

\$~11

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

Date of decision: 30th September, 2020

+ **RSA 83/2002**

STATE BANK OF INDIA Appellant

Through: Mr. Bheem Sain Jain, Advocate.
versus

RAM KUMAR JAIN Respondent

Through: Mr. Piyush Singhal, Advocate.
(M:9810055591)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **30.09.2020**

Prathiba M. Singh J.(Oral)

1. This hearing has been held through video conferencing. The present case highlights the plight of our banking sector wherein for a sum of Rs.10,000/- a litigation has been contested for almost thirty years. Undoubtedly the bank may have spent several times the said amount in pursuing/defending the litigation.

2. This is a second appeal challenging the impugned judgment passed by the Id. ADJ dated 1st May, 2002 by which, the suit filed by the Plaintiff/Respondent was decreed in favour of the Respondent for a sum of Rs. 10,000/-, along with interest against the Appellant i.e. State Bank of India (*hereinafter "SBI"*). The operative portion of the judgment reads as under:

"In view of my detailed findings recorded above, I find substantive merit in the appeal, and, therefore the appeal is allowed and thereby the judgment

recorded of the Ld. Trial Court is set aside and the suit of the appellant for Rs. 10,000/- is decreed with costs of the suit and interest at the rate of 12% p.a. from the date of filing of the suit till realisation of the decretal amount. Decree sheet be drawn in terms of the judgment. Appeal file be returned to the concerned court with the copy of the judgment and appeal file be consigned to RR.”

3. The litigation has had a long history spanning back to almost three decades. Plaintiff/Respondent's sole proprietorship firm – M/s RK Jain Sales had deposited two cheques for Rs.5,000/- and Rs.10,000/- in their bank account in SBI, Sadar Bazar, Bartan Market Branch on 24th September, 1981. The said two cheques were issued by, M/s Rajai Press and were drawn on its account in M/s State Bank of Bikaner and Jaipur, Naraina Branch, Delhi. The said M/s Rajai Press was a customer of the Respondent.
4. Out of the two cheques, the cheque for Rs. 5000/- was returned to the Plaintiff as the same was dishonoured. However, insofar as the amount of Rs. 10,000/- is concerned, the cheque was not returned and the amount of Rs.10,000/- was credited to the account of the Plaintiff. Some years later, the Bank realised that the amount of Rs. 10,000/- was wrongly credited in the account of the Plaintiff as the second cheque had also been dishonoured. Efforts were made to communicate with the Plaintiff and its bank as also with the customer M/s. Rajai Press, regarding debiting his account with Rs. 10,000/-, vide letters dated 29th September, 1981 [Ex.PW1/D1], 12th October, 1984 [Ex DW1/1], 5th April, 1984 [Ex. DW1/2] and 13th September, 1983 Ex. DW1/3. The customer Rajai Press confirmed that it has made payment to the Plaintiff, however, the Plaintiff did not respond or give any clarification as to whether he had received money independently from

his customer M/s Rajai Press or not.

5. When the Plaintiff did not confirm this, the Appellant-Bank on 1st August, 1986 reversed the entry in another account maintained by the Plaintiff in SBI, Karol Bagh Branch. This reversal was sought to be challenged and a suit for recovery of Rs. 10,000/- was filed before the Sub-Judge, Delhi.

6. Vide judgment dated 29th January, 2000, the trial court dismissed the suit on the ground that the Plaintiff had failed to confirm as to whether M/s Rajai Press had independently made payment to the Plaintiff. The Trial Court also observed that the Plaintiff had failed to produce the statement of accounts/book of accounts of M/s Rajai Press, which was maintained by him.

7. The Plaintiff then appealed before the Id. ADJ. In the appellate judgment, the Id. ADJ held that the reversal of the entry was sought to be done by SBI after more than five years had lapsed since the initial transaction and that would be beyond the period of limitation. On merits, the Id. ADJ was of the view that the actual cheque which was dishonoured for Rs.10,000/-, having not been returned to the customer, the mistake was of the Bank and therefore the reverse entry could have not been undertaken, that too in a separate bank account in a different Branch. Under these circumstances, the Id. ADJ had reversed the order of the Trial Court and decreed the suit by the impugned judgment dated 1st May, 2002.

8. In the present second appeal, the question of law that is sought to be raised is whether the Appellant-Bank is entitled to exercise the right of general lien irrespective of the law of limitation. Id. Counsel for Appellant relies on the judgment in *Walchandnagar Industries Ltd v. Cement*

Corporation of India of India [(2012) SCC OnLine Del 2389], paragraphs 9 and 13, to argue that the Court has recognised that adjustment can always be given effect to, even beyond the period of limitation.

9. This Court is of the opinion that the judgment in ***Walchandnagar Industries (supra)*** would not be applicable in the present case as the question is not merely of adjustment. Whenever a cheque is deposited by any customer in the bank, if the same is dishonoured, the cheque has to be returned to the customer. Admittedly in this case, only the cheque of Rs.5000/- was returned and the cheque for Rs. 10,000/- was not returned. This was a serious lapse on the part of the bank.

10. Something can be said about the Plaintiff/Respondent's conduct of not having confirmed whether they had independently received the payment from M/s Rajai Press and of not producing the statement of accounts of M/s Rajai Press. However, the act of SBI seeking to reverse the entry after five years had lapsed from the date of initial transaction was held to be impermissible by the Appellate Court. This view of the Appellate court is a plausible view. Moreover, the initial entry was made on 24th September, 1981 crediting the account of Plaintiff with Rs. 10,000/-. The reversal was almost five years later, since the cheque was dishonoured. The adjustment in the Plaintiff's bank account in a completely different branch, that too without having returned the cheque, may not have been completely in accordance with the procedure adopted by banks.

11. Under these circumstances, this Court is of the opinion that no substantial question of law arises in the present case. Moreover, considerable water has flown since the initial transaction, which took place almost three decades ago.

12. In this case, the execution proceedings were stayed, subject to deposit of decretal amount, vide order dated 10th July, 2002. The said decretal amount was permitted to be withdrawn by the Respondent/Decree-Holder, subject to FDR being given. Thereafter, the decretal amount was released in favour of the Respondent vide order dated 20th May, 2003, on the condition that he shall not encash the FDR. However, the FDR was illegally and wrongfully encashed by the Plaintiff, in his account on 29th April, 2006. This Court took a strict view of this wrongful encashment and a fine of Rs.20,000/- was imposed on the Plaintiff/Respondent vide order dated 29th September, 2006, along with a direction to furnish fresh FDR. Ld. counsel for the Respondent submits that the deposit of Rs.20,000/-, has already been deposited with the Delhi High Court Legal Services Committee. The receipt dated 6th October, 2006, showing the same, is placed at page 128 of the paperbook.

13. Accordingly, the FDR being DR No. KD/03/32797 dated 7th September, 2006 issued by Canara Bank, Tri Nagar, Delhi-110035, lying in this Court is directed to be returned to the Respondent/Plaintiff.

14. No interference is called for. The second appeal is accordingly dismissed.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 30, 2020
dj/A