**C.H. Java and Company Vs. State Bank of India**

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**SooperKanoon Citation** : sooperkanoon.com/56608

**Court** : DRAT Mumbai

**Decided On :** Jun-27-2006

**Reported in** : I(2007)BC47

**Judge** : S Parkar

**Appellant** : C.H. Java and Company

**Respondent** : State Bank of India

**Judgement** :

1. This appeal has been filed against the judgment and order dated 29th April, 2003 passed by the D.R.T.-III, Mumbai allowing the respondent Bank's claim against the appellants on a bill of exchange dated 14lh September, 1992. Few facts which give rise to the appeal are as follows: Trade Aid and Paper Allied Products (India) Private Limited (hereinafter referred to as 'drawer') had agreed to supply goods viz. white printing papers to the appellants. The said party had also obtained a bill discounting facility from the respondent-Bank.

The bill of exchange was drawn by the drawer, who were supplier of the goods to the appellants, in favour of the respondent-Bank. The bill for Rs. 9,99,999/- was payable on or before 13th December, 1992. The said bill was accepted by the appellants for the purchase of the goods. On due date, the said bill of exchange was dishonoured by the appellants by non-payment and, therefore, the respondent-Bank filed a suit against the appellants for recovery of the amount of the bill with interest at the rate of 6% per annum from the date of the suit till

payments and costs of the suit. The suit was contested by the appellants on various grounds, but the main ground on which the suit was contested was the failure of consideration as the goods supplied by the drawer were not as per the specifications mentioned by the appellants and, therefore, they were returned to the drawer.

After considering the various points raised by both the sides, the D.R.T. allowed the claim of the respondent-Bank and the decree has been passed in a sum of Rs. 16.29.685.80 with simple interest at the rate of 6% per annum on the principal amount till realization. That order is under challenge in this appeal.

2. On behalf of the appellants reliance is placed on the correspondence between the drawer and the appellants, which took place on 21st September, 1992 and 28th September, 1992, whereby the appellants had returned the goods sent to them under 3 bills mentioned in the bill of exchange which were accepted by the drawer. Relying on the said correspondence it was argued on behalf of the appellants that the appellants were not liable to pay the amount of bill of exchange to the respondent-Bank for failure of consideration. Reliance was heavily placed on the provisions of Section 118 of the Negotiable Instruments Act. Section 118 of the Negotiable Instruments Act provides for some presumptions about consideration in respect of Negotiable Instruments.

The very first presumption is that even negotiable instrument was made or drawn for consideration and even such instrument when accepted or endorsed, was accepted or endorsed for consideration. According to the appellants' Advocate, whenever there is a presumption under the law, the same is rebuttable by the facts. According to him, when the drawer of the bill who was also the supplier of the goods had accepted back the goods, the presumption of consideration against the appellants is rebutted and, therefore, the appellants are not liable to pay the amount of the bill of exchange to the respondent-Bank.

3. Reliance is placed on behalf of the appellants on the judgment of the Supreme Court in the case of Kundan Lal Rallaram v. Custodian Evacuee Property AIR 1961 SC 1316, which is not relevant at all to the facts of the instant case.

4. So far as the correspondence between the drawer and the appellants is concerned, the D.R.T. has raised its doubt about the genuineness thereof and has held that the said correspondence between the drawer and the acceptor of the bill of exchange is collusive. It is pertinent to note that by the letter of 21st September, 1992 the appellants informed the drawer that the material was not as per their specifications and, therefore, they should either replace the material or take back the same. On 28th September, 1992 the drawer wrote to the appellants to return the goods along with the bearer of that letter.

The appellants have produced a letter of the same date i.e. 28th September, 1992, addressed to the drawer stating therein that they had returned the goods and, therefore, the drawer should return their original documents like hundi, challans, etc. given to the drawer.

Apart from the fact that correspondence has stopped there only, a perusal of the original letter dated 28th September, 1992 Exhibit 'B', which is addressed to the drawer by the appellants, shows that the said letter was acknowledged by the director of the drawer Company. The correspondence between two parties situated at two different places i.e. Byculla and Ghatkopar, though both places are in Mumbai only, are not so close as to make it possible to exchange two letters between the parties on the same day. After the letter dated 21st September, 1992 was addressed to the drawer by the appellants, the drawer sent the letter of 28th September, 1992 with the bearer to collect back the material. When the appellants wrote the letter of 28th September, 1992 stating that the material has been returned and, therefore, the drawer should return the original documents, the same would have been acknowledged by the bearer sent by the drawer to collect the documents and not by the Director of the drawer Company as is done in this case.

This raises some doubt about the genuineness of the said correspondence because if the Director personally had been there to collect the goods back, the letter addressed to the appellants by the drawer Company would not have mentioned to return the goods along with the bearer.

From the tenor of the correspondence it is obvious that the bearer of the letter was other than the Director of the drawer Company and it the bearer was other than the Director of the drawer Company, the letter of the appellants addressed to the drawer Company on that very date could not have been acknowledged by the Director of the drawer Company who must not be in the office of the acceptor on that day. In view of this fact, I cannot go to the extent of disagreeing with the doubt raised by the D.R.T. in respect of the genuineness of the correspondence between the parlies about the return of goods for not being as per the specifications of the buyers, though one cannot visualize why the drawer would choose to acknowledge the return of goods and consequently exempt the appellants, the acceptors of bill of exchange, from payment unless the goods had been returned. But that is a matter between the drawer and the acceptor of bill of exchange i.e. the vendor and the purchaser of the goods/material supplied under 3 bills or invoices referred to in the bill of exchange.

5. There is one more aspect, which has to be considered, that the appellants who were the acceptors of the bill of exchange and were liable to pay the price of the goods to the Bank, did not inform the Bank at any time thereafter that the goods were returned for being defective and, therefore, they were not liable to pay the amount of bill of exchange. This failure on the part of the appellants adds to the doubt about the case of return of goods.

6. Apart from the aforesaid facts and the circumstances the legal question that has to considered is what is the liability of the appellants towards the Bank assuming that the goods were returned by the appellants i.e. the acceptors of the bill of exchange. In view of the acknowledgement of the Director of the drawer Company and the letter addressed to the appellants dated 28th September, 1992, the appellants are not liable to pay the price of the goods to the suppliers of the goods as the goods were returned to them. However, so far as the Bank is concerned there is a concluded contract between the Bank on the one hand and the appellants on the other hand, by virtue of accepting the bill of exchange by the appellants which was drawn on the respondent Bank, in view of Section 32 of the Negotiable Instruments Act.

Liability of maker of note and acceptor of bill.--In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

8. This section begins with the words "In the absence of a contract to the contrary". In other words, both the maker or the drawer of the negotiable instruments like bill of exchange as well as the acceptor of the bill are bound to pay the amount mentioned therein to the holder at the time of or after the maturity on demand. The bill of exchange dated 14th September, 1992 does not put any condition that the amount of bill is liable to be paid only after the receipt of the goods as per the specifications or that the amount is not liable to be paid if the goods are returned. Therefore, in the absence of such condition, the acceptor is liable to pay the amount to the holder, which in this case is the respondent-Bank, on the date of the maturity i.e. on the due date or thereafter. The bill of exchange having been drawn on the Bank and accepted without any condition it was entitled to receive the amount of the bill on the due date. If the acceptor of the bill raises any objection, the same can be raised with the drawer who had agreed to supply the goods to them and not with the Bank. If such objections arc allowed to be raised with the Bank in the absence of any specific conditions mentioned or referred to in Section 32 of the Negotiable Instruments Act, no Bank would probably allow the bill discounting facility to its customers.

9. In this respect reference may be made to the judgment of Delhi High Court in the case of Canara Bank, New Delhi v. Sanjeev Enterprises . That was a case where a suit was filed by the Bank for the recovery of the amount of bill of exchange from the acceptor.

Plea was raised by the defendants that no goods were purchased by them from the drawer and the hundi was drawn and accepted by the defendants without consideration and they had merely provided financial assistance to the drawer firm. It was held that even if the defendant is allowed to raise the plea of failure of

consideration, and it is assumed to have been established, yet the defendant is not free from the obligation to pay to the Bank money, which was due, on the bill of exchange, as the obligation was accepted by the defendant without any qualification. It was further observed that the Bank was not concerned with the ultimate fate of the transaction between the two parties. The said plea cannot be set up by the defendant against the Bank and so far as the Bank is concerned, the consideration of the hundi is expressly stated therein. In the instant case also, vis-a-vis the Bank, acceptor of bill had stated that they are liable to pay the amount of the bill for the value received vide bill Nos. 526, 527 and 528 dated 14th September, 1992. The originals of the bills, invoices of the bill Nos.

526, 527 and 528 dated 14th September, 1992, are produced on record to show that the drawers of the bill of exchange had issued and delivered the challans to the appellant Company on 14th September, 1992, all of which are acknowledged by the partner of the firm of the appellants.

Thus, it does not lie in the mouth of the appellants to say that the bill of exchange had been signed without consideration. The failure, if at all, to supply the goods as per the specifications and therefore the return of the goods, even if accepted to be true, had taken place subsequently, with which the Bank is not concerned. Therefore, the said plea can only be raised against the drawer of the bill of exchange. The appellants are not expected to be so naive as the return the goods without getting them discharged from their liability to pay the amount due on bill of exchange. In any way, the Bank is not concerned with the transaction, which takes place between the drawer and the acceptor of the bill of exchange.

10. Next argument advanced on behalf of the appellants is that the Bank had not made any demand on the appellants after the due date to pay the amount, which was due on the bill of exchange. The respondent Bank is relying on the noting and protest dated 6th March, 1993, issued by the Notary. According to the Notary, he had visited the appellants on 19th February, 1993 and demanded payment from the appellants on behalf of the Bank, but they refused to pay the same saying that they had supplied some goods to the drawer, but the said drawer was not making the payment of the same. On behalf of the appellants it is argued that the said

demand and refusal cannot be believed because the Notary was none other than the Advocate who was attached to the firm of solicitors who had filed the claim on behalf of the Bank. Secondly, it is not stated by the Notary as soon whom he made the demand and who refused to pay the same as the name of the person from whom he demanded the payment is not mentioned.

11. As per Section 101 of the Negotiable Instruments Act, the protest under Section 100 of the Act must contain the name of the person for whom and against whom the instrument had been protested. The appellant firm which is not having physical existence could not have been approached nor the firm itself could have refused to pay the amount. It is well established that if the law requires certain things to be done in a particular manner no reliance can be placed unless it is done strictly in a manner required by the law. No doubt, on behalf of the respondent-Bank it is pointed out that though reliance is placed in the plaint on the said noting and protest there is no denial in the written statement in which case the respondent Bank would have tried to prove the same by filing the affidavit or leading the evidence of the Notary.

Similar situation had arisen in case of Canara Bank, New Delhi v.Sanjeev Enterprises and Anr., (supra) and it is held that the Bank cannot suffer for the failure of the defendants to properly raise the issue. In the instant case, however, there is weakness in the evidence as regards the noting and the protest sought to be proved by the respondent-Bank through the notarial certificate. So far as the demand is concerned, I do not think that the claim of the Bank can be defeated for not making a formal demand against the appellants before filing the claim in the Court. In my opinion the provisions as regards noting and protest under Sections 99 and 100 of the Negotiable Instruments Act are not mandatory but directory in nature and therefore non-compliance thereof cannot defeat the claim of the Bank. This is obvious from the comparison of the language used in Sections 99 and 100 with that of Section 104 of the Act as regards foreign bills, which is mandatory.

12. Next it was argued that the respondent Bank had debited the account of the drawer Company with the amount of the bill of exchange immediately after the due date i.e. on 14th December, 1992 and therefore, they cannot recover the said

amount from the appellants. The learned Advocate for the appellants did not dispute that the Bank could have proceeded to recover the said amount from either of the parties i.e. the drawer or the appellants. He also did not dispute that the Bank could have filed the proceedings for the recovery against both the drawer as well as the acceptor of the bill and ultimately recover the amount from one of the parties. In the instant case, the respondent-Bank had filed the proceedings for the recovery of the said amount against both the parties separately and the claim against both the parties in respect of the amount due on the said bill of exchange has been decreed, but the Bank has not yet recovered the said amount from either of the parties. Merely, because the Bank has debited the account of the drawer Company with the amount of the bill of exchange does not mean there was recovery of the said amount. If the amount had been recovered on 14th December, 1992, when the debit entry was made in the account of the drawer Company, the Bank could not have and would not have filed the proceedings against the appellants and undergone the trouble of paying the Court-fee and prove the claim against the appellants. Only because some credit entries have been shown in the account of the drawer Company maintained by the respondent Bank it cannot be said that the amount of bill was recovered by the Bank as there is no credit entry in the account of the drawer for the amount of bill of exchange. I, therefore, find no substance in the said plea.

13. In view of the above there is no substance in the appeal and therefore the same is dismissed with no order as to costs.