
(1965) 07 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 323 of 1961

D.S. Purewal

APPELLANT

Vs

Punjab Mercantile Bank Ltd. (In Liquidation) and Another

RESPONDENT

Date of Decision : 27-07-1965

Acts Referred:

Banking Companies Act, 1949 — Section 45D
Contract Act, 1872 — Section 230

Citation : (1966) 36 CompCas 221

Hon'ble Judges : R.P. Khosla, J; Mehar Singh, J

Bench : Division Bench

Advocate : H.R. Sodhi and A.L. Bahri, for the Appellant; U.D. Guar and K.S. Keer for Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

R.P. Khosla, J.—In this appeal under Clause 10 of the Letters Patent, judgment dated 6th of October, 1961, of Tek Chand J. in Civil Original No. 55 of 1956 is impugned.

2. To appreciate the controversy it is necessary to set out a few facts.

3. The Punjab Mercantile Bank Limited (in liquidation) lodged the petition giving rise to the instant appeal, u/s 45D of the Banking Companies Act claiming a sum of Rs. 43,191-11-0. D.S. Purewal, the present appellant, and the Paramount Marketing Company through its two partners, Gian Chand Joshi and R.S. Phoolka, were impleaded as respondents.

The averments as respects the appellant's liability were that the Punjab Mercantile Bank Limited (in liquidation), hereafter to be referred as bank, had advanced monies from time to time to the Paramount Marketing Company (hereafter to be referred as the corporation) and was in that behalf carrying for the corporation a cash credit account. In realization of the advances made, iron scrap, property of the corporation, was despatched by the bank per railway

receipts endorsed to the appellant, D.S. Purewal, at Calcutta for him to sell the same in the market. The amounts realised were to be remitted to the bank to be deposited into the said credit account to meet the corporation's obligations to the bank. Purewal continued selling the scrap on delivery per railway receipts and remitted some amounts as contemplated, but failed to make good the outstandings totalling Rs. 25,000. The claim against the corporation was to the tune of Rs. 43,191-11-0, the amount due on account. The learned single judge on the pleas raised settled the three following issues :

"1. Whether any amount is due from D.S. Purewal, respondent No. 2, to the bank ?

2. Whether respondent No. 2 has paid the price of the scrap iron and to whom and what is the effect of payment ?

3. How much money is due to the bank and from which of the two respondents ?

4. On the evidence led and contentions raised the learned single judge concluded on the said issues in these terms :

" From the above discussion, I am satisfied that D.S. Purewal owes to the bank a, sum of Rs. 25,000 and I would answer the issue accordingly.

On the second issue, I hold that it has not been proved that D.S. Purewal had paid the price of the scrap iron to Gian Chand Joshi or R.S. Phoolka.

On the third issue, I find that a sum of Rs. 43,191-11-0 is due to the bank from the Paramount Marketing Corporation through its proprietors, Gian Chand Joshi and R.S. Phoolka. I am also satisfied that under this claim the bank is entitled to a sum of Rs. 25,000 from D, S. Purewal.

5. I will, therefore, pass a payment order of Rs. 43,191-11-0 against Paramount Marketing Corporation and its partners, Gian Chand Joshi and R.S. Phoolka. This amount will carry interest at the rate of 6"00 per cent, per annum till realisation. I also pass a payment order for Rs. 25,000 against D.S. Purewal, but this amount will not carry interest. If the amount of Rs. 25,000 is realised from D.S. Purewal or any part of it, that would go to reduce to that extent the bank's claim against the firm. Similarly realisation by the bank from the firm in excess of Rs. 18,191-11-0 out of the principal from the firm and its partners, would result in proportionate reduction from the bank's claim against D.S. Purewal. In other words, the total amount realisable by the bank is Rs. 43,191-11-0 and interest and out of this the total amount realisable from D.S. Purewal is Rs. 25,000. The bank will be entitled to the costs of these proceedings." The corporation appears to have remained content and did not question the findings. D.S. Purewal has challenged the judgment in the instant appeal.

6. The quantum of the payment order is not assailed. The liability was sought to be repelled almost on the same grounds as raised before the learned single judge.

7. It was in the first instance urged that on the facts alleged and proved there was between the bank and the appellant no privity of contract, The claim could not, therefore, sustain. In the alternative, it was contended that the bank had acted as the agent of the corporation, disclosed principal, and, therefore, was not competent to sue out. Either of the contentions is not sound.

8. On the facts it had been found that the appellant was dealing with the bank directly without reference to the corporation. He had to make good, the proceeds of the scrap sold, to the bank. On the reading of the covering letters P-3 (and others P-5, P-8, P-12, P-14 to P-16, P-18 and P-21 to the similar effect), accompanying the railway receipts sent by the bank to the appellant, it was maintained that the bank was acting under instructions of the corporation and was agent of the corporation. The contents of P-3 were :

"Under instructions from Shri R.S. Phoolka of Messrs. International Industries, Jullundur City, we are enclosing herewith R/R No. 730611 dated 16th May 1953, for twenty-five saddles, to be sold in the market and the proceeds sent to us for credit of their account with us. "

9. It was also urged that Purewal had, direct dealing with the corporation and had nothing to do with the bank. His statement made before the learned single judge when examined as his own witness did not bear out the stand taken. He stated as under :

" After selling scrap iron I used to pay the sale proceeds to the Punjab Mercantile Bank Ltd. for credit in the account of the Paramount Marketing Corporation. The proprietors of the firm on their occasional visits to Calcutta sometimes took money in cash from me which I debited to their account. I must have remitted on different occasions the sum totalling Rs. 20,000 to the Punjab Mercantile Bank Ltd. for the credit of the Paramount Marketing Corporation on account of the sale of scrap iron. "

10. It is significant that Purewal was not able to produce any receipt pointing that any amount representing the sale proceeds of scrap iron had been paid to the proprietors of the corporation. On the other hand, the account of the corporation maintained with the bank read with the statement of the accountant of the bank showed that occasional amounts had been received from the appellant by the sale of iron scrap and deposited in the cash credit account of the corporation. Obviously, the dealings between the bank and Purewal, the appellant, were direct though the bank was acting under instructions of the corporation.

11. Even if the bank was considered to have acted on behalf of the corporation (sic) the fact that it had beneficial interest in the property, it could as agent maintain the claim. There is ample authority in support of the proposition. Reference is called to the findings and observations in Firm Hardayal Mal-Mohri Lal v. Firm Kishan Gopal Jhanji and Sons AIR 1938 Lah. 673 and Subodh Gopal Bose Vs. Province of Bihar and Others, Section 230 of the Contract Act relied

upon is excepted in the premises. The bank had made advances to the corporation, the debt was being met by calling in sale proceeds of the scrap iron. The bank clearly had beneficial interest in the proceeds.

12. For all these reasons, this appeal must fail and I would dismiss it with costs.

Mehar Singh, J.

13. I agree.