

(1915) 02 PRI CK 0001

In the Privy Council

Moti Lal Shival

APPELLANT

Vs

Bombay Cotton Manufacturing Co., Ltd.

RESPONDENT

Date of Decision : 25-02-1915

Acts Referred:

Citation : (1915) AIR(PC) 69

Hon'ble Judges : Ameer Ali, John Edge, George Farwell, Shaw, Lords Dunedin, JJ.

Advocate : T.L. Wilson and Co., Hart, Latleys, Dunne, Upjohn, Raikes, K. Brown, Robert Finlay, for the Appearing Parties.

Judgement

Sir George Farwell, J.

This is an appeal from a judgment and decree, dated 20th August 1912, of the High Court of Bombay affirming a judgment and decree of the High Court in its Original Jurisdiction made on 4th March 1912.

In 1909, the date of the transactions in question in this appeal, the appellant was a banker and money-lender in Bombay having as his business manager there, one Dani. At the same time the respondent Company had as its secretaries, treasurers and agents the firm of Jiwandas and Co., consisting of two partners, Dwarkadas Dharmsey and Purshotam, and Dwarkadas was also agent and managing director of the Tricumdas Mills Company and the Lakshmidas Mills Company; both of these companies were then quite insolvent, while the respondents were perfectly solvent.

On the 13th February 1909, Dwarkadas applied to Dani for a loan to himself or either of the two mills of Rs. 50,000; Dani refused to make the advance to Dwarkadas but agreed to make it to Purshotam, and, accordingly, on a receipt signed by Purshotam for Rs. 50,000 bearing interest at 8 per cent., Dani, on behalf of the respondents, paid the sum of Rs. 50,000 to Dwarkadas, who at once applied it for his own use and benefit by reducing his own indebtedness to the Tricumdas Mills. On due date, the 14th April 1909, Dani, by his son, applied

for payment to Purshotam who referred him to Dwarkadas. Dwarkadas was quite unable to pay, and thereupon Dani, Dwarkadas and Purshotam prepared a number of documents and paper entries in the books of the respondent company and the Tricumdas Company for the fraudulent purpose of transferring the liability to pay the amount due on the receipt from Purshotam and the Tricumdas Company to the solvent respondent Company. A receipt for Rs. 50,666-10-8 was signed by Purshotam on behalf of the respondents and was given to Dani in discharge of the bill then due, and entries were made in their books by Dwarkadas and Purshotam crediting the said sum to the appellant as received from him and debiting Rs. 68,666-10-8, which included this Rs. 50,666-10-8. Various other entries were made in the books of the Tricumdas Mills and in those of Dwarkadas and of the respondents, but both Courts below agree in regarding them as fraudulent and there is no question left for their Lordships' consideration except that of authority of the respondents' agents. It is said that the liability of Purshotam was duly transferred to the respondents by Dwarkadas as their agent. Their Lordships, however, are of opinion that Dwarkadas had no such authority; it is not suggested that he had express authority, and the manager or managing director of a mill company has no implied authority to purchase on behalf of his mill the liability of a stranger and still less of their own manager or manager's partner in a private transaction of his own.

Their Lordships will humbly advise His Majesty that this appeal be dismissed with costs.