The Great American Insurance Co., Ltd. v. Shri Bodh Raj Shah

Harnam Singh J.

In the present case the company maintains that they have appointed surveyors who *have so far not reported on the loss and that in the circumstances the company is not in a position to admit or deny the loss.* If so, the dispute between the parties is *as to the amount of loss or damage* within the arbitration clause.

For the reasons given above I dismiss with costs L. P. A. No. 1 of 1951.

Weston C. J.

WESTON, C. J.—I agree.

APPELLATE CIVIL.

Before Weston, C. J. and Harnam Singh, J.

THE TRADERS BANK, LTD.,—*Defendant-Appellant*

versus

S. KALYAN SINGH,—*Plaintiff-Respondent.*

Regular First Appeal No. 297 of 1951.

1952

9th September

Banker and Customer—Relation between—Bank draft—Purchaser of, whether ordinary creditor—Refusal by the bank to pay on presentation unjustified—Whether creates trust in respect of the amount of the draft.

Held, that ordinarily the position of the Bank *vis-a-vis* a person dealing with the Bank is that of debtor and creditor. It is of course perfectly open to such person to show that in a particular transaction the Bank has received money in trust.

Held, that because a draft is negotiable, there can be no agreement that the money represented by the draft would be paid to a specified person. The holder of the draft is a creditor and his remedy is on the draft and his rights are defined by the Negotiable Instruments Act. The holder of the draft cannot claim the rights of the holder of a bill of exchange and the additional right to get the amount of the draft in preference to the general body of creditors.

Held further, that refusal of payment by the Bank on presentation of the draft, however wrongful such refusal may have been, cannot change the jural relation of the parties and create a trust in respect of the money due to the purchaser of the draft. The position of the plaintiff in the present suit is the position of an ordinary creditor, and he cannot on grounds of sympathy be given a position higher than that of any other creditor.

In re Noakhali Union Bank, Ltd. (1), and *The Official Assignee of Madras* v. *Krishna Bhatta* (2), relied on. *In the matter of the New Bank of India, Ltd* (3) and *Sugan Chand and Co.* v. *Brahmayya and Co.* (4), not followed.

(1) 54 C.W.N. 744
(2) 6 I.C. 213
(3) A.I.R. 1929 East Punjab 373
(4) A.I.R. 1951 Mad. 910

First appeal from the decree of Shri Y. L. Taneja, Commercial Sub-Judge, Delhi, dated the 14th November 1951, granting the plaintiff a decree for Rs. 8,750 only against the defendant.

I. D. DUA and S. N. CHOPRA, for Appellant.

GURBACHAN SINGH and R. K. JANEJA, for Respondent.

JUDGMENT.

Weston, C. J.

WESTON, C. J. The appellant in this appeal is the Traders Bank, Limited. The respondent is a merchant dealing in *ghee* at Amritsar. On the 17th of September 1947, the respondent went to the Branch of the appellant Bank at Amritsar, and purchased a draft on their Delhi Branch for an amount of Rs. 11,000. On the 19th of September, he purchased a similar draft for Rs. 12,000. According to the respondent, he came to Delhi and during the period, the 20th to the 27th of September, he endeavoured to cash the first draft but was met with the objection that advice from Amritsar had not been received. The second draft, it appears, was endorsed by the respondent to some third person at some date and apparently encashment of this draft was not sought by the respondent. On the 26th of September 1947, a moratorium was declared by Government for a period of three months and before the expiry of those three months the Bank had applied for a scheme under section 153 of the Indian Companies Act, which scheme was sanctioned by the District Judge in March 1948. In December 1948, the respondent had made an application to the District Judge to obtain payment of the Bank draft purchased on the 17th of September 1947. The matter eventually came to the High Court and in November 1949. it was held that after sanctioning the scheme the District Court had no further jurisdiction in the matter. On the 6th of March 1950 the present suit was filed to recover Rs. 8,750 principal and Rs. 1.345 interest, the difference between the principal and the amount of the draft being due, I understand, to an interim payment to the creditors made under the scheme.

The learned trial Judge has held that the relationship between the parties was that of

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debtor and creditor but relying on a judgment given by Mr. Justice Achhru Ram, *In the matter of the Indian Companies Act of* 1913, *and of the New Bank of India, Limited, Amritsar,* which appears in A. I. R. 1949, East Punjab, page 373, held that as the plaintiff had made demands for payment at Delhi, which had been wrongly refused the plaintiff, as he put it, "was kept out of his money unjustly and hence must have priority over the general body of creditors". He, therefore, passed a decree for Rs. 8,750 only having held that the plaintiff was not entitled to interest.

The Bank has now come in appeal but has restricted its appeal to the amount of Rs. 6,270 in view of a further instalment under the scheme having become due to the plaintiff as an ordinary creditor.

For the purposes of this appeal I accept the contention of the plaintiff that he had made demand for payment at Delhi prior to the 26th of September 1947, when a moratorium was declared. I also accept that payment was wrongly withheld on the pretext of advice not having been received, which pretext had no substance, probably because the officials of the Bank at Delhi, knew very well that a moratorium was likely and that the Bank was in difficulties, and they were anxious therefore to pay out as little as possible.

The case for the plaintiff-respondent on these facts is firstly that by his purchase of the draft at Amritsar on the 17th of September 1947, the Bank accepted his money as a trustee, as the purpose of the purchase to the knowledge of the Bank was the remittance of the amount of the draft from Amritsar to Delhi. Alternatively it is claimed that by reason of the wrongful refusal to make payment at Delhi the plaintiff is entitled in equity to preference over the ordinary creditors. I do not think either contention can be accepted.

There can be no doubt that ordinarily the position of the Bank *vis-a-vis* a person dealing

with the Bank is that of debtor and creditor. It is of course perfectly open to such person to show that in a particular transaction the Bank has received money in trust. A common instance is where a Bank is paid money for the express purpose of it being remitted to a person at some other place. In any particular case it is for the person alleging trust to establish it. In the present instance there is no evidence whatever to show that the transaction was anything more than the ordinary purchase of a demand draft on another Branch of the Bank. The plaintiff has admitted in his evidence that he had previously purchased drafts from the defendant Bank on several occasions in connection with his business. He stated that he filled in a form before purchase of the draft but this form contained no mention of the purpose for which the draft was being purchased. Learned counsel for the plaintiff laid great stress on the existence of communal disturbances at Amritsar at that time. The plaintiff does not say that this was the reason why he purchased the draft and he says nothing whatever of agreement with the officials of the Amritsar Branch that the purchase was to be considered of some special nature. As was pointed out by a learned Judge of the Calcutta High Court in *re Noakhali Union Bank, Ltd.* (1), when a draft is negotiable there can be no agreement that the money represented by the draft would be paid to a specified person. The holder of the draft is a creditor and his remedy is on the draft and his rights are defined by the Negotiable Instruments Act. The holder of the draft cannot claim the rights of the holder of a bill of exchange and the additional right to get the amount of the draft in preference to the general body of creditors. The learned Judge considered that the circumstance that in fact that draft had not been negotiated would make no difference. There can be no doubt, I think, that this represents the true position. On the facts, therefore, there is no case that the relationship between the plaintiff and the defendant Bank was anything other than that of creditor and debtor .

(1) 54 C.W.N. 744

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On the second point I am unable to understand how refusal of payment by the Bank at Delhi, however wrongful such refusal may have been, can change the jural relation of the parties and create a trust in respect of the money due to the plaintiff. It was held by a Full Bench of the Madras High Court, *The Official Assignee of Madras* v. *Krishna Bhatta* (1), that money held by a Bank on fixed deposit for a term did not become trust money after the expiry of the term and the mere fact that the depositor had demanded payment did not transform the Bankers into trustees. Mr. Justice Achhru Ram in the case relied upon by the trial Court, which appears in A.I.R. 1949, East Punjab, 373, seems to have placed reliance upon a view expressed by Mr. Justice Munro of the Madras High Court in a case reported in 5 I. C. 974 and it does not seem to have been brought to his notice that Mr. Justice Munro was a party to the later Full Bench and in that case stated that he was now satisfied that the view he formerly took was erroneous and that a mere demand for payment could not have the effect of changing the pre-existing relationship of debtor and creditor. This decision of Mr. Justice Achhru Ram was referred to by a Bench of the Madras High Court in the case appearing in A.I.R. 1951, Mad. 910. The learned Judges stated that they were not prepared to go as far as Mr. Justice Achhru Ram and the view they took was that the ordinary position between a Bank and its customer of debtor and creditor is subject to the exception created by express or implied agreement. The learned Judges, however, when considering the claim of purchasers of drafts to be preferential creditors seem to consider the circumstances (a) that the purchasers took drafts as payable to themselves (b) that the purpose of the purchasers was to transmit money from one place to another and (c) the fact that none of the purcahsers had accounts, current or deposit, with the Bank to be important. In that case, as in the present, there had been presentation and refusal made for no sufficient ground but in anticipation

(1) 6 I.C. 213

of the early closing of the doors of the Bank. The learned Judges say:—

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> "Surely equity will compel this bank to honour the draft issued by itself on itself and will not allow it to escape its responsibility by this kind of tactics. The essence of payment by cheque or draft on oneself is the understanding that it will be honoured, otherwise it will be like giving a worthless piece of paper as representing a currency note or valuable security."

With great respect I am not able to accept that the arguments accepted by the learned Judges had reliance or can do more than create sympathy which might extend equally to every debtor of the Bank who has not obtained payment of what is due to him. In my opinion the correct view is as stated by the Full Bench of the Madras High Court in the case to which I have referred. The position of the plaintiff in the present suit was the position of an ordinary creditor, and he cannot on grounds of sympathy be given a position higher than that of any other creditor. I would, therefore, allow the appeal to the extent the decree has been appealed against and substitute for the decree of the trial Court a decree for Rs. 2,480.

There has been a cross appeal for interest and costs. Under the scheme no creditor of the Bank is entitled to interest after the 27th of September 1947. This date is only a few days after the demand for payment made by the plaintiff. The question of interest, therefore, is of no practical importance.

The trial Court left the parties to bear their own costs. On our finding there is no ground whatever for disturbing this order in favour of the plaintiff and I think the parties may also be left to bear their own costs in the main appeal. The cross appeal therefore must be dismissed with no orders as to costs.

HARNAM SINGH, J. I agree.

Harnam Singh, J.