

(1941) 05 CAL CK 0012
In the Calcutta High Court

New Standard Bank Ltd., by B.K. Dutta, Managing Director	APPELLANT
Vs	
Probodh Chandra Chakravarty	RESPONDENT

Date of Decision : 01-05-1941

Acts Referred:

Companies Act, 1956 — Section 158

Citation : AIR 1942 Cal 87

Judgement

1. The facts which are not in dispute in these two appeals are these : A limited company named House of Labourers Ltd., was incorporated in the year 1926. Another Company named Steel Construction Co. Ltd., was incorporated in the year 1929. On 31st December 1930, Probodh Chandra Chakravarty (the respondent in these two appeals) for self and on behalf of the House of Labourers Ltd., executed a promissory note for Rs. 10,000 with interest at 12 per cent. per annum with half yearly rests in favour of a company known as the Rice and Oil Mills Ltd., Comilla. On 15th December 1931, the Steel Construction Co., took over the assets and liabilities of the House of Labourers Ltd. and at about the same time the Rice and Oils Mills Co. was converted into a company called the New Standard Bank Ltd. (the appellant in these two appeals). On 23rd September 1932 an order was made by the original side of this Court for winding up of the Steel Construction Co., and a liquidator was appointed. On 28th November 1932 Probodh for himself and on behalf of the Steel Construction Co., jointly borrowed from the appellant bank Rs. 1891 on a promissory note agreeing to pay interest at the rate of 12 per cent. with half yearly rests. On 23rd December 1932 the appellant bank filed a claim before the liquidator of the Steel Construction Co. for Rs. 1891-10-0 as the money due to them from the said company on the handnote up to 28th November 1932. They also in this claim included Rs. 12,147-11-0 due to them from the House of Labourers Ltd. on the promissory note dated 21st December 1930 upto 28th November 1931 stating that this amount was mentioned in the balance sheet of the Steel Construction Ltd., as due to them from the said company. On the next day by a resolution of the House of Labourers Ltd. Probodh a director of the said company

was authorised to renew the handnote dated 31st December 1930 in favour of the appellant bank.

2. On 25th December 1932 Probodh for sell and as director of the House of Labourers Limited executed a renewed handnote for Rs. 12,270 in favour of the appellant bank, the interest stipulated being the same as in the original handnote. On 1st May 1933 the operation of the order for winding up the Steel Construction Co. was stayed on certain conditions and a reconstruction scheme of the said company was approved by the original side of this Court. On 21st September 1933, the House of Labourers Ltd. executed a conveyance assigning its assets and liabilities in favour of the Steel Construction Company. In April 1934 the House of Labourers Ltd., went into voluntary liquidation and Probodh was appointed liquidator. On 5th June 1934, the reconstruction scheme of the Steel Construction Company was revoked and the proceedings for winding up of the said company were revived. On 5th October 1934, Probodh as liquidator of the House of Labourers Ltd., instituted a suit (suit No. 1) in the Court of the Subordinate Judge of Comilla for possession of the properties conveyed on 21st September 1933 on declaration that the assignment was void. This suit has been subsequently transferred to the original side of this Court and is still pending. On 27th November 1935, the appellant bank instituted a suit (suit No. 61) against Probodh and the liquidator of the Steel Construction Co. Ltd. in the Court of the Subordinate Judge of Comilla for recovery of Rs. 2685-10-6 due on the handnote dated 28th November 1932. On 9th December 1935 Peerless Tea Company Ltd., a creditor of the Steel Construction Company obtained leave u/s 158, Companies Act, to convene a meeting of the creditors and shareholders of the Steel Construction Company for consideration of a fresh reconstruction scheme of the said company. The material portions of this proposed scheme are as follows:

11. The new Standard Bank Limited are entitled to a sum of Rs. 16,000 or thereabouts to be paid in the manner following:

By allotment to them of fully paid up shares in the company to be issued in accordance with this scheme to the face value of Rs. 12,000. By assignment of debts to the amount of Rs. 4000.

(14) The amount due to the respective creditors and the debts due from the debtors shall be ascertained by the company but in case of any difference it will be referred to Mr. R. Roy whose decision shall be final.

3. On 2nd January 1936 the appellant bank instituted a suit (suit No. 62) in the Court of the Subordinate Judge of Comilla for recovery of Rupees 17,415 against the House of Labourers Ltd. and Probodh due on the renewed handnote dated 25th December 1932. On 1st February 1936 the appellant bank authorised their managing director to attend the meeting ordered to be convened on 9th December 1935 for consideration of the proposed reconstruction scheme of the Steel Construction Co. Ltd. with the following reservations:

(a) That the New Standard Bank Ltd. does not give up their claim against the

House of Labourers Ltd. in liquidation and another relating to which a suit is pending in the First Subordinate Judge's Court, Comilla; and (b) That this scheme is not to be regarded as novation of contract or as a discharge so far as the joint debtor with Steel Construction Co. Ltd. to New Standard Bank Ltd. is concerned.

4. These reservations however were not pressed by the managing director of the appellant bank at the meeting of 9th February. On 6th May Clause (11) of the proposed scheme was unanimously amended and a scheme of construction with certain modifications was approved. The material portions of this scheme are:

(1) The winding up will be set aside.

(2) The company will be carried on under a Board of Directors consisting of five Directors of whom three will be nominated by the New Standard Co. Ltd., one by the Peerless Tea Co. Ltd., the remaining will be elected from the shareholders of the Company from amongst themselves.

(3) The Company shall appoint the New Standard Bank Ltd., as its Managing Agents for a term of ten years.

* * * * (11) The New Standard Bank Ltd. are entitled to a sum of Rs. 16,000 or thereabouts to be paid in the manner following:

By allotment to them of fully paid up shares in the company to be issued in accordance with this scheme to the face value of 3/4th of the debt as ascertained not exceeding....Rs.12,000.

By assignment of debts to the 1/4th of the amount of the debt as ascertained not exceeding Rs. 4000.

* * * * (14) The amount due to the respective creditors and the debts due from the debtors shall be ascertained by the company but in case of any difference it will be referred to Mr. R. Bay whose decision shall be final.

(14a) Pending the allotment of new shares and the election of the Board of Directors Messrs. J.C. Bhattacharji, B.K. Dutta, J.A. Graham, N.C. Dutta and Madhusudan Sen Gupta, Retired Superintendent Engineer, be appointed to carry out the scheme with a provision that three of them will form a quorum and that in case of any casual vacancy the continuing members will be entitled to fill up the vacancy from amongst the creditors.

5. On 15th June 1936 this scheme was sanctioned by this Court on its original side. Thereafter the appellant bank received Rs. 16,000 in accordance with this scheme. On 17th July 1937 the appellant bank filed an application on the original side of this Court for leave to proceed with Suit No. 62 pending in the Court of the Subordinate Judge of Comilla against both the defendants in that suit for recovery of the balance after deducting the amount paid to them in accordance with the reconstruction scheme. This application was dismissed by Lord-Williams J. on 10th August 1937, on the ground that the appellant bank agreed to the

scheme without any reservation of any further claim against the House of Labourers Ltd. and that the scheme was accepted as a final liquidation of the claims of the bank both against the Steel Construction Co. Ltd., and the House of Labourers Ltd.

6. An appeal against this order by the appellant bank was dismissed. In accordance with this order the House of Labourers Ltd. were struck off from the category of the defendants in the Suit No. 62 and the appellant bank amended their plaint by limiting it to the recovery of Rs. 5519-12-0 from Probodh alone being the balance due to them after deducting Rs. 11,895-4-0 received by them on account of the claim in this suit in accordance with the scheme of reconstruction. The Steel Construction Co. were also struck off from the category of the defendants in Suit No. 61. In this suit also the appellant bank amended their claim by limiting it to recovery of Rs. 835-2-0 against Probodh alone being the balance due to them after deducting Rs. 1850-8-6 paid to them in accordance with the reconstruction scheme. The suits were then contested by Probodh. The trial Judge has held that the debt which is the subject-matter of Suit No. 62 was not put an end to by any novation of contract. He has also held that the liability of Probodh in both the suits was extinguished by acts which happened after the institution of these suits namely, satisfaction in pursuance of the final scheme of composition sanctioned by this Court on its original side. He accordingly dismissed both the suits. Hence these two appeals by the plaintiff bank.

7. Section 62, Contract Act, deals with one mode of discharge of contract by consent, namely, novation. By this section if the parties to a contract agree to substitute a new contract the original contract is discharged. This may happen if the parties agree to substitute a new contract either between themselves or between different parties the consideration being the discharge of the old contract. Whether all rights and liabilities under the old contract have been extinguished by novation is a question of fact depending on the circumstances of each case. In each case the question is not only whether a new debtor has consented to assume liability but whether the creditor has agreed to accept his liability in substitution of the liability of the original debtor. In *Monohar v. Thakurdas* (88) 15 Cal 319, this Court held that Section 62, Contract Act, does not apply where the agreement to substitute a new contract for the original one is made after the breach of the original contract. The actual language of the section seems to limit its operation to cases before the breach of the contract. The section enacts that in the circumstances laid down in it "the original contract need not be performed." This implies that the performance of the same could still be required. In the case referred to above this Court observed:

Section 62 is but a legislative expression of the common law; and its provisions do not apply after there has been a breach of the original contract.

8. Since this decision, however, there has been a good deal of controversy as to the scope of this section. In *Ramih Bagavathar v. Somasi Ambalam* (16) 3 AIR

1916 Mad 823 Seshagiri Aiyar J. was not prepared to dissent from the view taken by the Calcutta High Court in the above case. But Kumaraswamy Sastri J. was unable to see any grounds for introducing the principles of common law in construing the sections of the Contract Act. According to him there was no reason why after breach the parties should not agree to vary the terms or why a plaintiff who consents to such variation should not be held bound by the terms of his agreement.

9. Later on in K.M.P.R.N.M. Firm merchants carrying on business Vs. P. Theperumal Chetty a Merchant carrying on business, , Ayling Offg. C.J. and Odgers J. approved of the remarks of Kumaraswamy Sastri J. and dissented from the views of the Calcutta High Court as expressed in the above case. In Brijmohan v. Mahabir (36) 63 Cal 194 our learned brother Panckridge J. referring to Monohar v. Thakurdas (88) 15 Cal 319 observed as follows:

I think that if one does not go beyond the actual language of Section 62 there is something to be said for this view : "Parties to the contract" ordinarily signifies parties to an existing contract rather than parties to a contract that has already been discharged by breach. I find some difficulty, however, in applying this principle to a debt, for it appears strange if the mere failure to pay an outstanding debt on demand brings the case out of the scope of Section 62.

10. To these observations it might have been added that the section uses the words "the original contract need not be performed," implying thereby that the stage contemplated by the section is the one at which performance of the original promise could yet be required. Section 41 deals with another mode of discharge of contract. Under this section the contract is discharged if the promisee accepts performance from a third person other than the promisor. This section requires actual performance and falling short of novation does not absolve the debtor from liability. Whatever difficulties there might have been in applying the provisions of Section 62, Contract Act, it is beyond all controversy that where a breach of contract has taken place the cause of action that arises from the breach may be discharged by accord and satisfaction. Accord is the agreement that the debtor shall pay and that the creditor shall accept something in satisfaction of the cause of action. Satisfaction is the actual execution of such agreement.

Accord and satisfaction is the purchase of a release from an obligation whether arising under a contract or tort by means of any valuable consideration not being the actual performance of the obligation itself. The accord is the agreement by which obligation is discharged and the satisfaction is the consideration which makes the agreement operative: British Russain Gazette and Trade Outlook Ltd. v. Associated Newspapers Ltd (1933) 2 KB 616 643-44.

11. By Section 63, Contract Act, every promisor may dispense with or remit wholly or in part the performance of the promise made to him or may accept instead of it any satisfaction which he thinks fit. This section makes a wide

departure from the English law inasmuch as it does not refer to any agreement and valuable consideration. It should not, therefore, be enlarged by any implication of English doctrine: *Chunna Mal-Ram Nath v. Mulchand Ram Bhagat* (28) 15 AIR 1928 PC 99 160. Before the institution of the two suits out of which these appeals arise the appellant bank included in their claim before the liquidator of the Steel Construction Co. the two debts for recovery of which these two suits have been brought. So far as the debt due on the hand-note executed by the Steel Construction Co. Ltd., was concerned, the plaintiff bank were the creditors of the said company. So far as the other handnote is concerned they were the creditors of the House of Labourers Ltd. but they included the debt due on this hand-note in their claim as this debt was mentioned in the balance sheet of the Steel Construction Co. Ltd. In the suit to recover the debt due on the promissory note executed by the House of Labourers Ltd. they did not implead the Steel Construction Co. as defendants. In the scheme proposed by the Steel Construction Co. Ltd., on 9th December 1935, the company offered to pay Rs. 16,000 by debentures and assignment of debts on the footing that the appellant bank were entitled to a sum of Rupees 16,000 or thereabouts and that the amount of the debt due to them would be ascertained by the company and in case of any difference the decision of the liquidator would be final.

12. The appellant bank were not at first willing to accept the offer so far as the debt which was the subject-matter of suit No. 62, namely, the debt due from the House of Labourers Ltd., was concerned. They also were not willing at first to give up their claim against Probodh in Suit No. 61. When the proposed reconstruction scheme of the Steel Construction Co. which included the above-mentioned offer by the company to the appellant bank, came up for consideration at the meeting ordered to be convened u/s 153, Companies Act, Managing Director of the appellant bank who was deputed by the appellant bank to represent them at the said meeting accepted without any reservation the amendment of the original proposal as indicated in para. 11 of the scheme sanctioned by the Court. The amount due to the appellant bank was, thereafter, ascertained by the liquidator and the appellant bank received Rs. 16,000 without any reservation in full satisfaction of their claims including their claim in the two suits Nos. 61 and 62. It is clear from the facts and circumstances of the present case that although Probodh was a joint promisor in the two handnotes in suit he was not at all personally benefited by any of these two loans. It is also clear that on account of this fact the two debtor companies took upon themselves the entire liability of these two handnotes and the Steel Construction Co. Ltd. having taken over the liabilities of the House of Labourers Ltd. paid Rs. 16,000 in full satisfaction of all claims of the appellant bank including the claims of the two handnotes in suits.

13. Much reliance was placed by the appellant upon *Ex parte Jacobs*; *In re Jacobs* (1875) 10 Ch A 211. That was a case under the Bankruptcy Act. The appellant bank were not the creditors of the Steel Construction Co. Ltd. in respect of the debt due on the handnote executed by the House of Labourers Ltd.

This debt therefore could not have been affected by any scheme u/s 153, Companies Act. But the appellant bank agreed without any reservation to receive from the Steel Construction Co. Ltd. a certain amount in satisfaction of this debt. They also agreed to receive a certain amount without any reservation in full satisfaction of their debt due from the Steel Construction Co., Ltd. The facts of this case therefore are clearly distinguishable from the case in *Ex parte Jacobs*; *In re Jacobs* (1875) 10 Ch A 211. The appellant bank received without any reservation Rs. 11,895-4-0 in full satisfaction of their debt due on the handnote executed by the House of Labourers Ltd. Assuming that this did not amount to discharge of the debt by novation it certainly amounted to discharge of the debt u/s 41, Contract Act. The appellant bank also received without any reservation Rs. 1850-8-6 in full satisfaction of the debt due on the handnote executed by the Steel Construction Co. Ltd. This amounted to discharge of the cause of action in suit No. 61 u/s 63, Contract Act. Under the English law, accord and satisfaction made by one of several parties jointly liable or jointly and severally liable to the same creditor for the same debt discharges the claim of the creditor against all (*Leake on Contract*, Edn. 8, pp. 683-684). There is no reason why this principle would not apply to cases of joint and several liability u/s 43, Indian Contract Act. This is indeed a principle of general application and can be traced to the doctrines of the Roman law. In Roman law:

Obligation of this sort went by the name of correality or solidarity. Such an obligation bound each promisor for the whole. And yet though there might be two obligations, one thing only turned on them. If therefore any one paid what was due he put an end to the obligation of all, and set all free.

14. In such an obligation two or more persons were liable for the whole, but it was due only once, so that if the sum due was once paid, the whole was ended. Each debtor might be compelled to pay the whole or any part of the debt. If one of the debtors paid the whole or part of the debt, the other debtors were wholly or pro tanto released. But when a debtor was released by a cause that did not affect the joint obligation (as if he was made captive and enslaved), the other debtors were not to any extent released. In Roman law these cases fell into two groups, the essential difference being that in classical law, in one group the bringing of an action by, or against, one, barred or released, all the others. In other group roughly speaking, only satisfaction ended the obligation. To the first group the name correality was applied, the second case was commonly called simple solidarity. Anything which completely destroyed a correal obligation as to one debtor, without affecting his personality (as St. Paul puts it, destroyed the debt, but not the debtor) destroyed it altogether. In both the cases of correality and solidarity, whether there was one obligation, or more, there was at any rate only one thing due. One sum of money due and there was a very ancient rule expressed in the maxim *non bis in idem*--the same thing--must not be claimed twice.

15. As the appellant bank after the institution of the two suits adjusted the

claims in the two suits at certain amounts without any reservation and as the adjusted claims have been paid in full further claims against Probodh in these two suits are no longer maintainable. The learned Subordinate Judge was therefore right in holding that the two debts for enforcing which the two suits, viz., Nos. 61 and 62 were instituted had been discharged and the plaintiff bank were not entitled to recover anything from Probodh. The appeals therefore fail and are dismissed. There will be no order as to costs in the appeals. The cross-objections are not pressed and are therefore dismissed but without costs.