

M/S. Hyderabad Commercials vs India Bank And Others on 4 September, 1990

Equivalent citations: AIR 1991 SC 247, 1991 (2) SCALE 825, 1991 SUPP(2) SCC 340, AIR 1991 SUPREME COURT 247, 1990 ALL. L. J. 872, 1991 (2) BANKCLR 333, 1991 (1) BANKLJ 1, 1991 (1) CIV LJ 642, 1991 BANKJ 390, 1991 (2) SCC(SUPP) 340, (1991) 1 COM LJ 369

Bench: K.N. Singh, T.K. Thommen, Kuldeep Singh

ORDER

K.K. Singh, T.K. Thommen and Kuldeep Singh, JJJ.

1. Leave granted.

2. This appeal is directed against the judgment and order of the High Court of Andhra Pradesh dismissing the appellant's Writ Petition on the ground that it involved disputed questions of facts which could be determined by the Civil Court in a suit. After hearing learned Counsel for the parties and having perused the material on record we find that the case does not involve any disputed questions of facts instead on admitted facts the appellant is entitled to relief.

3. The appellant is the Sub-Distributors of M/s. Unimech Appliances, it has a Current Account No. 525 with the Indian Bank, Barkatpura Branch, Hyderabad. The appellant had been depositing money through cheques in its Current Account from time to time. During the period 15-1-87 to 13-5-87 the appellant had deposited cheques in the Indian Bank; the amounts under those were realised by the Bank and credited to the appellant's account but later on a sum of Rs. 12.95 lacs was transferred to the account of the respondent- M/s. Unimech Appliances. The appellant protested the transfer of the aforesaid amount on the ground that it had never authorised the Bank for transferring the amount to respondent's account. On the appellant's protest the Bank by its letter dated 21-12-1987 informed the appellant that the transfer had been made in an unauthorised manner and the same will be credited to its account within two months. The letter runs as under:

Indian Bank Barkatpura, Hyderabad Dated: 21-12-1987 M/s. Hyderabad-Commercials, Hyderabad. Dear Sir, We have today inform you that we have unauthorisedly debited your account from Jan., 87 to June, 87 on various dates which will be credited back to your account within 60 days time. We regret very much for the inconvenience caused in this regard.

Yours faithfully, for INDIAN BANK Sd/x y z Accountant/Manager.

Under the aforesaid letter the Bank admitted that the transfer of the disputed amount

had been made by the Bank in an unauthorised manner and it further admitted its liability to pay back the amount to the appellant. By another letter dated 21-12-1987 (Annexure 'V' to the SLP) the Bank reiterated that the amounts which were transferred from the appellant's account on various dates between January, 1987 to June, 1987 will be credited to its account for which no consent letter had been received from the appellant. In spite of its admission of liability and assurance to recredit the disputed amount to the appellant's account the Bank failed to honour its commitment. Ultimately, the appellant filed a Writ Petition for the issue of mandamus directing the respondent Bank, a Nationalised Bank for the issue of a direction to the Bank to deposit the disputed amount in its account. The Indian Bank resisted the appellant's claim on a strange plea that the disputed amount had been transferred to the respondents account on oral instructions of the appellant. As noted earlier the High Court dismissed the Writ Petition on the ground that the case involved disputed questions of facts.

4. The facts as noted earlier make it amply clear that the Bank had transferred the disputed amount of Rs. 12.95 lacs from the appellant's account to the account of respondent M/s. Unimech Appliances. There is, further, no dispute that the Bank admitted that it had made the transfer in an unauthorised manner without obtaining any instruction or authority from the appellant and it accepted its liability to recredit the amount to the appellant's account. On such admission the Bank which is an instrumentality of the State was under a legal obligation to pay back the disputed amount to the appellant. Initially the Bank accepted its mistake and admits its liability and assured the appellant to credit the amount to its account but later on it resiled and raised a strange plea of oral authority simply with a view to defeat the appellant's claim. It is difficult to believe that a sum of Rs. 12.95 lacs could be transferred to the account of an other person on oral instructions, without taking care to obtain authority or instruction in writing for the same. The plea of oral instruction, justifying transfer of such large amount is an afterthought which does not inspire any credence. The Bank's conduct is reprehensible. We are constrained to observe that such functioning of a Nationalised Bank is detrimental to public interest and if it follows the practice of transferring money of its customers to some other persons account on oral authority, people will loose faith in the credibility of Bank.

5. Since the basic facts regarding the unauthorised transfer of the disputed amount from the appellant's account as well as the Bank's liability was admitted, there was no justification for the High Court to direct the appellant to file suit on ground of disputed questions of fact. The respondent Bank is an instrumentality of the State and it must function honestly to serve its customers.

6. We, accordingly, allow the appeal, set aside the order of the High Court and direct the Indian Bank to recredit the disputed amount of Rs. 12.95 lacs to the appellant's account within three weeks from today along with interest if any due on the aforesaid amount. As regards the dispute between the appellant and respondents Nos. 6 and 7 is concerned, we express no opinion on the same. The appellant is entitled to its costs from the respondent No. 1