

(1950) 06 CAL CK 0026
In the Calcutta High Court

In Re: Calcutta Commercial Bank Ltd. (in liquidation)

Date of Decision : 19-06-1950

Acts Referred:

Contract Act, 1872 — Section 201

Citation : 54 CWN 747

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : D.N. Sinha, for the Appellant; Ranadeb Chaudhury, for the Respondent

Final Decision : Dismissed

Judgement

Banerjee, J.—The facts of this case are simple and may be stated as follows: The Petitioner sold certain goods to a customer at Jorhat and on September 6, 1948, instructed the manager, Calcutta Commercial Bank, Ltd., Jorhat, to collect the money from the customer and "remit the same by a draft or a cheque on any Calcutta Clearing Bank." The Bank collected the money on 15th and 16th September, 1948, and on the said dates sent to the Petitioner the respective drafts drawn on its head office in Calcutta and payable to the Petitioner. The bank is a Clearing Bank.

2. On September 17, 1948, the Bank suspended payment. Thereafter an order was made by this Court declaring a temporary moratorium which has been followed by a winding-up order. The company is in liquidation.

3. It is alleged by the Petitioner that before he received the drafts, the Bank had suspended payment. He further alleges that the two drafts were duly presented to the Bank for payment but it failed to pay the same: thereafter the Bank went into liquidation: and the Petitioner in spite of demand has not been paid the said sum or any portion thereof by the liquidator.

4. The Petitioner in the circumstances claims payment in full of the money due on the drafts and contends that the Bank is a trustee in respect of the money.

5. The question is whether the Petitioner is entitled to get the money in full or is

to share pro rata with other creditors. That depends on the question as to whether the Bank is a trustee or a debtor qua the money.

6. In *Alliance Bank of Simla, Ltd. v. Amritsar Bank* AIR 1915 Lah 214 a Bench of the Lahore High Court (Rattigan and Shadi Lal, JJ.), held that the principle of law was firmly established that when a person employed another to collect money and remit it to him, the latter stood in a fiduciary relation towards the former and might in respect of the money so collected be regarded as a trustee. Their Lordships went on to observe: "The case so far presents no difficulty and satisfies all the requirements which are essential to the creation of a fiduciary relationship. But the matter does not end here. As stated supra, the Appellant Bank distinctly asked the Amritsar Bank to send drafts on Delhi and this direction was fully carried out. We consider that as soon as the drafts in accordance with the instructions were despatched, the special business, for which (sic) agency had been created, was completed (sic) agency then ipso facto terminated (sic) sec. 201, Indian Contract Act) and (sic) fiduciary relationship came to an end."

7. Sec. 201 of the Contract Act provides for termination of agency. An agency is terminated, inter alia, by the business of the agency being completed.

8. Now, in this case there is no doubt that the Jorhat Branch of the Bank was an agent for the collection of the money and when it collected the money it became a trustee and was accountable to the principal (the Petitioner here) as a trustee. But then the moment the Bank had carried out the instructions of the principal, the relationship of principal and agent terminated.

9. What relationship did then spring up? I think the Petitioner's right to get the money arose on the drafts. The Petitioner asked the agent to remit the money by draft and the agent followed the usual course and remitted the drafts by post. It is perfectly immaterial when the drafts were received by the Cautioneer or whether he accepted them or not. As soon as the relationship of principal and agent terminated there sprang up, a new relationship, namely, that of debtor and creditor.

10. Counsel for the Petitioner has argued: (1) as the drafts before suspension of payment by the Bank did not reach the hands of the Petitioner and were not accepted by him and, (2) as the drafts made by one branch of the Bank on another, the Bank at all material times was and is still a trustee for the Petitioner qua the money. There is no substance in this contention.

11. As to (1) the Petitioner asked the Jorhat Branch (sic) Bank to remit the drafts. There was (sic) said in the instruction as to however (sic) should, be sent. The Post (sic) ordinary mode of communication and when the Petitioner asked the Bank to send the drafts he gave the Bank the right to send the drafts in the ordinary way. As soon as the drafts were delivered to the post office, the delivery to the Petitioner was made as complete and final as if the drafts had been put into the hands of a messenger sent by the Petitioner himself.

12. In the matter of the Noakhali Union Bank, Ltd. 56 C.W.N. 744 (1950), this Court (Sinha, J.) following the Lahore case said (judgment delivered on January 30, 1950): "In cases where a Bank has collected the money and issued a draft or drafts in compliance with the instructions of the Bank or in accordance with the ordinary course of business, the payee should be treated as an ordinary creditor."

13. I with respect accept that principle enunciated by the learned Judge as correct and hold that in this case the moment the drafts were posted, the relationship of trustee and cestui que trust ceased and it became that of debtor and creditor.

14. As to (2) : the instructions did not specifically exclude the Commercial Bank Head Office on which the drafts could be drawn. The instructions were to send the drafts on any Clearing Bank. The Calcutta Commercial Bank is a Clearing Bank. It is true that the Jorhat Branch of that Bank at the time when it collected the money was trustee for the money, but that trust flowed from the agency and came to an end when the agency ended. The Petitioner then became entitled to recover the money from the Bank not as from an agent who had collected the money but on the drafts. The fact that the drafts were sent by one Branch of the Bank to another, in my mind, does not on the principle I have enunciated, make any difference. The application fails and must be dismissed with costs. Certified for two Counsel. The Liquidator will be entitled to retain his costs out of the assets as between attorney and client.