

United Bank of India Vs J.D. Gupta and Others

Court: Delhi High Court

Date of Decision: March 14, 2011

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” 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

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 severely 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.