

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice A.K. M. Zahirul Huq

First Appeal No. 326 of 2006

Dutch Bangla Bank Limited appellant

-Versus-

Noor Mohammad Chowdhury and others

..... respondents

Mr. Md. Golam Sarwar with Mr. Nirupam Pandit
and Ms. Nadia Rob Jui, Advocates

..... for the appellant

Mr. Md. Abdul Mannan Bhuiyan with Mr. Shahahat
Hossen, Advocates

..... for respondents 1 and 2

No one appears for respondents 3 , 4, 5 and 6

Judgment on 29.05.2025

Bhishmadev Chakrabortty, J:

This appeal at the instance of plaintiff in Title Suit 151 of 2005 and defendants 1 and 3 of Title Suits 149 and 150 of 2005 respectively is directed against the judgment and decree of the Joint District Judge, Court 2, Dhaka passed on 25.09.2006 in Title Suits 149, 150 and 151 of 2005 decreeing Title Suit 150 of 2005 and dismissing Title Suits 149 and 151 of 2005.

Facts relevant for disposal of the appeal, in brief, are that in Title Suit 149 of 2005 plaintiff Al Baraka Bank Bangladesh Limited (Al Baraka Bank) who was defendant 1 in both Title Suit 150 and 151 of 2005 stated that Mr. Noor Mohammad Chowdhury and his wife Ms. Tahera Akter (plaintiffs in TS No. 150 of 2005) opened a Mudaraba Term Deposit Receipt (MTDR) of Taka 50 lac with Al Baraka Bank,

Dilkusha Branch on 09.10.2001 by putting their signatures in the necessary documents. In opening the MTDR account the bank supplied necessary documents to defendants 2 and 3 (MTDR holders) and original copy of the MTDR was delivered to them. One Abul Kashem defendant 4 in Title Suit 150 of 2005 and defendant 2 in Title Suit 151 of 2005 opened a current account with Dutch Bangla Bank Limited (DBBL), Foreign Exchange Branch on 13.11.2001 and applied for Secured Over Draft Loan (SOD loan) of Taka 45 lac. As security of the aforesaid loan he offered to pledge the MTDR of Taka 50 lac in the names of its holders maintained with Al Baraka Bank. He submitted letter of authority signed by the MTDR holders dated 02.02.2002 requesting DBBL to mark lien. DBBL forwarded the said MTDR along with letter of authority to plaintiff Al Baraka Bank requesting to authenticate those documents and to mark lien, if those were found genuine. Al Baraka Bank found signatures of Mr. Chowdhury and Ms. Akter in the form similar, confirmed the lien and informed it to DBBL on 09.02.2002. Accordingly, DBBL approved the loan to Abul Kashem taking his signatures on necessary documents including letter of lien and letter of guarantee of the MTDR holders. Borrower Abul Kashem withdrew the loan amount from DBBL on 3 (three) dates amounting to Taka 44,95,100/-. But when MTDR holders went to the plaintiff Al Baraka Bank on 17.02.2002 to encash the MTDR, the bank authority told them that it has been marked as lien and Abul Kashem took SOD

loan against it. Then they expressed that they did not at all acquainted with Abul Kashem and the original copy of the MTDR was lying with them. Thereafter, Al Baraka Bank through letter dated 13.03.2002 informed DBBL that the MTDR they authenticated as genuine was fake. Accordingly, DBBL called back the loan granted to Abul Kashem and claimed the money of lien. The plaintiff bank issued notice to the parties but nobody appeared before them. Then the plaintiff bank instituted this interpleader suit claiming that the defendants are bound to pay the amount. In fact, they instituted the suit to ascertain who is entitled to the MTDR amount.

In Title Suit 151 of 2005 DBBL stated the same fact as described in the aforesaid Title suit 149 of 2005 but they claimed that they approved the loan of Abul Kashem on getting security of MTDR maintained with Al Baraka Bank. The DBBL forwarded necessary documents of the MTDR submitted by borrower Abul Kashem to Al Baraka Bank who authenticated those as genuine and mark it lien. In this suit the DBBL prayed that defendants 1-4 are jointly and severally liable to pay them Taka 45 lac being the amount recoverable under the MTDR issued and authenticated by defendant 1 Al Baraka Bank. They prayed for a decree of direction upon the defendant for making payment.

In Title Suit 150 of 2005 the MTDR holders stated the fact that they maintained account with Al Baraka Bank Limited and opened

MTDR of Taka 50 lac. The original copy of the MTDR was always with them. They were not acquainted with borrower Abul Kashem. Al Baraka Bank authenticated fake documents in their names and SOD loan was approved by DBBL to Abul Kashem. They knew nothing about the said transaction. Being acquainted with the said facts they lodged a GDE with the Motijheel police station and claimed money to Al Baraka Bank. They also filed application to the Bangladesh Bank stating the fact of forgery. The MTDR and documents forwarded by DBBL to Al Baraka Bank to mark as lien were forged. At the instance of identifier Jashim, borrower Abul Kashem with the help of corrupt bank officials committed the forgery. The letter of guarantee was also prepared by forging their signatures. The Bangladesh Bank on inquiry found both the banks responsible for the forgery and directed Al Baraka Bank to pay the MTDR amount to them. They filed the aforesaid suit against the defendants for a declaration that the papers submitted to the banks for SOD loan showing them as guarantors are all fraudulent, *malafide*, collusive, false and created by the defendants. They also prayed for declaration that the letter dated 13.03.2002 issued by defendant 1 Al Baraka Bank and all other subsequent papers relating to SOD loan are *malafide*, collusive, motivated, false, forged illegal and not binding upon them.

The statements of plaintiffs as plaintiff in each suit is the written statement of other two suits as defendants. Since the issues of the suits

are identical and the parties thereto are almost same, the suits were heard analogously by the learned trial Judge.

On pleadings the learned Judge framed 5(five) issues. In the trial, the plaintiff Al Baraka Bank in Title Suit 149 of 2005 who was defendant 1 in Title Suits 150 and 151 of 2005 examined 1(one) witness and produced their documents exhibits-1-12(Ka). The plaintiffs of Title Suit 150 of 2005 who were defendants 3 and 4 of Title Suit 151 of 2005 and defendants 2 and 3 of Title Suit 149 of 2005 examined 1 witness DW2 and their documents were exhibits-Ka Ka-Uma Uma(1). The plaintiff of Title Suit 151 of 2005 the DBBL who was defendants 1 and 3 in Title Suits 149 and 150 of 2005 respectively examined 1 witness DW1 and their documents were exhibits-Ka-Ta(2).

However, the Joint District Judge by the judgment and decree dated 25.09.2006 decreed the suit filed by the MTDR holders and dismissed other two filed by two different banks. Being aggrieved by DBBL, plaintiff of Title Suit 151 of 2005 approached this Court with the present appeal.

Mr. Nirupam Pandit, learned Advocate for the appellant taking us through the materials on record submits that DBBL in compliance with the standard banking Rules accepted the MTDR as security of the SOD loan of Abul Kashem pursuant to the confirmation of genuineness and marking of lien by issuing Bank Al Baraka Bank and therefore, DBBL is entitled to protect its right and interest by way of encashment

of the MTDR. He then submits that no one can take benefit of his own wrong but in this case Al Baraka Bank being MTDR issuing bank is responsible for not scrutinizing the documents properly and now by withholding payment of DBBL compelling them to entire loss of Taka 45 lac. He then refers to a part of judgment passed by the trial Court and submits that finding of the trial Judge is contrary to the decision. The learned Judge found that Al Baraka Bank without verifying the authenticity of the MTDR marked it lien against the loan, but ultimately dismissed the suit of DBBL rejecting the claim that the MTDR issuing Bank is bound to pay the loan amount by encashing it. In view of the aforesaid position of fact and law, the trial Court ought to have decreed Title Suit 151 of 2005 filed by DBBL. The appeal, therefore, would be allowed and the judgment and decree passed by the trial Court be set aside.

Mr. Shahahat Hossen, learned Advocate for respondents 1 and 2 on the other hand supports the judgment and decree passed by the trial Court. He submits that the original copy of the MTDR was lying with these respondents. Therefore, DBBL cannot forward the documents to Al Baraka Bank to ascertain the authenticity of MTDR and mark as lien against the proposed SOD loan of Abul Kashem. The Bangladesh Bank on inquiry found the officials of both the banks responsible for sanctioning loan to Abul Kashem on forged documents. Since the loan has been sanctioned on forged documents, these respondents in no way

can be said responsible for the forgery of Abdul Kashem and the banks. They are entitled to get back their MTDR amount from Al Baraka Bank as per their demand. He submits that in spite of specific order passed by the trial Court, the MTDR issuing Bank is not paying their amount. The judgment and decree passed by the trial Court is based on materials on record which may not be interfered with by this Court in appeal. The appeal, therefore, would be dismissed.

No one appears for respondents 3 and 4 Al Baraka Bank Limited subsequently renamed as Oriental Bank Limited and finally renamed as ICB Islami Bank Limited, although it appears that Mr. M.A. Taher and Ms. Rani Aktar filed vokalatnama on behalf of respondent 3 Oriental Bank Limited on 06.02.2007.

We have considered the submissions of both the sides and gone through the materials on record. It is admitted fact that the plaintiffs of Title Suit 150 of 2005, the MTDR holders maintained an account with Al Baraka Bank Limited. They deposited Taka 50 lac as MTDR. It is also admitted by the parties that one Abul Kashem prayed for sanctioning SOD loan of Taka 45 lac keeping the aforesaid MTDR as lien. The MTDR was marked as lien by its issuing bank Al Baraka Bank. It has been proved and admitted by the banks that in the grantee form and other documents the signatures of Noor Mohammad Chowdhury and Tahera Akter were put on forgery. Because after granting loan and withdrawing the amount by borrower Abul Kashem,

the MTDR holders went to Al Barak Bank to encash the amount but they came to learn that Abdul Kashem took SOD loan from DBBL against the MTDR. It is proved and admitted by both the banks that the documents submitted by Abul Kashem for SOD loan against the MTDR were forged. In Title Suit 150 of 2005, the MTDR holders specifically asserted the fact that the original MTDR was/has been lying with them. In evidence DW2 Noor Mohammad Chowdhury affirmed the said statement made in the plaint. Nothing has come out adverse in his cross-examination. The copy of MTDR with the guarantee form which were submitted for granting loan containing signatures of Mr. Chowdhry and Ms. Akter ought to have been scrutinized by DBBL properly before sending those to Al Baraka Bank for marking lien but it did not do so. We failed to understand how DBBL forwarded the loan application with MTDR to Al Baraka Bank without its original copy. Therefore, appellant DBBL cannot avoid its responsibility in granting SOD loan to Abdul Kashem on fake documents. In the similar way, Al Barak Bank is found responsible for marking lien of MTDR without proper scrutiny and without having its original copy from its holders. The Bangladesh Bank on investigation found both the banks responsible for granting loan to Abul Kashem on forged documents. In exhibits-UmaUma-UmaUma (1) issued by Bangladesh Bank to DBBL and Al Baraka Bank respectively produced in Title Suit 150 of 2005 it is found that the central bank who has

control over all the banks of this Country found both the banks responsible for the forgery and directed the banks to take actions against the officials who were responsible for the misdeed. It is found that borrower Abul Kashem was a regular customer of DBBL and after taking the loan and issuance of the letter to deposit the amount he deposited Taka 20,000/- therein. We find both the banks responsible for sanctioning SOD loan to Abul Kashem on the MTDR of Noor Mohammad Chowdhury and Tahera Akter. The trial Court correctly assessed the evidence of witnesses and the documents submitted before it and decreed the suit filed by the MTDR holders and dismissed other two suits filed by two different banks. We find no substance in the submissions of Mr. Pandit, learned Advocate for appellant DBBL.

Therefore, this appeal bears no merit and accordingly it is dismissed. No order as to costs. The judgment and decree passed by the Court below is hereby affirmed.

Communicate this judgment and send down the lower Court records.

A.K.M. Zahirul Huq, J.

I agree.