**2011 PLRonline 0206 (SC)**

Madras High Court

*Before: Justice R. Mala*

Titan Industries Ltd. v. State Bank of India,

Appeal Suit No.177 of 2007

03.03.2011

**Banking – Forged DD – Liability of bank – Plaintiff Bank has passed the Demand Daft being received by way of collection by another bank i.e., the second defendant – That too the DD has been submitted by the reputed factory, there is no reason for alleging the motive against the plaintiff/first respondent's staff negligence and careless in passing of the said instrument – Per Section 72 since the amount has been paid mistakenly, no one is permitted to unjust enrichment themselves – Here, the first defendant is, not an holder of genuine instrument and they cannot unjust enriched themselves on the basis of the document which is a fake one – First defendant having been monetarily benefited, they are legally bound under Section 72 of the Act, to return the amount to the plaintiff/first respondent herein – Once the instrument has been received from the bank, no one expected to scrutinise the same with great care and caution while passing the instrument – First defendant has enjoyed the fruits of the fake instrument, they themselves unjust enriched, is liable to return the amount received – If the appellant/first defendant is permitted to retain the amount, it will amount to allow the unjust enrichment based on the mistake of the first respondent/plaintiff – Contract Act , Section 72. [Para 33, 34, 35]**

For Appellant : Mr.V.Jayachandran. For R-1 : Mr.P.A.Audikesavalu.

JUDGMENT

This appeal has been arising out of the judgment and decree dated 26.11.2004 passed in O.S.No.61 of 2004 by the learned Principal District Judge, Dharmapuri at Krishnagiri.

2. The averments made in the plaint in O.S.No.61 of 2004 are as follows:-

The first defendant presented a Demand Draft bearing No.549046, dated 27.10.1997, for Rs.5,20,000/- (Rupees Five Lakhs and Twenty Thousand only) through its Banker, Canara Bank, branch at Hosur viz., the second defendant, purported to have been issued by the State Bank of India, branch at Ghatkopar, (East) Mumbai and purported to have been drawn on the plaintiff Bank branch at Hosur. The said DD was presented by the first defendant through its Banker, second defendant for clearing on its behalf to the plaintiff Bank, branch at Hosur, on 06.11.1997. The plaintiff Bank, in good faith, paid a sum of Rs.5,20,000/- to the

first defendant. At the time of General Reconciliation of all the payments effected by DD as per banking practice, the plaintiff's Inter Office Reconciliation Department (Drafts) in Mumbai, intimated the plaintiff Bank branch at Hosur on 20.07.1998 that the above payment of Rs.5,20,000/-, paid by the plaintiff Bank branch to the first defendant, on the basis of DD in question, is not reconciled and it remained outstanding. Therefore, the plaintiff Bank, immediately, ascertained the reason for non reconciliation of the DD and then, they came to know that such Demand Draft has not been issued by the plaintiff Bank branch at Ghatkopar (East), Mumbai.

(ii) On scrutinising the Demand Draft, it was ascertained that the signatures of the officials found on the Demand Draft are forged one. It was a manipulated and forged document with a view to create a valuable security and make a wrongful gains by cheating. The DD was reported to have been received by the first defendant from one M/s. Rehman Enterprises, allegedly in consideration for supply of about 500 Titan Watches to the said M/s.Rehman Enterprises, 40/2, M.G. Marg, Usman Complex, Ghatkopar (East), Mumbai, represented by its partner Mr.Shakeel. The first defendant, on receipt of the Demand Draft, without verifying the genuineness, immediately delivered the Watches to the bearer of Demand Draft, even without ascertaining the background of the person, who brought the DD for such a huge sum and also even without waiting for the collection of such huge amount running to several lakhs.

(iii) The first defendant's show room of the factory at SIPCOT, Hosur, is authorised to handle transactions, which are less than Rs.10,000/- only and the show room officials have to obtain permission of Higher Authorities for any sales more than Rs.10,000/-. So, the plaintiff Bank has reason to suspect that the first defendant's officials of the show room have definitely colluded with the culprits to produce the Demand Draft and the fraudulent transaction is allowed to take place in connivance with the show room officials of the first defendant. Considering the size of the amount involved for the purchase value and also the presentment of the Demand Draft by unknown person, the acceptance of the Demand Draft by the first defendant should have been handled diligently to avoid any loss for the company and also the paying bank to whom the DD would be sent in the usual course of the transaction for payment eventually. If the first defendant made enquiries about the bearer of the DD and also the genuineness of the DD before accepting the same or they have waited for payment advice of the DD, there would not have been any scope for the above fraud. The plaintiff Bank accepted the DD, since the DD has been sent for payment through the clearing bank. So, there was no reason for the plaintiff Bank to suspect the genuineness or the validity of the instrument. The plaintiff Bank accepted the DD on bona fide impression that being the payee under the Demand Draft, the first defendant company would have exercised the caution in entertaining the DD for such a bulk purchase. At the time of accepting the DD by the plaintiff Bank for payment, there was no due whatsoever for the plaintiff Bank to suspect the genuineness of the DD. The plaintiff Bank is entitled to benefit and protection under Section 72 of the Indian Contract Act and the payment in acceptance of the counterfeit forged DD in good faith is only a bona fide mistake and the plaintiff was led to believe that they are liable to honour the DD. Under the above circumstances and in that bona fide belief, the payment was made by mistake by the plaintiff Bank. The first defendant had no title or right to collect any amount on the basis of

the forged counterfeit DD and the first defendant has no right or equity to retain the benefits of the wrong payment made by mistake by the plaintiff Bank. The first defendant cannot make unjust enrichment at the cost of the plaintiff. Under law of equity and justice, the plaintiff is entitled to recover the payment from the first defendant. The plaintiff Bank has given a police complaint and they have also written a letter to the first defendant and also contacted the responsible officers at its Hosur factory to apprise the matter and also to seek their co-operation for getting the refund of the amount paid under mistake to the first defendant. But the first defendant and its officials are trying to evade the issue. So, the plaintiff Bank issued a legal notice on 16.02.1999 to the first defendant. The first defendant has sent a belated reply on 06.04.1999 with false allegations. The plaintiff being a public institution cannot suffer loss on account of collusion and fraud at the instance of certain individuals. Hence, the plaintiff is constrained to file a suit for recovery of Rs.6,58,797/- and also for future interest and prayed for a decree.

3. The gist and essence of the written statement filed by the first defendant is as follows:-

The first defendant presented a Demand Draft No.549046, dated 27.10.1997, through its Banker, Canara Bank, Hosur branch for clearing on 06.11.1997. There is no apparent defect or discrepancy to the face of the instrument. Therefore, the first defendant, who had received the said DD from a customer, did not have any reason to suspect any foul play either. The first defendant has no knowledge of the intra-department transactions of the plaintiff Bank. The discrepancy alleged by the plaintiff Bank was noticed by the plaintiff only after a period of ten months from the date on which the DD has been presented, which itself is a considerable delay. After receipt of DD, 500 Titan Watches were delivered immediately as in keeping with normal business practice. The first defendant is not in a position to verify the genuineness of a Demand Draft, which a professional Bank itself cannot competently verify. The plaintiff Bank has been negligent in its business transaction and cannot, by reason of its own negligence, seek any remedy against the first defendant. The first defendant is not obliged in law or otherwise to ascertain the background of every customer, who purchases Watches from it. The plaintiff Bank has noted the discrepancy after a long period of delay of ten months. It cannot be expected and it is not possible for the first defendant to wait for a period of eight to ten months after each payment is made vide DD, as suggested by the plaintiff, before it completes the transaction. There is no necessity to obtain permission from the higher authorities for transactions exceeding Rs.10,000/-. The plaintiff Bank has been either negligent or employees of the concerned branch have been hand in glove with the culprits, who are stated to have forged the signature of the officials. The plaintiff Bank took ten months time to detect the defect in the Demand Draft and blamed the first defendant. The efficient service provided by the first defendant can hardly be termed as unholy haste. The statement is wrong. A Demand Draft unlike a cheque is a safer instrument to accept as the question of it being dishonoured does not arise. A Demand Draft is issued only after the money value of the Demand Draft is deposited with the bank issuing the same. The first defendant has no reason to suspect any forgery as alleged. The first defendant has accepted the same in good faith. The plaintiff Bank has, in the first instance, negligently cleared the DD and in order to conceal their negligence, they have sought to blame the first defendant. The plaintiff Bank cannot be permitted to plead equities or to take advantage of a situation caused due to their utter

negligence. If the DD was indeed forged, the plaintiff Bank should have returned the same to the Bankers Clearing House immediately rather than make any payment upon it. This being the case it would be inequitable and unjust to make the first defendant liable for the negligent acts of the plaintiff Bank. There was no collusion between the employees of the first defendant and the culprits. The plaintiff bank is not entitled to any relief under Section 72 of the Indian Contract Act, 1872. As per Sections 9 and 10 of the Negotiable Instruments Act, there is no liability on the part of the first defendant and as it is the negligence of the plaintiff Bank that led to the loss of the amount paid under the DD, the plaintiff bank alone is liable for the loss of the amount. So, the plaintiff is not entitled to any relief. The first defendant has always been ready and willing to co-operate with the plaintiff Bank. The first defendant has done everything within its means to assist the plaintiff Bank, although it is not obliged to do so. The plaintiff Bank, however, to cover up the negligence and the illegal acts committed by some of its employees, has been attempting to coerce the first defendant to accept the liabilities for the loss caused by the negligent acts of the plaintiff Bank. The first defendant had no knowledge of the alleged forgery, nor was it competent to detect such a forgery. The plaintiff Bank, has negligently paid on the Demand Draft and is now attempting to confuse the matter by making unjust and unfair statements and demands on the first defendant. The plaintiff Bank has been negligent, firstly in not ascertaining that the Demand Draft was genuine. Secondly, the plaintiff Bank has also been negligent in taking an inordinately long time in realising the fraud, if any, and that the DD was forged. Therefore, the plaintiff Bank is not entitled to any equity. No valid cause of action for the plaintiff Bank. Hence, the first defendant had prayed for dismissal of the suit.

4. The gist and essence of the written statement filed by the second defendant is as follows:-

No relief has been sought against the second defendant. Therefore, the second defendant had prayed for dismissal of the suit as a misjoinder of party. The first defendant is the customer of the second defendant for a long period, since opening of the industry at Hosur and are having regular operation of accounts. The first defendant presented a DD for Rs.5,20,000/- in their account for collection on 06.11.1997. The second defendant being the banker, it is the duty of the second defendant to accept the instrument and to forward the same for collection to the plaintiff Bank. The first defendant being a genuine customer to this bank and also as there was no discrepancy or defect apparent on the face of the instrument, there arises no occasion for the second defendant to suspect any foul play. The second defendant forwarded the DD for collection to the plaintiff Bank, who is the payee branch to the instrument. The activity of the second defendant is very much normal in sending the instrument presented by a customer for collection to the concerned bank and subject to the realisation of funds making credit into the entry of the said customer. The act of the second defendant is very much limited to the extent of passing of a Negotiable Instrument presented by its customer for clearing and on realisation of payments, crediting the same on account and the job of the the second defendant ends. The second defendant Bank has collected the instrument in good faith. The second defendant is not aware of the legal notice issued by the plaintiff.

5. The learned trial Judge, after considering the arguments advanced by the learned

counsel on either side as well as the averments both in the plaint and written statements, had framed five issues and two additional issues for consideration. On a perusal of oral and documentary evidence of P.Ws.1 to 3 and Exs.A.1 to A.8 and D.W.1 and Exs.B.1 to B.4, the learned trial Judge decreed the suit for Rs.5,20,000/- along with a simple interest at the rate of 6% per annum, from the date of plaint till realisation together with proportionate cost, against which, the present appeal has been preferred by the first defendant.

6. After Considering the arguments advanced by the learned counsel on either side, this Court had framed the following points for consideration:-

“1. Whether the suit is bad for non joinder of necessary party?

2. Whether the trial Court is correct in holding that the first respondent/plaintiff is entitled to benefit under Section 72 of the Indian Contract Act and to recover the amount?

3. Whether the judgment and decree of the trial Court is sustainable?

4. To what relief the appellant/first defendant is entitled to?”

7. The first respondent Bank as the plaintiff has filed a suit for recovery of amount stating that they honoured the DD, which was fake and the amount has been paid mistakenly, under Section 72 of the Indian Contract Act (hereinafter referred to as the Act), the plaintiff Bank is entitled to recover that amount. So, they filed the suit. After considering the defence raised by the respondents, the trial Court decreed the suit stating that the plaintiff/first respondent herein is entitled to decree by invoking Section 72 of the Act, against which, the present appeal has been preferred by the first defendant.

8. The learned counsel for the appellant/first defendant would submit that the appellant/first defendant are having their Factory at Hosur and show room at the factory premises. On 27.10.1997, one customer has tendered a DD for Rs.5,20,000/- on purchase of 500 Titan Watches and paid a sum of Rs.344/- in cash and the said DD was presented to collection bank of the second respondent/second defendant, in turn, the DD has been forwarded to the Clearing Agent i.e., the plaintiff Bank. The DD alleged to have been issued by Ghatkopar (East), Mumbai branch for Rs.5,20,000/-. The clearing bank also cleared the same. During reconciliation proceedings only, the plaintiff Bank came to know that Rs.5,20,000/- has not been tallied. Then only, they came to know that Ex.A.1-Demand Draft is a fake one and therefore, the plaintiff Bank had issued a notice under Ex.A.8 to the appellant/first defendant and received a reply under Ex.A.7. But, the trial Court has considered the evidence and came to the finding that Ex.A.1-DD is a fake one.

9. The learned counsel for the appellant/first defendant would submit that they are the holder in due course in respect of the instrument. But the instrument Ex.A.1 has been issued by their employees. So, they must be very diligent. They are having the Specimen Signature-Ex.A.6. So, they may very well compare the signature contained in the disputed DD-Ex.A.1. But they are in negligent manner, honoured the DD. Therefore, they are not entitled to a unjust enrichment under Section 72 of the Act.

10. The learned counsel for the appellant/first defendant relied on a decision of the Hon'ble Supreme Court reported in AIR 1990 Supreme Court page 313 (Mahabir Kishore and others Vs. State of Madhya Pradesh), and prayed for allowing of the appeal and setting aside the judgement and decree passed by the trial Court.

11. Repudiating the same, the learned counsel for the first respondent/plaintiff would submit that the appellant/first defendant had deposited the DD-Ex.A.1 before the second respondent/second defendant. So the first respondent/plaintiff is not aware of the customer. Even though the first respondent/plaintiff has made a request to the appellant/first defendant to furnish correct particulars about the customer, who gave the Demand Draft-Ex.A.1, the appellant/first defendant has not co-operated with the first respondent/plaintiff to find out the real culprits. The learned counsel for the first respondent/plaintiff has further submitted that Ex.A.1-DD is not printed by the plaintiff Bank itself. It is a fabricated one. The defect has been traced out only during the reconciliation of the statement has been made. Immediately, a complaint has been given as per Ex.A.2. Then, notice has been issued.

12. The learned counsel for the first respondent/plaintiff has relied on a decision of the Hon'ble Supreme Court reported in (1992) 2 Supreme Court Cases page 524 (Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and others) and submits that the customer himself is a fictitious person, is not available. Hence, the suit is not bad for non joinder of necessary party. since the money has been received by the appellant/first defendant, they have received the same as unjust enrichment. So, the appellant/first defendant is liable to refund the same. The learned counsel for the first respondent/plaintiff has further submitted that as per Section 72 of the Act, the amount has been paid by mistakenly and therefore, the first respondent/plaintiff is entitled to recover the amount wrongly paid. Hence, the learned counsel had prayed for dismissal of the appeal and confirmation of the judgement and decree passed by the trial Court.

13. As per the arguments advanced by the learned counsel for the appellant/first defendant, he raised only three points viz., negligent on the part of the first respondent/plaintiff, inordinate delay and non impleadment of necessary party. Now, this Court has to decide whether the suit is bad for non joinder of necessary party. But, admittedly the appellant/first defendant has not taken such a plea. But the receipt of Ex.A.1-DD was admitted by the appellant/first defendant and they also delivered 500 Watches and received Rs.5,20,344/- that case memo has been marked as Ex.B.1 and for Rs.5,20,344/-, a receipt has been given. The copy of Sales-Day Book entry for the month of October 1997 has been marked as Ex.B.3 and Letter of purchase given by Rehman Enterprises, Mumbai, has been marked as Ex.B.4. On that basis only, goods were delivered.

14. Admittedly, Ex.A.1-DD was tendered on 28.10.1997, which is dated 27.10.1997 and the goods were delivered on the same day. After that only, on 06.11.1997, it has been deposited with the second respondent/second defendant Bank. In turn, the second respondent/second defendant had despatched the same to the clearing banker i.e., the first respondent/plaintiff Bank. They received Ex.A.1-DD and cleared the same. The above facts are admitted one.

15. Only on 20.07.1998, the plaintiff Bank came to know that Ex.A.1-DD is a fabricated and fake document. The instrument itself is not printed by the plaintiff Bank. Since the plaintiff/first respondent Bank branch at Hosur was unable to reconcile the account, they contacted Ghatkopar (East), Mumbai branch, where they came to know that the instrument has not been issued by them. Immediately, the Assistant General Manager, State Bank of India, Ghatkopar (East) Branch, Mumbai, has sent a letter under Exs.A.3 and A.4 on 22.09.1998 directing the Branch Manager, State Bank of India, to take immediate action. Drafts Reconciliation Register was marked as Ex.A.5. The Assistant General Manager, Mumbai, has sent a letter to the Branch Manager, State Bank of India, Hosur Branch, forwarding the Demand Draft registered pertaining to the disputed DD-Ex.A.1. The specimen signatures of the officer, who was authorised to sign the DD, have been marked as Ex.A.6. Immediately, the plaintiff Bank/first respondent herein had preferred a complaint and a case has been registered under Ex.A.2 in crime No.1460 of 1998 for the offences under Sections 420, 406 and 471 I.P.C. Then, the plaintiff Bank had issued a notice on 16.02.1992 to the appellant/first defendant under Ex.A.8. After nearly two months, the appellant/first defendant has sent a reply on 06.04.1999 under Ex.A.7.

16. The learned counsel for the appellant/first defendant would morely focus upon Order 1 Rule 3 CPC and submits that all persons may be joined in one suit as defendants.

Order 1 Rule 3 CPC reads as under:-

“R.3. Who may be joined as defendants.- All persons may be joined in one suit as defendants where –

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative, and

(b) if separate suits were brought against such persons, any common question of law or fact would arise.”

17. Order 1 Rule 4 CPC reads as under:-

“R.4. Court may give judgment for or against one or more of joint parties.- Judgment may be given without any amendment-

(a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to;

(b) against such one or more of the defendants as may be found to be liable, according to their respective liabilities.”

18. Order 1 Rule 6 CPC reads as under:-

“R.6. Joinder of parties liable on same contract.- The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on

any one contract, including parties to bills of exchange, hundis and promissory notes."

19. Order 1 Rule 9 CPC reads as under:-

"R.9. Misjoinder and non-joinder.- No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:

[provided that nothing in this rule shall apply to non-joinder of a necessary party.]"

20. Considering the above provisions, it is true that the customer, who purchased the materials from the appellant/first defendant is a fictitious person. No address has been furnished. In such circumstances, it is difficulty for the plaintiff/first respondent to implead him as a party to the proceedings. Furthermore, considering Order 1 Rule 3 CPC, there is no direct transaction between the customer and the first respondent/plaintiff, who given the Demand Draft and purchased the Titan Watches. The DD stands in the name of the appellant/first defendant. The collection agent is the second respondent/second defendant. Since the first defendant/appellant herein has produced the instrument i.e., Ex.A.1-DD that has been forwarded through the second respondent Bank/second defendant and the first respondent/plaintiff has received the same through the Canara Bank viz., the second defendant, so the first respondent/plaintiff honoured the Demand Draft. So, the first respondent/plaintiff is not entitled to any relief against the customer, who purchased the Titan Watches from the appellant/first defendant. So, the non impleading of the customer, who purchased 500 Titan Watches, is not a necessary and proper party for disposal of the suit.

21. Furthermore, the suit has been field by invoking Section 72 of the Act stating that the amount has been paid mistakenly to the appellant/first defendant. So, the plaintiff Bank has filed the suit for refund of the amount paid mistakenly. In such circumstances, no relief has been sought for against the second respondent/second defendant, who is the collecting agent. So, the customer, who tendered Ex.A.1-DD and purchased 500 Titan Watches, is not proper and necessary party to the suit. So, the arguments advanced by the learned counsel for the appellant/first defendant that the suit is bad for non joinder of necessary party does not merit acceptance.

22. Now, this Court has to decide whether the first respondent/plaintiff is entitled to recover/refund of the amount wrongly paid under Ex.A.1-DD by invoking Section 72 of the Act. The trial Court has considered the evidence elaborately and came to the conclusion that the instrument Ex.A.1 is a fake one. That aspect has not been challenged by the appellant/first defendant. So admittedly, the instrument Ex.A.1 is not only a fake one, but also, it has not been printed by the first respondent/plaintiff's Head office. Since it is a fake instrument, the appellant herein is not an holder in due course for fake document.

23. At this juncture, it is appropriate to consider the only point whether the first respondent/plaintiff is entitled to refund of the amount by invoking Section 72 of the Act. The learned counsel for the appellant/first defendant would submit that the first respondent/plaintiff alone having the specimen signatures. The plaintiff Bank is the

competent person to verify that whether the instrument is genuine or fake. But they honoured the same. After ten months only, they came to know about the same. Then only, they verified and came to know that Ex.A.1-DD is a fake one. Admittedly, they honoured the DD-Ex.A.1 and amount has been transferred and credited in the account of the first defendant/appellant herein, who enjoyed the fruits of Ex.A.1. Admittedly, the amount has been paid to the appellant/first defendant, since the instrument Ex.A.1 is not a genuine one and it was a forged and fake one. So, the first respondent/plaintiff is not an holder in due course.

24. Now, it is appropriate to consider Section 72 of the Indian Contract Act, which reads as under:-

“72. Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.- A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

Illustrations

(a) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(b) A railway company refuses to deliver up goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.”

In that it was specifically mentioned that a person to whom amount has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

25. Here, Ex.A.1 is a fake document. On the basis of the fake document, the appellant/first defendant has received the money. So, as per Section 72 of the Act, the appellant/first defendant is entitled to refund of that amount.

26. The learned counsel for the appellant/first defendant has relied on a decision reported in AIR 1978 CALCUTTA page 169 (United Bank of India Ltd., Vs. M/s.A.T.Ali Hussain and Co., a firm and others), wherein, the Hon’ble Calcutta High Court has held as follows:-

It is not correct to say that every sum paid under mistake is recoverable no matter what the circumstances may be. There may in a particular case be circumstances which disentitle a plaintiff by estoppel or otherwise.

It is difficult to lay down the circumstances under which a plaintiff may be held to be debarred from recovering the money which he had paid under a mistake, but if the circumstance be construed as falling within the purview of the doctrine of estoppel or are such that it would be inequitable to allow the plaintiff to recover, the plaintiff must fail.

So long as the status quo is maintained and the payee has not changed his position to his

detriment he must repay the money back to the payer. If, however, there has been a change in the position of the payee who, acting in good faith, parts with the money to another without any benefit to himself before the mistake is detected, he cannot be held liable. Equity disfavours unjust enrichment. When there is no question of unjust enrichment of the payee by reaping the benefit of an 'accidental windfall' he should not be made to suffer, for he would be as innocent as the payer who paid the money acting under a mistake. Case law discussed."

27. The learned counsel for the first respondent/plaintiff has relied on a decision of the Hon'ble Supreme Court reported in AIR 1990 SUPREME COURT page 313 (Mahabir Kishore and others Vs. State of Madhya Pradesh), wherein, the Hon'ble Supreme Court has held as follows:-

"The principal of unjust enrichment requires: first, that the defendant has been 'enriched' by the receipt of a "benefit", secondly, that this enrichment is "at the expense of the plaintiff", and thirdly: that the retention of the enrichment be unjust. This justifies restitution. Enrichment may take the form of direct advantage to the recipient's wealth such as by the receipt of money or indirect one for instance where inevitable expense has been saved."

28. The learned counsel for the first respondent/plaintiff has also relied on a judgment of this Court passed in A.S.No.466 of 1988 (Govindaraj & Co. Vs. The Nedungadi Bank Ltd., wherein, in paragraph No.18, the Hon'ble Division Bench of this Court has observed as follows:-

"18. A difference can normally be drawn between a Demand Draft being paid at the counter to a person in possession thereof and a Demand Draft being paid to another Bank who sought collection for one of its customers. In a case like this where the Demand Draft was placed before the drawee Bank by the collecting Bank, the drawee Bank can act with reliance and assurance that the collecting Bank would have discharged the duty of careful scrutiny of the said instrument and satisfied itself about the title of its customer over the said Draft. Hence, when a Demand Draft is placed for encashment at the counter of a Bank by an unknown person, the Bank has to exercise a better degree of care and discharge its duty in scrutinising and satisfying itself. But, one cannot expect and the law would also not demand the same degree of care and caution, when the Draft is placed for encashment by way of collection by another Bank. In the instant case, it was the Canara Bank, who sent the instrument in question to the plaintiff Bank for collection. Hence, the contention of the appellants' side that the staff of the plaintiff Bank was grossly careless and negligent in passing the Demand Draft cannot be countenanced. Having encashed a materially defective, altered, tampered and void instrument, the defendants 1 and 2 who had no title over the said Demand Draft, cannot at all be permitted to raise a defence stating that the plaintiff Bank was negligent and careless in passing the said instrument. Thus, the Court is unable to see any merit in the appeal so as to interfere with the judgment of the Court below. Therefore, the judgment of the lower Court has got to be sustained, and the appeal is liable to be dismissed."

(emphasis supplied)

29. Relying on the decision reported in AIR 1990 SUPREME COURT 313 and the judgment of this Court passed in A.S.No.466 of 1988, the learned counsel for the respondents submits that once the DD has been submitted by an unknown person, the bank has to exercise a better degree of care and discharge its duty in scrutinising and satisfying itself. But, one cannot expect and the law would also not demand the same degree of care and caution, when the Draft is placed for encashment by way of collection by other Bank.

30. The learned counsel for the respondents culled out and submits that here through the Canara Bank viz., the second respondent/second defendant, the appellant herein has submitted Ex.A.1-DD. So the appellant/first defendant having encahsed the fake document. Defendants 1 and 2 viz., the appellant/first defendant and the second respondent/second defendant, have no title over the said Demand Draft cannot at all be permitted to raise the defence stating that the plaintiff Bank was negligent and careless in passing the said instrument.

31. Considering the citations showed here that the plaintiff Bank/first respondent herein has passed the Demand Daft being received by way of collection by another bank i.e., the second respondent/second defendant that too the DD has been submitted by the reputed factory, the appellant herein, there is no reason for alleging the motive against the plaintiff/first respondent’s staff negligence and careless in passing of the said instrument. So the arguments advanced by the learned counsel for the appellant/first defendant is that the first respondent’s officials themselves have committed negligence while passing the fake instrument. So the plaintiff Bank/first respondent is not entitled for refund/return of the amount does not merit acceptance.

32. As per Section 72 of the Act, since the amount has been paid mistakenly, no one is permitted to unjust enrichment themselves. Here, the appellant/first defendant is, as already stated, not an holder of genuine instrument and they cannot unjust enriched themselves on the basis of the document Ex.A.1, which is a fake one. The learned trial Judge, in paragraph Nos.11, 12 and 13, has considered the same and came to the conclusion that is no negligence on the part of the first respondent/plaintiff. Admittedly, the appellant/first defendant having been monetarily benefited, they are legally bound under Section 72 of the Act, to return the amount to the plaintiff/first respondent herein.

33. The learned counsel for the first respondent/plaintiff would submit that if the appellant/first defendant has not delivered the goods, after presenting the instrument for collection, then after realising the amount, the appellant/first defendant supplied 500 Titan Watches to the customer means that the first respondent herein/plaintiff is not entitled the amount paid by them. But here as soon as the appellant/first defendant has received the DD, they supplied 500 Titan Watches to the customer and the appellant/first defendant submitted the same to the second respondent/second defendant for collection and the collection agent being a bank in turn they submitted to the plaintiff/first respondent. As per the decision in A.S.No.466 of 1988, once the instrument has been received from the bank, no one expected to scrutinise the same with great care and caution while passing the

instrument i.e., Ex.A.1. In such circumstances, the appellant/first defendant has enjoyed the fruits of the fake instrument, they themselves unjust enriched. Hence, the appellant/first defendant is liable to return the amount received under Ex.A.1-DD, which is a fake instrument.

34. Considering the arguments as well as the decision relied upon and as per Section 72 of the Act, admittedly, the appellant herein/first defendant has received Ex.A.1-DD dated 27.10.1997 and supplied and parted with 500 Titan Watches and the appellant herein has received cash of Rs.344/-, on 06.11.1997, the appellant/first defendant has submitted the DD to the second defendant/second respondent, from there itself, the plaintiff's Hosur branch has received the Ex.A.1-DD. Since the plaintiff Bank has received the DD-Ex.A.1 from the bank, they passed the instrument and during the reconciliation only, they came to know that the document Ex.A.1 is a fake one.

35. As already stated, the appellant/first defendant is not an holder in due course for the document Ex.A.1, since Ex.A.1 is a fake document. So the appellant herein/first defendant has enriched themselves of Rs.5,20,000/-, the appellant herein is bound to refund that amount and they have no justification to retain with them. Hence, the appellant herein/first defendant is liable to refund the amount to the first respondent/plaintiff. If the appellant/first defendant is permitted to retain the amount, it will amount to allow the unjust enrichment based on the mistake of the first respondent/plaintiff.

36. Hence, I am of the view that the first respondent/plaintiff is entitled to protection under Section 72 of the Act and also entitled to recovery of the amount paid under Ex.A.1-DD. So, the appellant/first defendant is liable to pay the amount paid by the first respondent/plaintiff viz., Rs.5,20,000/-. So the finding of the trial Court does not warranted any interference. The point No.1 is answered accordingly.

37. Point Nos.2, 3 and 4:

In view of the answer given to point No.1, the first respondent/plaintiff is entitled to refund of the amount of Rs.5,20,000/- already paid by him under Ex.A.1-fake document. The trial Court has considered all the aspects in proper perspective and came to the correct conclusion. Hence, the judgment and decree of the trial Court does not suffer from any infirmity or illegality. Hence, it is liable to be confirmed. So, the appellant/first defendant is not entitled to any relief. The appeal deserves to be dismissed. Hence, it is hereby dismissed.

38. In fine,

(i) The First Appeal is dismissed.

(ii) The judgement and decree passed by the learned Principal District Judge, Dharmapuri at Krishnagiri, in O.S.No.61 of 2004, is hereby confirmed.