
(1963) 04 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 486 of 1961

Amar Nath

APPELLANT

Vs

Produce Exchange Corporation Ltd. Calcutta

RESPONDENT

Date of Decision : 15-04-1963

Acts Referred:

Partnership Act, 1932 — Section 25

Citation : AIR 1963 P&H 479

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Advocate : D.C. Gupta, for the Appellant; L.M. Suri, for the Respondent

Final Decision : Allowed

Judgement

1. This petition for revision is directed against the order of the Additional District Judge, Ambala, reversing on appeal the decision of the trial court granting the plaintiff a decree for Rs. 28-13-9.

2. The plaintiff is Messrs. Produce Exchange Corporation limited having its registered office at 5, Royal Exchange Calcutta (hereinafter referred to as the supplier). The defendant is Amar Nath who owns two concerns - (1) National Printing Press, and (2) Paul Publications. There were transactions between the National Printing Press and the supplier between 27th of August to 15th of November, 1955, resulting in a credit balance in favour of the supplier amounting to Rs. 191/8/-. The other transaction was between Paul publications and the supplier. Paul Publications advances a sum of Rs. 3,100/- to the supplier for the purchase of paper. According to the supplier paper was supplied of the value of Rs. 1,701/2/9 before the 30th March, 1957, and of the value of Rs. 1,236/3/- on the 18th of April, 1957. The supplier further stated that a sum of Rs. 1,398/13/3 was returned in cash to Amar Nath. The supplier, therefore, brought a suit for the recovery of Rs. 1,236/3A with interest thereon against Amar Nath.

In defence Amar Nath raised the plea that the sum of Rs. 1,398/13/3 had not

been received by him in cash as alleged by the plaintiff but he had received paper of the value of Rs. 2,937/5/9 with the result that a sum of Rs. 162/10/3 was due to him from the supplier. A number of issues were framed and it is only necessary to state the first two. They are in these terms:-

(1) Whether the defendant is entitled to adjust the payment made by him for Paul Publications to the plaintiff?

(2) If yes, whether the plaintiff returned Rs. 1,398/13/3 to the defendant out of the sum of RS. 3,100/- admitted to have been received by him?

On the second issue it was found that the sum of Rs. 1,398/13/3 was not paid in cash to Amar Nath by the supplier. Therefore, the position that emerged was that a sum of Rs. 191/8/- was due to the supplier from Amar Nath and a sum of Rs. 162/10/3 was due from the supplier to Amar Nath. The result, therefore, was that the trial Court passed the decree after adjustment in the sum of Rs. 23-13-9, in favour of the plaintiff-supplier.

Against this decision an appeal was taken to the District Judge which came up for hearing before the Additional District Judge. The Additional District Judge did not give any decision in appeal with regard to issue No. 2. On Issue No. 1 the came to the conclusion that the adjustment could not be-allowed. It would be proper at this stage to state his conclusions in his own words:-

"This would, show that the trial Court has taken for granted that the plaintiff admits that paper of the value of Rs. 2,937/5/9 was supplied towards the advance of Rs. 3,100/- which is not a fact and thus its remark that issue No. 4 is redundant is also incorrect. The plaintiff's position is that the advance of Rs. 3,100/- had, already been adjusted by supply of paper of the value of Rs. 1,701/2/9 before 30th March, 1957, and then by cash payment of Rs. 1,398/13/3 by receipt Exhibit P-1 dated 30th March, 1957. Its position is that paper of the value of Rs. 1,236/3/- was subsequently supplied on credit to Paul Publications from which firm this amount is due and for which the plaintiff has brought a separate suit. Thus the very basis of the learned trial Court's finding is wrong. In my opinion, the account of Paul Publications should not have been allowed to be inter-mingled with the account of the present defendant and this intermingling has created all confusion in the case.

"Paper in the present case had all been supplied up to 15th November, 1956, and thus the plaintiff is entitled to recover Rs. 191/8/- on that account. The subsequent deposit of Rs. 3,100/- by means of two receipts Exhibit D-6 dated 1st February, 1957, of Rs. 1,600/- and Exhibit u-7 dated 22nd March, 1957, of Rs. 1,500/- was a different transaction relating to the account of Paul Publications and the two accounts being separate cannot be allowed to be intermingled."

In this view of the matter he allowed the appeal and decreed the plaintiff's suit in the sum of Rs. 191/8/-. With regard to issue No. 2 he gave no finding on the

ground that as adjustment could not be allowed it was not necessary to give finding on that issue. It may be mentioned that a separate suit, filed by the supplier for the recovery of Rs. 1,236/3/- and interest thereon was dismissed and an appeal, I am told, is pending against that decision. Therefore, the only question that requires determination in this petition for revision is whether the view of the learned Additional District Judge that no adjustment could, be allowed because there are two separate accounts though between the same parties is justified.

Suffice it to say the matter stands concluded by two Bench decisions of this Court reported in *Firm Jaikishen Dass Jinda Ram and Others Vs. Central Bank of India*, and *Punjab National Bank Ltd. v. Arura Mal Durga Dass* ILR 1960 P&H 823: (AIR 1960 P&H 632). It Was held by Bhandari C. J. in the former case as follows:-

"In this view of the case it seems to me that although two separate firms are involved In the present litigation, they are not two separate legal entities and cannot be distinguished from the members who compose them. It follows as a corollary that although two separate accounts were opened with the Bank, one in the name of firm No. 1 and the other in the name of firm No. 2, the customers in both the cases were the same, namely, the appellants. The Bank was a creditor of the appellants in one case and a debtor of the appellants In the other. It is manifest that mutual demands existed between the Bank on the one hand and the appellants on the other.

Nor can it be said that these demands do not exist between the parties in the same right; The expression "in the same right"" means obviously that a debt due from one person shall discharge only a debt to that person alone end that a debt of one character, that is, whether several or joint, Individual or representative, shall discharge a debt of the like character and no other. Thus a joint debt on claim cannot be set off against a separate demand nor a separate debt or claim against a joint demand. But joint debts owing to and by the same person in the same right can be set off against each other. The appellants, who are partners are governed by the Indian Partnership Act Section 25 of which makes it quite-clear that partners are liable jointly as well as severally for all acts binding on the firm. Here a joint debt was owing to the appellants in their capacity as members of a firm, and another joint debt was owing by the appellants in their capacity as members of another firm. There can be no manner of doubt that these two demands could be set off against each other," .

To the same effect are the observations in the latter case. Therefore, it must be held that the learned Additional District Judge was in error in holding that no adjustment could be allowed.

3. It is conceded by the learned counsel for the respondent that if adjustment is to be allowed then the case must go back to the Additional District Judge for determination of the second issue. This concession is not disputed by the learned counsel for the petitioner. That being so, I allow this petition, set aside the

decision of the Additional District Judge and remit the case to him for decision on issue No. 2 in the light of the observations made above. The costs will be the costs in the cause.