In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

F.A. No. 144 of 2017
with
CAN 1 of 2016 (Old No. CAN 1198 of 2016)
Punjab & Sind Bank
Vs.
M/s. Chainrup Sampatram

For the appellants	:	Ms. Jayati Chowdhury, Ms. Mayuri Ghosh, Ms. Mandobi Chowdhury, Ms. Priya Malakar
For the respondent	:	Mr. Sakya Sen, Mr. Rishabh Karnani, Mr. Pawan Kumar Gupta, Ms. Sofia Nesar, Mr. Santanu Sett
Hearing concluded on	:	03.04.2025
Judgment on	:	09.04.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been filed by the defendant-Bank against a judgment and decree passed in favour of the plaintiff/respondent declaring that the discounting and/or discharge of the Fixed Deposit Receipt Nos.084574 for Rs.25,00,000/- and 084575 for Rs.5,00,000/- is false, fraudulent, inoperative and not binding upon the plaintiff as

well as a decree of Rs.39,67,922/- along with interest *pendente lite* on the principal sum at the rate of 9% per annum from the date of suit to the date of decree and further interest from the date of decree till realisation at the rate of 6% per annum, with costs.

2. The brief facts of the case are that the plaintiff/respondent, which is a partnership firm, opened a Fixed Deposit of Rs.25,00,000/- on May 17, 1997 and another Fixed Deposit of Rs.5,00,000/- on May 19, 1997 with the defendant-Bank for a period of six months each, maturing respectively on November 17, 1997 and November 19, 1997.

3. According to the plaintiff/respondent, when the respondent wrote to the Branch Manager of the concerned Bank on November 19, 1997 for release of the maturity amounts in respect of the said two Fixed Deposits (FDs), a reply was given in writing by the said Branch Manager on behalf of the Bank on the same date, alleging that the FDs had been discharged and prematurely discounted on May 19, 1997 and May 24, 1997 respectively and the proceeds credited to Current Account No.756 purportedly opened in the name of the plaintiff/respondent. Apparently, the said amount had subsequently been siphoned off from the said account as well.

4. The plaintiff/respondent alleges that fraud was practised on it by the respondent-Bank and its officers collusively, either by themselves or with the help of some third party, manufacturing and fabricating false documents by forging the signature of a partner of the plaintiff-firm, alternatively, the defendant-Bank, in breach of its duty of care to the

plaintiff, its customer, had allowed a stranger to withdraw the amounts of the said two FDs by use of manufactured, forged, false documents and, as such, the defendant-Bank is liable to compensate the plaintiff for the loss and damages suffered by the latter on account thereof.

5. The plaintiff further alleged that the receipts with regard to the said two FDs were, on being induced by the then Branch Manager of the defendant-Bank, deposited by the plaintiff with the said Brach of the defendant-Bank for safe custody on the undertaking to keep the same in the Bank's custody safely without any lien, guarantee or charge thereon. The plaintiff furnished two letters dated may 17, 1997 and May 19, 1997 issued by the Bank regarding such safekeeping of the FD Receipts.

6. Learned counsel for the appellant-Bank argues that no vicarious liability can be attributed to the defendant-Bank in view of the misconduct of its Branch Manager or employees in terms of the Service Rules of the Bank. It is argued that in the event of contravention of such Service Rules, the Bank would not be liable for such misconduct of its employees, as such acts would be *de hors* the duties conferred on the said employees by the Bank.

7. At best, it is argued, the plaintiff could be said to have made out a case of negligence against the Bank, but not fraud as per the plaint case.

8. Learned counsel for the Bank further contends that either in a civil or a criminal proceeding, an allegation of fraud has to be proved beyond reasonable doubt, which has not been done in the present case, since

the learned Trial Judge proceeded on the yardstick of preponderance of probabilities.

9. Learned counsel next argues that the deposit of the FD Receipts with the Branch Manager by the plaintiff, as alleged, was not an act done in the regular course of business by the Bank and as such, the defendant cannot be held liable for the same.

10. The appellant-Bank next submits that the learned Trial Judge did not apportion the liabilities for the loss of the plaintiff, if any, between the Bank and its Branch Manager and as such, the impugned judgment and decree are vitiated on such score.

11. It is further argued that the Branch Manager, against whom the brunt of the allegations has been levelled, was a necessary party to the suit. Hence, the suit is bad for non-joinder of the Branch Manager as a party.

12. Learned counsel appearing for the Bank contends that the learned Trial Judge himself examined the handwriting of the then Branch Manager of the defendant-Bank without resorting to expert opinion, which is also *de hors* the law.

13. Accordingly, it is argued that the impugned judgment and decree ought to be set aside.

14. Learned counsel appearing for the appellant/Bank cites *State Bank of India (Successor of the Imperial Bank of India) v. Smt Shyama Devi*, reported at *(1978) 3 SCC 399* to elaborate her proposition that if an employee misappropriates money upon the customer having handed

over a cheque to such employee beyond the regular course of business of the Bank or the duties assigned to the employee, the Bank cannot be held vicariously liable for the acts of its servant.

15. Learned senior counsel for the plaintiff/respondent controverts the arguments of the bank and submits that the Bank proceeded to open a current account and discounting and/or discharging the Fixed Deposits without any written instructions from its customer, the plaintiff/respondent. Moreover, the stamp and signature on the relevant document for opening such account appears in the capacity of a proprietor of the plaintiff/respondent, although it was within the knowledge of the Bank that the plaintiff is a partnership firm.

16. Moreover, the alleged introducer of the account could not be identified by the Bank's witness.

17. It is further argued that the then Manager of the Bank was apparently suspended by the Bank and a CBI Inquiry initiated, which vindicates the plaintiff's stand that there were fraudulent acts on behalf of the Bank's employees. Thus, the Bank cannot avoid its liability.

18. We find from the records that the two FDs were opened respectively for amounts of Rs.25,00,000/- and Rs.5,00,000/- on May 17, 1997 and May 19, 1997, both for a period of six months, and were due to mature respectively on November 17 and November 19, 1997. Surprisingly, the FD dated May 17, 1997 was discharged and prematurely discounted within two days, on May 19, 1997, and the one dated May 19, 1997 so discharged and discounted on May 24, 1997, that is within six days of

opening of the same and the proceeds thereof were credited to a current account which was allegedly opened on October 1, 1996.

19. The reliance on *Smt Shyama Devi*'s case by the appellant is misplaced. In the said case, the customer had handed over a cheque to an employee of the bank, but not in the bank. There was no proof of deposit by the customer at all. In such context, the Supreme Court held that the Bank was not vicariously liable for the misappropriation of the money by its employee.

20. In the present case, however, the act of premature discounting and discharge of the FDs happened within the Bank and were well within the regular course of activities of the Bank. The concerned Branch Manager at that point of time was obviously empowered to have an overall supervision on the financial activities of the Bank in its regular course of business.

21. Thus, even if we proceed on the premise that the plaintiff could not prove its case of having deposited the FD receipts with the Branch Manager, in any event, the said receipts were produced in the suit from the custody of the Bank. The original receipts were marked collectively as Exhibit-A. The explanation sought to be given to such receipts coming from the custody of the Bank, by learned counsel for the Bank, is that those were deposited by the plaintiff at the time of discharge and premature discount of the FDs. However, the letters dated May 17 and May 19, 1997 issued by the defendant-Bank were also were tendered to the Bank's witness and marked collectively as Exhibit-B, where the

deposit of the receipts with the Branch Manager by the plaintiff was admitted.

22. The learned Trial Judge compared the signatures of the then Branch Manager on the said letters as well as on the other documents pertaining to the opening of the current account as well as discharge of the FDs and found them to tally. It has been argued by the appellant-Bank that the learned Trial Judge could not have examined the signatures himself.

23. Section 45 of the Indian Evidence Act, which was applicable at the relevant juncture, provides that when the court has to form an opinion, *inter alia* as to the identity of handwriting, the opinion upon that point of persons specially skilled in questions as to identity of handwriting are relevant facts.

24. However, Section 45 has to be read in conjunction with Section 73 of the said Act, which provides that 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 the signature, writing or seal has not been produced or proved for any other purpose.

25. Thus, the court, which is considered to be the expert of all experts, always has the liberty to exercise its option of examining the veracity

and identity of signatures by itself, without referring to an expert under Section 45.

26. Moreover, we have also looked at the relevant signatures and find that there is considerable similarity between the signatures of the Branch Manager in the letters and other admitted relevant documents produced from the custody of the Bank. Thus, we do not find any fault on the part of the learned Trial Judge in undertaking such exercise and coming to the finding that the letters issued by the Branch Manager of the defendant-Bank on its behalf respectively on May 17 and May 19, 1997, admitting that the FD Receipts were deposited for safekeeping with the Branch, were indeed signed by the Branch Manager himself. Hence, coupled with the fact that the originals of the said receipts have been produced from the custody of the Bank, there cannot be any manner of doubt that the learned Trial Judge was justified in observing that such receipts were actually deposited for safe custody with the Branch Manager himself and were misused by the Bank.

27. The argument of the Bank that at best negligence on the part of the Bank has been proved but not fraud, as per the plaint case, is also not tenable in view of the plaintiff having categorically alleged in Paragraph No.19 of the plaint, even apart from the fraud pleaded in the other paragraphs, that it was the breach of the duty of the Bank towards its customer, the plaintiff, which led to the loss and damage of the plaintiff. Thus, there were ingredients of allegations pertaining to

negligence of the Bank to discharge its duty, befitting a prudent person, in the plaint itself.

28. In the present case, it is an admitted position, as evident from the documentary evidence-on-record, that the current account in the name of the plaintiff/respondent was opened by an unknown person posing to be the proprietor of the plaintiff-firm whereas the plaintiff is not a proprietorship but a partnership firm. Since it was the incumbent duty of the Bank, while opening FDs in the name of the plaintiff/respondent, to verify the credentials of the plaintiff, it can very well be presumed that the Bank was well aware that the plaintiff/respondent was a partnership firm and as such, in the absence of any written authority by the firm, there could not arise any question of anyone acting as a "proprietor" (as opposed to a "partner") while opening such current account. It was gross dereliction of duty and negligence on the part of the defendant-Bank in permitting such current account to be opened and/or the FDs to be discharged by a person in the capacity of proprietor, without comparing his credentials and signature and the seal of such purported proprietor with the specimen signature and seal of the plaintiff/partnership firm which was very much available with the Bank, since the plaintiff has had transactions with the appellant-Bank at the time of opening the FDs-in-question and previous transactions with regard to other FDs as well.

29. That apart, the defendant's witness admitted that there was no written instruction on record by the plaintiff to the defendant-Bank to

discharge the FDs, prematurely discounting them and/or transferring the amount lying therein to the current account.

30. The first FD of Rs.25,00,000/-, which was for a short period of six months, was allegedly discharged on May 19, 1997, that is, only two days after its opening on May 17, 1997 and the FD of Rs.5,00,000/-, opened on May 19, 1997 (also for six months) was also prematurely discounted within five days on May 24, 1997. Such peculiar acts, purportedly on behalf of the plaintiff, of withdrawing short-term FDs of only six months' tenure within a few days after opening the same were evidently suspect.

31. Such activities on the part of the plaintiff, a customer of the Bank, should have immediately evoked suspicion and raised a red flag in the mind of the Branch Manager and the Bank personnel, who are supposed to be specialised bankers having financial acumen to smell a rat in such strange behaviour of its customer and ought to have rechecked with the plaintiff on such count, if the officials of the Bank acted with due diligence befitting a prudent person.

32. Instead of doing so, the Bank merrily proceeded to prematurely discount the FDs within days after their opening, without any written instruction from the plaintiff to do so and on the basis of the purported signature and seal of someone pretending to be a proprietor of a partnership firm. It has also been admitted by the defendant's witness that the alleged introducer of the current account of the plaintiff-firm could not be identified by the Bank. Thus, the entire circumstances

surrounding the premature discount and discharge of the FDs and routing the money therefrom to a current account, from which it was promptly siphoned off, is ample justification to prove not only the negligence of the Bank but such gross dereliction of the obvious duty of the bank in its regular course of business traverses beyond the domain of negligence into the arena of palpable fraud.

33. The Bank argues that the act of fraud is to be proved beyond reasonable doubt even in a civil case. However, such proposition is contrary to settled law. Even in circumstances where the same set of allegations has collateral nuances both of a criminal and a civil nature, it is trite law that the criminal proceeding initiated thereon shall be decided on the yardstick of "beyond reasonable proof", whereas the test to be applied in a civil proceeding would be "preponderance of probability". Hence, the allegations of fraudulent activity in a civil suit have to be tested on the anvil of preponderance of probability which, in the present case, overwhelmingly indicate towards the complicity of the Bank officials and the Bank itself in the fraud practised upon the plaintiff.

34. The flimsy plea of non-apportionment of liability by the Trial Court does not arise, since the Bank, as the principal, was fully responsible for the act if its agent, the Branch Manager, who was acting well within the duties conferred on him by the Bank and in respect of transactions which took place within the regular course of business of the Bank. Opening of FD Accounts, prematurely discounting and discharging the

same, opening current account and canalising the money released from the FDs to such current account are all within the regular course of business of the Bank, for which the Branch Manager is empowered by the Bank. Thus, the principle laid down in *Smt Shyama Devi*'s case, where the customer handed over a cheque to an employee of the Bank but outside the Bank, is not attracted at all.

35. The Bank cannot avoid its liability for the acts of its agent, the then Branch Manager, done in the regular course of transactions of the Bank, as against its customer. If the Bank suffers a decree due to the unlawful acts of any of its employees, it is for the Bank to seek compensation or recovery of money from the said employee and/or to take disciplinary action against such employee or take other legal recourse. However, such actions are limited between the Bank and its employee and cannot bind third parties.

36. The specious contention that the Branch Manager of the Bank is a necessary party is neither here nor there. The allegations and money claim in lieu of damages made by the plaintiff is against the Bank, since the transactions were between the defendant-Bank and the plaintiff and the Branch Manager merely acted in the capacity of an agent of the Bank. As such, the plea of non-joinder on such count is not tenable in the eye of law.

37. The defendant/appellant also argues that since the Branch Manager committed misconduct under the Service Rules of the Bank, the Bank does not have any vicarious liability for the acts of the Manager.

However, such proposition has no legs to stand upon. The Service Rules of an institution, be it a Bank or otherwise, governs the employees of the said institution and not third parties. The transactions-in-question in the present case took place between the plaintiff and the defendant-Bank and the plaintiff is not even concerned with the internal Service Rules of the Bank, which could at best empower the Bank to take disciplinary action against its own Manager. In fact, admittedly the defendant-Bank has lodged complaint against the then Branch Manager and a CBI enquiry has been initiated on such count, which also indicates that there was fraud practised on the plaintiff even in the perception of the defendant-Bank.

38. There arises no question of apportionment of liability, since the plaintiff has had no truck with the Branch Manager in his personal capacity and it is the Bank which is liable for its negligence and the fraud practised in transactions with its customer. Hence, the learned Trial Judge rightly fixed liability on the bank and passed the impugned judgment and decree.

39. We find from the impugned judgment and decree that all the above aspects of the matter were considered by the learned Trial Judge at length while arriving at well-reasoned conclusions in favour of the plaintiff/respondent.

40. It is well-settled that the appellate court cannot substitute its own views, even if possible, unless there is an error of law or patent error of fact on the part of the court of first instance. In the present case, we do

not even find any error, either of law or fact, to prompt us to interfere with the impugned judgment and decree. Hence, there is no scope of interference in the present appeal and accordingly, the present appeal fails.

41. In view of the above observations, F.A. No. 144 of 2017 is dismissed on contest without any order as to costs, thereby substantially affirming the judgment and decree dated May 17, 2014 passed by the learned Additional District Judge, Fast Track, First Court at Alipore, District – South 24 Parganas in C.S. No. 435 of 2000 with the minor modifications as indicated below.

42. The Bank Guarantee furnished by the defendant/appellant with the learned Registrar General of this Court, pursuant to orders passed in connection with the present appeal, shall be invoked by the learned Registrar General and the amount obtained upon encashing the same shall be handed over to the duly authorised representative of the plaintiff upon being so approached, upon deducting the statutory charges.

43. Since the said amount covers the principal decretal amount along with interest only up to the date of furnishing the Bank Guarantee, the Defendant/Appellant-Bank shall pay to the Plaintiff/Respondent, within 90 days from this date, the balance amount of interest at the rate of 6% per annum on the principal decretal sum, calculated from the day immediately after the date of furnishing the Bank Guarantee till

the date of payment of the same, in consonance with the impugned judgment and decree of the Trial Court.

44. In the event the said balance interest is not paid within 90 days from date, the Appellant-Bank shall pay to the Respondent, in addition to such balance interest, further interest at the rate of 8% per annum on the amount of balance interest due as on the 90th day from this date, calculated from the 91st day from this date till the date such payment is made.

45. A formal decree be drawn up in terms of the above.

46. CAN 1 of 2016 (Old No. CAN 1198 of 2016) is disposed of accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)