(1956) 05 CAL CK 0025

In the Calcutta High Court

Case No : A.F.O.O. No. 95 of 1955 and Matter No. 12 of 1949

Birbhum Central Co-operative Bank Ltd. APPELLANT

Vs

Pioneer Bank Ltd., (in liquidation) RESPONDENT

Date of Decision : 29-05-1956

Acts Referred:
Negotiable Instruments Act, 1881 (NI) — Section 13, 5, 85A

Citation : AIR 1956 Cal 615

Hon'ble Judges : Chakravartti, C.J;Sarkar, J

Bench : Division Bench

Advocate : Lala Hemanta Kumar, for the Appellant;E.R. Meyer and S.P. Mitra, for the Respondent

Final Decision : Dismissed

Judgement

Chakravartti, C.J.—The appellant bank which had obtained eight Demand Drafts from the Suri Branch of the Pioneer Bank Ltd. against cash tender put in a claim in the liquidation of the latter bank for prior payment, but was admitted by the Liquidators only as an ordinary creditor. At the settlement of the claims before the learned Company Judge, the appellant''s claim for being treated as a preferential creditor was pressed again, but it was rejected by Banerjee, j., who admitted as an ordinary creditors one Provash Chandra Mitra, the Manager of the appellant bank, in whose favour the drafts had actually been issued. The present appeal is directed against that order. It is contended that the amount of the drafts was actually paid over to the Suri Branch of the Pioneer Bank for transmission to Calcutta and there having thus been an entrustment for a specific purpose, the appellant bank was entitled in the liquidation of the Pioneer Bank to be repaid its money in preference to the ordinary creditors.

2. The undisputed facts are that on 31-8-1948, the appellant bank paid a sum of Rs. 34,000/-to the Suri Branch of the Pioneer Bank Limited through its Manager, Provash Chandra Mitra, and obtained seven several drafts for diverse amounts, totalling Rs. 34,000/-. Similarly, on the 14-th of September following, the

appellant bank paid to the same branch of the Pioneer Bank a further sum of Rs. 28,000/- and obtained a Demand Draft for that amount. The total amount for which the eight drafts were issued was thus Rs. 62,000/-. They were drawn on the Calcutta Branch of the Pioneer Bank Limited and were made payable on demand "to the order of Sri Provash Chandra Mitra." Payment on them could not be obtained, because before they could be presented for encashment, the Pioneer Bank Ltd. closed its doors.

3. So far there is no dispute as to the facts. It is well-settled that a banker''s draft is a bill of exchange and as such it is a negotiable instrument. That such is the nature of a banker''s draft would appear from the definition of a Bill of Exchange and a Negotiable Instrument, as contained in the Negotiable Instrument Act. A banker''s draft issued by one branch of a bank to another is specifically dealt with in Section 85A. It is there provided that "where any draft, that is, an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course." The issue of a draft is regarded in banking practice as a matter of purchase and ordinarily the relationship between the holder of a Demand Draft and the bank issuing it is that of debtor and creditor. The holder of the draft is a creditor and his remedy is on the draft.

4. But although a draft may ordinarily be nothing more or nothing less than a bill of exchange and although, taken by itself, it may not create any relationship except that of debtor and creditor, it is open to a person who caused a Demand Draft to be issued to establish that, in fact, there was a con- tract between the bank and himself for transmission of the money and the issue at one end of a draft, payable at the other end, was only chosen as a convenient and expeditious method of remitting the amount covered. When a person requires money to be remitted from one place to another and desires the remittance to be made through a bank, the bank may, for due consideration, put through a transaction of that kind and send to its branch at the place where the money is desired to be remitted, telegraphic instructions or a letter of advice, but it may also, instead of issuing such instructions or sending such a letter, issue a draft on the branch at the place where the money is sought to be remitted and make it payable to a nominee of the person who pays the money or to his order. The contract in such a case is essentially a contract of carriage, the subject-matter to be carried being money, and where such a contract is proved, it may reasonably be contended that although a Demand Draft was issued by the bank, the consideration for the draft was paid for the specific purpose of the transmission of the money to the place where the draft was made payable. Provided a contract of that kind and so understood by both parties, is made out, it is possible to say that a person paying money to a bank under such a contract and on such terms is not in the position of an ordinary creditor, but is rather in the position of a trustor who entrusts the bank with money to be applied to a specific purpose, viz, the purpose of its being carried to the other end and paid out there to the trustor

himself or a nominee of his or to his order.

5. The claim of the appellant in the present case was obviously modelled on the basis of a contract of that kind. Paragraph 4 of the affidavit, affirmed by Provash Chandra Mitra, states as follows:

"On 31-8-1948 and 11-9-1948 the said claimant entrusted and paid to the Suri Branch of the said Bank a sum of Rs. 62,000/- in cash through its officer Provash Chandra Mitra for the specific purpose of transmission to Calcutta for payment to the said Provash Chandra Mitra at Calcutta."

It will be noticed that the appellant bank is, in the passage I have just read, making a case of entrustment of the money to the Pioneer Bank Limited for the specific purpose of its transmission to Calcutta. Banerjee, J., appears to have accepted the appellant''s case that the money had been paid for a purpose of that kind & that an agency had been created, but he did not admit the appellant''s claim to rank as a preferential creditor, because, in his view, as soon as the drafts had been issued in favour of Provash Chandra Mitra and handed over to him, the agency had ceased. "The Bank", observed the learned Judge, "made over Rs. 62,000/- to the Suri Branch of the Pioneer Bank for transmission to Provash Chandra Mitra, who was formerly a Manager of the Co-operative Bank, by drafts. He in his affidavit affirmed on 11-12-1951, admits that the Pioneer Bank issued eight several drafts in his favour on its Calcutta Office for the sum, which he accepted. The Pioneer Bank carried out the instructions of the Co-operative Bank and the agency ceased."

6. As far as I can understand that passage, the learned Judge''s meaning seems to be that although there was an entrustment of the amount of the drafts, the entrustment was for the purpose of the transmission of the money to Calcutta in order to be paid out to Provash Chandra Mitra, but since it was Provash Chandra Mitra himself who took delivery of the drafts from the Suri Branch of the Pioneer Bank, the trust of transmitting the money to him was fulfilled or discharged as soon as the drafts were so handed over. Thereafter, the drafts having been issued by the Pioneer Bank Limited ana having been accepted by the person whom they favoured, the trust was exhausted and Provash. Chandra Mitra became merely an ordinary creditor of the Pioneer Bank. In my opinion, the learned Judge, instead of being unfair to the appellant, went further in its favour than the facts appear to me to warrant.

7. I have already read the case made by the appellant bank in paragraph 4 of the affidavit, affirmed by Provash Chandra Mitra. The Official Liquidators repudiated that case and contended that the claimant had purchased the drafts for cash. and the Pioneer Bank had not accepted any engage- ment for the specific purpose of transmission of the money to Calcutta or as an agent of the claimant. The Liquidators also pointed out that at the initial stage when the claim was first lodged, the appellant bank had claimed an amount of Rs. 62,000/-, simply as the total of amounts due on eight several drafts.

8. That the appellant bank based its claim at the initial stage solely on the drafts, will appear from the affidavit of Provash Chandra Mitra, affirmed on 12-7-1950. In paragraph 2 of that affidavit, the claim is stabbed and it is described as "the amount due to the claimant under eight several drafts issued on the Calcutta Office of the said Pioneer Bank against cash payment made by the claimant at Suri." There is no case made there of any contract for transmission of the money. The case made is one of a simple purchase of Demand Drafts against cash payment and the status asserted is, merely that of the holder of such Demand Drafts, that is to say, the status of an ordinary creditor. It is true that the claimant adds that he is entitled-to priority in payment, but, speaking for myself, I do not find that the statement made as regards the nature of the Pioneer Bank''s liability under the drafts contains any basis for a preferential claim.

9. Indeed, even when the claimant seems to have begun to think of making a claim for being, ranked as a preferential creditor, it made the case that the issue of the drafts did not embody or reflect truthfully the real nature of the transaction. "I say," Provash Chandra Mitra swore in the affidavit affirmed on 11-12-1951, "that the issue of the said drafts were contrary to the express instructions of the claimant. The said drafts were purported to be in discharge of the liability of the said Bank as such trustee. I say that the demand drafts were never accepted by the claimant as discharge of the liability of the said Bank as such trustee."

10. It would, therefore, seem that the case, now made by the appellant bank, was that if the Demand Drafts were to be taken at their face value, there could be no trust surviving after they had been issued, because they purported to be simple bankers drafts issued in exchange for cash and closing the transaction at the end where the money was paid and the drafts handed over in exchange. Whatever liability the Pioneer Bank had incurred by accepting the payment from the appellant had been, according to the affidavit, sought to be discharged by the issue of the drafts and it would have been discharged, if the claimant had accepted them as an acquittance of the liability of the Pioneer Bank as the trustee. They were, however, not accepted as discharging that liability and, therefore, the character of a trustee continued to attach to the Pioneer Bank.

11. It is not quite clear to my mind what Provash Chandra Mitra meant by saying that the claimant had never accepted the drafts. They were drawn in his favour and it is not contended that the appellant bank did not intend them to be so made out. Delivery of them was also taken by Provash Chandra Mitra who certainly intended to present them at the Calcutta Branch of the Pioneer Bank for payment or to endorse them in favour of someone else who would present them and demand the money payable. If Provash Chandra Mitra thought that the drafts contradicted the real contract and that by the issue of such drafts the real instructions given to the bank were not being carried out, it is impossible to see why he took delivery of the drafts at all.

12. Be that as it may, the case that the amount of the drafts was paid to the

Pioneer Bank for the purpose of its transmission to Calcutta rests solely on the affidavit of Provash Chandra Mitra. Even he does not say that a Proposal for the transmission of the money was made to the bank and that the method of carrying out the transmission by means of the issue of Demand Drafts was mutually agreed to. If there had been evidence to show that the appellant bank had proposed to the Pioneer Bank at Suri that it should lend its services for the transmission of the amount concerned to Calcutta & that thereafter it was agreed that instead of the Bank sending telegraphic instructions to the Calcutta Branch for consideration received in cash at Suri or sending a letter of advice or opening a letter of credit, the issue of Demand Drafts, payable on demand by the Calcutta Branch to the order of Provash Chandra Mitra, would be a more convenient alternative and that the drafts had been issued in pursuance of such an agreement, there might be a basis for contending that there had been an entrustment of the money for a specific purpose. Nothing whatever was produced to show that any such agreement took place between the bank and the appellant and, indeed, as I have pointed out, Provash Chandra Mitra does not even say in his affidavit that the Pioneer Bank knew of the purpose for which the drafts were being purchased. It is no doubt stated that the money was paid to the bank for the specific purpose of transmission to Calcutta for payment to Provash Chandra Mitra, but it was clearly possible to have that purpose served by purchasing Demand Drafts at Suri which would be payable on demand at the Calcutta Branch of the Pioneer Bank and doing so without disclosing anything to the bank at Suri of the intention to transmit the money or the necessity of such transmission. Anyone wishing to take money from one place to another can choose the more convenient and less risky method of buying some Demand Drafts payable at the other place to which he wants to carry the money and it is not necessary for him to apprise the issuing bank of such intention or any intention of any kind at all. In my view, there were no materials at all before the learned Judge and there are none before us from which it is possible to conclude that there was an agreement between the appellant and the Pioneer Bank for the transmission of the money to Calcutta and that the Demand Drafts were issued in pursuance of such an agreement.

13. In the case of In re Noakhali Union Bank Ltd. 54 Gal WN 744 (A) Sinha, J., observed that even assuming it to be possible for a person who secured a draft from a banker to agree that the money represented by the draft would be paid to a specified person or be spent in a specified manner, it would require very strong evidence to prove such an agreement. The learned Judge proceeded to add that where a claim had been made before the Official Liquidators upon the basis of a draft, the claimant was to be treated only as an ordinary creditor and that a mere statement in an affidavit filed in Court that the money had been paid for being transmitted to another place and for being paid to a specified person would not suffice to establish that the holder was a preferential creditor. Better evidence, the learned Judge observed finally, would have to be produced. With that view, I entirely! agree. In the present case, the only evidence we have is the

statement in the affidavit of Provash Chandra Mitra and even that statement is inadequate for making out a contract of entrustment. I am, therefore, clearly of opinion that no materials whatever were placed either before the Official Liquidator or before the learned Judge which could be sufficient to make out the special contract of entrustment put forward by the appellant bank.

14. The above is sufficient for the disposal of the appeal. I may, however, add that, as observed by S. B. Sinha, J., in the case to which I have already referred, it is hardly possible to make out a case of entrustment for the purpose of payment to a specified person when the "draft concerned is one which can be negotiated. Being a negotiable instrument, it can be; negotiated in favour of any person and if a person who pays money to a bank, accepts a draft issued in that form, it is difficult two see how it can be said that there was an agreement to the effect that the money represented by the draft would be carried to a particular place to be paid to any particular party. The drafts in the present case are not simply made payable to Provash Chandra Mitra, nor are they payable to Provash Chandra Mitra or order. They are payable to the order of Provash Chandra Mitra. I agree entirely with S. B. Sinha, J., that the issue and acceptance of such drafts against payment in I cash is inconsistent with an agreement that the money covered by the draft should be paid to a specific person and it cannot possibly be said that, in such a case, there is any specified appropriation of the funds in the hands of the drawee for meeting the specific demands of the holder.

15. Before the drafts could be presented and cashed, the Pioneer Bank had stopped payment and gone into liquidation. On the facts proved, as I read them, there was no entrustment at all for transmission of the money to Provash Chandra Mitra at Calcutta which Banerjee, J. seems to have found, but simply a purchase of a number of Demand Drafts against cash payment, it might be with the intention, on the part of the appellant bank, of so arranging its affairs that the money would be available to it in Calcutta for application to a specific purpose. But there is nothing whatever to show that, in any such arrangement, the Pioneer Bank at Suri joined. The position of the appellant bank in the liquidation is, therefore, only that of a holder of certain Demand Drafts, which means that it is entitled to rank only as an ordinary creditor and no higher.

16. In the course of the argument, reference was made to a number of decided cases. To one of them I have already referred. The other cases cited were In re: Calcutta Commercial Bank Ltd. 54 Cal WN 747 (B). The First National Bank Ltd. Vs. Pioneer Commercial Bank, ; In Re: Calcutta National Bank Ltd., Ex parte: Daruwala Brothers and Others, and In the matter of the New Bank of India Ltd, Amritsar AIR 1949 EP 373 (E). Except the first and the last case, the cases cited deal with the question of a bank''s agency in a particular form which is not relevant here. They are concerned with the entrustment of bills to a bank for the purpose of collection and remittance of the amounts collected and they discuss up to what point of time the agency, which is obvious in such cases, subsists and by what acts on the part of the bank it is terminated. No such question arises

here. I do not, therefore, consider it necessary to enter into a discussion of the cases cited at the Bar.

17. For the reasons given above, this appeal fails and is dismissed with costs.

18. Certified for two Counsel in the sense that the Liquidator will be entitled to retain, as between attorney and client, out of the assets of the company in his hands the fees for two Counsel, but the certificate will not operate as certificate as against the appellant.

Sarkar, J.

19. I agree.