

**(2011) 03 DEL CK 0439**

**Delhi High Court**

**Case No:** Regular First Appeal No. 229 of 1996

United Bank of India

APPELLANT

Vs

J.D. Gupta and Others

RESPONDENT

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**Date of Decision:** March 14, 2011

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 96

**Hon'ble Judges:** Valmiki J Mehta, J

**Bench:** Single Bench

**Advocate:** Fauzia Shakil, for the Appellant; None, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Valmiki J Mehta, J.

The challenge by means of this regular first appeal u/s 96 of the Code of Civil Procedure, 1908, is to the impugned order dated 31.5.1995 whereby the application of the Appellant/bank to set aside the exported proceedings was dismissed and also to the judgment and decree dated 30.9.1995 decreeing the suit jointly and severally against the Defendants/Respondents, the Appellant bank being one such Defendant (Defendant No. 5) in the suit.

2. The subject suit for recovery of Rs. 55,547.50 was filed by the Plaintiff/Respondent No. 1 on the ground that a bank draft was got prepared by him from the Canara Bank, Bhogal in favour of Defendant No.7/Respondent No. 7 Sh. Manohan Bhardwaj. It was alleged in the suit that the bank draft for Rs. 34,000/- was however, illegally received by Defendant No.1/Respondent No. 2/Sh. Pappu Srivastava and by opening a fraudulent account with the Appellant/Defendant No.5 in Guwahati the draft was encashed. The Respondent No.1/Plaintiff therefore filed the suit for recovery against various Defendants, including the Appellant/Defendant No. 5 for recovery of the amount. The trial court has decreed the suit jointly and severally against the Defendants, including the Appellant/Defendant No. 5.

3. In my opinion, there is no illegality in the order dated 31.5.1995 refusing to set aside the ex-parte proceedings against the Appellant inasmuch as the trial court has noted that there was no appearance on behalf of the Appellant/Defendant No. 5 on as many as six dates of hearings being 16.9.1991, 10.12.1991, 26.2.1992, 15.5.1992, 29.5.1992 and 4.9.1992. The Appellant bank cannot take up a stand that the ex parte proceedings were not validly taken. Ordinarily, every bank regularly corresponds with his advocate and if the Appellant bank has been found wanting in this regard, the same cannot be the ground to set aside the ex parte proceedings.

4. I find this appeal to be really unnecessary inasmuch as the decree in this case is of the year 1995 i.e. more than 16 years have elapsed and the Appellant did not have stay of the money decree against it. The counsel for the Appellant does not know whether the money decree has been executed qua the Appellant or against any of the Defendants who have been made jointly and severally liable. The only ground urged before this Court for setting aside the impugned judgment and decree dated 30.9.1995 is that the courts at Delhi had no territorial jurisdiction qua the Appellant /Defendant No. 5 which had its branch at Gauhati. This argument is without substance because for the Plaintiff/Respondent No. 1 part of the cause of action arose at Delhi and the part of the cause of action is of making of the bank draft by Plaintiff/Respondent No.1 at Delhi. Therefore this Court had territorial jurisdiction because part of the cause of action arose at Delhi.

5. In view of the above, I do not find any illegality or perversity in the impugned order dated 31.5.1995 and the impugned judgment and decree dated 30.9.1995 which calls for interference by this Court in appeal. Merely because two views are possible, this Court will not interfere with a plausible view which is taken by the trial court. The appeal is therefore dismissed leaving the parties to bear their own costs.