NEGOTIABLE INSTRUMENT

Ambit of ‘Drawee Bank’ for Negotiable Instruments Act

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Following the trail of *Dashrath Roopsingh case*[1], and *Ramanbhai Mathurbhai case**[2]***, one more judgment with regard to jurisdiction of Courts in dishonour of cheque cases is up in the judicial matrix, delivered by the Honourable High Court of Bombay. When the *Ramanbhai case* dealt with position of law in cases of "cheques payable at par at all branches of respective bank", the instant case, *Smt. Sangita wd/o Ajay Shah vs. Sukrant s/o Harilal Shah**[3]**,* examined the issue of whether 'Real Time Gross Settlement (RTGS) system' has widened the ambit of 'drawee bank' so as to include every branch of a bank under its definition. The contention raised by the petitioner to prove this in affirmative was "*this is a system wherein payments are made to the payee of the cheques by any of the branches of the same bank on one of whose branches the cheque is drawn, across the country whenever they are presented to any of those branches and, therefore, any or all of these branches of the bank, for the purposes of Section 138 of the Negotiable Instruments Act 1881 offence, can be called as the drawee bank."*

However, the Hon'ble Court observed that RTGS is a system meant for enabling speedy payment of cheque amount by reducing to minimum the time taken for processing of cheque and it has got nothing to do with the definition of Drawee Bank. This brings us to the question what RTGS system is. RTGS system is defined by Reserve Bank of India as the continuous (real-time) settlement of funds transfer individually on an order by order basis (without netting). 'Real Time' means the processing of instructions at the time they are received rather than at some later time; 'Gross Settlement' means the settlement of funds transfer instructions occurs individually (on an instruction by instruction basis). Considering that the funds settlement takes place in the books of the Reserve Bank of India, the payments are final and irrevocable.[4] This system substitutes the conventional processing method in which considerable time is spent for obtaining instructions by the bank where the cheque is presented from the bank where the cheque is drawn and where the funds are physically kept, with modern internet- based technology which quickly access information including information contained in Bank accounts.

The Court observed that the action of processing of cheque for payment has to be differentiated from**giving approval** for the processing. The latter authority resides only with the bank with which the funds are physically lodged. A bank which merely process the payment after getting approval from another bank only act as a facilitator and does not fall under the ambit of drawee bank for the purpose of Negotiable Instruments Act. To fall under the definition of "drawee bank" the said bank must be**directed to pay** the amount by the maker of the cheque[5]. This direction is given only to the bank in which the funds are physically stored.

Relying on FAQs answered by Reserve Bank of India regarding RTGS, the Court stated that RTGS only contemplates expeditious transfer for fund from one branch of the bank where the funds are held to another. It is refusal of this transfer from one branch to another which constitutes the offence of dishonour of cheque. This refusal takes place at the branch were the funds are physically held, i.e the drawee bank. Dismissing the writ petition, it was held that RTGS has not expanded the concept of "drawee bank".

[1] *AIR 2014 SC 3519*

[2] *2014 (3) KHC 847*

[3] *Judgment dated 13.01.2015 in Criminal Writ Petition No. 951 Of 2014*

[4] *FAQs answered byReserve Bank of India. http://www.rbi.org.in/scripts/FAQView.aspx?Id=65*

[5] *Section 7, Negotiable Instruments Act*