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Court : Rajasthan

Decided On : Aug-13-1959

Reported in : AIR1960Raj166

Judge : K.L. Bapna, J.

Acts : [Trusts Act, 1882](#) - Sections 13, 15, 20 and 23

Appeal No. : Civil Revn. No. 129 of 1955

Appellant : Suraj Narain

Respondent : Hari Ram

Advocate for Def. : Biradmal, Adv.

Advocate for Pet/Ap. : Chandmal, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

K.L. Bapna, J.

1. This is a revision by the defendant in a suit for recovery of money.

2. The plaintiff Hari Ram received a draft from one of his customers for a sum of Rs. 500/- dated 30-7-1951 drawn on the Punjab National Bank Bikaner and as he had no account with the Bank he approached the defendant Suraj Narain. Suraj Narain carried on joint family business in the name of Anand Roop Nainsukh Das at Bikaner. The plaintiff's case is that he went to the defendant and requested him to have the draft encashed through the defendant's bank as the defendant had an account in the bank, and the defendant agreed to do so and to pay the money to the plaintiff on encashment of the draft. It was alleged that the plaintiff endorsed the draft and handed over the draft to the defendant on 3-8-1951, and the draft was encashed on 6-8-1951 by the Pareek Commercial Bank, City Branch, Bikaner, to whom the draft was endorsed by the defendant. It was alleged that the plaintiff demanded the amount of the draft from the defendant whereupon the defendant gave a cheque of Rs. 500/- on 6-9-1951 to the plaintiff on the Pareek Commercial Bank City Branch, but the same was dishonoured on presentation as the bank had suspended payment. The plaintiff claimed Rs. 500/- from the defendant.

The defendant pleaded that he was only a partner in the firm of Anand Roop Nainsukh Das and not the Karta of the joint family firm of that name. The incident or the circumstances under which the draft was made over to the defendant were stated to be slightly different than what the plaintiff had alleged. It was said that the plaintiff came with the draft and intimated that he had no account in any bank but that the defendant who had such account in the Pareek Commercial Bank may accept the draft and get it encashed for the plaintiff. The defendant thereupon said that the cheque book for withdrawal of any money from the Pareek Commercial Bank, Bikaner had been sent to Calcutta and the money could only be withdrawn from the said bank after a month unless the bank agreed to issue loose blank cheques in the meanwhile. The defendant did not show any inclination to take on the responsibility of encashing the draft through his bank but the plaintiff further informed the defendant that he had no immediate necessity for the money and the amount of the draft may remain in deposit with the Pareek Commercial Bank and he would later on obtain the payment from the said bank.

It was pleaded that it was on the aforesaid conditions that the draft was accepted by the defendant and sent to the Pareek Commercial Bank after proper endorsement for encashment by the Punjab National Bank. It was admitted that the amount of the money was received by the Pareek Commercial Bank from the Punjab National Bank and deposited in the account of the defendant. The defendant, however, pleaded that he came to know of this deposit in his account on 13-8-1951 from the plaintiff's servant and the defendant agreed to issue a cheque for the amount on receiving blank loose cheques from the bank next day. The defendant tried to obtain such blank loose cheques from the bank but his efforts were not successful and in the meanwhile the bank suspended payment on 22-8-1951. The defendant pleaded that he had only issued the cheque for Rs. 500/- to the plaintiff on 4-9-1951 so that the plaintiff may take such action as he thought fit against the Pareek Commercial Bank and the defendant was not at all liable to repay the amount. The defendant pleaded that he was only a trustee for the amount and having given the pay order to the plaintiff had no further responsibility in the matter.

3. The learned Munsif after evidence dismissed the suit. In his opinion the defendant was unable to obtain money from the Pareek Commercial Bank prior to 22-8-1951, and therefore it could not be said that he had obtained the money of the draft for which he could be made liable to pay to the plaintiff. He also held that as the bank had suspended payment on 22-8-1951, the subsequent issue of cheque by the defendant was without consideration.

4. On appeal, by the learned Civil Judge a decree was given in favour of the plaintiff. He was of opinion that the Pareek Commercial Bank having received the amount from the Punjab National Bank credited the same to the account of the defendant which increased his bank balance by that amount. He further held that as the defendant issued the cheque on 4-9-1951 after his amount in the bank had been so increased the said cheque could not be said to be without consideration. He allowed the appeal and decreed the suit in favour of the plaintiff as stated above. The defendant has come in revision.

5. It was argued by the learned counsel for the applicant that the defendant had only received the draft from the plaintiff on condition that he would repay the amount on receipt of the cheque book from Calcutta or of loose blank cheques from the bank and since the bank failed prior to that event he was not responsible. The argument was that the defendant was either an agent or trustee for the purpose of encashment of the draft from the Punjab National Bank through his own bank, the Pareek Commercial Bank. There was no negligence on the part of the defendant and, therefore, if the bankers suspended payment by the time the defendant could be able to withdraw the money, he was not liable and the loss should be suffered by the plaintiff him-self. I have carefully considered the arguments put forth by learned counsel for the parties. There is no doubt that the plaintiff while handing over the draft to the defendant wanted a favour from the defendant inasmuch as the defendant had an account an the bank and was In a position to obtain the amount from the Punjab National Bank through his bank.

The defendant had not accepted the draft for any remuneration but only undertook to oblige him. The position of the defendant at that time seems to have become that of an agent, without remuneration, for the plaintiff. The Pareek Commercial Bank, City Branch, obtained the encashment of the draft from the Punjab National Bank on 6-8-1951 and credited the amount to the account of the defendant. From that time onwards the position of the defendant was that of a trustee as admitted by the defendant himself in his written statement and he was under a liability to pay the amount to the plaintiff. The defendant did tell the plaintiff that his cheque book was not with him when the plaintiff went to him in order to request him to have the draft encashed. This is proved not only by the evidence of the defendant but by the contents of the letter Ex. D. 1 which the plaintiff wrote to Ramanlal, another partner of the firm Anand Roop Nainsukh Das at Calcutta.

In this letter the plaintiff after stating that he received the crossed draft on the Punjab Naional Bank wrote that he or other Sethlog of Bikaner did not keep their accounts in banks and for that reason he gave the draft to Suraj Narain. The letter states further that 'This Suraj Narain said that the cheque book of our firm (Deewan Khana) is not here but we have an account in our name in the bank and would obtain the encashment of the draft whereupon I gave the draft to him.' The

plaintiff when questioned with respect to this in cross-examination tried to explain that the non-possession of the cheque book was only intimated to him several days later. This cannot be accepted to be true. It must, therefore be held that the plaintiff had been told by the defendant that the cheque book of the bank was not with the defendant which meant that there would be some delay in recalling the money of the encashed draft from the Pareek Commercial Bank.

There is evidence that the defendant took steps to obtain blank loose cheques from the Pareek Commercial Bank, City Branch, from 16-8-1951 onwards and some loose cheques were received by the defendant some time on 21st or 22nd August, 1951 (vide document Ex. D. 3, a letter by the defendant to the Pareek Commercial Bank, City Branch, dated 16-8-1951). Shankerlal, then cashier of the Pareek Commercial Bank has testified to the receipt of this letter and his endorsement to the Head Office as to what should be done. He said that he sent to the Head Office because the local Manager was not present on that day and he did not know whether loose cheques could be issued by the bank. Parmatma Saran was Manager in the Head Office and he testified that he received Ex. D. 3 and he endorsed thereon that the loose cheques should be issued, This was done by him on 21-8-1951 and the endorsement on Ex. D. 3 was made by him to the effect.

6. The whole case, therefore, hinges on the fact whether the defendant had acted with diligence expected of him or he had taken an unnecessary risk in letting the amount of Rs. 500/- remain in the Bank when he was under a duty to repay to the plaintiff as soon as the cheque had been encashed. After a very careful consideration of the facts and circumstances of this case I am of opinion that the defendant had taken a risk in excess of what could be expected of a diligent man. If the cheque book was not with him on 3-8-1951, the means of communication were such that he could obtain it within say a week of that date from Calcutta where he said his cheque book was. But even apart from that if his bank had acted in a straight-forward manner, he could have obtained another cheque book or loose cheques whenever he wanted them.

The defendant in the first instance made an unnecessary delay of writing to the bank on 6-8-1951 when he could have known quite easily that the draft would be encashed as soon as it would be presented to the Punjab National Bank. Further the fact that the bank of the defendant did not issue the cheque book or loose cheques at once would not absolve the defendant of his own responsibility in the matter. If the bank refused to issue the cheque or delayed to issue the cheque to such a date that the bank was not in a position to make payments, the plaintiff could not be held to bear the consequences of such neglect of the defendant's bank. There is authority for the proposition that if a trustee acts in such a manner that his action can be fettered by some body else in the discharge of his duties then the trustee becomes responsible for any loss that is occasioned in such circumstances--White v. Baugh, (1835) 3 Cl and Fin, 44: 6 ER 1354. In that case a receiver appointed by the Court, in order to induce A and B to become his sureties, entered into an arrangement with them, that the rents, as received, should be deposited in a bank in the joint names of the sureties, and that all drafts should be in the handwriting of A's partner, and should be signed by the receiver.

An account was opened upon this footing, and the bank failed, and a considerable loss was incurred. Sir J. Leach held that the receiver and his sureties were not to be answerable; but his Honour's decision was reversed on appeal by the Lord Chancellor; and this reversal was afterwards affirmed on the final appeal by the House of Lords. The principle behind the decision was that a trustee must not lodge the money in such a manner as to put it out of his own control, though it be not under the control of another. In England under Section 23 of the Trustee Act, 1925 although in specified cases a trustee is empowered to appoint a solicitor or banker to be his agent to receive money, yet if he permits the money to remain in the hands or under the control of the solicitor or banker longer than is reasonably necessary to enable the solicitor or banker, as the case may be, to pay the money to him, his liability is expressly retained.

7. What is mentioned in this section affords a good guide for the decision of the present case. The defendant was justified in employing the Pareek Commercial Bank to obtain encashment of the draft from the Punjab National Bank but he allowed the money to remain longer than was reasonably necessary for

withdrawing the amount from the Pareek Commercial Bank and pay the money to the defendant in order that he could be able to discharge his liability to the plaintiff, and in the circumstances the defendant was liable to pay the amount to the plaintiff although the defendant's bank had failed to pay not only this money in dispute but also a larger amount of the defendant's own money in deposit with the Bank. It was the admitted case for the parties that the Pareek Commercial Bank had suspended payments on 22-8-1951, The subsequent issue of the cheque by the defendant did not furnish any fresh cause of action for that cheque was in all probability given by the defendant with the suggestion that the plaintiff may obtain payment if he gestion that the plaintiff may obtain payment if he could. The bank after suspending the payments went to liquidation and the question of the said cheque being encashed was known to he out of question to both the parties.

8. As a result of the above findings, this appeal cannot succeed and must be dismissed. I will not allow costs to the respondent as the liability of the defendant arose in peculiar circumstances mentioned above. The parties will bear their own costs throughout.

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