
(1959) 10 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 26-D of 1954

Gulzari Lal Devi Dayal

APPELLANT

Vs

Punjab and Kashmir Bank Ltd., Delhi

RESPONDENT

Date of Decision : 14-10-1959

Acts Referred:

Companies Act, 1956 — Section 153A

Citation : AIR 1960 P&H 281 : (1962) 32 CompCas 110

Hon'ble Judges : G.L. Chopra, J;D. Falshaw, J

Bench : Division Bench

Judgement

(1) The only point involved in this second appeal is whether a payee or holder of a demand draft on another branch of the Bank issuing the draft is not to be regarded as an ordinary creditor for the purposes of the scheme under which the Bank is working.

(2) A demand draft for Rs. 2800/- in his own name was obtained by Devi Dayal, father of the present appellant, against cash payment at Rawalpindi branch of the Punjab and Kashmir Bank Ltd., Delhi, the respondent, on 24th September 1947. The draft was issued on the Delhi Branch of the Said Bank. After his migration to India, Devi Dayal handed over the draft to the Punjab National Bank, Hardwar, for collection. The payment having not been received, the draft was given back to Devi Dayal. He then instituted the present suit for recovery of Rs. 2867/-, including Rs. 67/- for interest and sundry expenses.

The suit was resisted by the defendant Bank mainly on the ground that the plaintiff was not entitled to any preference and to claim anything more than what was payable to an ordinary creditor of the Bank under the scheme dully sanctioned u/s 153A of the Indian Companies Act. According to the original scheme, the creditors were to be paid in certain specified instalments. The scheme has thereafter been more than once amended. Since one of the instalments had fallen due to the plaintiff after the instalments had fallen due to the plaintiff after the institution of the suit, the Bank deposited a sum of Rs.

700/- to be paid to the plaintiff.

The plea did not find favour with the trial Court; the suit was consequently decreed. On appeal by the defendant, the decision was reversed by the Additional District Judge, Delhi. It was held that the plaintiff was bound by the scheme and thus he was entitled to recover the balance, Rs. 2100/-, as provided in the scheme and not by execution of the decree. This is a further appeal preferred by Gulzari Lal, the legal representative of Devi Dayal plaintiff.

(3) The point is fully covered by a Division Bench decision of this Court in *Traders Bank Ltd. v. Kalyan Singh* 1953 55 Pun LR 73: (AIR 1953 (P &H)194). There, the facts were almost similar and it was held that ordinarily the position of the Bank vis-a-vis a person dealing with the Bank is that of debtor and creditor. It is, however, open to such person to show that in a particular transaction the Bank had received the money in trust. A common instance is where a Bank is paid money for the express purpose of its being remitted to a person at some other place. A contrary view expressed by Ache Ram J. in the matter of *New Bank of India Ltd., Amritsar* AIR 1949 EP 373 was not accepted. The same view was taken by Sinai J. in *In re Noakhali Union Bank Ltd.* 54 CWN 744, it was pertinently observed:

"Ordinarily, when a draft is issued by a Bank, the holder is a creditor and his remedy is on the draft. The rights of the holder are defined by the Negotiable Instruments Act. It is difficult to see how the holder of the draft can have all the rights of a holder of a bill of exchange and the additional right to get the amount of the draft in preference to the general body of creditors. It is open to the payee to negotiate the draft. If the draft is negotiable, it is difficult to see how there can be an agreement that the money represented by the draft would be paid to a specified person or would be spent in a specified manner. The fact that the draft has not in fact been negotiated does not affect the matter. If the draft was issued by the Bank and accepted by the payee, his rights are those of the holder of a bill of exchange. There is in such cases no specified appropriation of the funds in the hands of the drawee for meeting the demands of the holder."

(4) The fact that the draft in this case was negotiable and correctness of the principle laid down in these decisions are not disputed by Mr. Charanjit Lal, learned counsel for the appellant. It is, however, contended that the present is a case covered by the exception envisaged by Weston C. J. in the *Traders Bank's* case referred to above. The argument is that in the days of turmoil during the partition, the appellant decided to migrate to India and for that reason he disposed all his belongings in Pakistan and turned them into cash.

Fearing that it would be risky to carry cash with him, the appellant paid the amount to the respondent bank and purchased the draft with a view to get it cashed on his arrival in Delhi. The Bank's services, it is submitted, were utilized merely for the purpose of the money being remitted to a specified person, i.e. the appellant himself, at some other place. The facts do attract sympathy, but I

fail to understand how they create a trust of the amount in the hands of the bank and take away the case out of the general rule.

The object of the appellant in purchasing the draft might have been to remit the money to himself in Delhi, but that was only a unilateral Act or intention of the appellant himself and was not sufficient to create a trust or the relationship of Principal and Agent between the parties. To create a trust or an agreement of agency, the intention must be common to the parties and the same must be agreed upon between them.

The usual relationship between a Banker and Customer being that of a debtor and creditor, the money paid into the Bank ceases to be the money of the person paying it. It becomes the money of the Banker with the stipulation that he will be paying a sum equal to that deposited with him when he is asked for it. a special agreement to create a trust or an agency has to be specifically alleged and proved. Nothing of the kind was alleged by the plaintiff, nor is there any evidence to support it.

(5) In the result, the appeal must fail and is dismissed. In view of the facts of the case, the parties are left to bear their own costs throughout.

Falshaw, J.

(6) I agree.

(7) Appeal dismissed.