

M/S.Ganesh Cotton Traders., Rep. by Its Proprietor Vs. the General Manager and Others

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Court : Andhra Pradesh

Decided On : Oct-03-2012

Judge : R. Subhash Reddy

Appeal No. : Writ Petition No.28621 of 2012

Appellant : M/S.Ganesh Cotton Traders., Rep. by Its Proprietor

Respondent : The General Manager and Others

Judgement :

This writ petition is filed, seeking directions by way of Mandamus, declaring the action of respondents in freezing the account of the petitioner, as illegal and violative of Articles 19 and 21 of the Constitution of India.

The petitioner, a proprietary concern, is engaged in cotton business. Petitioner is having business dealings with M/s.Lakshmi Ganesh Textiles (P) Ltd., Coimbatore in Tamilnadu. In the course of business transactions, M/s.Lakshmi Ganesh Textiles (P) Ltd. has issued a cheque bearing No.726190, dated 05.04.2012, for an amount of Rs.24,15,365/-, towards part payment for the purchases made by the said Firm from the petitioner. The petitioner is an account holder in the 2nd respondent-Bank with account No.022302210002513. It is the case of the petitioner that when he presented the cheque issued by M/s.Lakshmi Ganesh

Textiles (P) Ltd., Coimbatore, the said cheque was honoured and an amount of Rs.24,15,365/- was transferred to his account, and subsequently, he issued cheques to third parties towards the amounts payable by him, but, when the cheque bearing No.577858, dated 05.05.2012, for Rs.11,40,200/-, issued by the petitioner came for scrutiny, it was dishonoured stating that the account was frozen. In this writ petition, it is the case of the petitioner that when the cheque issued by M/s.Lakshmi Ganesh Textiles (P) Ltd. was already honoured and such amount was credited to his account by the 2nd respondent-Bank, there is no reason or justification for freezing his account. It is stated that the account of the petitioner is illegally frozen, without issuing any notice to him and also without conducting any inquiry.

The 3rd respondent-Chief Manager of UCO Bank, Coimbatore has filed counter affidavit. In the counter affidavit, it is stated that after issuance of a post-dated cheque bearing No.721690 to the petitioner for an amount of Rs.24,15,365/-, mentioning the date as 05.04.2012, M/s.Lakshmi Ganesh Textiles (P) Ltd., through its Managing Director, has issued stop-payment letter dated 02.04.2012, which was received on 03.04.2012 by the 3rd respondent-bank. The stop-payment letter was acknowledged by the bank staff on 03.04.2012, but by mistake, it was not uploaded in the system for stop-payment alert, and due to oversight, when the petitioner presented the cheque for collection at Coimbatore, inadvertently, the bank passed the cheque and credited an amount of Rs.24,15,365/- to the account of the petitioner on 19.04.2012, and when the said issue came to light on 23.04.2012, immediately, he has contacted the Manager of UCO bank branch at Guntur, where the petitioner is maintaining the account, and requested the branch to freeze the account lying to the credit of the petitioner, by issuing a letter dated 23.04.2012 to that effect. It is further stated in the counter that M/s.Lakshmi Ganesh Textiles (P) Ltd., which has issued instructions for stopping the payment, objected to the action of respondent-bank in passing the cheque issued in favour of petitioner and filed a complaint before the Banking Ombudsman, Chennai, before whom, he has explained about crediting of amount in the petitioner's account by mistake and oversight, upon which, the Banking Ombudsman passed an award, dated 07.09.2012. In the counter, it is further stated that in view of the mistaken entry of transfer in favour of petitioner contrary to the instructions given

by M/s.Lakshmi Ganesh Textiles (P) Ltd., Coimbatore, and in view of the award of the Banking Ombudsman, the account of the petitioner was frozen. It is stated that by the time the account of the petitioner was frozen, petitioner had already withdrew certain amounts and only an amount of Rs.11,70,102/- was lying to the credit of the petitioner at Guntur branch. In the counter, it is further stated that the grievance of the petitioner, if any, should be only against M/s.Lakshmi Ganesh Textiles (P) Ltd., Coimbatore, which has issued stop-payment instructions, but not against the respondent-bank.

Heard learned counsel for petitioner Sri Nagaraju and also the learned Standing counsel appearing for the 3rd respondent-bank.

In this case, it is contended by the learned counsel for petitioner that though there is no mistake on the part of the petitioner, having transferred the cheque amount to the credit of his account, respondents have dishonoured the cheque issued by him, indicating that his account was frozen. It is submitted by the learned counsel that for no fault of the petitioner, he is made to suffer and that no such power is conferred on the respondent-bank to freeze the account on their own, without conducting any inquiry and without issuing any notice to him. In support of his contention, the learned counsel has placed reliance on the judgment of Hon'ble Supreme Court in the case of **RangappaV. Mohan** 2010 (2) ALD (Cri.) 734 (SC).

On the other hand, it is submitted by Sri E.Sambasiva Pratap, learned counsel for respondents that the cheque issued in favour of petitioner was post-dated one i.e. cheque bearing No.721690, dated 05.04.2012, for an amount of Rs.24,15,365/-, but even much before the said date, M/s.Lakshmi Ganesh Textiles (P) Ltd., Coimbatore, which has issued the said cheque to the petitioner, has issued letter, dated 02.04.2012, which was received by the 3rd respondent on 03.04.2012, for stopping the payment. It is stated that the bank has committed a mistake by not uploading it in the system for stop-payment alert, and due to oversight, when the petitioner has presented the cheque for payment, the bank passed the said cheque and credited an amount of Rs.24,15,365/- to the account of the petitioner. It is further submitted that in view of the award passed by the Banking Ombudsman, and in view of the instructions issued by M/s.Lakshmi Ganesh

Textiles (P) Ltd., the account of the petitioner was frozen. The learned counsel, in support of his contention, relies on the provision under Section 72 of the Indian Contract Act, 1872.

In this case, it is not in dispute that a cheque for an amount of Rs.24,15,365/- was issued by M/s.Lakshmi Ganesh Textiles (P) Ltd. in favour of petitioner. Though the account of the petitioner was frozen only on account of the instructions given by M/s.Lakshmi Ganesh Textiles (P) Ltd. and the subsequent award of the Banking Ombudsman, dated 07.09.2012, the said Firm i.e. M/s.Lakshmi Ganesh Textiles (P) Ltd. is not a party before this Court. It is true that when the cheque was presented by the petitioner on 05.04.2012, the same was honoured, but earlier to the said date i.e. on 02.04.2012 itself, instructions were issued by M/s.Lakshmi Ganesh Textiles (P) Ltd., for stopping the payment. As indicated in the counter, such instructions for stopping the payment have been issued, referring to some dispute with regard to quality and quantity of the goods supplied by the petitioner. Though the receipt of such letter was acknowledged by the 3rd respondent on 03.04.2012, as explained in the counter affidavit, it appears, they have not uploaded it in the system for stop-payment alert, and due to the same, by oversight, the cheque, which was presented by the petitioner, was honoured and the amount was credited to his account. But when the same was noticed, immediately, the 3rd respondent has contacted the 2nd respondent and issued a letter, dated 23.04.2012, for freezing the account of the petitioner. Even by that time, certain amounts were already withdrawn by the petitioner, and only an amount of Rs.11,70,102/- was lying to the credit of his account at Guntur branch. It is also to be noticed that in this case, when the 3rd respondent-bank has failed to comply with the stop-payment instructions issued by M/s.Lakshmi Ganesh Textiles (P) Ltd., the said Firm has also approached the Banking Ombudsman, who passed the award dated 07.09.2012, to the effect that UCO Bank shall credit-back the amount to the current account of the complainant with immediate effect along with interest at savings bank rate from the date of wrong debit till the date of crediting. In the award, there was a direction to credit-back the amount of cheque issued by the complainant i.e. M/s.Lakshmi Ganesh Textiles (P) Ltd., and in that view of the matter, there was no option to the 3rd respondent, except to freeze the account of the petitioner, where, an amount to the tune of Rs.11,70,102/-, was

lying. In view of the letter dated 02.04.2012, which was received by the 3rd respondent on 03.04.2012, it is a mistaken transfer, which falls within the scope of Section 72 of the Indian Contract Act, as per which, a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. As the bank has paid to the petitioner by mistake, contrary to the stop-payment letter dated 02.04.2012, issued by M/s.Lakshmi Ganesh Textiles (P) Ltd., it is the obligation on the part of the petitioner to pay-back such amount on his own. In view of such mistaken transfer and in view of the letter dated 23.04.2012, addressed by the 3rd respondent to the 2nd respondent, where the petitioner operates his account, the account is freezed to realise the amount, which was mistakenly transferred to his account. In view of the provision under Section 72 of the Indian Contract Act, this Court is of the view that as the 3rd respondent-bank has committed an inadvertent mistake, it has rightly issued the letter dated 23.04.2012, to the 2nd respondent for freezing the account of the petitioner. Though the learned counsel for petitioner has relied on the judgment of the Hon'ble Supreme Court in the case of **Rangappa**(1 supra), the issue involved in the said case relates to Section 138 of the Negotiable Instruments Act, 1881, therefore, the ratio laid down in the said judgment would not render any assistance in support of the case of the petitioner. On the other hand, the judgment relied on by the learned counsel appearing for the 3rd respondent-bank in the case of **S.KotrabasappaV. The Indian Bank** (AIR 1987 KARNATAKA 236), would support the case of 3rd respondent. In the aforesaid judgment, while interpreting the scope of Section 72 of the Indian Contract Act, 1872, it is held that when there is a mistaken credit in the account of a person by the Bank, such person is bound to repay or return such amount and he is also liable to pay interest under Interest Act, on such amount retained by him. In that view of the matter, this Court is of the view that in this case, as there was a mistaken credit to the account of the petitioner, this judgment would support the case of 3rd respondent. If there is any dispute with regard to the amounts payable by M/s.Lakshmi Ganesh Textiles (P) Ltd., it is open for the petitioner to proceed against the said Firm, but in view of the letter dated 02.04.2012, received by the 3rd respondent-bank on 03.04.2012, and in view of the further award of the Banking Ombudsman, dated 07.09.2012, I do not find any illegality in freezing the account of the petitioner. Therefore, the

petitioner is not entitled for the relief sought for in this writ petition.

For the aforesaid reasons, giving liberty to the petitioner to pursue the remedies available under law against M/s.Lakshmi Ganesh Textiles (P) Ltd., this writ petition is disposed of. No costs.

As a sequel, WPMP.No.36498 of 2012 stands closed.

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