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Court : Allahabad

Decided On : Sep-26-1956

Reported in : AIR1957All104

Judge : Gurtu, J.

Acts : Negotiable Instruments Act, 1881 - Sections 58

Appeal No. : Second Appeal No. 1459 of 1948

Appellant : Firm Kalka Pd. Ram Charan

Respondent : L. Kunwar Lal Thapper and ors.

Advocate for Def. : Mohd. Hamid Husain, Adv.

Advocate for Pet/Ap. : H.N. Kapur, Adv.

Disposition : Appeal dismissed

Judgement :

Gurtu, J.

1. One Baijnath Sayal received a telegram purporting to be from L. Kunwar Lal Thapar. A request was made in that telegram that Baijnath Sayal should send Rs. 4000/- by draft to Kunwar Lal Thapar c/o Messrs. Karam Chand Thapar and Brothers. L. Baijnath Sayal went to Imperial Bank Delhi and purchased a draft. The

draft was drawn by the Imperial Bank Delhi payable to Kunwar Lal Thapar by the Imperial Bank Kanpur. The draft was duly posted and it was taken delivery of not by Kunwar Lal Thapar but by another person, Inder Raj sethi. Either Inder Raj Sethi or some other person took the draft to firm Kalka Prasad Ram Charan.

That person had a letter of introduction to. the firm from Baijnath and Co. That person said that he wished to buy certain goods from firm Kalka Prasad Ram Charan. He endorsed the draft as Kunwarlal Thapar and handed it over to firm Kalka Prasad Ram Charan. They in their turn made an endorsement in blank in favour of the Bharat Bank. This draft was entered in a pay-in slip by firm Kalka Prasad Ram Charan in which two other items were entered and the draft along with the pay-in slip was sent to the Bharat Bank.

The Bharat Bank presented the draft for payment to Imperial Bank Kanpur the drawee and received the amount mentioned in the draft and paid in that amount into the account of firm Kalka Prasad Ram Charan. It appears that whenKaram Chand Thapar came to know that L. Baijnath Sayal had sent a draft in this manner and that the draft was taken possession pf by another person and was dealt with in the manner described above, L. Kunwar Lal Thapar and L. Baijnath Sayal as co-plaintiffs filed the present suit against the Imperial Bank of India Delhi and Kanpur branches, the Bharat Bank Kanpur and firm Kalka Prasad Ram Charan.

The banks were made pro forma defendants and the decree was asked for as against firm. Kalka Prasad Bam Charan', defendant No. 1 alone. The defence of defendant No. 1 was that the 'plaintiffs were guilty of gross negligence and carelessness in knowingly and deliberately sending the. draft to a person who was not in Kanpur and, therefore, estopped from claiming the amount from defendant No. 1. It was further pleaded that defendant No. 1 was holder of the bank draft in due course and that he acted bona fide and was not liable.

2. The learned Munsif held that defendant No. 1 was not a holder in due course because the endorsement in his favour was forgery. He also held that the plaintiffs were not guilty of any fraud. Accordingly, he decreed the plaintiffs' claim for Rs. 4,000/- with future interest as against defendant No. 1.

3. There was an appeal and a cross-objection filed in the Court below. The Court below held that the forged endorsement in favour of the firm could not give it a title. The Court below also agreed with the learned Munsif that Kunwar Lal Thapar and Baijnath Sayal. the plaintiffs, had been duped and defrauded. The appeal and the cross-objection, which related to costs, were both dismissed.

4. The present second appeal has been filed by the firm 'Kalka Prasad Ram Charan', defendant No. 1. Learned counsel concedes that on the finding that the endorsement in favour of the firm was a forgery, no legal title passed to the firm in the draft. It is also conceded that the firm, in its turn, passed no legal title to the Bharat Bank. It is well settled that the endorsement on a negotiable instrument through which a holder in due course claims must be genuine and, therefore, a forged endorsement creates no title in favour of the holder in due course.

It is not only that such holder in due counsel has a defective title but he has no title at all. For that reason, such a holder, who obtained payment under the negotiable instrument, is guilty of conversion and the true owner is entitled to waive the tort and sue for recovery of the amount of the instrument which amount the holder must be deemed to be holding for the use of the true owner. It is, however, argued that it was really the Bharat Bank which could be said to have converted the draft to its own use because it was that Bank which presented the draft for payment to the drawee and received the draft amount.

The liability of the Bank, I think, is not open to question (See Jai Narain v. Nahbub Baksh, ILR 28 All 428 (A), No decree was. however, claimed against the Bharat Bank, but, in my view, firm-'Kalka Prasad Ram Charan' was equally liable. The firm took the draft under a forged endorsement and, in its turn, endorsed it to the Bharat Bank for collection. The firm thus undoubtedly converted the draft to its own use.

It is true that it was the Bank that actually presented the draft to the drawee and obtained payment thereunder, but the Bank gave a credit to the firm in the latter's account with the Bank in respect of the amount of the draft and so ultimately the firm at least derived an advantage to the extent of the draft and I am of the view thatit is bound to restore that advantage to the true owner. In Jai Narain's case (A) not only the last holder but the broker who had earlier forged the endorsement was made liable.

5. Banks collect drafts as agents for collection and until they place the amount so collectedto the credit of the customer, the relationship ofa creditor and debtor does not arise--In re. Farrow Bank Ltd. (1923) 1 Ch 41 (B). But the termsof the contract between the banker and customer,inter alia, involve an undertaking by the bankerto collect draft etc. for the customer and a reciprocal undertaking by the customer that the proceeds so collected are not to be held, in trust forthe customer but the Bank borrows the proceedsand undertakes to repay the customer. (SeeJoachimson v. Swiss Bank Corporation, (1921) 3KB 110 at page 127) (C)).

The customer thus immediately upon the crediting of the amount can withdraw the same and can have the use of it. This is an advantage which has, in this case, accrued to the firm as a consequence of the conversion by it of the draft to its own use. It is not denied that the credit given to the firm in its account was availed of and the advantage, in my view, must be restored to the true owner of the draft.

6. Parties who have no title to an instrument because of the original forged endorsement, but have dealt with it must each be held guilty of conversion and, in my view, would be liable to the true owner for the amount of the draft (if he chooses to waive the tort and sue any of them for the amount of the draft) except the drawee who is protected by section 85, Negotiable Instruments Act.

7. Accordingly, I am of the view that this appeal must be, and is hereby, dismissed without any order as to costs.

8. Leave to file a special appeal is asked for and is granted.

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