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Court No. - 36

Case :- SECOND APPEAL No. - 528 of 2010

Appellant :- Punjab National Bank
Respondent :- M/S Allen And Alvan Private Ltd. And Others
Counsel for Appellant :- Ashok Bhatnagar
Counsel for Respondent :- Ishir Sripat

with

Case :- SECOND APPEAL No. - 527 of 2010

Appellant :- Punjab National Bank
Respondent :- M/S Allen And Alvan Private Ltd. And Others
Counsel for Appellant :- Ashok Bhatnagar
Counsel for Respondent :- Ishir Sripat

Hon'ble Kshitij Shailendra,J.

THE TWO APPEALS

1. These two second appeals arise out of consolidated judgment passed by the trial court and the first appellate court in the following proceedings:-

(i) Original Suit No.143 of 1991 (M/s Allen and Alvan Private Ltd Vs. Punjab National Bank and two others) giving rise to Civil Appeal No.147 of 2002 (M/s Allen and Alvan Private Ltd Vs. Punjab National Bank and two others); and

(ii) Original Suit No.176 of 1991 (M/s Allen and Alvan Private Ltd Vs. Punjab National Bank and two others) giving rise to Civil Appeal No.146 of 2002 (M/s Allen and Alvan Private Ltd Vs. Punjab National Bank and two others).

RESULT OF TRIAL PROCEEDINGS AND THE DECREE DRAWN

2. The trial court dismissed both the civil suits by a consolidated judgment dated 28.08.2002, however, two civil appeals were allowed by the first appellate court by consolidated judgment dated 07.08.2009. The decree impugned in these two appeals is a money decree drawn in favour of the plaintiff-respondent against the defendant-appellant bank.

PLAINT OF THE FIRST SUIT

3. Original Suit No.143 of 1991 (hereinafter referred to as the 'first suit') was filed claiming a decree for a sum of Rs.41,986.25 along with 24% interest per annum stating that the plaintiff, being a private company through Devinder Jit Singh Vadara (hereinafter referred to as the 'Managing Director/M.D.') was having current account No.4869 with the defendant-bank and a cheque bearing No. PYC 883200 dated 05.02.1988 covering a sum of Rs.24,410.60 had been wrongly cleared by the bank. Signatures of the Managing Director on the cheque were stated to be forged with a statement that an employee of the company, namely, Indrapal, in conspiracy with the bank officials, was instrumental in such clearance. A first information report was lodged by the Managing Director of the Company against

Indrapal in July, 1988, later on, matter was transferred to the Crime Branch, Meerut. Negligence of the bank in clearing the cheque without comparing the signatures of the drawer was pleaded and the suit was instituted based upon a notice dated 19.08.1990 sent by registered post with a further statement that since limitation concerning the aforesaid cheque was going to expire, the suit was filed. In paragraph no. 4 of the plaint, fraudulent encashment of six more cheques was pleaded with a statement that the plaintiff reserved its rights to subsequently claim the amount of the said cheques together with interest.

PARTIES, INITIAL AND SUBSEQUENTLY IMPLEADED AND THE SECOND SUIT

4. The first suit was filed initially only against the bank. Later on, the aforesaid employee of the bank, namely, Indrapal, and the payee of the cheque, namely 'Investment Corporation' were impleaded as defendants no.2 and 3 sometime in the year 1995. In the meantime, another suit being Original Suit No.176 of 1991 (hereinafter referred to as the 'second suit') was instituted by the plaintiff-company, that too, initially only against the bank and, later on, the employee Indrapal and two payees, namely, 'Ayodhya Investment Syndicate' and 'Investment Corporation' were respectively impleaded as defendants no.2, 3 and 4 in the year 1995. The second suit was in respect of following six cheques:

Sr. No.	**Cheque No.**	**Date**	**Amount (Rs.)**	**Payee's Name**	**Endorsement in favour of**
1	QEM 878600	17.02.88	50,000.00	Self-Withdrawal by Indrapal	
2	QEM 878578	25.02.88	40,000.00	Self-Withdrawal by Indrapal	

3	PYC 883400	27.02.88	23,641.00	M/s KP Box Makers	M/s Ayodhya Investment Syndicate
4.	PYC 883399	01.03.88	22,751.00	Munesh Kumar	M/s Ayodhya Investment Syndicate
5.	PYC 883699	13.06.88	26,953.00	Ashok Kumar	M/s Ayodhya Investment Syndicate
6.	PYC 883700	03.06.88	26,581.00	K.P. Box Makers	Investment Corporation
Total Amount			**2,14,336.60**		

THE DEFENCE

5. The bank contested the suits by filing written statement denying wrongful encashment of cheques stating that signatures of the Managing Director thereon were not forged and that the payment was made after comparing the signatures of the Managing Director with his specimen signatures. Plea of non-impleadment of the payees (before their impleadment), was also taken with various other statements defending action of the bank as regards encashment of cheques in normal course of business transactions. The employee Indrapal and the payees also filed their separate written statements in both the suits. Whereas Indrapal denied any conspiracy or fraud and stated that cheques were rightly encashed and also took a plea that he had demanded salary, bonus and others perks from the company but his request was rejected against which he moved some application before the Labour Commissioner and that he was also removed from service in December, 1987 and, therefore, institution of suit was a result of malice of the employer. The payees took a defence that cheques were rightly presented and credited into their accounts. Bar of Order 2 Rule 2 CPC as regards second suit was also pleaded praying

for dismissal of both the suits as barred by the provisions of Limitation Act, CPC as well as Sections 82 and 85 of the Negotiable Instruments Act.

6. Both the suits were consolidated by the trial court by order dated 11.11.1992 and the Original Suit No.143 of 1991 (first suit) was made the leading case.

THE TRIAL COURT'S JUDGMENT

7. The trial court, by judgment and decree dated 28.08.2002, dismissed both the suits. It held the second suit as barred by Order 2 Rule 2 CPC on the ground that on the date of filing first suit, cause of action to institute the second suit had already arisen, particularly in view of notice dated 19.08.1990 (Exhibit-1), paper No.22-C and observed that non-claiming relief in the first suit as regards six cheques forming subject matter of second suit would be fatal to plaintiff's case. As regards negligence of the bank officials towards clearing cheques, the trial court observed that the plaintiff had failed to lead sufficient evidence to establish forgery in signatures of the Managing Director, particularly when no expert was ever called for. It also observed that the plaintiff was a company of high repute involved in everyday transactions of lacs of rupees where 20-25 cheques were issued on daily basis.

THE FIRST APPELLATE COURT'S JUDGMENT

8. Two civil appeals arising out of consolidated dismissal of two suits have been allowed by the first appellate court by the impugned judgment dated 07.08.2009 holding the bank as guilty of negligence. The first appellate court found the trial court having erred in not comparing the disputed signatures of the Managing Director with those available on record, i.e. the plaint and other documents and

observed that even in absence of expert evidence under Section 45 of the Evidence Act, the court had ample power conferred under Section 73 of the Act to compare signatures with any other signatures available on record; that there were separate and distinct dates of cause of action in relation to filing of two separate civil suits and, therefore, bar of Order 2 Rule 2 CPC did not stand attracted; that PW-1 had succeeded to establish forgery in the cheques; that specimen signature of the Managing Director were available on paper No.29-C/1 (Exhibit 8), an introduction letter issued by PNB to its another branch at Railway Road, Aligarh; that specimen signatures available in the bank were not produced by the bank and that the statement of DW-1 Amar Deo, being secondary evidence in absence of production of the officials working at the relevant point of time of clearance of cheques, was not admissible. Though the appellate court did not record a finding that the defendants acted in collusion with each other or that there was some conspiracy in between them, it found the bank negligent in discharging its duties and drew the money decree. A significant feature of the first appellate court's judgment is that original file concerning criminal case lodged by the company against Indrapal, i.e. Sessions Trial No.1908 of 1994, under Sections, 420, 467, 468, 471 IPC (State Vs. Indrapal), P.S. Banna Devi, District Aligarh was summoned and it was observed that the Managing Director of the plaintiff-company had, after perusing original cheques available on record of the criminal case, proved his signatures on the cheques to be forged.

ADMISSION ORDER IN THE INSTANT APPEAL

9. The instant second appeal was admitted by a co-ordinate bench of this Court by order dated 08.02.2023, framing following four substantial questions of law:-

> "1. Whether the lower appellate court has erred in law in accepting the case of plaintiff by comparing the signatures on the cheques with the signature of the plaintiff on the plaint, his testimony and Exhibit-8 as well as on different correspondences between the bank and the plaintiff regarding transactions which were the subject matter of the original suits?
>
> 2. Whether the findings of the lower appellate court regarding negligence of the bank in encashing the cheques and its liability to return the amount involved in the cheques is supported by evidence and findings on record and whether, in any case, the appellant-bank was liable to refund the amount involved in the cheques?
>
> 3. Whether original suit no.143 of 1991was barred by Order 2 Rule 2 C.P.C?
>
> 4. Whether the interest awarded by the lower appellate court to the plaintiff is in accordance with Section 34 of Code of Civil Procedure, 1908?"

10. The Court may observe an inadvertent error in question No.3 as regards number of the original suit. As the question relates to bar under Order 2 Rule 2 CPC, it was raised and decided by two courts differently in relation to Original Suit No.176 of 1991 (second suit) and not in respect of Original Suit No.143 of 1991 (first suit). Hence, third question would be understood and decided qua bar associated with the "second suit" and not the "first suit". The said inadvertent error, in the opinion of the Court, being borne out from the record, need not be corrected at this stage of writing final judgment. It is also apparent that the appellant-bank, in pursuance of the interim order dated 06.09.2022 passed in these proceedings, has deposited the decretal amount and although certain dispute has been raised by the decree holder by filing an application to the effect that there is a shortfall in making deposit as per the interim order, since this Court is finally deciding both the appeals on consent of both sides, the question of compliance/non-compliance/partial compliance of the interim order would be no significance at this stage and, therefore, the Court is not entering into the said controversy.

LEARNED COUNSEL HEARD

11. I have heard Sri Ashok Bhatnagar, learned counsel for the appellant and Sri Rahul Sripat, learned Senior Counsel, assisted by Sri Ishir Sripat, learned counsel for the respondents.

APPELLANTS' ARGUMENTS

12. Sri Bhatnagar vehemently argues that the plaintiff had raised dispute regarding seven cheques in toto. The first suit, admittedly, was filed on the basis of notice dated 19.08.1990, paper No.22-C-1/1 on record, which contained details of all the seven cheques and asking the Chairman, Zonal Manager and the Chief Manager of the Bank to credit total amount of Rs.2,14,336/- in the account of the plaintiff. He submits that the plaintiff chose to file first suit based upon cause of action arising out of clearance of first cheque No. PYC 883200 covering a sum of Rs.24,410.60 and there being no leave obtained from the civil court before institution of the second suit, Original Suit No.176 of 1991 was barred by provisions of Order 2 Rule 2 CPC. He further submits that though the appellate court summoned the record of criminal trial containing original cheques but, instead of calling for an expert evidence, if required to examine the plea of forgery, it, in itself, acted as an expert and findings recorded in paragraph no.26 of the appellate court's judgment are wholly un-called for. Contention is that though Section 73 of the Evidence Act has no application in the facts of the present case as it applies in case of admitted signatures in order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made to the satisfaction of the Court, since the Managing Director of the plaintiff-

company had denied his signatures on the cheques, nothing was there as "admitted signatures" on record but it was a case where the signatures were "not admitted" by the plaintiff. Alternate submission of Sri Bhatnagar is that even if Section 73 could be invoked by the first appellate court, it was not a case where analysis of signatures of the Managing Director could be done in the manner it has been done in the judgment and the findings on trimmer, pen-lift, pen-pass, pen-hall, sharpness of words, speed and alienation etc have been recorded as if the Cout was a qualified handwriting or signature expert. As regards evidence from the side of the bank, it is submitted that officials posted at the time of clearance of the disputed cheques (Exhibits No.12 to 18) had already left services of the bank after availing Voluntary Retirement Scheme (VRS) due to which Amar Deo, a current employee of the bank, was produced as the defence witness. Further submission is that as far as alleged non-production of specimen signatures, there was already on record letter dated 10.09.1988 (Exhibit-8) by which the bank had introduced the Managing Director of the plaintiff-company to the other branch of the bank. He further submits that once both the courts below have not recorded finding that the bank officials had acted in conspiracy with other defendants, holding the bank as liable to pay the amount covered by the cheques which sum was not retained by the bank but was paid to the payees, i.e. Investment Corporation and M/s Ayodhya Investment Syndicate, the decree drawn against the bank is wholly unsustainable.

13. Sri Bhatnagar further submits that the plea raised by the plaintiff-respondent that some of the defendants were different which required leading of different evidence and for this reason two separate suits were filed, is fallacious, far-fetched and not tenable in the eyes of

law inasmuch as no relief was ever claimed against other defendants. Moreover, a perusal of both the plaints would reveal that the defendants no. 1, 2 and 3 in the first suit are common and only the defendant no. 3 in the second suit i.e. M/s Ayodhya Investment Syndicate was not made party in the first suit as it was not the payee of the first cheque. However, M/s Investment Corporation is defendant in both the suits. Explaining the cause of action, it is urged that a plaintiff cannot create a cause of action solely by his own effort. It must be created for him by some act of the defendant that must be a part of the cause of action. In the instant case, the cause of action in relation to all seven cheques arose only on 19.10.1990 when the defendant-bank refused to pay the plaintiff the amount claimed in the legal notice dated 19.08.1990. Therefore, the first suit filed claiming the amount mentioned in the first cheque would infer that the plaintiff failed to include the whole of the claim which it was entitled to make in respect to the cause of action, thereby relinquishing its claim for the remaining 6 cheques, hence the second suit was barred under Order 2 Rule 2 CPC. Reliance has been placed upon paragraph no.11 of the Full Bench decision of this Court in **Zila Parishad Vs. Shanti Devi, AIR 1965 All 590**. As regards incompetence of a court to act as a handwriting or signatures expert in itself, Sri Bhatnagar placed reliance upon the judgment of Hon'ble Supreme Court in **State (Delhi Administration) Vs. Pali Ram: AIR 1979 SC 14** and referred to paragraph no.29 whereof, which reads as under:-

> "29. The matter can be viewed from another angle, also. Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person

> accused of an offence solely on comparison made by himself. It is, therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert."

RESPONDENTS' ARGUMENTS

14. Per contra, Sri Rahul Sripat, learned Senior Counsel, submits that the bar of Order 2 Rule 2 does not at all stand attracted in the facts of the case as rightly held by the first appellate court, inasmuch as all cheques of different dates were presented in different points of time and, therefore, wrongful credit thereof in the bank accounts of the payees would give rise to separate causes of action. In addition to Order 2 Rule 2 CPC, Rule 3 thereof was also referred as regards joinder of several causes of action and it was contended that separate dates, separates payees, separate amounts and separate clearance of every cheque giving rise to separate cause of action, if the plaintiff filed first suit in respect of one cheque and joined causes of action of remaining six cheques in the second suit, bar of Order 2 Rule 2 CPC would not be attracted. He further submits that although no expert evidence was brought on record, certainly there was an order of conviction of Indrapal and also the original cheques before the first appellate court pursuant to summoning of the file of the criminal trial and for invocation of Section 73 of the Evidence Act, it is not required to exercise such power only when there are two conflicting expert reports. He submits that in the facts of the case the first appellate court has rightly compared the signatures of the Managing Director as available on various documents on record and rightly arrived at a conclusion that the bank was negligent in not comparing the same with the specimen signatures available with it. In support of his

submissions, learned Senior Counsel has placed reliance upon following authorities:-

(i) The Haryana Co-operative Sugar Mills Ltd., Rohtak Vs. Joint Hindu Family Firm Styled as Gupta Drum Supply Company: **AIR 1976 P&H 117**;

(ii) Murari Lal Vs. State of M.P.: **AIR 1980 SC 531**;

(iii) Shriniwas Pansari Vs. Hari Prasad Mehra and others: **AIR 1983 Pat 321**;

(iv) Canara Bank Vs. Canara Sales Corporation and others: **AIR 1987 SC 1603**;

(v) Babulal Agarwalla Vs. State of Bikaner and Jaipur: **AIR 1989 Cal 92**;

(vi) Syndicate Bank Vs. West Bengal Cements Lts. and others: **AIR 1989 Delhi 107**;

(vii) Mahabir Prasad Bubna Vs. United Bank of India: **AIR 1992 Cal 270**;

(viii) Mathew Jacob Vs. Salestine Jacob and others: **AIR 1998 Delhi 390**;

(ix) Jyoti H. Mehta and others Vs. Kishore J. Janani and others: **MANU/MH/0133/2019**; and

(x) Mrugendra Indravadan Mehta and others Vs. Ahemdabad Municipal Corporation: **MANU/SC/0420/2024**.

ANALYSIS OF RIVAL CONTENTIONS

Re:- Order 2 Rule 2 CPC

15. Having heard learned counsel for the parties, I find it established on record that the plaint of first suit filed on 05.02.1991

disclosed sending of notice dated 19.08.1990 and non-compliance thereof by the bank. The said notice being on record as Exhibit-1, paper No.22-C-1/1, contains details of all the seven cheques out of which four were issued on different dates in February, 1988, one cheque in March, 1988 and two cheques in June, 1988. The second suit was filed on 16.02.1991 in respect of remaining six cheques. From the statement contained in paragraph nos.4, 9 and 10 of the first suit, it appears that since three years period from the date of encashment of first cheque, i.e. 05.02.1988, was going to expire, the plaintiff-company reserved its right to claim amount of remaining six cheques and cause of action behind filing of the first suit was alleged to have arisen on 06.03.1988, i.e. the date of fraudulent encashment of the cheque and payment made negligently. Paragraphs no.4 and 10 of the plaint of first suit read as under:-

> "4. That in addition to the said cheque, six more cheques were also fraudulently encashed and negligently paid by the defendant Bank from the said account on different dates bearing forged signatures of the Managing Director and the plaintiff reserves its right to claim the amount of those cheques together with interest subsequently.
>
> 10. That the cause of action for the present suit arose on 6.3.1988, the date of fraudulent encashment of the cheque and payment made negligently by the defendant Bank, on different dates, the defendant Bank was requested to make good the loss, on 19.8.1990, the date of notice, on 19.10.1990, the date of reply notice and lastly about a week ago, when the defendant Bank was personally approached to settle the matter amicably, but to no fruitful result or effect, hence this suit, which lies within the jurisdiction of this Court and the Hon'ble Court is competent to try the same."

16. The submission of Sri Rahul Sripat that relinquishment to institute a lis in relation to six cheques would not create a bar to institute a second suit, when examined from the bare statements contained in the plaint of first suit, it would reveal that the plaintiff itself had alleged arising of cause of action in relation to first suit on

06.03.1988, the date of fraudulent encashment of the cheque and payment made negligently by the defendant Bank on different dates and when the defendant Bank was requested to make good the loss, on 19.8.1990, i.e., the date of notice, on 19.10.1990, i.e., the date of reply notice and, lastly, when the defendant-Bank was personally approached to settle the matter amicably. It appears that the plaintiff took shelter of plea of limitation of three years from the date of arising of cause of action and, according to the plaintiff, at the best, its plea was that as the limitation was about to expire in March, 1991, the first suit was filed. Interestingly, second suit was also filed in February, 1991, i.e. after 11 days from the date of filing of first suit. By that time, obviously limitation to file either of the two suits had not expired, if, at all, computation of period of limitation is understood in the manner in which it has been sought to be explained vide the statements contained in both the plaints. As per law, limitation to file a suit for recovery of money would be three years computed either from the date when the amount became payable/due or from the date when demand was made or it was not satisfied, as the case may be. In both the suits, issue of bar of limitation was framed and has been decided by the first appellate court in favour of the plaintiff-respondent and against the bank. There is no challenge to the said finding by the appellant-bank. Even otherwise, this Court is satisfied that both the suits were well within period of limitation.

17. In view of the above, it is now to be seen as to whether the first appellate court was right in holding the suit as not barred by the provisions of Order 2 Rule 2 CPC. For a ready reference, Order 2 Rules 2 and 3 CPC are reproduced as under:-

> "**2. Suit to include the whole claim.**—(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may

relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) *Relinquishment of part of claim.*—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) *Omission to sue for one of several reliefs.*—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

3. Joinder of causes of action.—(1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit."

(emphasis supplied)

18. The provisions, as extracted above, show that the plaintiff has to include whole of the claim which he is entitled to make in respect of cause of action but he can relinquish any part of his claim in order to bring the suit within the jurisdiction of Court. The omission or intentional relinquishment of any part of his claim would certainly bar the plaintiff to sue afterwards in respect of portion so omitted or relinquished. The subsequent suit can be saved by the rigours of Rule 2 only when the plaintiff obtains a leave of the Court at the time of relinquishment or omission of part of his claim. In the instant case, no leave as regards institution of the second suit in respect of remaining

six cheques was obtained by the plaintiff, although it was not only well aware of the wrongful credit of the accounts of the payees but it itself had sent composite notice dated 19.08.1990 and received reply dated 19.10.1990 in respect of all seven cheques and mentioned this fact in the plaint of the first suit itself. The submission of Sri Sripat that in paragraph no.4 of the plaint of first suit, the plaintiff had reserved its right to subsequently claim the amount of remaining six cheques together with interest, does not impress the Court, inasmuch as Order 2 Rule 2 or 3 CPC does not contemplate any such reservation by the plaintiff himself. If interpretation of the aforesaid provision, as suggested by Sri Sripat, is accepted, it would demolish the very statutory bar contained in CPC and negate the legislative intent and would give leverage to any plaintiff to omit or relinquish any part of his claim or its portion according to his own whims and wishes, whereas such a reservation is provided in clear words "except with the leave of the Court" as per sub-rule (3) of Rule 2 of Order 2 CPC.

19. Joinder of causes of action, as argued by Sri Sripat while referring to Rule 3 of Order 2, in the facts of the case, would be read only in respect of joinder of causes of action based upon payment concerning six cheques and the Court does not find any defect in the frame of second suit on individual or separate basis but when read with the first suit and the composite notice, the second suit was certainly barred by the provisions of Order 2 Rule 2 CPC. Further, joinder is contemplated in respect of several causes of action in the same suit and not joining of causes in two suits. In the facts of the case, nothing prevented the plaintiff to join grievance and relief in relation to all the seven cheques in the first suit, as the record position at the time of institution of both the suits was the same, i.e. payment of all the cheques had been released in favour of all the payees and a

composite notice Exhibit-1 describing a joint cause of action was very much there. One should not forget that the plea of different defendants as raised by Shri Sripat while arguing against the bar of Order 2 Rule 2 is of no avail inasmuch as the payees were added after 4 years of institution of both the suits and no relief was ever claimed against them.

20. The judgment in **Haryana Co-operative Sugar Mills Ltd. (supra),** cited by Sri Sripat, cannot be read in favour of the plaintiff, inasmuch as the Punjab and Haryana High Court had laid down the correct test falling under Order 2 Rule 2 CPC stating that the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation in the former suit. It explained the cause of action as every fact which will be necessary for the plaintiff to prove in order to support his right to judgment and observed that if the evidence to support the two claims is different, then the causes of action are also different. There is no dispute about the proposition laid down in the said judgment, however, as to how it can help the plaintiff in the facts of the present case, is not understandable. As observed above, single cause of action in relation to all the seven cheques had arisen at the time of filing of the first suit itself and no distinction is found in any of the parameters or components, either qua pleadings or evidence in both the cases. It is, therefore, held that the second suit was clearly barred by Order 2 Rule 2 CPC as rightly held by the trial court and wrongly decided by the first appellate court. Hence, third question framed by this Court in the admission order is answered in favour of the defendant-appellant (bank).

Re:- Section 73 of Evidence Act

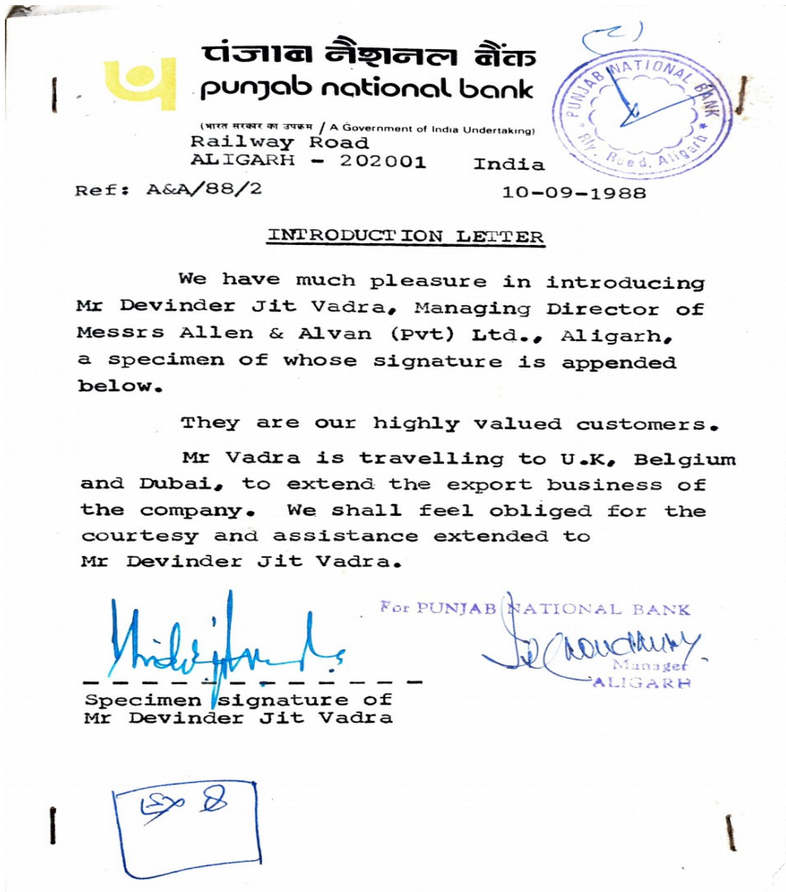
21. On merits of the plaintiff's case as regards wrongful payment of cheques, the only dispute was as regards genuineness of signatures of

the Managing Director of the plaintiff-company on the cheques. Admittedly, neither before the trial court nor before the first appellate court any expert evidence in terms of Section 45 of the Evidence Act was brought on record. What the Court notices from the record is that FIR was registered by the Managing Director of the plaintiff-company against the accused Indrapal on 29.07.1988. During the pendency of the original suit, charge sheet was submitted against the accused and he was being tried by the court of competent criminal jurisdiction in S.T. No.1908 of 1994. Suits were dismissed in the year 2002 by which time the sessions trial was not over. Accused Indrapal was convicted by the Chief Judicial Magistrate, Aligarh on 29.03.2006, i.e. during the pendency of civil appeals. Admittedly, the original cheques were never brought on record of the proceedings of civil suit, however, the same formed part of the record of the criminal trial. The trial court observed about lodging of the FIR, transfer of investigation to the Crime Branch and also perused Exhibit Ka-5, i.e. the first information report registered at Case Crime No.254 of 1988. The first appellate court observed about summoning of the file of the criminal case by the trial court itself. The first appellate court perused the original cheques or their certified copies on record and observed that though there were various documents such as plaint, statement of PW-1 and certain correspondences entered into between the parties, the trial court did not make any efforts to compare the said signatures before deciding the suits. As regards Exhibit-8, in relation whereto first question has been framed in the admission order, the first appellate court observed that it being an introduction letter issued by the bank to its Railway Road Branch, it would be deemed to be “admitted signatures” of the Managing Director. The appellate court, thereafter, proceeded to observe that the bank had not produced specimen

signatures on record and then recorded following findings in paragraph no.26 of the judgment:-

"२६. इस उद्देश्य से मैंने फौजदारी पत्रावली में उपलब्ध मूल विवादित चैकों जिनकी प्रमाणित फोटो प्रतियाँ प्रदर्श-१२ लगायत १८ विचारण न्यायालय की पत्रावली पर उपलब्ध है। देवेन्द्रजीत वाडरा के हस्ताक्षरों की मिलान अभिलेख पर उपलब्ध दावे, ब्यानात एवं प्रदर्श क-८ लगायत क-११ पर देवेन्द्रजीत वाडरा के हस्ताक्षर और विशेषकर प्रदर्श-८ पर उपलब्ध देवेन्द्रजीत वाडरा के नमूने के बैंक के द्वारा सत्यापित हस्ताक्षर, से अत्यन्त सूक्ष्मतापूर्वक एवं गम्भीरतापूर्वक की। चैक दिनांक १३-६-८८ सं० पी० वाई० सी० ८८३६९९ धनराशि २६,९५३/- चैक सं० पी० वाई० सी० ८८३७०० दिनांक ३-६-८८ धनराशि २६,५८१/-, चैक सं० पी० वाई० सी० ८८३४०० दिनांक २७-२-८८ धनराशि २३६४१/-, चैक सं० पी० वाई० सी० ८८३३९९ दिनांक १-३-८८ धनराशि २२,७५१/-, चैक सं० क्यू० ई० एम० ८७८५७८ दिनांक २५-२-८८ धनराशि ४०,०००/-, चैक सं० पी० वाई० सी० ८८३२०० दिनांक ५-२-८८ धनराशि २४,४१०.६०, चैक सं० क्यू० ई० एम० ८७८६०० दिनांक १७-२-८८ धनराशि ५०,०००/- पर उपलब्ध **देवेन्द्रजीत वाडरा के हस्ताक्षर खुली आँख से देखने पर ही प्रदर्श-८ पर देवेन्द्रजीत वाडरा के हस्ताक्षरों से किसी भी लेखीय विशेषताओं के परिप्रेक्ष्य में मेल नहीं खाते हैं। बिना किसी गहन परीक्षण या प्रयोगशाला परीक्षण पर आधारित मिलान के भी ये सभी हस्ताक्षर फर्जी बनाये गये दर्शित हो रहे है जिसमें तमाम लाइन क्वालिटी डिफेक्टस यथा ट्रेमर अस्वाभाविक पेनलिफ्ट पेनपास एवं पेनहाल उपस्थित है। लिखे गये शब्दों की शार्पनेस, गति तथा झुकाव में इतने स्पष्ट अंतर दिखाई दे रहे हैं कि किसी भी स्थिति में इन्हें एक व्यक्ति के लेख का नही माना जा सकता। हस्ताक्षर के अतिरिक्त कतिपय चैकों में धारक जिनके नाम चैक जारी किये गये है तथा धनराशि की हिज्जे में ऐसे चौकाने वाले दोष है जो इतनी प्रतिष्ठित कम्पनी के द्वारा अपने व्यापार के सामान्य अनुक्रम में जारी चैकों में नही हो सकते।** उदाहरण के लिये चैक सं० पी० वाई० सी० ८८३२०० दिनांक ५-२-८८ में पैसे को प्राइस लिखा गया है, टवेन्टी व थाउजेन्ड के बीच नीचे ओर फोर अलग कलम से बढ़ाया गया है। थाउजेन्ज के आगे के फोर को काटा गया है फिर उसके ऊपर फोर लिखा गया है। यहाँ भी देवेन्द्रजीत वाडरा के जो हस्ताक्षर है उनका विभिन्न तथा तुरन्त प्रकार में आ जाने पर विभिन्नता स्पष्ट रूप से उजागर है। इसी तरह चैक पी० वाई० सी० ८८३४०० में फोरटी की स्पेलिंग गलत है तथा सेल्फ को लेल्वज लिखा गया है।"

22. The above findings demonstrate that the appellate court apparently acted as a well qualified expert of comparing handwriting as well as signatures. The component and parameters, like trimmer, pen-lift, pen-pass, pen-hall, sharpness of words, speed and alienation etc have been described in the manner in which a well qualified expert explains the same. The Court may also reproduce here the nature of the signatures of the Managing Director which are found on different documents on record. Scanned copy of the signatures of the Managing Director, both undisputed (On Exhibit-8) and disputed (On 7 cheques), are reproduced as below:-



पंजाब नैशनल बैंक
punjab national bank
(भारत सरकार का उपक्रम / A Government of India Undertaking)
Railway Road
ALIGARH - 202001 India

PUNJAB NATIONAL BANK Br. Regd. Aligarh

Ref: A&A/88/2 10-09-1988

INTRODUCTION LETTER

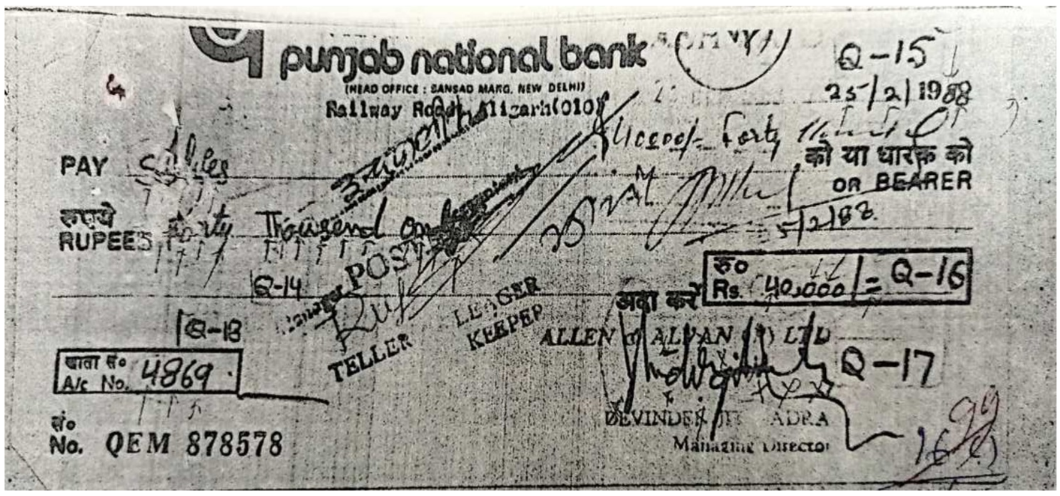
We have much pleasure in introducing Mr Devinder Jit Vadra, Managing Director of Messrs Allen & Alvan (Pvt) Ltd., Aligarh, a specimen of whose signature is appended below.

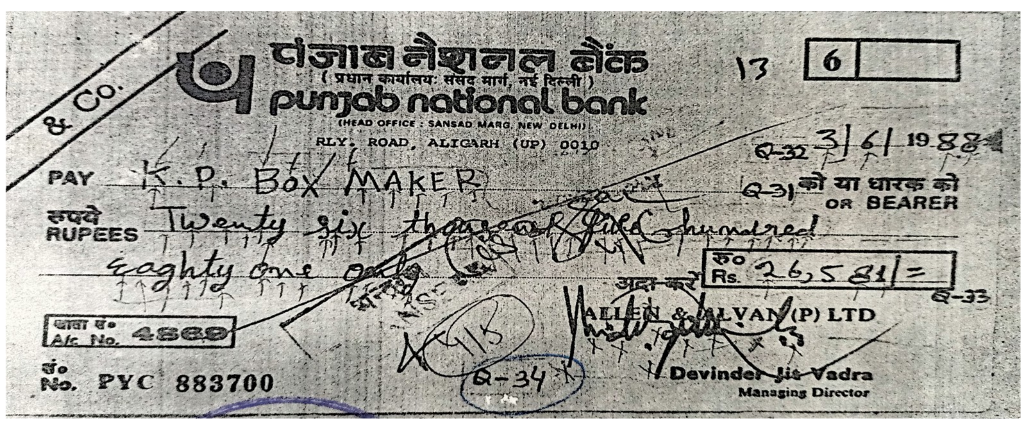
They are our highly valued customers.

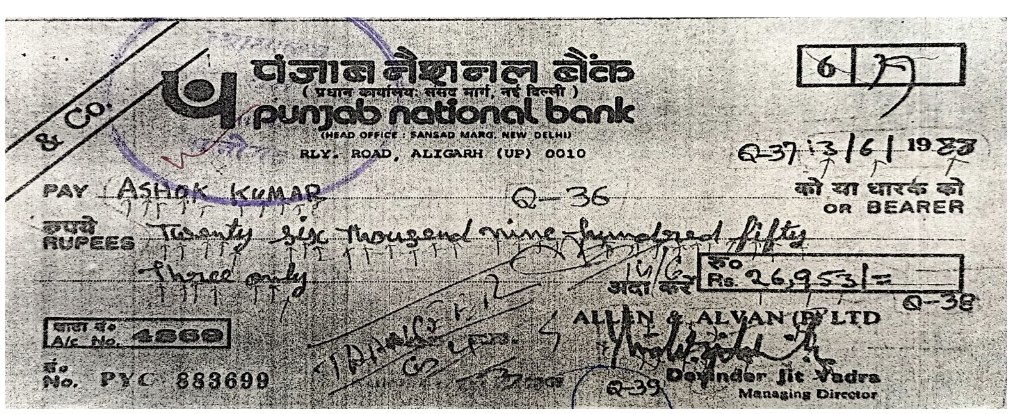
Mr Vadra is travelling to U.K, Belgium and Dubai, to extend the export business of the company. We shall feel obliged for the courtesy and assistance extended to Mr Devinder Jit Vadra.

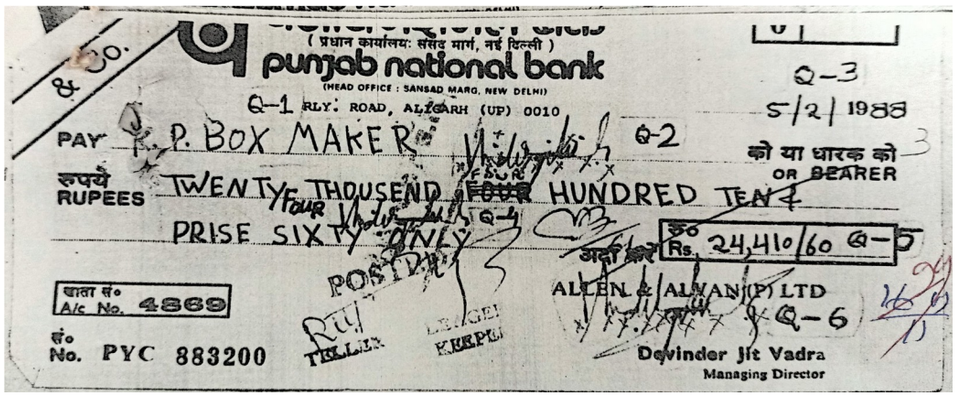
For PUNJAB NATIONAL BANK
Manager
ALIGARH

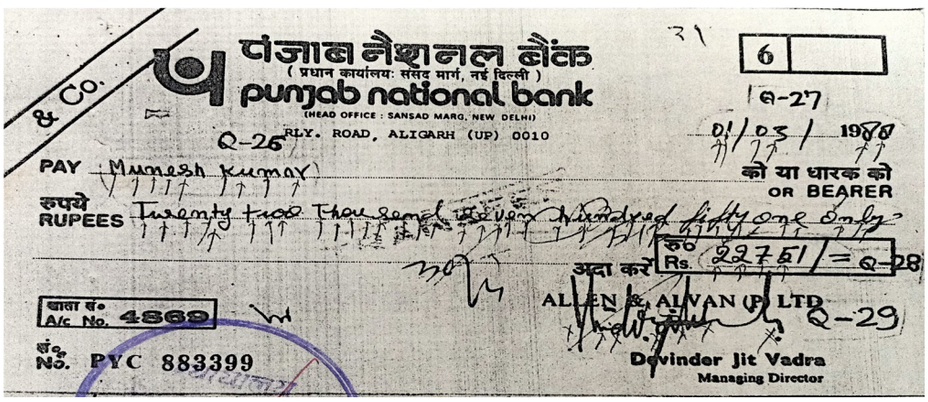
Specimen signature of
Mr Devinder Jit Vadra

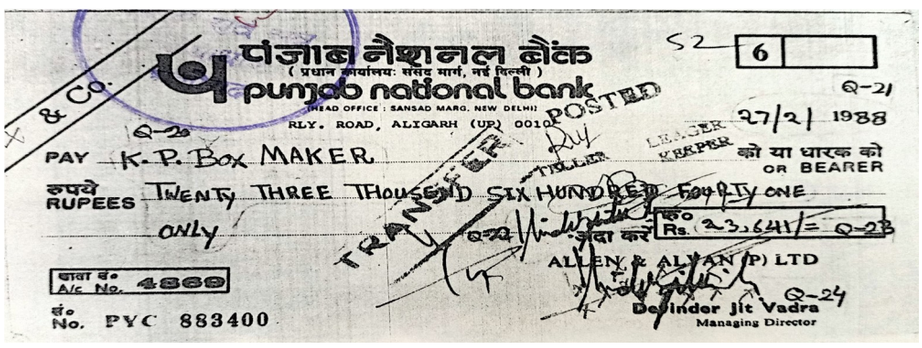

punjab national bank
(HEAD OFFICE : SANSAD MARG, NEW DELHI)
Railway Road, Aligarh(0010)
Q-15
25/2/1988
PAY Selves को या धारक को OR BEARER
रुपये RUPEES Forty Thousend only
रु० Rs. 40,000/- Q-16
अदा करें
Q-14 POST
TELLER LEDGER KEEPER
Q-13
खाता सं० A/c No. 4869
ALLEN & ALVAN (P) LTD
Q-17
DEVINDER JIT VADRA
Managing Director
सं० No. QEM 878578

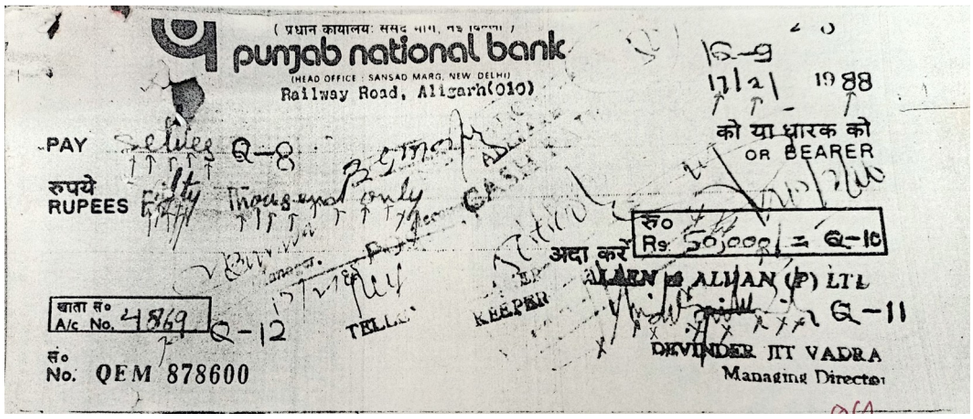

& Co.
पंजाब नैशनल बैंक
(प्रधान कार्यालय: संसद मार्ग, नई दिल्ली)
punjab national bank
(HEAD OFFICE : SANSAD MARG, NEW DELHI)
RLY. ROAD, ALIGARH (UP) 0010
13 6
Q-32 3/6/1988
PAY K.P. BOX MAKER Q-31 को या धारक को OR BEARER
रुपये RUPEES Twenty six thousand five hundred eaghty one only
रु० Rs. 26,581/-
अदा करें
Q-33
खाता सं० A/c No. 4869
ALLEN & ALVAN (P) LTD
Q-34
Devinder Jit Vadra
Managing Director
सं० No. PYC 883700


& Co.
पंजाब नैशनल बैंक
(प्रधान कार्यालय: संसद मार्ग, नई दिल्ली)
punjab national bank
(HEAD OFFICE : SANSAD MARG, NEW DELHI)
RLY. ROAD, ALIGARH (UP) 0010
6
Q-37 13/6/1988
PAY ASHOK KUMAR Q-36 को या धारक को OR BEARER
रुपये RUPEES Twenty six thousend nine hundred fifty three only
रु० Rs. 26,953/-
अदा करें
Q-38
खाता सं० A/c No. 4869
TRANSFER
ALLEN & ALVAN (P) LTD
Q-39
Devinder Jit Vadra
Managing Director
सं० No. PYC 883699


पंजाब नैशनल बैंक
(प्रधान कार्यालय: संसद मार्ग, नई दिल्ली)
punjab national bank
(HEAD OFFICE : SANSAD MARG, NEW DELHI)
Q-1 RLY. ROAD, ALIGARH (UP) 0010
Q-3
5/2/1988
PAY K.P. BOX MAKER Q-2
को या धारक को OR BEARER
रुपये RUPEES TWENTY Four THOUSEND FOUR HUNDRED TEN4
PRISE SIXTY ONLY Q-4
रु० Rs. 24,410/60 Q-5
अदा करें
खाता सं० A/c No. 4869
ALLEN & ALVAN (P) LTD Q-6
सं० No. PYC 883200
Devinder Jit Vadra
Managing Director
POSTED
TELLER
LEDGER KEEPER


पंजाब नैशनल बैंक
(प्रधान कार्यालय: संसद मार्ग, नई दिल्ली)
punjab national bank
(HEAD OFFICE : SANSAD MARG, NEW DELHI)
Q-25 RLY. ROAD, ALIGARH (UP) 0010
Q-27
01/03/1988
PAY Mahesh kumar
को या धारक को OR BEARER
रुपये RUPEES Twenty two Thousand seven Hundred fifty one Only
रु० Rs. 22751/= Q-28
अदा करें
खाता सं० A/c No. 4869
ALLEN & ALVAN (P) LTD Q-29
सं० No. PYC 883399
Devinder Jit Vadra
Managing Director


पंजाब नैशनल बैंक
(प्रधान कार्यालय: संसद मार्ग, नई दिल्ली)
punjab national bank
(HEAD OFFICE : SANSAD MARG, NEW DELHI)
RLY. ROAD, ALIGARH (UP) 0010
Q-21
27/2/1988
PAY K.P. Box MAKER
को या धारक को OR BEARER
रुपये RUPEES TWENTY THREE THOUSEND SIX HUNDRED FORTY ONE ONLY
रु० Rs. 23,641/= Q-23
अदा करें
खाता सं० A/c No. 4869
ALLEN & ALVAN (P) LTD Q-24
सं० No. PYC 883400
Devinder Jit Vadra
Managing Director
POSTED
TELLER
LEDGER KEEPER
TRANSFER



23. A perusal of the signatures would show that the same being highly complicated, in order to arrive at a definite conclusion by a court of law as to whether they were forged or genuine, expert evidence was required and it is beyond the competence of a judge to arrive at such a conclusion in purported exercise of power under Section 73 of the Evidence Act. It may be noted that there is on record an expert report accompanied by various cheques, both disputed in the civil litigation and undisputed but the same was on the record of the criminal case and the expert had given opinion which, ultimately, resulted into conviction of the accused Indrapal. As to what happened to the conviction, either in appeal or otherwise, is not on record. Even otherwise, none of the courts below has, in fact, treated either the expert report of criminal proceedings or even the findings recorded by the investigating officer or the learned Magistrate as an evidence in the civil proceedings and rightly so, inasmuch as record of criminal proceedings cannot be treated as evidence in civil proceedings. Hence, what is there before the court is the oral and documentary evidence led before the civil court but to answer issues arisen and questions framed by this Court, it has to be seen as to whether the evidence was

sufficient to hold the bank negligent as regards discharge of its duties in clearance of cheques.

24. The Court may refer to Section 73 of the Evidence Act that reads as under:-

> "**73. Comparison of signature, writing or seal with others admitted or proved.-** In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.
>
> The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person."

25. The Supreme Court in **O. Bharathan vs. K. Sudhakaran and another** , **AIR 1996 Supreme Court 1140**, condemned the judgment of the High Court of Kerala in an election petition where the High Court had compared the signatures on two counterfoils alleged to be related to certain witnesses without the aid of an expert or the evidence of persons conversant with the disputed signatures. The Supreme Court held that the High Court had erred in taking upon itself the task of making comparison and found the approach of the High Court not in conformity with the spirit of Section 73 of the Evidence Act.

26. Gauhati High Court in **Shyam Sundar Chowkhani alias Chandan and others vs. Kajal Kanti Biswas and others, AIR 1999 Gauhati 101**, after referring to judgment in **State of Maharashtra vs. Sukhdeo Singh and another, AIR 1992 SC 2100,** observed that although Section 73 empowers the Court to compare the disputed writing with the specimen/admitted writing shown to be genuine,

prudence demands that the Court should be extremely slow in venturing an opinion on the basis of comparison, more so, when the quality of evidence in respect of specimen/admitted writing is not of high standard.

27. The Orissa High Court in **Laxmi Bai vs. A. Chandravati, AIR 1995 Orissa 131,** held that under Section 73 of the Evidence Act, a Court is competent to make comparison of disputed writings, it would, however, be too hazardous for a Court to use his own eyes and merely on the basis of personal comparison decide a very vital issue between the parties centering round the handwriting or signatures of a person.

28. As far as the judgment of Patna High Court in **Shriniwas Pansari (supra)**, cited by Sri Sripat, it was held that there is no bar to the judge using his own eyes to compare the disputed writing with the admitted writing even without the aid of the evidence of any handwriting expert. There is no dispute about the said proposition but the same would not be applicable in the present case as the first appellate court has not simply compared the signatures with his open eyes but has acted as a well qualified expert having specialized knolwledge when it used words like trimmer, pen-lift, pen-pass, pen-hall, sharpness of words, speed and alienation etc.

29. The third judgment relied upon by Sri Sripat in **Canara Bank (supra)** deals with the liability of the bank to make good the payment. In that case, the Hon'ble Supreme Court upheld the judgment of the trial court and the first appellate court which had held the bank liable to pay amount covered by the disputed cheques. The Hon'ble Supreme Court discussed the relationship of the bank with its customers and the terms of the contract between the two and also observed that the bank's business depends upon the trust and

whenever a cheque purported to be by a customer is presented before a bank, it carries a mandate to the bank to pay. If the cheque is forged, there is no such mandate and the bank can escape liability only when it can establish knowledge to the customers of the forgery in the cheques. In the instant case, admittedly, the first information report was lodged by the Managing Director against Indrapal in 1988 itself, i.e. immediately after the cheques were cleared and alleged forgery came to the knowledge of the Managing Director. The suits were filed just before the third year was going to lapse in 1991. During this period of time, the plaintiff-company was prosecuting its own employee. After institution of suits, whatever evidence was brought on record, as discussed above, the same is sufficient for this Court to form an opinion that the Bank had successfully established its defence of no negligence and non-conspiracy with the accused and also of taking reasonable care in clearing the cheques considering the large number of transactions by the company and the nature of forgery alleged by the plaintiff. Further, knowledge of alleged forgery to the plaintiff was also established in view of prosecution lodged by plaintiff immediately in 1988. Therefore, with due respect, the judgment in **Canara Bank (supra)** would also not be helpful to the plaintiff-respondent.

30. The judgment of Calcutta High Court in **Babulal Agarwalla (supra)**, with due respect, does not lay down any law so as to dislodge the bank's defence. The said judgment was delivered in an original suit with no discussion of oral or documentary evidence. Single cheque was presumed to be forged without any discussion and just a passing reference of Supreme Court's judgment in **Canara Bank (supra)** was given with a further observation that Section 85(2) of the N.I. Act would not stand attracted in case of a forged cheque. In the

facts of the instant case, oral and documentary evidence read as a whole, want of expert evidence under Section 45 of the Evidence Act and improper and illegal exercise of power under Section 73 of the Evidence Act by the first appellate court does not persuade this Court to read the judgment in **Babulal Agarwalla (supra)** in favour of the appellant. Another judgment in **Syndicate Bank (supra)** is on payment of interest which, with due regards to Delhi High Court, is of insignificant value in the present case as this Court has arrived at a conclusion that the bank was not liable to pay any amount to the plaintiff and, hence, question of interest would not arise.

31. The judgment of Calcutta High Court in **Mahabir Prasad Bubna (supra)** and Delhi High Court in **Mathew Jackob (supra)**, on the interpretation of Section 73 of the Evidence Act, are also not helpful for the plaintiff-respondent, for the same reasons stated above. Bombay High Court in **Jyoti H. Mehta (supra)** on the point that the plaintiff is entitled for refund as the bank is a custodian of the amount is also of no help to the plaintiff as facts of the said case were different from the one involved in the present lis where initially the suit was instituted against the bank but, later on, the accused of the forgery, i.e. the employee of the plaintiff as well as the payees were impleaded as defendants without amending the plaint. No decree having been claimed against the payees, suit could not be decreed against the bank merely on the ground that it was custodian of the amount kept by the customers. The last judgment in **Mrugendra Indravadan (supra)** is on the proposition laid down by Hon'ble Supreme Court in relation to Order 41 Rule 31 CPC which having not been argued from either side and, even otherwise, not being significantly involved in view of analysis of every aspect of the matter, the same has no application in the facts of the present case.

Re:- Liability of Bank to refund the amount

32. Here, the Court would like to refer oral testimony of PW-1 Devinder Jit Singh Vadara, i.e. the Managing Director. In his cross examination, he stated Indrapal as his peon. As regards payees 'M/s Ayodhya Investor Syndicate' and 'Investment Corporation', it was stated that there had never been any commercial transaction in between the plaintiff-company and the said payees. He also stated that he had not claimed any decree against the said payees. He stated his qualification as MA (Economics) and LL.B and stated that his company did not trade in India and explained his transactions in relation to foreign countries. Acquaintance with the payees 'Investment Corporation' and 'M/s Ayodhya Investor Syndicate' was clearly stated by him but he expressed his ignorance as to why despite their impleadment, no relief was claimed against them. From the overall testimony of PW-1, though it is clear that he denied issuance of cheques and also termed his signatures thereon as forged, the bare statement to that effect would not suffice drawing a decree for payment of money against the bank and in favour of the plaintiff. The reason is that the bank was neither a wrongful gainer of the money nor can it otherwise be stated to be a case of undue enrichment of the bank. If Indrapal, an employee of the plaintiff-company, was convicted and it is assumed that his conviction has attained finality, he being a party to both the original suits, decree might have been drawn against him but since no relief was claimed by the plaintiff to that effect, there is no such decree. Similar is the position with respect to additionally impleaded payees in both the suits and it is clear that though PW-1 denied business transactions with the said payees, ultimately the amount covered by all the cheques was credited in their bank accounts. Therefore, it is the payees who were rightly or wrongly

benefited with the amount credited with them and in such situation, there could be a decree against the said payees but, for the reasons best known to the plaintiff, neither any relief was claimed despite subsequent impleadment of the payees, nor did the first appellate court look into this aspect. The appellate court has simply held the bank negligent in discharge of its duties and has drawn a decree against it. It may also not be forgotten that it is not a case arising out of deficiency in service under Consumer Protection Act, 1986 or Legal Services Authorities Act, 1987 where respectively Consumer Redressal Forum or a Permanent Lok Adalat under Sections 22-A and 22-C of the Act of 1987 may or may not adjudicate liability of the bank in relation to services rendered by it. The appeal arises out of a civil suit where liability to pay would accrue when all components affecting civil rights of the parties have to be adjudicated upon as a court exercising civil jurisdiction in relation to parameters of civil procedural law and Specific Relief Act, 1963.

Re:- Negotiable Instruments Act

33. While discussing the arguments based upon Section 85 of the N.I. Act, the appellate court observed that the cheques being forged in the present case, they would not fall within the parameters of a 'negotiable instrument' and, hence, benefit under sub-section (2) of Section 85 of the N.I. Act would not be available to the bank. Here, the Court deems it appropriate to refer to the provisions of Sections 7 and 85 of the N.I. Act, which are as under:-

> "**7. "Drawer", "Drawee".**—The maker of a bill of exchange or cheque is called the "drawer"; the person thereby directed to pay is called the "drawee".
>
> **"drawee in case of need".**— When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need such person is called a "drawee in case of need."

> **"acceptor".**—After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor".
>
> **"acceptor for honour".**— [When a bill of exchange has been noted or protested for non-acceptance or for better security], and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour".
>
> **"Payee".**—The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee"."
>
> **"85. Cheque payable to order.**— [(1)] Where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course.
>
> (2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or in blank appearing thereon, and notwithstanding that any such endorsement purports to restrict or exclude further negotiation."

34. It appears from the record that protection of sub-section (2) of Section 85 was claimed by the bank on the ground that the cheques originally expressed to be payable to bearer, once the same were cleared in due course, the bank would be discharged from its liability. In the instant case, the plaintiff-company was the drawer and the bank was drawee. Even if the cheques were termed as containing forged signatures of the Managing Director so as to take them away from the definition of a negotiable instrument, the appellate court should have examined the significance of sub-section (2) of Section 85 so as to appreciate as to whether the bank had discharged its obligation in its normal course of business, particularly when it had come on record that the plaintiff-company, being a reputed one, presented 20-25 cheques per day in the bank.

35. In addition to it, Section 131 of Negotiable Instruments Act, 1881 indicates the circumstances when the Bankers are not liable for consequences of wrongful payment. The provision reads as under:

> "**131. Non-liability of banker receiving payment of cheque.—** A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.
>
> Explanation I.—A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.
>
> Explanation II.— It shall be the duty of the banker who receives payment based on an electronic image of a truncated cheque held with him, to verify the prima facie genuineness of the cheque to be truncated and any fraud, forgery or tampering apparent on the face of the instrument that can be verified with due diligence and ordinary care."

36. Although, the Explanations I and II were added or replaced by the amendments brought in the Act in the year 2002-03, by which time the trial in the aforesaid suits was over, even if the same are seen in view of the fact that the matter was pending before the first Appellate Court, a plain reading of the provision and the Explanations appended to it would indicate that the bankers shall not be liable to the true owner for receiving payment of a cheque crossed generally or specially in good faith and without negligence in case the title of the cheque proves defective. The provision protects bankers who, in good faith and without negligence, receive payment for a customer of a crossed cheque when the title to the cheque proves defective. Proof of good faith and no negligence depends on the facts and circumstances of the case. The said provision has been explained by Madras High Court in **Mrs. Rosali vs. M/s Syndicate Bank, Luz, Mylapore Madras-4, 2018 (1) CTC 441**.

37. The Karnataka High Court, in **Ashit Roy vs. Syndicate Bank**, **2000 (101) CC 178**, after placing reliance upon the judgment of Hon'ble Supreme Court in **Canara Bank** (supra) and **Mahabir Prasad Bubna** (supra) held that the banks have a mandate to pay only when a cheque is genuine and signed by the customer and they cannot escape liability unless they can establish knowledge to the customer of the forgery in the cheques. Meaning thereby that in a given case, if bank is able to establish that as regards forgery committed in cheque, the customer had knowledge, it can put a defence to avoid its liability otherwise situation might be different. In the instant case, immediately after the dispute cheques were cleared, the Managing Director of the plaintiff-company lodged first information report against its own employee Indrapal and it instituted suit only after a period of three years, by which time charge sheet had already been filed against the accused. Significantly, none of the bank officials was made an accused in the criminal case and the plaintiff succeeded to get its own employee convicted.

38. The Division Bench of Kerala High Court, in **State Bank of India vs. Kerala State Co-operative Marketing Federation and others**, O.S. No. 252 of 1988 decided on 05.10.1995 held that in order that a payment should be held to be made in due course, it should be, firstly, in accordance with the apparent tenor of the instrument; secondly, it must be made in good faith and without negligence; thirdly, payment must be made to a person in possession of the instrument; and fourthly, while making the payment care should be taken to see that no circumstances exist which afford a reasonable ground for believing that the instrument-holder is not entitled to receive payment of the amount mentioned in the instrument. The phrase "apparent tenor" seems to indicate the information available on

the face of the instrument itself. Factors such as the identity of the payee or of the drawee, the figure of the amount or the date on which or after which the amount becomes payable must be deemed to have been conveyed by the apparent tenor of the instrument.

(emphasis supplied)

CONCLUSION

39. When the entire material on record is examined in the light of the questions framed in the admission order, this Court safely comes to a conclusion that the first appellate court has grossly erred in accepting the plaintiff's case by comparing the signatures on the cheques with the signature on the plaint, oral testimony, Exhibit-8 and on different correspondences and that liability to pay and credit the amount covered by the cheques in the bank account of the plaintiff-company out of alleged negligence in clearing the cheques has been wrongly decided by the first appellate court. Therefore, first two questions are answered in favour of the appellant-bank.

40. As far as fourth question relating to interest with reference to Section 34 CPC, since this Court has arrived at a conclusion that the decree drawn against the bank is unsustainable, no question of awarding any interest arises and, therefore, fourth question is also answered in favour of the bank. Third question as regards bar of second suit under Order 2 Rule 2 CPC has already been answered in favour of the bank.

41. In view of the above discussion, both the second appeals succeed and are, accordingly, **allowed.** The impugned consolidated judgment dated 07.08.2009 and the decree drawn on that basis in both the Civil Appeals No. 147 of 2002 and 146 of 2002 is **set aside** and

the trial court's judgment dismissing both the Original Suits No.143 of 1991 and 176 of 1991 is **upheld.**

42. Any amount lying deposited, either pursuant to the interim order of this Court or otherwise, is directed to be refunded to and credited in the concerned account of the appellant-Punjab National Bank along with accrued interest upto date. The Executing Court shall facilitate such refund forthwith.

43. This Court records all its appreciation for both the learned counsel in very ably assisting the Court in deciding these old appeals.

Order Date :- 30.9.2024
AKShukla/-

(Kshitij Shailendra, J.)