
(1981) 12 MP CK 0009
In the Madhya Pradesh High Court
Case No : First Appeal No. 172 of 1979

Dena Bank

APPELLANT

Vs

The Madhya Pradesh National Textiles Corporation Ltd.

RESPONDENT

Date of Decision : 16-12-1981

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 50

Citation : AIR 1982 MP 85 : (1982) JLJ 633 : (1982) 27 MPLJ 402

Hon'ble Judges : G.P. Singh, C.J.; Faizanuddin, J

Bench : Division Bench

Advocate : P.K. Munshi, for the Appellant; M. Chaphekar and A.K. Khaskalam, for the Respondent

Final Decision : Dismissed

Judgement

Faizanuddin, J.

This is a defendant's appeal, directed against the judgment and decree dated 8th May 1979, passed by the Additional District Judge, Burhanpur, in Civil Suit No. 1-B of 1972, whereby the plaintiff's suit has been decreed.

The undisputed facts between the parties are that Tapti Mill. Burhanpur was a limited company, having its registered office at Burhanpur, which was declared a Relief Undertaking Mill, under Industrial Development Regulation Act, 1951, and its management vested in the Central Government and was being managed by the Authorised Controller. The defendant Bank is one of the Scheduled Banks which carries On banking business, having its registered office at Harriman Circle, Fort, Bombay, and a branch at Lal Bagh, Burhanpur, besides other places. It has also not been disputed that the plaintiff company transacted business for sale of 43 bales of cloth, manufactured by plaintiff mill to one Bombay Textiles Agency, Sewapur, purnia, Bihar. The consignment of 43 bales of cloth was booked on various dates in Jan. and Feb. 1972 as detailed in plaint para 4. by road, through the carriers Messrs. Road Transport Company against respective motor

transport receipts. The 24 bills of the said consignments, Motor Transport Receipts along with demand drafts were presented to the defendant Bank duly endorsed in favour of the defendant Bank,

The plaintiff company brought the suit against the defendant Bank (hereinafter referred to as the Bank) for a claim of Rs. 81,075/50 towards cost of Bills and Hundies and interest, on the ground inter alia that the Bank in usual course of its business purchased bills for collection and credited the amount of such bills in the account of its customers and received Hundi-builty (Transport Receipts) duly endorsed in its favour for presentation to the concerned party to secure its collection. The plaintiff company was one of its such customers who besides other accounts had a "Bill purchase account" with the Bank. The plaintiff averred that a representative of Bombay Textile Agency, Semapur, District Purnia, Bihar had purchased 43 bales of doth from the plaintiff, worth Rs. 77,975-50 p. and instructed to send the relevant documents for collection of price through any Bank. Accordingly, the plaintiff company consigned the said goods on various dates in Jan. and Feb. 1972 as detailed in plaint para No. 4, through the carriers Messrs. Road Transport Company (or delivery against motor transport receipts along with the demand drafts (Hundies) covering the price of the goods consigned duly endorsed in favour of the defendant Bank on various dates when the consignments were despatched in Jan. and Feb. 1972.

It has been further averred by the plaintiff company that as usual and as per practice of bill purchase facility, the defendant Bank purchased the said bills of the plaintiff company, worth Rs. 77,975-50 and accepted the aforesaid all the Hundies for the like amount drawn on Bombay Textiles Agency, Semapur, along with respective transport receipts duly endorsed in favour of the Bank and credited Rs. 77,975-50 to the account of the plaintiff company and took upon itself the responsibility of securing the said amount from the party concerned through any scheduled Bank and to reimburse to itself the price of the said bills purchased from the plaintiff company.

The plaintiff company pleaded that to Us surprise the defendant Bank by its letter dated 5th May 1972 (Ex. P-2) informed the plaintiff company that as the bills were long outstanding in their books against the plaintiff, and therefore the Bank was reversing the credit entry and debiting the amount of the said bills. The plaintiff company by its letter dated 10th May 1972 (Ex. P-5) protested against it by contending that if the Bank had by its negligence or otherwise wrongly delivered the documents by reason of which the goods have been lost, the plaintiff is entitled for payment of the amounts covered by the bills purchased by the Bank and the Bank had no right to debit the price unless the relevant documents purchased by the Bank or the goods covered by them are returned back to the plaintiff company. In spite of this protest, the defendant Bank neither returned the relevant documents nor struck off the debit entry and hence the plaintiff brought this suit for recovery of the said amount with interest,

The defendant Bank contested the suit by contending that the Bank does not

purchase any bills or documents and no purchase as such is involved in any of the transactions. The Bank pleaded the usual practice followed by it in the ordinary course of its business in the matter of collection of bills accompanied with relevant documents like this. The Bank acts only as a collecting agent merely earning a commission and receive the usual handling charges. The documents are endorsed in favour of the Bank with a view to facilitate collection and also by way of security for the credit facility provided by crediting the amount to the customer's account in anticipation of collection. If the drawer gives specific instructions for collection of bills through a particular agency, the Bank proceeds to do so. But where no such instructions are given the Bank collects the bills through one of its own branches or any other Bank of its choice. When the bills and documents are received and accepted by the Bank for collection, the Bank's customers are required to fill and sign a printed application form (Annexure "A" and marked as Ex. P-9) in which the blank space is provided for noting the agency through which the bills are to be routed. But the blank space in the form being very short, is generally left vacant by the customers and the instructions for routing the documents through a particular agency are noted on the bill, and invoices which are treated sufficient and as part and parcel of the application form. If the amount is collected the same is credited in the "Bills Purchased Account" of the customer. But if the amount is not collected, the credit entry initially made in favour of the customer is reversed by debiting the same amount with interest in the current account of such a customer and such reverse entries are also made in case of undue delay in collection.

The defendant Bank, while admitting the receipt of bills of the goods accompanied by relative Transport receipts and demand drafts duly endorsed in its favour as payable to the defendant Bank or its order, denied the allegations that the Bank was purchaser of the said bills from the plaintiff company and took the plea that it was only a collecting agent for the plaintiff company according to its instructions and on the conditions appearing in the application form a specimen of which is Ex. P-9. The Bank also denied that the plaintiff instructed to send the documents through any Bank for collection of the price of 43 bales worth Rs. 77,975-50, and pleaded that the plaintiff instructed for collection of the bills through the "Canara Banking Corporation, Semapur Factory, Bihar." and accordingly, when the plaintiff handed over the 14 (24 ?) bills and the relevant documents to the defendant Bank with application in printed form, for the purposes of collection, the Bank was specifically instructed by the plaintiff company to send the bills and documents for presentation and collection to the Canara Banking Corporation. Semapur and the Bank Manager. Shri Chiman Lal Shah (D. W. 1) was also orally communicated the said instructions. Not only this, but the plaintiff company had also noted these instructions on the bills. The defendant Bank acting on the instructions so given, sent all the bills and documents for the 43 bales on six different dates by post under registered covers addressed to Canara Banking Corporation, Semapur, with necessary instructions for presenting the bills and delivery of documents duly endorsed after collection

to the drawee named in the bills, but no intimation as to collection of bills was received by the Bank within a reasonable time, and therefore, the Bank, on 12-4-1972, wrote to the Canara Banking Corporation, Semapur, making the necessary enquiry. But this letter was received back on 26-4-1972 with the remarks that the addressee had "left". The defendant Bank later on learnt that there was no such branch of the Canara Bank at semapur and that the registered covers were in fact delivered to one "Canara Banking" Corporation, Semapur, for whom one Ratanlal Agarwal signed as Manager and thus someone played fraud in receiving the documents as also in forging endorsement on the same and obtained the delivery of the 43 bales from the Carrier for which the Bank lodged a report with the police on 30-7-1972, but no action was taken.

In the aforementioned circumstances, the Bank pleaded justification in reversing the credit entry and contended that the plaintiff company was not entitled to the amount of the said bills. It also took the plea that the post office through which the documents were sent per registered post was not the agent of the defendant Bank but that of the plaintiff company. It has also been averred that it was a fraud committed by one Om Prakash and his Munim Mahadeo, and that Om Prakash, Mahadeo, Premchand and Ministry of Post and Telegraph Department were the necessary parties.

The learned trial court by its order dated 7-4-1975 held that no other party or persons except the defendant Bank were necessary parties to the suit. On consideration of the evidence on record, the learned trial court took the view that the defendant Bank was the purchaser of the bills in suit from the plaintiff company, worth Rs. 77,975-50, and therefore, liable for the same to the plaintiff. It also took the view that the plaintiff company was not bound to give any specific instructions for collection of the bills through any particular agency according to term No. 11 of the contract agreement Ex. P-10 and even if any instructions were given that the bills be presented for collection through Canara Banking Corporation, Semapur, the said instructions were only advisory, not binding upon the defendant Bank, and that unless the documents or the goods covered by the same were delivered back to the plaintiff company, the defendant Bank was not entitled to reverse the credit entry in the plaintiff's accounts. The learned trial court, therefore, decreed the plaintiff's suit for Rs. 77,075-50 as cost of the said documents and Rs. 1550/- as interest with effect from 1-3-1972 to 15-7-1975 and also further interest from the date of the institution of the suit till recovery at the rate of 6% per annum, against which this appeal has been directed by the defendant-Bank.

The learned counsel for the appellant Bank strenuously urged that the dealings between the plaintiff company and the Bank were purely of loan facilities in terms of subsisting contract between the plaintiff company and the defendant Bank and not as sale and purchase of the title documents, and therefore, claimed absolute immunity from any liability whatsoever on the basis of the terms of the application form. Ex. P-9 and the agreement Ex. P-10. It was contended that the

Bank had simply to charge commission and interest at an agreed rate and to realise handling charges in collecting the bills for the plaintiff company and the Bank had no freedom to sell the goods covered by the Transport receipts to any person and at a price of its own choice, and on the contrary the Bank had a right to reverse the credit entry if the documents were dishonoured and not retired by the drawee thereof, which are the factors against the concept of sale transactions as claimed by the plaintiff company. On these contentions, it was stressed that the defendant Bank was only a collecting agent for the plaintiff company and the credit given to the plaintiff after receiving the documents was by way of overdraft under the expectation that the documents will be honoured and retired by the drawee concerned. As against this, the learned counsel for the plaintiff/respondent contended that under the Banking business practice the defendant Bank was purchaser of the title documents, especially when the defendant Bank discounted the documents and gave credit of the amount of bills immediately after receiving the same and before the collection of amount from the drawee concerned.

Thus as seen above the main question centres round the controversy whether by accepting the relevant documents with endorsement in its favour and discounting the same by crediting the price thereof to the account of the plaintiff company immediately and before realising the same from the drawee concerned, the ownership in goods covered by the said documents passed on the defendant Bank and it became a purchaser for value of the said documents or it was simply a collecting agent for the plaintiff company on commission and other collecting charges.

aS regards the question of transfer of ownership by transfer of title documents under the Indian Contract Act. the position has been settled by the Supreme Court in *The Morvi Mercantile Bank Ltd. and Another Vs. Union of India (UOI)*, wherein it has been held that under the Indian law the transport receipts are equated with the goods covered by them for the purposes of constituting delivery of goods within the meaning of the Contract Act and that transport receipt is a document of title to the goods covered by it and the transfer of the said document for consideration effects a constructive delivery of goods also.

We shall now proceed to examine the questions as posed by the respective parties as stated in paragraphs Nos. 10 and 11 above. At page 374 of the *Banking Law and Practice in India*, by M. L. Tannan, 16th Edn. the precautions to be taken by a banker in discounting the bills have been discussed and at page 375 under the head note, "Documentary or other bills", it has been stated that the bankers need not make thorough inquiries about the credit of the parties in case of documentary bills to which documents of title of goods, such as railway receipts etc, are attached because in case of dishonour of such bills by the drawee, or in the event of any difficulty arising in connection with the realisation of the amount from the drawer, the goods can be sold and the chances of loss to the banker are minimised. It has been further stated that it must be

remembered that such bills should not be purchased from parties whom the banker does not know well as there are certain risks attached to the business.

It may also be noted that under the banking laws when the bills are handed over to the banker by his customer in order that the same be collected when due, and the proceeds be credited to the customer's account, then they are called, "Bills for collection". This term distinguishes from the term, "Bills negotiated" or "Bill discounted", which are bills for which the banker has given value at once, instead of waiting till the banker has actually received the proceeds of the bills when collected. Thus, in the case of the bills handed over to the banker by the customer for collection when due and to credit the amount in the account of the customer after the proceeds are actually collected, it is not a case of sale and purchase of negotiable instruments or documents of title relating to goods because these bills are merely handed over to the banker for collection and credit when received and the banker has no property in them. But the "Bills negotiated" or "Bills discounted" stand on a different footing by which the discounters is a holder for full value and gets absolute title over it. In this behalf a reference may be made to Sheldon's Practice and Law of Banking, Tenth Edition, at page 306, wherein the author has discussed that "to discount a bill" is to buy it, to become the transferee of it, by having it endorsed or transferred by delivery by the holder, giving him a price settled, either by agreement or by the current rate in the money market. It has been further stated that a discounter is a holder for full value and not a pledgee: he can deal and part with the bills as he likes, his title to the bill and to sue on it is absolute and covers the whole face value; he is in no sense a trustee for the previous holder as to any part of the bill or its proceeds and that the person who gets the bill discounted is a transferor if by indorsement there with all the liabilities of a indorser if a transferor by delivery, then with the liabilities attaching to that character. In either case, he parts with all rights, title and interests in the bill and its proceeds.

Here a reference to Section 50 of the Negotiable Instruments Act, 1881, may be made with advantage which runs as under :--

"Section 50. Effect of indorsement, The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument or to receive its contents for the indorser or for some other specified person."

A reading of the substantive part of Section 50 will go to show that the possession of the title instruments is a prima facie evidence that the holder of the same is the owner thereof and entitled to all the rights thereon and that the indorsement of a negotiable instrument followed by delivery of it, transfers to the indorsee the property therein. In the Halsbury's Laws of England, in paragraph 421 at page 226 (Vol. 2, Third Edition), the discounting of Bills has been discussed under the head note, "Bills taken as transferee". It has been stated

that a banker discounts a bill as opposed to taking it for collection or as security for advances, when he takes it definitely and at once as transferee for value and that it does not matter that the amount of the bill, less discount, is carried to current account as in the case of a customer that is the usual course, It has been further stated that where the transaction is really one of discounting, the banker is of course at liberty to deal with the bill as he pleases rediscounting or transferring it,

A somewhat similar question also came up for consideration before a Division Bench of this court in *The Commissioner of Income Tax, M. P. v. Laxmichand Muchhal*, Indore 1966 MP LJ 720, in which it was held that if a Bank, after purchasing or discounting an instrument from a customer, credits the customer with the amount of the instrument and allows him to draw against the amount as credited before the bill or instrument is cleared, then the bank would be collecting the money not for the customer but chiefly for itself. From the above discussion, it is clear that if the bills and the relevant documents presented by its drawer are accepted by a banker with endorsement in its favour and the same are immediately discounted by the banker without waiting for its collection, by giving full credit for the entire amount of the document, so presented, the banker itself becomes a purchaser and the holder thereof for full value. But at page 226 in paragraph 421 itself in the Halsbury's Laws, it has been stated that whether the bill is taken from a customer for collection or as security or discounted for him, is a question of fact. We shall, therefore, advert to the evidence in this behalf.

Chimanlal (D. W. 1) was the Manager of the defendant Bank at the relevant time. He deposed in para 6 of his deposition that after receiving the documents duly endorsed in favour of the Bank, the value thereof is credited to the account of the customer and if the customer so desired he may withdraw the said amount from his account. He also admitted that the amount so credited is the value of the goods covered by the bills and that after the transport receipts are presented to the Bank duly endorsed in its, favour, the Bank further indorses the same in favour of the collecting agent and that party alone will get the goods in whose favour the bank endorses the same. Almost the same facts are reiterated by the Accountant of the Bank, Madhusudan (D. W. 3), who went to the extent of admitting that the Bank purchases the Hundi-builty from customers and the value thereof is immediately credited to the account of the customer and if the customer so desires, he can withdraw the amount immediately. He also deposed that the amount so paid to the customers for purchase of bills, is recovered back only after returning the documents to the customer concerned. From this evidence, it is amply clear that the defendant Bank was not only a collecting agent of the documents presented to it by the plaintiff company but the documents on presentation were discounted by the Bank and the value was credited to the account of the plaintiff immediately without waiting for its collection from the drawee. These facts and circumstances clearly make out a case that the Bank was purchaser of title documents and it was holder thereof

for full value and therefore it was the responsibility of the Bank itself to collect the mount of the bills from the drawee to reimburse itself and if the drawee refused or the documents were dishonoured or the drawee could not be found, to present the documents back to the drawer and collect the value thereof either in cash or by reversing the credit entry by debiting the same amount in the plaintiff's account and not otherwise.

The defendant Bank claimed immunity on the basis of the terms printed in the application form, Ex. P-9. and the agreement, Ex. P-10, as well as on the basis of the instructions alleged to have been given by the plaintiff company to collect the bills through Canara Banking Corporation, Semapur. But on scrutiny of the evidence, the learned trial court found that the defendant Bank had failed to establish the same. We have also scrutinised the evidence and find that these conclusions are well founded and call for no interference. It may be seen that the application form, Ex. p-9 and the alleged agreement Ex. P-10, are only pro forma copies in which there are no signatures of either party. The originals thereof being in possession of the Bank, were not produced to prove the same, The evidence regarding the instructions alleged to have been given by the plaintiff for collection of the bills through a particular agency is neither satisfactory nor consistent. It is clear from the evidence of the defendant itself that the blank space in the application form, a copy of which is Ex. P-9, was left vacant by the plaintiff and it was not specified as to from which agency the bills had to be collected and it was thus left to the discretion of the Bank to select the agency of its own choice. The evidence of the Bank Manager, Chimanlal (D. W. 1) and Accountant Madhusudan (D. W. 3) that the instructions for collection through a particular agency were written in the Hundies given by the plaintiff could not be accepted for the simple reason that no such instructions are noted in the carbon copies of Hundies produced by the plaintiff. In the absence of any satisfactory and convincing evidence in this behalf, it has to be assumed that the defendant Bank adopted its own mode and choice of agency in sending the documents through the post office by registered post which were delivered to some wrong and unknown person who took the delivery of the goods and committed fraud. In these circumstances, the defendant Bank was not entitled to reverse the credit entry, and more so, without returning back the documents to the drawer.

In the result, the appeal fails and is hereby dismissed with costs. Counsel's fee, Rs. 600/-, if certified.