

Dena Bank Vs. K.K. Alex

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Court : Kerala

Decided On : Jun-06-1986

Reported in : AIR1987Ker70

Judge : K.S. Paripoornan and; K.T. Thomas, JJ.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 6 and 8

Appeal No. : A.S. No. 184/1986

Appellant : Dena Bank

Respondent : K.K. Alex

Advocate for Pet/Ap. : T.L. Viswanatha Iyer, Adv.

Disposition : Appeal dismissed

Judgement :

Paripoornan, J.

1. The first defendant in O.S. No. 261 of 1983, Subordinate Judge's Court, Kozhikode -- Bank is the appellant. The plaintiff in the suit is the respondent. The suit was laid for recovery of a sum of Rs. 20,840/- together with interest at the rate of 6% per annum from the date of plaint till realisation. Briefly stated, the facts are these : On 12-8-1981, the plaintiff purchased Traveller's Cheques worth Rs.

19,000/- from the defendant-Bank. He did so in pursuance to the advertisement that Travellers cheques afforded complete protection against theft or loss. The plaintiff proceeded to Bangalore and stayed in a Hotel there, from 24-8-1981 to 1-9-1981. On 31-8-1981, he went out of the hotel room after locking the same. The Traveller's cheques were kept in his suit case properly locked. On his return at 2 p.m., he found that the Traveller's Cheques were missing. He reported to the J.C. Road branch of the Bank and also to the Police Station. The J.C. Road branch Manager of the Bank assured him that the loss would be reported immediately to the Calicut branch as well as the Head Office. On 3-9-1981, the plaintiff informed the Calicut branch personally and gave a written request to take immediate steps to stop payment of the Traveller's cheques. The plaintiff wrote to the 2nd defendant for refund of the amount. But the defendant pleaded that the cheques were lost due to the negligence of the plaintiff. It was also stated that since cheques were paid in the ordinary course of business, the defendants are not liable to refund the amounts. The plaintiff assailed this stand and caused a lawyer's notice to be sent. Subsequently, the suit was also laid. The defendants contested the suit, it was pleaded that the plaintiff was not made to believe that the Traveller's Cheques afford complete protection against theft or loss. The Bank is not responsible for any payment made on Traveller's Cheques to an unauthorised person due to the negligence on the part of the purchaser and any loss arising therefrom should be borne by the purchaser. The plaintiff has not taken due care and caution in the safe keeping of the cheques. On receipt of information about the theft the Bank informed all its branches. But before the information could reach all the branches, cheques worth Rs. 14,000/- were cashed in the ordinary course of business from the Salem and Trichy branches. Other cheques were presented through the Punjab National Bank. The cheques were encashed through various branches before information regarding the theft could reach them. In terms of the rules governing the issue and purchase of Traveller's Cheques the Bank is not required to stop payment. The plaintiff is not entitled to any relief.

2. The Court below found that the defendant- Bank has not proved as to what are the terms and conditions as per which the plaintiff purchased the Traveller's cheques. It was also found that the evidence of P.W. 1 proved the safe custody and the loss of cheques. There was no specific denial about the plaintiff's

averments in that regard by the defendants. The lower Court also held, on a comparison of the signatures in the cheques, that there was some difference in the two signatures and that the difference was prominent and if the concerned paying officers of the Bank had taken due care and caution by comparing the signatures they could not have been encashed. In other words, the officers had not verified the signatures at the time of payment properly. The encashment was as a result of negligence on the part of the defendant-Bank and so the payment cannot be said to be in due course of business. D.W. 1, an officer of the Bank, stated that the officials who actually passed the cheques for payment should act with due care and caution and the encashing officer is bound to scrutinise the signature in the cheques. It was admitted that the person presenting the cheque should sign in the presence of the officer before whom the cheques are presented for payment. This is so to ensure that the person who purchased the cheque received payment. In this view and on a comparison of relevant signatures in the various cheques, the trial Court found that regarding Exts. B6 to B25 there was difference in the signature in each of the cheques and the officer who passed the cheque for payment was really negligent in not scrutinising the signature properly. On the other hand, the signatures on a comparison were found to be similar in Exts. B1 to B4 and B26 to B42 and so the payments were made in due course of business. The suit was decreed regarding Exts. B6 to B25 cheques amounting to Rs. 10,000/-. The 1st defendant has come up in appeal.

3. We heard counsel for the appellant, Mr. T. L. Viswanatha Iyer. Counsel did not dispute about the facts stated in the judgment of the Court below regarding the evidence of D.W. 1, an officer of the Bank. He (D.W. 1) did not see the encashment of the cheques (Exts. B6 to B25); nor did he enquire with the concerned officers of the Bank who passed the cheques for payment. He admitted that the encashing officer is bound to scrutinise the signature in the cheques. He also admitted that the person presenting the cheque should sign in the presence of the officer before whom the cheques are presented for payment. It is a matter of common knowledge that in the case of Traveller's Cheques the Banks insist that the person presenting the cheque should sign in the presence of the officer before whom the cheques are presented for payment which will ensure that the person presenting the cheque for payment is the same person who purchased the

cheque. This is intended to safeguard and protect the Bank who pays the amount as also the person who has purchased the cheque. The vast differences in the two signatures in Exts. B6 to B25 cheques have not been explained and the officer who passed the cheque for payment was not examined. There is evidence to show that such officer was really negligent in not scrutinising the signatures properly. In Banking Law and Practice in India by M. L. Tannan, 16th Edition (1977), at page 508 it is stated as follows :

'Travellers' Cheques.-- Travellers' cheques bear a striking resemblance to circular notes, with the exception that they do not require any letter of indication. Like the circular notes, they are generally drawn for certain round sums and are cashable at the current exchange rate. At the time of the issue of a traveller's cheque, its holder signs, it at the place appointed for the purpose and he has only to sign it again in the presence of the banker to whom he presents it for payment. This signature must correspond with the signature already on the cheque, which serves to identify the holder.'

The words underlined are important and highlight the necessity of the bank to insist, and prove that the holder signs the cheque again in the presence of the banker to whom the holder presents it for payment and the signature must correspond with the signature already on the cheque. The above practice is so well known that it has become a rule of law. The necessity to insist for compliance of the above, will be evident when once it is realised that the payment as per Traveller's cheque is made to individuals even without identification and merely upon corresponding signatures.

4. In the light of the unassailable finding of the Court below as regards Exts. B6 to B25 that in spite of vast differences in the two signatures in the cheques, they were passed for payment negligently, without scrutinising the signatures properly, the decree passed by the Court below is not open to any challenge. We concur with the judgment and decree passed by the Court below.

5. There is no merit in this appeal. It is dismissed in limine.

