

In the Supreme Court of Bangladesh
High Court Division
(CIVIL APPELLATE JURISDICTION)

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice A.K.M. Zahirul Huq

First Appeal No. 97 of 2011

Managing Director, Head Office, Sonali Bank Ltd.
and others

....Appellants

Versus

Md. Abdul Karim and others

....Respondents

Ms. Hosnara Begum, Advocate

....For the Appellants

Mr. Md. Amimul Ehsan, Advocate

....For the Respondent Nos. 1 & 2

Judgment on 09.02.2026

A.K. M. Zahirul Huq, J

At the instance of the defendants, Sonali Bank Ltd. and others, this appeal is directed against the judgment and decree dated 01.12.2010 of the Joint District Judge, 2nd Court, Bogura, passed in Money Suit No. 03 of 2001, which was decreed in favour of the plaintiffs-respondents for the recovery of Tk. 11,18,603/- along with interest.

The plaintiffs' case, in essence, is that they maintained a joint STD Account No. 9 with Sonali Bank Limited, Shibganj Branch, in the names of A. Karim and A.K. Azad, in connection with their business dealings with Himadri Cold Storage Ltd. They claim to have deposited a total sum of Tk. 11,25,262/- into the said account. However, to their surprise, the bank ledger showed a remaining balance of only Tk. 6,659/-. Subsequently, the discrepancy came to light following a newspaper report revealing that a Cash Officer of the bank had perpetrated fraud by maintaining two separate ledgers, one genuine and the other fabricated for the purpose of misappropriating depositors' money. Knowing such the plaintiffs approached the bank with balance confirmation certificates, their claim was rejected by the Claim Settlement Committee. Having no other alternative, the plaintiffs instituted Money Suit No. 03 of 2001 for the recovery of the deposited amount.

The defendant bank contested the suit by filing a written statement contending inter alia that it admitted that a misappropriated some money by committing forgery and applying an illegal method by its Cash Officer, but denied any liability arising therefrom. It asserted that the plaintiffs failed to establish their alleged deposits, particularly due to the non-production of deposit slips. The bank further contended that the balance confirmation certificate relied upon by the plaintiffs was forged, and alleged that the plaintiffs were engaged in so-called "pocket banking." It was also argued that the Claim Settlement Committee had lawfully rejected the claim, that the suit was defective for non-joinder of Himadri Cold Storage Ltd., and that findings in the related criminal proceedings were not admissible or binding in the present civil suit. On these grounds, the defendant prayed for dismissal of the suit.

The Joint District Judge, 2nd Court, Bogura, framed three issues to adjudicate the matter in dispute. Among these, the vital issue was whether the plaintiffs were entitled to obtain a decree in the money suit. During the trial, the plaintiffs examined three witnesses, and their documents were exhibited as Exhibits 1-13. On the other hand, the defendants examined one witness, and their documents were exhibited as Exhibits Ka and Kha series.

Upon consideration of the oral and documentary evidence on record, the trial Court decreed the suit, holding that the plaintiffs successfully proved the deposit and subsequent misappropriation of Tk. 11,18,603/-. It further found that fraud on the part of the bank officials was clearly established, that the balance confirmation certificate bearing official seal and signature was reliable, and that the decision of the Claim Settlement Committee was not binding upon the civil court. Accordingly, the suit was held to be maintainable.

Hosnara Advocate for the appellants submits that the trial Court committed errors both in law and on the facts. It is contended that the plaintiffs failed to prove the alleged deposit inasmuch as no deposit slips were produced; that the balance confirmation certificate is not genuine and does not correspond with the bank ledger; that the Claim Settlement Committee was a competent authority and its decision ought to have been accepted; that the money in question belonged to Himadri Cold Storage Ltd., and as such, the suit was not maintainable in the absence of the said company as a party; and that the findings of the criminal case could not be

relied upon in the civil proceeding. Accordingly, he prays for setting aside the impugned judgment and decree.

Conversely, Mr. Md. Amimul Ehsan, learned counsel for the respondents, supported the judgment of the trial Court. He submitted that the plaintiffs, being joint account holders, had full *locus-standi* to institute the suit. He argued that the bank itself retained the deposit slips and passbook and that, in a case where fraud by bank officials is clearly proved, the plaintiffs cannot be penalized for non-production of deposit slips.

He further submitted that the balance confirmation certificate was issued by the bank during office hours with an official seal and signature, and that the bank failed to prove forgery. He also contended that the criminal case established the existence of two ledgers and misappropriation by the Cash Officer and that the Claim Settlement Committee's decision cannot override the jurisdiction of a civil court. He therefore prayed for dismissal of the appeal.

This Court heard the Advocates for the parties, went through the memo of appeal, judgments of the trial court below, carefully considered the submissions and the evidence lying with the lower court records.

The appellants contended that the suit was not maintainable due to the non-joinder of Himadri Cold Storage Ltd., claiming that the disputed amount belonged to the said company. However, the evidence on record clearly establishes that STD Account No. 9 was opened and operated in the joint names of the plaintiffs.

P.W.-1 Md. Abdul Karim, in his examination-in-chief, categorically stated, “আমি সোনালী ব্যাংক শিবগঞ্জ শাখায় এস.টি.ডি একাউন্ট নং-৯ যৌথ নামে পরিচালনা করতাম।” alleged statement remained consistent throughout his testimony. Although in cross-examination he admitted that the deposits were related to the business of Himadri Cold Storage Ltd., he clearly stated that the account was never opened in the name of the company.

It appears the alleged version is fully corroborated by D.W.-1, Md. Shamsul Haque, the Branch Manager, admitted that STD Account No. 9 was operated in the names of the plaintiffs and that all correspondence regarding claim settlement and investigation was conducted directly with them. From the above evidence, it is evident that a contractual relationship existed between the plaintiffs and the bank. Therefore, this Court finds that the

plaintiffs had sufficient *locus-standi* to institute the suit and that non-impleadment of Himadri Cold Storage Ltd. does not render the suit defective.

The appellants' contention that the plaintiffs failed to prove the deposit due to the non-production of deposit slips is not convincing. It appears from the evidence that P.W.-1, in cross-examination, admitted, "আমি তদন্তকালে জমা ভাউচারের মুড়ি বই দেখাতে পারি নাই।" However, he clarified that during the relevant period, the Cash Officer used to collect money directly and retain the deposit book and passbook, which were not returned owing to mutual trust between the parties. This explanation is corroborated by the testimonies of P.W.-2 and P.W.-3, who consistently deposed that bank officials regularly visited the cold storage premises, collected the deposited money, and retained the relevant documents.

On the other hand, D.W.-1 stated that, except for one pay-slip of Tk. 20,000/-, no deposit vouchers were produced by the plaintiffs. At the same time, he admitted that a serious fraud was detected in the branch and that a Cash Officer was prosecuted and convicted. In such circumstances, where fraud by a bank employee is admitted, and it is proved that deposit documents were retained by bank officials, strict insistence on the production of deposit slips cannot be imposed upon the customers. This Court holds that failure to produce deposit slips, in the proven context of fraud, does not disprove the plaintiffs' claim.

With regard to the allegation that the balance confirmation certificate was forged, P.W.-1 stated that the certificate dated 23.11.1998 was issued by the bank during office hours, bearing the official seal and signature of the Cash Officer. The bank merely denied its genuineness but failed to produce any expert opinion, forensic report, or departmental finding to establish forgery. Mere allegation without proof cannot discredit a document issued under official seal.

More importantly, Exhibit-10, the judgment in Special Case No. 46 of 2003, conclusively established that two ledgers were maintained by the Cash Officer, one genuine and another fabricated. This finding reasonably explains the discrepancy between the balance confirmation certificate and the bank ledger. Being the custodian of its own records, the bank cannot disown documents issued under its seal and signature.

Accordingly, this Court finds that the balance confirmation certificate carries strong evidentiary value and inspires confidence, having been issued

in the ordinary course of business with due authentication and without any credible rebuttal from the defendants.

The appellants further argued that findings of the criminal case should not be relied upon in a civil proceeding. This Court is of the view that while findings of a criminal case are not binding on a civil court, they are relevant facts and may be used as corroborative evidence. In the present case, the trial Court did not rely solely on the criminal judgment but considered it along with oral and documentary evidence. Therefore, reliance on the criminal proceedings as supporting material was lawful and proper.

D.W.-1 admitted that the fraud was committed by a bank employee during the course of his official duty. It is a settled principle that an employer is vicariously liable for wrongful acts committed by its employee in the course of employment. Customers cannot be made to suffer due to internal misconduct or criminal acts of bank officials. Hence, this Court finds the bank is liable for the loss suffered by the plaintiffs.

Upon an overall assessment of the evidence, this Court finds that the trial Court meticulously evaluated the oral and documentary evidence and applied the correct principles of law. The findings are neither perverse nor based on misreading or non-consideration of evidence.

For the foregoing reasons, we are of the considered view that the appeal has no merit. The impugned judgment and decree are based on sound reasoning and evidence and call for no interference by this Court.

Accordingly, First Appeal No. 97 of 2011 is dismissed.

The judgment and decree dated 01.12.2010 passed by the learned Joint District Judge, Bogura, in Money Suit No. 03 of 2001 are hereby affirmed.

There shall be no order as to costs.

Let a copy of this judgment be communicated to the Court below, and the lower Court's records be sent down at once.

Md. Iqbal Kabir, J:
I agree.