(1950) 03 CAL CK 0028

In the Calcutta High Court

Case No : Suit No. 657 of 1947

First National Bank Ltd. APPELLANT

Vs

Pioneer Commercial Bank RESPONDENT

Date of Decision : 14-03-1950

Acts Referred:

COMPANIES ACT, 1956 — Section 153

Citation : AIR 1951 Cal 34 : (1951) 21 CompCas 261

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : A.N. Ray and S.K. Mukharji, for the Appellant;

Judgement

Sinha, J.—This is a suit for a declaration that the defendant bank, which is now in liquidation, holds a sum of Rs. 27,875/- being the amount collected by it on 3 bills of that value as agent or trustee for the plaintiff, for a decree for Rs. 27,875/- for injunction and for other ancillary reliefs.

2. On November 6, 1946, the plaintiff sent, by a letter of that date, a bill for Rs. 10,225/- to the Champadanga branch of the defendant bank for collection and for sending the proceeds by a "Lahore Draft". On November 12, 1946, and November 13, 1946, the plaintiff similarly sent two bills for Rs. 8825/- and Rs. 8825/- respectively with similar instructions to the said branch of the defendant bank. On November 19, 1946, the Manager of the plaintiff bank asking for information as to what has happened to the bills, the said branch of the, defendant bank sent three drafts to the plaintiff drawn on November 26, 1946 on its head office in Calcutta for Rs. 10,225/-, Rs. 8,825/- and Rs. 8,825/- respectively. It is not disputed that the said branch of the defendant bank realised the proceeds of the 3 bills from the drawees. The said drafts were sent by the plaintiff to the Central Bank of India for realisation. They were presented for payment to the head office of the defendant bank but were not paid. On November 26, 1946, the head office of the defendant bank wrote to the plaintiff that they had received payment from their said branch office but they were

unable to pay, as payments have boon suspended by the High Court. The Central Bank returned the drafts to the plaintiff whereupon it wrote to the defendant asking for reasons for nonpayment. The defendant bank replied that its business has been suspended by the High Court u/s 153 of the Indian Companies Act.

2. It appears that on November 25, 1946, an application was presented to this Court by the defendant bank for a scheme of arrangement u/s 153 of the Indian Companies Act. On that date, on the undertaking of the directors not to withdraw any money they had in the bank and not to transfer their shares in the bank, directions were given for convening meetings of the shareholders and of the creditors and until the final determination of the application or until further orders of the Court, the commencement and/or continuation of all suits and proceedings both civil and criminal against the defendant bank were stayed. In spite of the said order, the drafts were drawn on the next day, that is, November 26, 1947.

3. No payment having been made, the solicitors "of the plaintiff wrote to the defendant''s solicitor claiming payment of the proceeds of the sum of Rs. 27,875/-, being the proceeds of the said three bills, which, it was alleged, the defendant was holding as trustee.

4. On March 12, 1947, this suit was filed. On behalf of the Official Liquidator a written statement has been filed, disputing that the defendant company held the proceeds of the said 3 bills as trustee or agent.

5. On behalf of the plaintiff Mr. Prannath Gupta was called. From his evidence and from the bundle of admitted correspondence and documents which has been marked Ex. "A" there can be no doubt that the defendant realised the bills as agent or trustee for the plaintiff. It will be remembered that the plaintiff''s specific instructions were to send the proceeds by a Lahore Draft which, according to Mr. Gupta, means that the amounts collected were to be sent by a draft of a bank which had its branch in Lahore e.g., the Punjab National Bank, Central Bank of India. The defendant bank disregarded the express and specific instructions of the plaintiff and sent the proceeds by a draft drawn on its head office in Calcutta.

6. It is quite evident, therefore, that the defendant did not follow plaintiff''s specific instructions in sending the drafts. It is true that the drafts were sent for encashment by the plaintiff to the Central Bank of India. It is suggested that the plaintiff thereby accepted the draft in payment and discharge of the defendant''s liability as trustee and thenceforward the relationship of principal and agent ceased and was substituted by a relationship of creditor and debtor.

7. I do not think, in the circumstances of this case the plaintiff accepted the defendant as its debtor or that the defendant ceased to be a trustee in respect of the money realised as agent of the plaintiff. I think the plaintiff accepted the draft as conditional payment and I do not think that by sending the drafts for encashment, the plaintiff consented to accept the defendant as its debtor and to

abandon its rights as principal or cestui quo trust. The drafts not having been realised, the original position revived, and the plaintiff is entitled to claim the amount from the defendant as trust money,

8. It will be remembered that on the 25th November, an order was made by this Court staying all proceedings against the bank. There was no order preventing the bank from carrying on its business. The defendant, however, seems to have understood the order as an order of suspension of payment. If that is so, it was not honest conduct on their part to issue the drafts on the next day after the order, knowing full well that the drafts would never be paid. It is quite clear to me that when the drafts were issued the defendant knew perfectly well that the drafts would not be honoured on presentation and they were issued in order to lull the plaintiff into a sense of security. When the plaintiff sent the drafts to the Central Bank for encashment, it did not know all the facts which had happened.

9. In those circumstances, I hold that the defendant never became a debtor to the plaintiff and that the sum of Rs. 27,875/- was held by the defendant as agent or trustee for the plaintiff and is repayable to it in preference to all other creditors.

10. There will, therefore, be a decree for the said sum with interest thereon at 6% from November 25, 1946 upto the date of the institution of this suit. Interest will run on the due date at 6%. The defendant will pay the costs of the suit.

11. The decree will, however, not be executable till the ascertainment of the claims of other persons who may have claims on defendant for money held as trustee or agent for them or until further orders of the Court. The Official Liquidator will take prompt steps for ascertainment of debts and claims of creditors and should apply to Court for necessary directions in that behalf. Liberty to apply.