SUPREME COURT OF INDIA

Hongkong & Shanghai Banking Corpn. Ltd.

Vs.

Canbank Financial Services Ltd.

C.A.No.5281 of 2004

(Chandramauli Kr.Prasad and V.Gopala Gowda JJ.)

15.07.2013

JUDGMENT

CHANDRAMAULI KR. PRASAD, J.

1. Defendant No. 1, the Hongkong & Shanghai Banking Corporation Ltd., a Company incorporated under the laws of Hong Kong, aggrieved by the judgment and decree dated 30th of June, 2004 passed by the Special Court (Trial of Offences relating to Transaction in Securities), Bombay in Suit No. 11 of 2002 decreeing the plaintiff's suit for a sum of Rs. 18,59,71,808.22/- along with interest at the rate of 15% has preferred this appeal.

2. Plaintiff Canbank Financial Services Ltd., respondent no. 1 herein filed the suit seeking a decree directing defendant no. 1 to pay to the plaintiff a sum of Rs.33,13,42,781.62/- with further interest thereon at the rate of 24% per annum compounded quarterly from the date of the suit till realization. According to the plaintiff, it is a Company incorporated under the Companies Act and a subsidiary of Canara Bank. Plaintiff has averred that it is engaged in the business of providing financial and management consultancy services and trading in Government and public sector securities and bonds. In course of business the plaintiff buys and sells Government and public sector bonds and securities in accordance with the guidelines issued from time to time by the Reserve Bank of India. The plaintiff's case is that on 24th of June, 1991, it purchased from defendant no. 1, through a broker M/s. Naresh K. Aggarwala, Coal India bonds of the face value of Rs. 18 crores. The broker issued a contract note of the same date. The plaintiff, in order to obtain from bank a pay order in favour of the seller, gave a cheque in favour of the said bank. Accordingly, the Canara Bank issued a pay order favouring defendant

no. 1, for a sum of Rs. 18,59,71,808/- specifically mentioning that the pay order is on account of the plaintiff Canbank Financial Services Ltd. The plaintiff's case further is that during the reconciliation of the securities account in or about September, 1994, the plaintiff found that the Coal India bonds purchased by it from defendant no. 1 on 24th of June, 1991 have not been received by them. Accordingly, plaintiff wrote a letter dated 1st of October, 1992 to defendant no. 1 for delivery of the bonds or to refund the amount paid by it. According to the plaintiff, defendant no. 1 acknowledged the receipt of the aforesaid amount by Canara Bank pay order but asserted that it was for settlement of Canbank Mutual Fund bank receipt No. 2214 issued by them in its favour on 8th of May, 1991. It is the assertion of the plaintiff that defendant no. 1 was not justified in adjusting the amount paid by the plaintiff for purchase of bonds towards transactions between defendant no. 1 and Canbank Mutual Fund. The plaintiff has alleged that the transaction between defendant no. 1 and Canbank Mutual Fund are totally unconnected with the transaction between plaintiff and defendant no. 1.

3. On the aforesaid pleadings, the plaintiff filed the suit seeking the relief aforesaid on its assertion that the action of defendant no. 1 by adjusting the amount paid by the plaintiff towards payment allegedly due to defendant no. 1 from Canbank Mutual Fund is totally unauthorized.

4. The defendant no. 1 contested the suit and its plea in the written statement is that on 8th of May, 1991, through a broker M/s. Naresh K. Aggarwala, defendant no. 1 purchased Coal India bonds of the face value of Rs.18 crores from Canbank Mutual Fund and paid to it an amount of Rs.18,05,64,657.53/-. Defendant no. 1 received from Canbank Mutual Fund bank receipt No. 2214 promising to deliver securities purchased by the plaintiff from the Canbank Mutual Fund. The plea of defendant no. 1 further is that on 24th of June, 1991 it sold the same securities to Canbank Mutual Fund and in consideration, received a cheque from Canara Bank for Rs. 18,59,71,808.22/-, which is the principal trustee of Canbank Mutual Fund. Further plea of defendant no. 1 is that along with the pay order defendant no. 1 did not receive any covering letter. Defendant no. 1 has further averred that after receiving the pay order, acting on instructions received from the broker, it handed over the bank receipt to the said broker for onward delivery to the Canbank Mutual Fund. It is claimed by defendant no. 1 that for transaction dated 24th of June, 1991 the broker has issued a contract note to defendant no. 1 who by letter dated 30th of October, 1992 confirmed that he had received the bank receipt No. 2214 issued by Canbank Mutual Fund from defendant no. 1 and handed over that receipt to Canbank Mutual Fund. Although defendant no. 1 admits that broker had informed him that the pay order dated 24th of June, 1991 was issued on account of plaintiff,

the said payment had been made by it with a clear understanding and arrangement between the plaintiff and the Canbank Mutual Fund that the bonds would be delivered by Canbank Mutual Fund to the plaintiff on account of the money having been paid by the plaintiff to said defendant. Therefore, according to defendant no. 1, the liability to deliver the securities to the plaintiff is that of Canbank Mutual Fund and not of defendant no.

> 1. It is the case of defendant no. 1 that there was no transaction between it and plaintiff for purchase of any securities on 24th of June, 1991.
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> On the basis of the pleadings the trial court framed a large number of issues including the following issue with which we are concerned in the present appeal:
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> "3) Whether Defendant prove that the said pay order for Rs. 18,59,71,808.22 was issued by Plaintiffs on behalf of CMF as alleged in para 8 of Written Statement?"

5. On the basis of the pleadings and the evidence, the trial court recorded a finding that the plaintiff has proved that on 24th of June, 1991 it had bought the securities through the broker Naresh K. Aggarwala. The trial court also recorded a finding that the payment was made by the plaintiff to defendant no. 1 of the purchase price relying on the pay order which shows that Canara Bank issued the pay order on account of the plaintiff. All these findings are based on material on record and, in fact, can not legitimately be questioned. The main defence of defendant no. 1 is that there was understanding between the plaintiff and Canbank Mutual Fund and, in fact, the payment was made to it by the plaintiff on behalf of the Canbank Mutual Fund. Thus, defendant no. 1 accepts receipt of the payment by a pay order on account of the plaintiff. However, its assertion is that the payment was made to it by the plaintiff on behalf of the Canbank Mutual Fund. In view of this assertion, the only question which falls for consideration is as to whether defendant no. 1 has established that the payment that was made by the plaintiff to it on 24th of June, 1991 was on behalf of the Canbank Mutual Fund?

6. Mr. C.A. Sundaram, Senior Counsel appearing on behalf of defendant no. 1-appellant submits that on 24th of June, 1991, the appellant received the payment and the broker informed it that the payment had been made by the plaintiff on behalf of Canbank Mutual Fund. Once this is established, the case of the plaintiff would fail. Ms. Sunita Dutt, Counsel appearing on behalf Canbank Financial Services Ltd., plaintiff-respondent no. 1, however, submits that it is a separate legal

entity so also the Canbank Mutual Fund and it is established that as the amount was paid by the plaintiff for purchase of the securities, defendant no. 1 was obliged to deliver the securities or to refund the amount to the plaintiff.

7. We have bestowed our consideration to the rival submission and we do not find any substance in the submission of Mr. Sundaram. It is the specific case of defendant no. 1 that the broker informed it that the plaintiff has made payment on behalf of Canbank Mutual Fund. However, the letter dated 25th of February, 1993 of the broker to defendant no. 1 shows that on 24th of June, 1991 the Coal India bonds were sold by defendant no. 1 to the plaintiff and not to Canbank Mutual Fund. From the aforesaid it is evident that defendant no. 1 has not been able to prove that payment was made by the plaintiff on behalf of Canbank Mutual Fund. The natural corollary thereof is that the payment was made by the plaintiff to defendant no. 1 to purchase the bonds. It is not the case of defendant no. 1 that it had delivered the bonds to the plaintiff. Therefore, we are in agreement with the reasoning and the conclusions arrived at by the trial court and find no reason to interfere with the same.

8. In the result, we do not find any merit in the appeal and it is dismissed accordingly, but without any order as to costs.