the statement of account Ex.PW1/1 of the plaintiff maintained by the defendant bank at Bangalore to establish the averment that all withdrawals made w.e.f. 01.01.1998 were singly signed cheques by defendant no.3 which were against the specific instructions dated 17.12.1997. None of this can be deciphered from Ex.-PW1/3. The said cheques referred to in Ex.PW1/1 have not been produced by the plaintiff; if he was relying upon these transactions which according to him were transactions made by defendant no.3 singly; it was incumbent upon the plaintiff to have produced these cheques to establish this averment.

16. Letter Ex.PW-1/6 as is evident had been sent to the office of the defendant at Bangalore; no instructions had been given to the defendant bank at Delhi. On affidavit it has been stated that Ex.PW1/6 along with the necessary documents have been received in the office of defendant no.1 at New Delhi; yet a perusal of

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Ex.PW1/6 shows that it is addressed to the Indus Bank at Bangalore, there is no doubt that there is a stamp of Indus Bank, New Delhi Branch; who has received it at the New Delhi Branch whether this letter was accompanied by the Board Resolution or not is not answered; the date of the receipt of this letter is also undisclosed.

17. These averments have been reiterated by PW-1 K.Murali and PW-2 Damodar Prabhu on oath in Court. In his cross-examination PW-2 has admitted that these transactions relate to the period 1.1.1998 to 31.5.1998; Suresh Menon continued to be the signatory of the plaintiff even after 31.12.1997 up to 1.6.1998; his authority was revoked w.e.f from 01.06.1998 but there is no document of revocation. He denied the suggestion that Suresh Menon continued to be the authorized signatory even after 01.06.1998. He has admitted that vide Board resolution dated 31.03.1997 transactions could be effected singly by defendant no.3 i.e. Suresh Menon. In his cross-examination, he has further stated that the Board resolution dated 31.03.1997 was withdrawn on 01.11.1997; perusal of Ex.PW1/5 i.e. the board resolution dated 1.11.1997 does not speak such; there is no mention of the earlier resolution dated 31.3.1997. PW-1 has admitted that he does not know whether there has been any confirmation from defendant no.1 that he had forwarded these revised instructions to defendant no.2; further Ex.PW-1/5 and Ex.PW-1/6 were never sent to either defendant no.2 or to defendant no.3

18. DW-1 S.Subramaniam, the Chief Manager of the Indus Bank has produced the Board Resolution dated 31.3.1997 Ex.DW1/D1.

He has deposed that as per Ex.DW1/D1, defendant no.2 had been

instructed to honour cheques, bills of exchange and promissory notes which may be drawn by the plaintiff company; mode of operation was by anyone person; these instructions were not withdrawn; defendants no.1 and 2 continued to follow these instructions till the defendant no.2 received a communication dated 01.06.1996 Ex.PW-1/7 from the plaintiff. He has categorically deposed that at no point of time instructions about the change of operation of the current account had been communicated by the plaintiff to defendant no.2. He has further deposed that the plaintiff used to collect the print outs of the transaction in the accounts maintained at the different branches of defendant no.2 on a daily basis by using internet facility; the alleged misappropriations by defendant no.3 had taken place w.e.f. 01.01.1998 to 30.05.1998 but the operations during this period have been carried out by the authorised signatory of the plaintiff as per the Board resolution dated 31.3.1997 Ex.DW1/D1 i.e. by defendant no.3. This had not been withdrawn by the plaintiff during the aforementioned period i.e. from 1.1.1998 to 31.5.1998. Revised instructions, if any, of the plaintiff had never been communicated to defendant no.2 at any point of time.

19. This has been reiterated by DW-2 Deepak Kochar, the Vice President of the Indus Bank, Barakhamba Raod, New Delhi.

20. Section 101 of the Evidence Act stipulates that the person who alleges a fact must prove it; it was for the plaintiff to have proved the averments made in the plaint.

21. Evidence gathered has established that defendant no.3 was a signatory of the plaintiff company in terms of the resolution dated 31.3.1997 Ex.DW-1/D-1; this resolution had not been superseded

by any subsequent resolution. Resolution dated Ex.PW-1/5 dated 1.11.1997 does not make any reference to the earlier resolution dated 31.3.1997. There is no proof of either the dispatch or receipt of the letter Ex.PW-1/6 dated 17.12.1997 to the office of either defendant no.1 or defendant no.2 i.e. to the Indus Bank either at Bangalore or at Delhi. PW-2 has in fact admitted that Ex.PW-1/5 and Ex.PW-1/6 were never sent to either the Bangalore office of the Bank or to Suresh Menon, defendant no.3. Ex.PW-1/6 is admittedly addressed to the Bangalore office. A mere stamping of the Indus Bank, New Delhi branch without any date; person authorized to receive not having been detailed; this cannot be pressed into service as proof of receipt of the revised instructions. PW-1 had also admitted that he has no document to show that the revised instructions had been received either in the Bangalore office or at the Delhi office or that the same had been forwarded by the Bangalore branch to the Delhi branch. It is, thus, clear that the defendant bank had no instructions either at Bangalore or at Delhi that the current account of the plaintiff at the Bangalore Branch was to be operated from 1.1.1998 on the joint signatures of two persons. Ex.PW-1/5 even otherwise does not mention the name of defendant no.3 Suresh Menon; defendant no.3 was not amongst the two names mentioned as the joint signatories for the current account in Delhi; those names were of S.N.Gupta and Kurt Meister. Ex.PW-1/1 is the Statement of Account of the plaintiff at the Bangalore branch; Bangalore branch had no instructions that henceforth i.e. from 1.1.1998 current account of the plaintiff was to be operated on joint signatures of two persons. No liability can be fastened upon defendant no.3.

22. Further case by the plaintiff is that although defendant no.3 had withdrawn amounts yet in the course of the arguments learned counsel had admitted that it is not their case that he had misutilized the entire funds; in fact a sum of Rs.2,50,000/- has been refunded by defendant no.3; defendant no.3 had utilized some funds for and on behalf of the company but the cash withdrawals have not been answered; these funds have been siphoned off by him. There is no details of these amounts; how and when they were withdrawn and on whose single signatures; cheques as aforementioned have not been produced; Ex.PW-1/1 i.e. the statement of account makes reference to 'self' withdrawals of cash; but who was this 'self' had to be proved by the plaintiff which proof he has not furnished. PW-2 in his cross-examination has admitted that the damages of Rs.50 lakhs cannot be quantified but they relate to loss of business and reputation. No further details have been given. Mere bald averments by plaintiff would not advance his case. Plaintiff is not entitled to any amount against defendant no.3.

23. Issue No.4 is decided against the plaintiff and in favour of defendant no.3.

24. **ISSUE NO.5:**

Suit of the plaintiff is dismissed against defendant no.3. No order as to costs. Decree sheet be drawn. File be consigned to Record Room.

INDERMEET KAUR, J.

March 26, 2010
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