(1925) 06 CAL CK 0055

In the Calcutta High Court

Bengal Nagpur Railway Company Ltd. — APPELLANT

Vs

Co-operative Hindusthan Bank Ltd. — RESPONDENT

Date of Decision : 23-06-1925

Acts Referred:

Citation : AIR 1926 Cal 1089 : 97 Ind. Cas. 606

Hon'ble Judges : Lancelot Sanderson, C.J;Buckland, J

Bench : Division Bench

Judgement

Lancelot Sanderson, C.J.—This is an appeal by the defendant Railway Company from the judgment of my learned brother Mr. Justice C.C. Ghose delivered on the 1st of August, 1924.

2. It appears that a man called Badree had agreed to supply certain goods, viz., dog spikes, to the Railway Company. He made out two bills in respect of these goods. He arranged with the plaintiff Bank that they would make advances to him to the extent of 80 per cent, of the amount of the bills. Before completing the arrangement the Bank sent a representative to the office of the Chief Engineer of the Railway at Garden Reach, and made certain enquiries from the Head Clerk of the Chief Engineer. The enquiries were directed to the question whether the bills in question were genuine. He was informed that the bills were in order and that the Railway Company would pay the bills in due course. Having got that information on the 1st of November, the arrangement, to which I have already referred, was made between the Bank and Badree, The Bank, however, were not satisfied with the information which they had obtained verbally, and consequently they wrote a letter on the 2nd of November asking for confirmation. They said "...As assured by your said Head Clerk we should be glad to have your confirmation in reply that the bills are correctly drawn and that bills will be paid to us direct, the cheques therefor being drawn in favour of this Bank in due course." The answer to that was from the Chief Engineer on the same date and was as follows; "...The bills...are in order. Arrangements are being made to pass the same on to our Chief Auditor for payment."

3. It is in evidence that in consequence of that statement and believing the statement to be true the Bank made certain advances to Badree. The bills were presented to the Railway Company and in due course on or about the 28th of November, a cheque for the amount of the bills was sent to. the Bank by the Railway Company. The cheque was drawn by the defendant Company upon the Imperial Bank of India and was in these terms "Pay to Co operative Hindusthan Bank, Limited, for credit of Messrs. M. Badree & Co., the sum of rupees fifteen thousand six hundred and seventy-four and annas eight only and charge the same against the drawing account," The cheque was presented on the 30th of November and payment was refused.

4. It appears that the Railway Company stopped it because they found that Badree had made certain statements with regard to these goods which were untrue and that Messrs. Bird & Co. were unpaid vendors of the goods and still had the Railway receipts.

5. The learned Judge came to the conclusion that the plaintiffs were entitled to a decree.

6. I have no doubt that the decision, at which the learned Judge arrived, was correct. In my opinion the Railway Company are estopped from denying that the two bills in question were in order and that the transaction was correct in every respect.

7. The learned Counsel who appeared for the defendants argued that there could not be any estoppel by reason of a phrase which occurs in the letter dated the 2nd November written by the manager of the plaintiff Bank to the Chief Engineer of the defendants and the phrase is this: After referring to the bills, the writter said "...duly endorsed in favour of this Bank for valuable consideration, enclosing their letter also on the point herewith." The argument was that inasmuch as the Bank represented that valuable consideration had already passed from the Bank to Badree it was not possible to hold that the Bank had relied upon the Railway Company''s statement so that the Railway Company should be estopped.

8. In my opinion, the phrase, "for valuable consideration," is quite consistent with there having been an arrangement that the Bank would make advances in future to Badree against the bills if it was found that they were in order and the manager of the plaintiff Bank stated that the Bank would not have advanced money to Badree, but for the letter from the Chief Engineer of the defendants dated the 2nd November 1923 which contained the statement that the bills were in order and arrangements were being made to pass the same on to the Chief Auditor for payment.

9. In these circumstances, I am of opinion that there is no substance in the abovementioned contention.

10. The learned Counsel further relied upon Section 58 of the Negotiable Instruments Act and argued that inasmuch as Badree had made untrue

representations to the Railway Company and that in consequence of those representations the Railway Company had issued the cheque, it was for the plaintiffs to show that they were holders in due course.

11. I am not prepared to accept that argument because I think the facts of this case do not bring it within that section. The plaintiffs were not claiming through any person who obtained the cheque from the defendant by "fraud or for an unlawful consideration." The cheque on which the suit was based was drawn by the defendants in favour of the plaintiffs and did not pass through the hands of Badree.

12. The last point, with which I think it is necessary to deal, is that the learned Counsel argued that the form in which the cheque was drawn went to show that the plaintiffs were merely collecting agents. In my judgment the words used in the cheque do not bear that interpretation. I think the words "for credit of Messrs. Badree and Company" merely means this that the cheque was drawn in favour of the Co-operative Hindusthan Bank, Limited, in respect of the amount which was owing by the Railway to Messrs. Badree and Company, The Railway Company must have known that the plaintiffs, in view of the arrangement between them and Badree, were entitled to receive the money and in the ordinary course of business the plaintiffs would give credit, to Messrs. Badree and Company for the amount of the cheque.

13. For these reasons, in my judgment, the appeal should be dismissed with costs.

Buckland, J.

14. I agree and have nothing to add.

