

Bank of Maharashtra

Vs

M/s. Automotive Engineering Co.

Civil Appeal No. 1881 of 1982

(B.P. Jeevan Reddy, G.N. Ray JJ)

08.12.1992

JUDGMENT

G. N. RAY, J. -

1. This appeal is directed against the judgment and decree of the High Court of Bombay dated March 3, 1981 passed in Second Appeal No. 661 of 1974 affirming the judgment and decree passed by the learned Additional Joint Judge, Thana, in Civil Appeal No. 170 of 1973 dated February 22, 1974, affirming the judgment and decree of the Joint Civil Judge, Junior Division, Thana, in Civil Suit No. 363 of 1970 dated April 27, 1973. The plaintiff-Bank of Maharashtra, the appellant herein, instituted the said Civil Suit No. 363 of 1979 for recovering a sum of Rs. 7,452, comprising Rs. 5,920.12 on account of principal and the balance on account of interest. The relevant facts concerning the instant appeal may be stated as follows.

2. The plaintiff is a nationalised bank carrying on the business of banking under the name of Bank of Maharashtra and it opened a branch at Wagle Industrial Estate, Thana. The defendant-respondent, M/s Automotive Engineering Company, is a partnership firm and the said partnership firm opened a current account with the same branch of the plaintiff-Bank. One firm named M/s Imperial Tube and Hardware Mart opened an account with the Union Bank of India Ltd., Thana Branch on May 26, 1967. The said account was represented by its proprietor, Mr. B. M. Shah. The said Mr. Shah presented a cheque being Ex. 54 to the Union Bank of India Ltd., Thana Branch, for crediting the amount in his account in the said bank. Such cheque bore the date May 29, 1967 and was issued in the name of Imperial Tube and Hardware Mart and the amount under the cheque was Rs. 6,500. The said cheque was sent to the clearing house by the Union Bank of India Ltd., and on presentation of the said cheque for payment the plaintiff-Bank passed the cheque for Rs. 6,500 and debited the said amount to the account of the defendant. At the time of debiting the amount, the defendant firm had a credit of Rs. 20,000 in its account with the plaintiff-Bank. In the first week of June 1967, the plaintiff-Bank forwarded statement of account to the defendant. The defendant thereafter raised an objection some time in the third week of June 1967 that the amount of cheque at Ex. 54 was wrongly debited for Rs. 6,500. The agent of the plaintiff-Bank thereafter went to the Union Bank of India Ltd., Thana Branch, and on examining the cheque under the ultraviolet ray lamp it transpired that the original cheque was issued in favour of one Shri G. R. Pardawala and the amount under the said cheque was Rs. 95.98. The writing on the cheque was chemically altered with regard to the date, the name of the payee and also the amount. The defendant thereafter made demands to the plaintiff Bank to credit the same amount to his account. In the aforesaid facts, the said Suit No. 363 of 1970 was instituted by the Bank of Maharashtra. The agent of the plaintiff-Bank at the relevant time was examined as a witness for the bank and he has stated that before passing the said cheque for payment, he had checked the serial number and the date of the cheque and also compared the

signature of the defendant appearing on the cheque with the specimen signature of the defendant. The endorsement on the cheque was also verified by him and after such verification the cheque was passed by him for payment. The said agent has further stated in his evidence that from the visual appearance of the cheque, no infirmity was noted by him and from the tenor of the cheque it appeared to be a genuine one. It, however, transpires from the evidences adduced in the said suit that the said Thana Branch of the plaintiff-Bank had no ultraviolet ray lamp for scrutinising the cheques although in other branches of the said bank, such lamp was made available.

3. The trial court after considering the facts and circumstances of the case and evidences on record, came to the finding that apparently on visual scrutiny the cheque in question did not appear to be fabricated or altered but on closer scrutiny some suspicion could have been raised. The trial court was also of the view that the bank should have provided the facility of ultraviolet ray lamp to the said Thana Branch for scrutinising the cheques and for not providing such ultraviolet ray lamp, the bank had failed to discharge proper care. In the aforesaid circumstances, it should be held that the bank did not pass the cheque with the due diligence. In that view of the matter, the trial court dismissed the said suit with costs.

4. The appellant-Bank thereafter preferred Civil Appeal No. 363 of 1970 in the Court of Additional Joint Judge, Thana. The learned Additional District Judge, however, accepting the case of the appellant-Bank held that on a visual inspection of the cheque in question (Ex. 54) no abnormal features so as to direct the attention of the bank as to suspect the genuineness of the cheque could be found. But the learned Additional District Judge was of the view that if the cheque was scrutinised with the help of the ultraviolet ray lamp, the forgery on the cheque could have been detected. The additional District Judge was of the view that the Branch at Thana was just on the outskirts of the metropolitan city of Bombay where forgery was very rampant and the amount being heavy, the bank ought to have been more careful and since the defendant was available on phone, the bank should have taken such caution in contacting the defendant for proper verification before making payment. The learned Additional District Judge was of the view that the bank was under an obligation to exercise ordinary prudence and skill and visual inspection of the cheque might have absolved the bank from its liability, but in a commercial place like Thana the bank was not entitled to such protection for the lapse in not subjecting the said cheque for scrutiny under the ultraviolet ray lamp when such facility was available easily and other branches of the bank had also kept such ultraviolet ray lamp. In that view of the matter, the learned Additional District Judge dismissed the said appeal and affirmed the judgment and decree of the trial court.

5. The appellant-Bank thereafter preferred a second appeal in the High Court of Judicature at Bombay being Civil Appeal No. 661 of 1974. The High Court of Bombay accepted the finding that the cheque in question apparently did not show any sign of alteration. But as it transpired from the evidence of the then agent of the plaintiff-Bank that any alteration in the cheque could have been detected if the same was examined under the ultraviolet ray lamp and although the plaintiff-Bank had heavy transactions daily in the industrial area in Thana, such ultraviolet ray lamp was not provided in the said Branch and such ultraviolet ray lamp was provided to other branches of the said bank, the High Court was of the view that the appellant-Bank did not act with proper care and caution in not providing necessary device for detecting forged cheques. Absence of the ultraviolet ray lamp, according to the High Court, amounted to negligence on the part of the bank. Accordingly, the High Court was of the view that the payment was not made in due course and the appellant-Bank was not entitled to claim relief under Section 89 of the Negotiable Instruments Act. In that view of the matter, the second appeal was also dismissed.

6. For the purpose of appreciating the contentions made by the learned counsels for the parties, three sections of the Negotiable Instruments Act may be referred to -

Section 10 :

"10. Payment in due course. - 'Payment in due course' means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned."

Section 31 :

Section 31 relates to the liability of the drawee of the cheque, it is as under :

"31. Liability of drawee of cheque. - The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required to do so, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default."

Section 89 :

"89. Payment of instrument on which alteration is not apparent. - Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered, or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated, payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed."

7. The learned counsel for the appellant has strenuously contended that it has been held by the learned Additional District Judge specifically that on visual inspection, no infirmity could be detected on the cheque in question (Ex. 54). Referring to Section 89 of the Negotiable Instruments Act, the learned counsel has contended that the appellant-Bank has made payment according to the apparent tenor of the cheque. At the time of the payment, sufficient amount was lying to the credit of the defendant. Hence, the appellant-Bank had a duty under Section 31 of the Negotiable Instruments Act to honour the said cheque and make payment on the presentation of the cheque of payment. He has contended that it is immaterial whether an ultraviolet ray lamp could have been purchased by the said branch at the relevant time and such ultraviolet ray lamp was made available to other branches of the plaintiff-Bank. Admittedly, at the relevant time the plaintiff-Bank was not provided with ultraviolet ray lamp. Hence, it cannot be contended that the bank was negligent in discharging its duties and functions in the matter of passing the cheque by not scrutinising the cheque under the ultraviolet ray lamp. He has submitted that the then agent of the plaintiff-Bank has deposited on behalf of the Bank. He has categorically stated in his evidence that he had verified the serial number of the cheque and the amount on the cheque and also the signature of the defendant on the said cheque with the specimen signature kept with the branch. He has also stated categorically that from the apparent look of the cheque, no defect could be detected by him and since the apparent

tenor of the cheque was beyond any suspicion, the payment was made in due course. The learned counsel for the appellant has contended that the learned Additional District Judge and also the Bombay High Court have erroneously come to the finding that the appellant-Bank was guilty of negligence by not further scrutinising the cheque under the ultraviolet ray lamp only because the branch was situated in an industrial area on the outskirts of the metropolitan city of Bombay and other branches of the bank were provided with the ultraviolet ray lamp for scrutiny. He has contended that the conditions for getting protection under Section 89 of the Negotiable Instruments Act were fulfilled in the facts of the case and it cannot be contended that the branch of the bank was bound to keep an ultraviolet ray lamp and to scrutinise the cheques including the cheque in question under the said ultraviolet ray lamp even if no infirmity on the face of the said cheque on visual scrutiny could be found.

8. The learned counsel for the appellant has referred to a decision of the Privy Council made in the case of *Commissioners of Taxation v. English, Scottish and Australian Bank Ltd.* (AIR 1920 PC 88) It has been held in the said decision that negligence is a question of fact and each case must be decided on its own merits. The standard of care of a banker in collecting cheques is not that of an individual invited to purchase or cash such cheques for it is no part of the business or ordinary practice of individuals to cash cheques, while it is the business and ordinary practice of a bank to collect cheques. It has also been held in the said decision that to lay down that no cheque should be collected without a through enquiry as to the history of the cheque would render banking business impossible and that the fact of a cheque being paid into the account, the next day after the account was opened being in no way unusual was not such as to put the bank on enquiry and there was no negligence on the part of the bank in collecting that cheque. Relying on the said decision, learned counsel for the appellant has contended that the agent of the bank has deposed to the effect that he had verified signature of the defendant on the cheque with the specimen signature of the defendant and he had also checked the serial number of the cheque, date and other writings on the cheque. Since no infirmity was visible, he had passed the cheque in due course. The learned counsel has further contended that it is not practicable that each and every cheque should be subjected to a further scrutiny with the help of the ultraviolet ray lamp and the law also does not require that such special scrutiny is required to be made by the banker when no infirmity does appear on the face of the cheque. The finding made by the court of appeal below which was the last court of fact is that from the tenor of the cheque, no infirmity could be visible. In such circumstances, there was no necessity to assume that the bank was under an obligation to take extra precaution by subjecting each and every cheque including the cheque in question under ultraviolet ray lamp. In this connection, the learned counsel has also referred to a decision of the Calcutta High Court made in a case of *Brahma Shum Shere Jung Bahadur v. Chartered Bank of India, Australia and China* (AIR 1958 Cal 399). It has been held in the said decision that if a cheque on the face of it does not show that it is a forged one and at the time it was presented for encashment, sufficient amount to honour the cheque was lying to the credit of the person issuing the cheque, the payment made by the bank was "payment in due course" and such payment was according to the "apparent tenor of the cheque", and hence the bank making such payment was entitled to debit the amount to the account of its constituent.

9. The learned counsel has contended that unfortunately the lower appellate court and also the High Court proceeded on an erroneous footing that as the branch of the appellant-Bank was situated in an industrial area in the outskirts of the city of Bombay and as the bank had substantial transactions, it was the duty of the bank to keep an ultraviolet ray machine particularly when such machines have been kept in the other branches of the bank. He has submitted that it may be expedient and to ensure greater safety in some cases that a bank should take the aid of advanced technology in detecting

fraud attempted to be committed by fabricating or forging cheques, but it cannot be held as a sound proposition of law that unless a cheque is subjected to advance technology for further scrutiny as to its genuineness, the bank should be held liable for negligence and the protection under Section 10 and Section 89 of the Negotiable Instruments Act is not available to the bank. He has, therefore, contended that the appeal should be allowed by this Court and the judgment and decree of the High Court affirming those of the lower appellant court and the trial court should be set aside and the suit should be decreed.

10. The learned counsel for the respondent, however, disputed the contentions made on behalf of the appellant and it has been contended by the learned counsel that the negligence attributable to a banker must depend on the facts and circumstances of each case. In the instant case, the trial court has come to the finding that even on a closer scrutiny without the aid of the ultraviolet ray lamp, some infirmity could have been noticed particularly with reference to the number of the month. The amount under the cheque was quite heavy and in such circumstances the banker was under a legal obligation to exercise further scrutiny before passing the same. It is an admitted position that the cost of ultraviolet ray lamp was only Rs. 400 and the bank provided such ultraviolet ray lamps to other branches but such lamp was not provided to the branch in question although admittedly such branch is situated in an industrial area on the outskirts of the city of Bombay. It is also on record that the branch was having heavy commercial transactions. In the aforesaid facts, there was no earthly reason why the usual precaution of scrutinising the cheque under the ultraviolet ray lamp was not taken by the bank. If on such lapse, the concurrent findings have been made by the courts below including the High Court that the bank was guilty of negligence and the protection under the Negotiable Instruments Act was not available, such finding is not required to be upset by this Court. He has, therefore, submitted that the appeal should be dismissed with costs.

11. After considering the relevant facts and circumstances of the case and the contentions made by the learned counsels for the parties, it appears to us that the court of appeal below has categorically come to the finding that on visual examination no sign of forgery or tampering with the writings on the cheque could be detected. There is also evidence on record which has not been upset by the court of appeal below that the then agent of the bank had taken the care to verify the serial number of the cheque, the signature on the cheque with the specimen signature of the constituent, namely, the defendant and on a scrutiny of the cheque visually no defect could be detected by him. It also transpires from the evidence that the defendant had sufficient amount in the bank to cover the said payment of Rs. 6,500 at the relevant date when the cheque was presented for payment. Under Section 31 of the Negotiable Instruments Act, the appellant-Bank had a liability to honour the said cheque and make payment if the cheque was otherwise in order. 'Payment in due course' under Section 10 of the Negotiable Instruments Act means payment in accordance with the apparent tenor of the instrument in good faith and without negligence. In the facts of the case, there was no occasion to doubt about the genuineness of the cheque from the apparent tenor of the instrument. There is nothing on record from which it can be held that the payment of the said cheque has not been made in good faith. Although no strait-jacket formula can be laid down to cover each case of negligence of a banker and the question of negligence requires to be decided in the facts and circumstances in each case, it does not appear to us that the appellant-Bank can be held to be guilty of negligence simply because an ultraviolet ray lamp was not kept in the branch and the cheque in question was not subjected under the ultraviolet ray lamp. It has not been established in evidence that invariably the other branches of the appellant-Bank or the other commercial banks had been following a practice of scrutinising each and every cheque under the ultraviolet ray lamp or there was any prevalent practice to scrutinise cheques involving a particular amount under such lamp by way of extra precaution. In such circumstances, it cannot be contended as a correct legal proposition

that the bank, in order to get absolved from the liability of negligence, was under an obligation to verify the cheque for further scrutiny under advanced technology or for that matter under ultraviolet ray lamp apart from visual scrutiny. The cost of the ultraviolet ray lamp was only nominal and it might have been desirable to keep such lamp in the branch in question to take aid in appropriate. But even then, it cannot be contended that although no forgery could be detected on visual scrutiny on the apparent tenor of the cheque in question and the reasonable care by way of scrutiny of the cheque with reference to its serial number, verification of the specimen signature of the signatory of the cheque had been made, the bank officials should have resorted to scrutiny of the cheque under ultraviolet ray lamp by way of additional precaution and by not taking such extra precaution the bank may be held guilty of negligence. We do not think that there was any justification for the courts below to proceed on the footing that the Bank had failed to take reasonable care in passing the cheque for payment without subjecting it for further scrutiny under ultraviolet ray lamp because the branch was on the outskirts of the metropolitan city of Bombay and in an industrial area where such forgery was rampant, particularly when other branches of the appellant-Bank were provided with such lamp. We, therefore, allow this appeal, set aside the judgment and decree passed in the suit since affirmed by the court of appeal below and also by the High Court. In the facts of the case, we, however, decree the suit only for the principal amount without any interest on the same. There will be, however, no order as to costs.

</html