



2019 PLRonline 3408

Delhi High Court

(JUSTICE S. MURALIDHAR, JUSTICE TALWANT SINGH)

**Fortune Marketing Pvt. Ltd. v. United Bank Of India**

W.P.(C) 11334/2015

22.10.2019

Banking - Forged DD ( Demand draft) - Encashment - If it was a stolen leaf on which signatures of bank officials were forged to prepare the DD, then that clearly was not a valid instrument and could not have been honoured - Negotiable Instruments Act, 1881, Section 118 shifts the burden of proof to the person who has accepted such instrument in due course and acting upon it - Section 72 of the Contract Act, 1872 or the principles of equity can be invoked in such circumstances – Petitioners had acted on demand drafts which were prepared on stolen draft leaves, bank drafts were fraudulently prepared on stolen bank draft leaves - These were not valid instruments and could not have resulted in any valid credit being made in the accounts of the petitioners - The Bank was simply not liable to honour such DDs - Whether if the payment had been made by using fake currency, which both Petitioners accepted bonafide, any valid credit could have been given in their accounts by the respective bankers, who may have accepted such currency without checking them first - The answer had to be in the negative - A fake currency, even if acted upon bonafide and given credit, could not have resulted in such credit being continued once the fraud was discovered. The principle can be no different in the instant case – Bank entitled to recover the aforementioned sums claimed against the two Petitioners – Recovery of Debts and Bankruptcy Act (RDB Act), 1993. [Para 19, 20]

## ORDER

### **Dr. S. Muralidhar, J.:**

1. These are two petitions arising out of a similar set of facts and raising common issues and are accordingly being disposed of by this common order.

2. W.P.(C) 3549 of 2014 by M/s.Fortune Marketing Pvt. Ltd. ('FMPL') is directed against orders dated 1st August, 2013 and 2nd April, 2014 passed by the Debt Recovery Tribunal ('DRT')-2 in OA No.277 of 2001 and Debt Recovery Appellate Tribunal ('DRAT') in Appeal No.77 of 2014 respectively.

3. W.P.(C) 11334 of 2015 is by Vintron Informatics Ltd. ('VIL') and is directed against the order dated 6th November, 2014 passed by the DRAT dismissing VIL's Appeal No.130 of 2015 by which the challenge raised by it to the order dated 23rd December, 2014 of the DRT-2 in OA No.279 of 2001 was negatived.

Facts in W.P.(C) 3549/2014

4. One Virender Pratap Singh sole proprietor of Computech Orbit and Graphics Computer, Muzaffarpur, Bihar purchased computer parts/accessories from FMPL, for which he made payment by way of Demand Draft ('DD') (DD No.295188) dated 3rd December, 1998 for a sum of Rs.8.50 lakhs drawn on United Bank of India ('UBI'), Connaught Circus Branch, New Delhi. According to FMPL, since no dealer/business man in Delhi could have sold computer parts to a purchaser from Bihar on the basis of a cheque, Virender Pratap Singh got the aforementioned DD prepared in the name of FMPL directly.

5. On 8th December, 1998, FMPL deposited the DD with its bank i.e. State Bank of Saurashtra ('SBS'), Nehru Place, New Delhi, which by the time of the consideration of the matter by the DRT had merged into State Bank of India ('SBI'). The said DD was cleared by UBI and credit was given in the account of the FMPL, without any doubt being raised at that stage as to the genuineness of the DD. The goods were supplied to Virender Pratap Singh in the name of the aforementioned two proprietors.

6. FMPL claimed that it was surprised to receive a telephonic call on 17th September, 1999 from SBS that the DD was a forged one and that it had lodged a complaint on 18th September, 1999 with the Police Station ('PS') Nehru Place, New Delhi.

7. UBI filed OA No. 277 of 2001 in the DRT under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ('RDDBFI Act') praying for recovery of a sum Rs.14,24,640/- along with pendente lite and future interest at 18% per annum from the date of filing of the OA till its realisation. In para 5.11, UBI pointed out that FMPL was liable to pay interest on the amount of Rs.8.50 lakhs from 9th December, 1998 till the date of filing of the OA i.e. 13th November, 2001, which at 18% per annum with quarterly rests worked out to Rs.5,74,640/-.

8. The aforementioned application was filed against FMPL as Defendant No.1 and SBS as Defendant No.2. In the said application it was stated that on 31st July, 2000, an FIR was registered at PS Connaught Place in respect of the aforementioned DD. It was further stated that by letters dated 2nd September, 6th October 1999, 17th January and 24th March 2000, UBI had contacted SBS, calling upon them to make the payment of the aforesaid DD. SBS informed UBI by letters dated 25th October, 1999 and 18th January, 2000 that they merely acted as a collecting bank and were not liable to pay the aforementioned amount. It is further stated that since the payment in respect of the DD was not forthcoming from FMPL, UBI sent a legal demand notice dated 30th October, 2001 calling upon it to remit the outstanding amount. Since FMPL had also failed to remit the outstanding amount, the OA was filed.

9. By an order dated 1st August, 2013 the DRT allowed the said application and held that UBI would be entitled to recover a sum of Rs.14,24,640/- with simple interest at 18% per annum from 13th November, 2001 till the date of recovery from the FMPL. The DRT came to the following conclusions:

(i) The amount claimed was a debt within the meaning of Section 2(g) of the RDDBFI Act.

(ii) The DD was presented by the FMPL through its bank and this DD was the one reported to be misusing from the Chanditala Branch in West Bengal. There was no negligence on the part of the UBI in honouring the said DD as the fraud came to light subsequently.

10. However, the DRT rejected the claim for 18% interest with quarterly rest and ordered that the FMPL would be liable to pay simple interest at 18% per annum on the sum of Rs.14,24,640 from 13th November, 2001 till the date of recovery.

11. FMPL challenged the above order of the DRT dated 1st August, 2013 before the DRAT by way of Appeal No.77 of 2014. The DRAT by an order dated 2nd April, 2014 dismissed the said appeal, upholding the order of the DRT.

#### Facts in W.P.(C) 11334 of 2015

12. As far as W.P.(C) 11334 of 2015 is concerned, the facts are that VIL is a manufacturer and dealer of personal computers, mother boards and other computer accessories. One of its dealers M/s Shri Sati Systems ('SSS') at Salimpur Ahra, Kadam Kuan, Patna was approached by Mr.Vijay Pratap Singh of M/s. Computech Orbit in Muzaffarpur, Bihar for purchasing computers for onward sale to Pusa Engineering College. Based on the discussions between SSS and VIL, the SSS received DD No.295191 dated 6th November, 1998 favouring VIL in the sum of Rs.7.50 lacs. SSS by its letter dated 17th November, 1998 forwarded the said DD to VIL against the purchase order of Pusa Engineering College received through M/s. Computech Orbit.

13. On receiving the DD, VIL deposited it with its bank i.e. Oriental Bank of Commerce ('OBC') Greater Kailash Part-1, New Delhi on 19th November, 1998. The said DD was in turn presented by OBC for collection to UBI and it was honoured. The proceeds upon encashment were credited to the account of VIL on 21st November, 1998. Thereafter, VIL supplied the material to SSS

by two invoices, both dated 23rd November, 1998.

14. 9 months after the despatch of the goods, VIL received a call from OBC on 13th September, 1999 that the DD was purportedly fraudulently encashed. VIL conveyed this fact to SSS at Patna, who in turn wrote to M/s.

Computech Orbit in Muzaffarpur on 17th September 1999. VIL clarified to OBC that it had acted bonafide. The claim of VIL is that it is not a real beneficiary and even SSS is not the real beneficiary and that both had acted diligently at every stage and that SSS had even got an FIR registered with the local police station.

15. OA No.279 of 2001 was filed by UBI in the DRT-2 against VIL and OBC. By an order dated 23rd December, 2014, the DRT negatived the claim on the ground that UBI had not taken steps to implead Virender Pratap Singh who had actually done the forgery.

16. Against the dismissal of its claim by the DRT-2, UBI filed Appeal No.130 of 2015 before the DRAT. By the impugned order dated 6th November 2015, the DRAT allowed the appeal noting that the DRAT itself had upheld UBI's claim in an identical set of circumstances.

17. This Court has heard the submissions of learned counsel appearing for the Petitioners in both petitions i.e. FMPL and VIL and learned counsel appearing for UBI, the Respondent No.1 in both petitions.

18. Counsel for the Petitioners have placed extensive reliance on the judgment of learned Single Judge of this Court in *Rajesh Gupta v. Central Bank of India* (2013) 205 DLT 713, which interpreted Section 72 of the Contract Act, 1872 and held that once the Appellant in that case had proved receipt of the bank draft towards sale consideration and the bank had been unable to show irregularity in the same, there was no need for the Appellant to prove that the bank draft was genuine since its banker had made the payment thereunder. In such circumstances, it was held that on the rule of equity enshrined in Section 72 of the Indian Contract Act, 1872 the

sale could not be held to be suspect and there was no liability on the Appellant to refund the amount to the bank.

19. The Court is unable to accept the line of reasoning adopted by the learned Single Judge in *Rajesh Gupta (supra)*. The facts set out in the said judgment in para 6 do not clearly state what was done with the stolen/lost bank draft leaf, which was used to prepare the draft that was ultimately presented for payment. In any event, if it indeed was a stolen leaf on which signatures of bank officials were forged to prepare the DD, then that clearly was not a valid instrument and could not have been honoured. The judgment makes no reference to Section 118 of the Negotiable Instruments Act, 1881, which in the circumstances shifts the burden of proof to the person who has accepted such instrument in due course and acting upon it. Consequently, this Court is not persuaded that Section 72 of the Contract Act, 1872 or the principles of equity can be invoked in such circumstances.

20. The fact of the matter is that in both FMPL and VIL had acted on demand drafts which were prepared on stolen draft leaves, and in respect of which, an FIR was lodged by UBI and on the basis of which a charge-sheet has also been prepared by the police and filed in the concerned Court. A copy of the said charge-sheet forms part of the record in both cases. It shows that in both instances the bank drafts were fraudulently prepared on stolen bank draft leaves. These were not valid instruments and could not have resulted in any valid credit being made in the accounts of either VIL or FMPL. The Bank i.e. UBI was simply not liable to honour such DDs. It transpires from the charge-sheet that this was an inter-state fraud committed by an organised gang and not in respect of just the two DDs in question, but several others which were fraudulently used for making payments.

21. Counsel for the Petitioners have no answer to the query posed by Court as to whether if the payment had been made by using fake currency, which both Petitioners accepted bonafide, any valid credit could have been given in their accounts by the respective bankers, who

may have accepted such currency without checking them first. The answer had to be in the negative. A fake currency, even if acted upon bona fide and given credit, could not have resulted in such credit being continued once the fraud was discovered. The principle can be no different in the instant case.

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22. Consequently, the Court finds that in both cases, the DRT and the DRAT were right in finding that UBI was entitled to recover the aforementioned sums claimed against the two Petitioners.

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23. There is no merit in either of these petitions and these are accordingly dismissed. No costs.

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S. MURALIDHAR, J.

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TALWANT SINGH, J.

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OCTOBER 22, 2019

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