

(1987) 07 CAL CK 0021
In the Calcutta High Court
Case No : Appeal No. 550 of 1977

Daga Films

APPELLANT

Vs

Lotus Productions and Others

RESPONDENT

Date of Decision : 27-07-1987

Acts Referred:

Transfer of Property Act, 1882 — Section 130

Citation : AIR 1988 Cal 280

Hon'ble Judges : Satya Brata Mitra, J; Bimal Chandra Basak, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Basak, J.—This appeal is directed against a judgment and decree dated 4th of July 1977 whereby the learned Judge dismissed the claim of the plaintiff and passed decree in favour of the defendant No. 2 on the basis of the counter-claim of the defendant.

2. The short facts of this case, which are relevant for the purpose of this appeal herein, are as follows : --

3. There was a distributorship agreement between the Plaintiff and the defendant No. 1 on 18th Mar. 1964 pursuant to which a sum of Rs. 1,30,000/- as minimum guarantee was to be paid by way of certain instalments by the plaintiff to the defendant No. 1. The plaintiff was also to spend Rs. 40,000/- on publicity. The plaintiff paid to the defendant No. 1 four instalments aggregating Rs. 60,000/-. there were some modifications of the agreement thereafter. On 17th Oct. 1969 there was a letter from the defendant No. 1 to the plaintiff recording an agreement to pay Rs. 1,95,000/- instead of Rs. 1,30,000/- and the balance of Rs. 1,35,000/- was to be paid against delivery of 12 prints from Ramnod Research Laboratories. In Mar. 1970 there was an assignment of all rights and interest of the defendant No. 1 in favour of the defendant No. 2 which was recorded by a letter dated 12th of Mar. 1970 and this position is not disputed before us. There

was a letter of 7th April 1970 which, having regard to the contention raised herein, we set out herein-below : --

"Re : Delivery of prints of the picture "JUARI" for the circuit of Bengal excluding Bihar and Nepal.

With reference to your letter dated, it has been agreed upon irrevocably between ourselves that I will give you delivery of 12 (twelve) Brand-New Prints and 8(eight) loan prints as requested in your said letter. That you will pay to Messrs. Famous Cine Laboratories & Studios (P) Ltd. Mahalaxmi, Bombay on my account under your contract with M/s. Lotus Productions a sum of Rs. 90,000/- against delivery of 12 brand-new prints and the balance amount of Rs. 40,000/- you will ay me as follows : --

Rs. 5,000/- on or before 27-4-70 by Demand draft in my favour

Rs. 5,000/- do 27-5-70 do do

Rs. 10,000/- do 27-6-70 do do

Rs. 10,000/- do 27-7-70 do do

Rs. 10,000/- do 27-8-70 do do

I have agreed to indemnify you from any claim or demand or action whatsoever arising out of or in respect of or touching my delivery to you of the prints and publicities of the above picture as also the deferred payment of the above amount of Rs. 40,000/-.

Thanking you,"

4. There was a further agreement in April, 1970 that the plaintiff would pay Rs. 60,000/- in full and final settlement of all accounts provided that the balance 8 prints were brand new prints. On 14th of April, 1970 the plaintiff paid Rs. 60,000/- to Famous Cine and got delivery of balance 8 prints. Thereafter in July, 1970 this suit was filed by the plaintiff against the defendants praying for (a) declaration that Agreement dated 7th April, 1970 was void; (b) injunction from enforcing the agreement; (c) decree for Rs. 1,00,000/-as damages;

5. There is a written statement filed by the defendant No. 2 making a counter claim of Rs. 70,000/-. The suit was heard and by a judgment and decree dated 4th July, 1970 the plaintiff's claim was dismissed and there was a decree for Rs. 70,000/- in favour of the defendant No. 2. There were various documents apart from the depositions of the father of the plaintiffs partners on commission, that is, Bairo Bux Daga, Nirmal K. Sarkar, sole proprietor of the defendant No. 1 and Dharmdas N. Mehta, the defendant No. 2.

6. At the time of the argument on behalf of the Plaintiff it was stated that the plaintiff did not press his claim in the plaint, but most vehemently opposed the defendant No. 2's claim as made out in the written statement. The main defence was that the defendant No. 2 has irrevocably assigned his right to M/s. Famous

Cine Laboratories and Studios Pvt. Ltd. to the extent of Rs. 90,000/- and as such no decree could be passed in favour of the defendant No. 2 for the balance sum of Rs. 30,000/- as the sum of Rs. 60,000/- has already been paid by the plaintiff to the said Famous Cine Laboratories and Studios Ltd. In this context, the aforesaid letter dated 7th April, 1970 was relied upon.

7. The learned Judge held that there was no assignment in favour of the Famous Cine Laboratories and Studios Ltd. and there was no such pleading and no such case made out by Mr. Daga in his examination on commission. Accordingly, the learned Judge dismissed the plaintiffs claim in the suit and passed a decree for the sum of Rs. 70,000/- in favour of the defendant No. 2 together with interim and further interest @6% and costs against the plaintiff. Being aggrieved by the same, this appeal has been preferred.

8. Mr. Gupta, learned Advocate appearing in support of this appeal, has very fairly submitted that his case rested on the letter of 7th April, 1970 quoted above. He relied on the expression "irrevocable" used therein and submits that in this case there has been assignment in favour of M/s. Famous Cine Laboratories and Studios Ltd. and, that therefore, the learned Judge was not right in passing such a decree in favour of the defendant No. 2. In support of his contention Mr. Gupta has relied on a decision of the Division Bench of this Court in the case of Prokash Chandra Kishenlal v. Kays Construction Co. reported in AIR 1962 Cal 624.

9. We are of the opinion that the learned Judge was right in "deciding the matter and passing a decree in favour of the defendant on the ground as he did. The expression "irrevocable" is no doubt there, but that, in our opinion, does not change the nature of the letter. It was pointed out in the case cited by Mr. Gupta himself that "a pay order must be distinguished from an assignment. A pay order gives the payee no interest in the fund and the liability of the debtor is still to the creditor and not to payee. But an instrument though in form a pay order may amount to an assignment and may pass the interest in the fund to the payee. Each instrument must be construed in the light of its own language and in the light of the attendant circumstances". In that case endorsements on the bill were to the following effect :

"Please make the payment of this bill to M/s. Parkash Chand Kishan Lal 35, Cross Street Calcutta. It may please be treated as irrevocable."

10. The learned Judges of the Division Bench in Prokash Chandra Kishenlal Vs. Kays Constructions Co. and Another, distinguished the case of Kisen Gopal Bogree Vs. L.J. Bavin, where the Court had occasion to deal with the following endorsement on bill : --

"Messrs. Kilburn and Co. Kindly remit to Babu Kissen Gopal Bogree who will collect on our behalf."

The Division Bench in Prokash Chandra Kishenlal's case observed in this context

that the case of Kissen Gopal Bogree was decided on the basis that "this endorsement was a revocable pay order and did not amount to an assignment of the debt. While agreeing with this decision, Sanderson C.J., pointed out that the endorsement meant that Kissen Gopal Bogree was not to collect the money on his own behalf but was to collect it on behalf of the original creditor. In that context it was recorded that the wording of the endorsement in question before them was materially different. By the endorsement in that case the original creditor did not direct the debtor to pay the amount of the debt to the plaintiff on behalf of the original creditor. There was an unconditional order by the original creditor to the debtor to pay the amount of the bill to the plaintiff coupled with the direction that "the order would be irrevocable".

11. We rely on the observations made in Prokash Chandra Kissen Lal's case. In the present case it is not a case of assignment irrespective of the use of the expression "irrevocable". From the endorsement of the present case it is quite clear that such amount was to be collected by Famous Cine Laboratories on behalf of the defendant No. 2. Therefore, the original creditor still remains and there has been no assignment. Further it is to be pointed out that though in the case of such counter claim in the written statement the plaintiff had the right to file an additional written statement to take any such point, no such defence was taken by way of filing of any additional written statement. The learned Judge further rightly pointed out that Mr. Daga in his evidence did not make out any such case of assignment. It was merely an argument from the Bar.

12. For the aforesaid reason, we are of the opinion that the learned Judge was right in passing a decree in favour of the defendant No. 2. Accordingly, we confirm the judgment of the learned trial Judge and dismiss the appeal.

13. We are informed that pursuant to the direction of the Appeal Court in the appeal the appellants had deposited a certain sum with their Advocate-on-record and from the letter dated 11th Dec. 1986 of the Advocate-on-record of the appellants produced before us it appears that a sum of Rs. 39,022.27p is lying in fixed deposit with the State Bank of India which was due to mature on 23rd Dec. 1986. We direct the Advocate-on-record of the appellants to hand over the money lying in that fixed deposit account with accrued interest to the defendant No. 2 in pro tanto satisfaction of its claim. In the case that such deposit has been renewed beyond Dec. 1986 necessary step be taken by the Advocate-on-record for the appellants so that the money now lying with the bank may be immediately withdrawn and paid to the Advocate-on-record for the defendant No. 2.

14. So far as the further bank guarantee furnished pursuant to the order of the Appeal Court is concerned, the Registrar, Original Side, is directed to encash the said bank guarantee immediately and hand over the amount or so much of the amount as may be due to the defendant No. 2 pursuant to the said decree.

15. There will be no order as to costs so far as this appeal is concerned.

16. All parties concerned including the bank to act on a signed copy of the operative portion of this judgment.

Mitra, J.

I agree.