
(1940) 02 BOM CK 0013

In the Bombay High Court

Case No : Civil Revision Application No. 368 of 1939

Bhagwandas Purshottamdas Kapadia

APPELLANT

Vs

Chunilal Dahyabhai

RESPONDENT

Date of Decision : 07-02-1940

Acts Referred:

Citation : AIR 1940 Bom 291 : (1940) 42 BOMLR 518

Hon'ble Judges : Sen, J; John Beaumont, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

John Beaumont, Kt., C.J.—This is an application in revision against a decision of the full Court of the Small Cause Court, which reversed the decision of the trial Judge.

2. The plaintiff is a broker and a member of the Native Share and Stock Brokers' Association. In November, 1937, the plaintiff purchased on behalf of the defendant fifty ordinary shares of the Tata Iron and Steel Company Limited, the price being approximately Rs. 350. Nothing turns on the exact price. The purchase was made for December vaida. By December the shares had fallen heavily in value, and the primary obligation of the client was to take up and pay for the shares which he had bought through his broker, and the broker would have to carry the transaction through on the Exchange. If the client did not desire to pay for the shares, he could, of course, close the transaction by selling the shares at the December price and paying the difference to his broker. He, however, wanted to carry the shares over through a different broker and, therefore, entered into a havala transaction with another broker called Rajaballi.

3. Rule 171 of the Rules and Regulations of the Native Share and Stock Brokers' Association deals with havala transactions and provides that they may be carried through by members on behalf of a constituent at a rate agreed by initialling the relevant entries in their books, but in the absence of any havala price confirmed

and initialled in the books, the official making-up price is to be binding on both members. Then under Sub-rule (c) of Rule 171, which was amended in June, 1933, where a member accepts a havala on behalf of his constituent, it is to be at the risk of the constituent who is to be deemed to indemnify the member accepting the havala against any loss suffered by him by reason of his having accepted the havala. Now, as I understand it, what a havala amounts to is that there is a notional sale and repurchase of shares for a fresh account, and the new broker is deemed to have purchased the shares for the fresh account on behalf of the constituent, and the price at which he is deemed to have purchased them is the official making-up price. That has to be fixed under Rule 296, which provides :

(a) The Secretary with the concurrence of the Members of the Board of Directors present at the time shall fix a making-up price of all securities cleared through the Clearing House by taking the actual Market price at the closing of business on the business day immediately preceding the Pay Day.

(b) On the morning of Pay Day all unsettled bargains in such securities shall be brought down and temporarily adjusted with such making-up price.

4. Now, in this case the price was fixed, provisionally at any rate, under rule. 296 on December 9, and the Pay Day was to be December 15, though there is power under Rule 324 for the Board of Directors to alter the Pay Day in special circumstances. The price provisionally fixed by the Directors was Rs. 267 for Tata ordinary shares, and that meant a loss to the client in respect of the transaction for purchase carried through by the plaintiff of Rs. 4,000 odd, and no question arises that the client was bound to pay Rs. 4,000 odd to the plaintiff, who was his broker, and that sum has been paid. But Rule 297 enables the Board of Directors under exceptional circumstances to alter the making-up price. The actual terms of the Rule are-

The Board of Directors may under exceptional circumstances which shall be fully set out in the minutes of the said Board, alter a making-up price which has been fixed. When the making-up price is so altered, all accounts shall be readjusted and payment shall be made or received at the altered price.

5. The Board of Directors did alter the price in respect of Rajaballi's transactions by reducing the price to Rs. 257, and the plaintiff was called upon to pay, and did pay through the Clearing House, another Rs. 500 representing the additional loss due to the reduction in the making-up price from Rs. 267 to Rs. 257, and it is for that Rs. 500 that he is suing in the present suit. The trial Judge decreed the claim, but the full Court reversed his decision and dismissed the plaintiff's claim on the ground that the pay-out day was on December 15, and the Committee could not after that day alter the making-up price under Rule 297. I am not altogether satisfied that that is a correct view of the matter, because, according to the evidence of Mr. Shroff, the Chairman of the Association, I am inclined to think that there was a later pay-out day fixed some time before December 18

under Rule 324, though his evidence is not very clear on the subject. What he says in respect of the alteration of price is :

As far as the banks were concerned we did not alter the price for December settlement. We paid at the rate of Rs. 267 to the banks. So far as Rajaballi's shares were concerned as he had failed we altered the rate to Rs. 257. We did not alter in the case of others as we had received full payment. Rate is altered if a member fails and all parties concerned with that member have to make readjustment at that altered rate. The alteration has to be made before the pay-out day. I do not remember the pay-out day of December settlement.

So that Mr. Shroff admits that the alteration must be made before the payout day, and that seems obvious. The directors could hardly alter the rate in respect of a transaction which had been completed. But I rather gather from Mr. Shroff, though he does not remember the exact date, that the pay-out day in respect of Rajaballi's transactions was postponed. But a more serious difficulty in the way of the plaintiff seems to me to be that, although the Board of Directors may alter under exceptional circumstances the making-up price, there is nothing in the rules to justify them in altering the making-up price in respect of one broker's transactions, and not in respect of the transactions of other brokers. The making-up price is settled for the whole market, and if it is to be altered, it must be altered, in my opinion, for the whole market. If there is to be power to alter the making-up price in respect of a particular broker, that power must be conferred very clearly by the rules, and I can find no such power.

6. The whole question in this case turns upon whether the alteration in the price was validly made. If it was, then the plaintiff was bound to pay the difference arising from the alteration to the Exchange, and he is entitled to be indemnified by his constituent. But if the alteration of the price was invalid, then the plaintiff was entitled to refuse to pay the amount, and if he paid something which he was not bound to pay, his constituent is not bound to indemnify him. In my opinion, there was no power in the Committee to alter the making-up price in respect of Rajaballi's transactions. That being so, the additional loss is not one for which the constituent is liable, and if the broker has paid it, that is not a matter which concerns the constituent.

7. I think, therefore, that the decision of the full Court was right, and the application must be dismissed with costs.,

Sen, J.

8. I agree.