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(1996) 07 MP CK 0101

In the Madhya Pradesh High Court

Case No : First Appeal No. 43 of 1986

Dena Bank APPELLANT

Vs

New Malwa Cotton Corpn. and Others RESPONDENT

Date of Decision : 31-07-1996

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (1997) 1 JLJ 276

Hon'ble Judges : Subhash Balwant Sakrikar, J;Asha Ram Tiwari, J

Bench : Division Bench

Advocate : J.W. Mahajan, for the Appellant; G.M. Chafekar, S.S. Samvatsar and D.D. Vyas for Respondent Nos. 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sakrikar, J.—Appellant/Plaintiff Bank has directed this appeal against the judgment and decree dated 20th March, 86 passed by III Additional Judge to the Distt. Judge, Indore in Civil Suit No. 18/85 (Old No. 65B/84) thereby the suit filed by the Appellant was decreed only against Respondent No. 5 and dismissed against Respondent No. 1 to 4.

2. The facts of the case lie in narrow compass. That Respondents No. 2 and 3 are the Partners of Respondent No. 1 and are dealing with cotton business in the name of Respondent No. 1. Respondent No. 4 stood surety for different loan facilities given to Respondent No. 1 by the Plaintiff/Bank. Respondent No. 1 obtained certain facilities i.e. pledge, cash credit, bill purchase etc. According to the Plaintiff''s case, under the bill purchase loan facility given to Respondent No. 1, Respondent No. 1 used to send goods to its customers and used to endorse the bill, motor transport receipts and Hundi in favour of the Appellant/Bank. Respondents used to obtain the amount involved in the aforesaid hundis and bill from the Bank. The amount used to be debited in the name of Respondent No. 1, although the bill used to be endorsed in favour of the Bank, still the liability used to remain with Respondents even though the goods are not taken by the

customers or otherwise lost or destroyed. If the goods are taken by the customers and the amount is deposited then the amount used to be deposited in the account of Respondent No. 1. Respondents No. 2 and 3 executed certain traditional documents in favour of the Bank with regard to the loan facilities including the bill purchase facility extended to the Respondent No. 1. Respondent No. 4 who stood surety also executed guarantee deed in favour of the Bank. The rate of interest agreed as Rs. 10.40% p.a. above RBI rate and it was fixed Rs. 19.40% p.a.

3. Respondent No. 1, through Respondent No. 5 who is in the list of approved transporters of the Appellant/Bank sent some consignments to its customers Mandwi Spinning Mills vide their letters dated 26.3.83, 28.3.83 amounting to Rs. 97,729.89 and Rs. 69,909.17. Hundis and Bilties in respect of these consignments were submitted to the Plaintiff/Bank for collection. When the Plaintiff/Bank did not get collection of hundis and bills and then Plaintiff/Bank enquired from transporters Respondent No. 5, who could not satisfy the Bank. Respondent No. 5 vide its letter dated 13.1.84 (Exh. P/23) intimated the Bank that the goods will be rebooked within seven days and sent to Indore. In the alternative, he also intimated the Plaintiff/Bank that he will pay the entire amount of bills in question with all expenses. Since Respondent No. 5 did not handover goods and did not pay the costs of the goods, the Bank served a notice on Respondent No. 1 and filed a suit against all the Respondents for the recovery of the amount of bills received by Respondent No. 1, alongwith interest of Rs. 42,821/- total for Rs. 2,10,460.50.

4. Respondent No. 5, remained ex-parte while Respondents No. 1 to 4 have denied entire claims of the Plaintiff/Bank. According to Respondents No. 1 to 4, under the bill purchase agreement, the goods used to be dispatched under the supervision of the Bank Authority but through the approved transporters of the Bank by making the endorsement of bills and bundls in favour of the Bank. The Plaintiff Bank becomes the owner of the goods in question, if the approved transporter of the Bank fails to deliver the goods to the customers or to the Bank, Respondent No. 1 to 3 cannot be held liable for the suit amount. According to them Respondent No. 5, the transporter fails to send back the goods in question, only transporter is liable to pay the amount involved in the transaction in question. Learned trial Court framed issues on the pleadings of the parties and on the basis of the evidence led by the parties, the trial Court decreed the Plaintiff s claims only against Respondent No. 5 whereas the Plaintiff''s suit was dismissed against Respondents No. 1 to 4. Aggrieved by the judgment and decree dismissing the Plaintiff''s suit against Respondents No. 1 to 4 the Plaintiff/ Bank has filed this appeal u/s 96 of the Code of Civil Procedure.

5. We have heard Shri J.W. Mahajan learned Counsel for the Appellant and Shri G.M. Chafekar learned Sr. counsel with Shri Samvatsar and Shri J.D. Vyas learned Counsel for Respondents No. 1 to 4. None appeared for Respondents No. 5.

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6. Learned Counsel for the Appellant contended that in the present transaction, Plaintiff/Bank simply works like an agent and gets the amount collected from the customers to whom the goods are despatched. For this facility, Bank charges commission. He also contended that the Bank neither becomes the owner of goods nor purchaser of the goods. Plaintiff/Bank is not liable even if the goods are lost in transit and therefore, Respondents No. 1 to 3 and Respondent No. 4 as guarantor are liable to pay the amount of both bills given in advance before collection of the amount of hundi and bills alongwith Respondent No. 5.

7. In oppugnation, learned Counsel for the Respondents No. 1 to 4, contended that once the bills, hundi or transporter''s receipts are given to the Plaintiff Bank after due endorsement, and the amount of bill and hundi is credited in the consigner''s account, the Bank becomes purchaser of the goods in question for full value. The Bank cannot reverse the credit entries without returning the documents to the customers alongwith the goods which were booked through approved transporter. In the present case, the Bank has not returned the goods which were booked by the Respondents to its customers at Mandwi through Respondent No. 5 and therefore, the Plaintiff Bank cannot recover the amount which is credited in his account, as a result of purchase of hundi and bilty of the goods in question. Learned Counsel relied on Division Bench decision of this Court reported in 1982 JLJ 633 : 1982 MPLJ 402; Dena Bank Burhanpur v. M.P. Textile Corporation Bhopal.

8. During the course of arguments, learned Counsel for the parties consented that decision of this appeal mainly rests on the findings on issue No. 6. If the findings on Issue No. 6 is reversed then Respondents No. 1 to 4 shall also be liable to pay the suit amount alongwith Respondent No. 5 to the Plaintiff/Bank. Therefore, only question arises for decision in this appeal is that whether on facts and evidence on record of the case, the Plaintiff/Bank becomes the purchaser of the goods in question or by endorsement bills and hundis in favour of the Plaintiff/Bank it merely becomes an agent for collection of the amount mentioned in the bill and hundis?

9. In the case of Dena Bank, Burhanpur (supra) the Division Bench of this Court has held as under:

If Bills and other title documents presented by their drawer are accepted by a banker with endorsement in its favour and the same are immediately discounted by the banker without waiting for their collection by giving full credit for the entire amount of the documents as presented, the banker itself becomes a purchaser and the holder thereof for full value. Whether the bill is taken from a customer for collection or as security or discounted for him is a question of fact.

In view of the above, the question of acceptance of bills and other title documents, presented by the customers to the Bank with endorsement, the Bank becomes the purchaser of the goods, owner or acts merely as an agent for collection of the amount mentioned in the bills and Hundies is a question of fact

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which has to be decided on the basis of evidence on record of a particular case.

10. In the present case, both the parties led oral and documentary evidence in connection with their claims. DW 1, Ghisalal examined on behalf of Respondents No. 1 to 4 in his statement admitted his signatures and execution of the documents filed on behalf of the Plaintiff Bank.

11. PW 1, Suresh Shankar, the then Branch Manager of the Plaintiff Bank in his statement in para 2 has stated that bill purchase facility extended to the customer, the customer submits the bill, invoice, hundi and insurance cover note to the Bank and receives from the Bank an advance amount equivalent to the bills submitted to the Bank for its collection. The separate account is maintained by the Bank with regard to the bill purchase facility given to the customers. The advance amount received by the customer is debited in his account and when the amount of the bills received from the purchaser through collecting Bank by transferring the bills and other documents to the purchaser and received by drawee bank then the same amount was credited in the bill purchase account of the customer. In para 6 of his statement, he specifically stated that Respondent No. 1 has submitted two disputed bills for collection of the amount from the purchaser party (Mandwi Spinning Mills, Mandwi). On submitting the bills, the advance amount was debited in the account of the Respondent No. 1 and the bills were sent for collection through State Bank of India Branch, Mandwi. In para 12 of the cross-examination, he stated that in bill purchase transaction, the Bank received only documents and the Bank has nothing to do with the goods concerning with the bills which were given to the Bank for collection. He also stated that they do not inspect or verify the goods concerning with the bills submitted to the Bank. In para 13, PW 1 Suresh Shanker has also stated that the Bank never takes the responsibility with regard to the goods sent through transporter.

12. The only witness DW 1, Ghisalal examined on behalf of the Defendant/ Respondents, in para 12 of his cross-examination, has admitted that in a bill purchase transaction, the Bank do not purchase the goods sent to the party, through transporter. The Bank only helps its customers in the collection of the amount of bills through which the goods were sent to other party.

13. On considering the documents filed on behalf of the Plaintiff/Bank, which bears the signatures of Respondents No. 2 and 3, it emerged that in a bill purchase transaction, the Plaintiff/Bank practically does not purchase the goods and does not become the owner of the goods sent by the customer to the other party but the Bank only acts as a collecting agent for its customers and the Bank does not take any liability for the loss or delay of the goods in transmission. In Exh. P/4, which is a letter of hypothecation executed by Respondents No. 2 and 3 as partners of Respondent No. 1, in para 12 of this letter Respondents have agreed as under:

The Bank shall not be liable or responsible for any act, neglect, default, failure or

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insolvency of any Banker, CorRespondent, Agent or Sub-agent or for loss or delay in transmission.

14. In Exh. P/19, which is a covering letter submitted to the Bank alongwith one of the disputed bills also mentions that the bills are sent for collection through State Bank of India at the entire risk and responsibility of the Respondents. Relevant portion of the letter, Exh. P/19 reads as under:

Please have the bills collected through State Bank of India at our entire risk and responsibility. We also agree that in the event of the Bank through whom the bill is to be collected ceasing to function, suspending payment or going into liquidation, or in the event of your not being able to realise proceeds of the bills herewith tendered from the said Bank due to any cause whatsoever, we ourselves shall be responsible for the same, and you will not be responsible in any way whatsoever.

15. On perusal of letter, Exh. P/26, which was sent to the Plaintiff/Bank on behalf of Respondent No. 1, it emerged that Respondents have agreed to deposit the amount which was received by them by way of advance with regard to disputed bills amounting to Rs. 1,67,000/-. In letter Exh. D/1, it was admitted on behalf of Respondents that the goods pertaining to bill No. 832 dated 26.3.83 for Rs. 97,929.83 have been delivered by the transporter to the drawee (Mandwi Spinning Mills Ltd., Mandwi) and the payment of the same will soon be remitted which may be adjusted against bill No. 838 in the Respondents'' account.

16. Learned Counsel for the Respondents argued that as per plaint allegations the bill purchase loan facility was extended to Respondent No. 1 clearly indicates that in the alleged transaction, the Plaintiff/Bank on receiving the bills and other documents duly endorsed in favour of the bank thereby becomes the purchaser of the goods sent to other party under the bill and motor transport receipts.

17. In view of the documents and the evidence on record, the contention of the learned Counsel for the Respondents cannot be accepted. From the oral evidence as well as from the documentary evidence on record, it cannot be said that only by receiving the bills, Hundi and motor transport receipts duly endorsed in the name of the Plaintiff/Bank, the Plaintiff/Bank had become the purchaser, owner of the goods in question. In our view, from the evidence on record and the nature of transaction, the Plaintiff/Bank can be considered only a collecting agent for the collection of the amount with regard to the bills submitted to it by the customers.

18. In view of the evidence on record, in our considered opinion, the finding of the trial Court on issue No. 6, is not correct and deserves reversal. Accordingly, we set aside the finding of the trial Court on issue No. 5 and decide issue No. 6 in the negative in favour of the Plaintiff/bank.

19. As a result of the foregoing discussion, in the present case, in view of the transaction having taken place between Plaintiff/Bank and Respondent No. 1, the

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Plaintiff/Bank never become the purchaser/owner of the goods in question with regard to the disputed bills and as such in absence of receiving the amount of the bills due to any reason, the Respondents No. 1 to 4 cannot be escaped from the liability of payment of the amount received by them by way of advance.

20. Consequently, this appeal is allowed. The judgment and decree of the trial Court modified and the Respondents No. 1 to 4 alongwith Respondent No. 5 are held liable jointly and severally to pay decretal amount to the Plaintiff/Bank. Accordingly, Respondents No. 1 to 4 are also directed to pay decretal amount to the Plaintiff/bank alongwith the costs as ordered by the trial Court. Respondents No. 1 to 4 shall pay the costs of this appeal to the Appellant and bear their own costs, as per schedule, if certified. Decree be drawn up accordingly.

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