
(1964) 08 AHC CK 0014
In the Allahabad High Court
Case No : First Appeal No. 265 of 1952

Punjab Co-operative Bank Ltd.	Vs	APPELLANT
Amrik Singh and Others		RESPONDENT

Date of Decision : 14-08-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33, Order 7 Rule 7, 151
Displaced Persons (Debts Adjustment) Act, 1951 — Section 17, 17(1)

Citation : AIR 1966 All 216

Hon'ble Judges : Gyanendra Kumar, J

Bench : Single Bench

Advocate : Gopal Behari, for the Appellant; G.P. Bhargava and N.D. Ojha, for the Respondent

Final Decision : Dismissed

Judgement

Gyanendra Kumar, J.—This is an appeal by the plaintiff-bank which is a limited company. The bank had filed the suit for recovery of Rupees 6,612-12-9 against the defendants on the basis of a cheque for Rs. 5,200 issued by the defendants in favour of the bank on 11th November 1947 and a payment-order for Rs. 400 issued the next day. i.e., on the 12th November 1947. Both the cheque and the payment order were dishonoured on account of stoppage of the payment by the defendants. Hence the suit for recovery of Rs. 6,612-12-9 including interest at Rs. 6 per cent per annum, with monthly rests, plus pendente lite and future interest at the rate of Rs. 6 per cent per annum.

2. The preliminary facts are not disputed between the parties. The defendants were carrying on business in Peshawar under the name and style of "Harishmgh Govind Singh", while the plaintiff-bank had one of its branches at Peshawar. The defendants had a cash credit account in the name of their firm with the Peshawar Branch of the plaintiff-bank. The defendants used to borrow money from the plaintiff-bank against the pledge of goods by way of security. On 23rd November 1946 the defendants borrowed a sum of Rs. 30,000 from the bank and executed

a promissory note in lieu thereof. Later on, in February 1947, the defendants further executed a deed of pledge in favour of the bank where under 425 bags of Mash (urd) were pledged with the bank to secure the payment of the aforesaid loan of Rs. 30,000 with interest. The defendants drew on then said cash credit account from time to time and repaid part of the dues of the bank, with the result that on 11th November 1947 a sum of about Rs. 5,600 was outstanding against the defendants in their cash credit account. It was in order to pay off this debt that the defendants had issued a cheque for Rs. 5,200 in favour of the plaintiff on 11-11-1947 and a payment order for Rs. 400 on 12-11-1947 in full and final adjustment of the plaintiff's dues.

From this stage there is difference between the versions of the parties. According to the plaintiff, the bank had handed over the key of the godown in which the pledged bags of Mash (urd) were lying stored, by way of symbolic delivery of possession of the goods to the debts. The plaintiff's case further is that the cheque and the payment order, which had been issued by the defendants in favour of the plaintiff only amounted to conditional payment of the plaintiff's dues outstanding against the defendants, and inasmuch as the same had been dishonoured, the debt remained due from the defendants to the plaintiff; as such the plaintiff-bank was entitled to recover Rs. 5,600 as the principal amount and Rs. 1,012-12-9 as interest, in all Rs. 6,612-12-9.

3. On the other hand, the case of the defendants was that they had issued the cheque and the payment order on the condition that the plaintiff-bank would return the pledged goods to them but the plaintiff-bank failed to do so, hence on 16-11-1947 the defendants stopped the payment of the cheque and the payment order in question. By amendment of their written statement on 20th February 1952 it was further pleaded by the defendants that in any case they were protected under the provisions of Section 17(1)(b) of the Displaced Persons (Debts Adjustment) Act, 1951. This Act came into operation in Uttar Pradesh on the 10th of December 1951, while the instant suit had been instituted on the 4th of November 1950.

4. It has strenuously been argued by the learned counsel for the appellant-bank that the provisions of Section 17(1)(b) were applicable only to proceedings under the Act which were pending before the Tribunal and they had no application to an ordinary civil suit filed by the creditor. In support of his contention the appellant's counsel relies upon a single Judge decision of the Punjab High Court in *Banka Mal Naranjan Das and Another Vs. The Central Bank of India Ltd. and Others*, wherein Weston, C. J. had held that Section 17 was not an addition to the general substantive law but was a provision enforceable only by the Tribunal appointed under the Act, holding debt adjustment proceedings under Chapter II of the Act, in which Section 17 found place. It was further pointed out that the fact that Section 17 fell in Chapter II which was headed "Debt Adjustment Proceedings" and lay between two sections, each of them providing the law to be applied by the Tribunal, tended to show that Section 17 was also intended as a

provision applicable to proceeding of the Tribunal. It was further observed by the learned Judge that the circumstance that Sections 19 and 20 contain substantive law applicable to proceedings outside those of a Tribunal was not substantial reason for holding that the provisions of Section 17 should be available to the debtor in a suit out side the Act.

5. The aforesaid, 1952 case of Banka Mal Naranjan Das and Another Vs. The Central Bank of India Ltd. and Others, come up for consideration before the Punjab High Court in the subsequent case of Sulakhan Singh Mool Chand and Others Vs. The Central Bank of India Ltd., The two learned Judges, who constituted the Division Bench, wrote separate judgments but they were to the same effect. Harnan Singh, J. held that in the opening part of Section 17(1) it was stated that the rules given in Clauses (a) to (d) of that section should regulate the rights and liabilities of the creditor and the debtor and, therefore, the provisions contained in Section 17 were part of the substantive law of the country and had application outside the proceedings before the Tribunal under the Act. On the other hand, Kapur, J. found that Section 17 was available to a displaced debtor even when the proceedings were before an ordinary Court of the country. The Division Bench consequently overruled the 1952 case of Banka Mal Naranjan Das and Another Vs. The Central Bank of India Ltd. and Others, which had taken a view to the contrary. The law laid down in Sulakhan Singh Mool Chand and Others Vs. The Central Bank of India Ltd., was later on approved by another Division Bench of the same High Court in Krishan Talwar Vs. Hindustan Commercial Bank Ltd. and Another, I am in respectful agreement with the law as laid down by the two Division Benches of the Punjab High Court in Sulakhan Singh Mool Chand and Others Vs. The Central Bank of India Ltd., and Krishan Talwar Vs. Hindustan Commercial Bank Ltd. and Another,

6. A plain reading of Section 17 shows that the protection granted therein to a displaced debtor is of a universal application and is not confined to proceedings taken under the Act before the Tribunal. Section 17 had fundamentally brought out an addition to the substantive law of the land, and should be applicable to proceedings before ordinary civil Courts as well.

7. In the instant dispute, it is the admitted case of the parties that both of them had fled away from Peshawar in the third week of November 1947 and that the pledged goods were no longer in possession of the creditors and were not now available for redemption by the debtors. Therefore, the creditor-bank is no longer entitled to recover from the defendants the secured debt or any part thereof as envisaged by Section 17(1)(b) of the Act. It has been fully proved that the defendants are displaced persons now living in Ghaziabad and the defendants had pledged the goods with the plaintiff-bank before they became displaced persons, as a result of the partition of the country. Therefore, they were completely protected from being sued by the bank under the provisions of Section 17(1)(b) of the Act.

8. It was next contended on behalf of the plaintiff that in the instant case, the

suit had been instituted on the 4th of November 1950 before the commencement of the Act in Uttar Pradesh on 10th December 1951. This matter had also come up for consideration before the Division Bench of the Punjab High Court in *Krishan Talwar Vs. Hindustan Commercial Bank Ltd. and Another*, already referred to earlier. The learned Judges of the Punjab High Court relying upon the observations of the Federal Court in AIR 1941 5 (Federal Court) held that as an appeal was a rehearing of the suit, the appellate Court had to pass such orders which were in accordance with the law in force at the time of passing of appellate decree, with the result that subsequent change of the law had to be taken into account by the appellate Court. It was, therefore, observed by the Punjab High Court that although the Displaced Persons (Debts Adjustment) Act, 1951, which the appellant in that case was taking advantage of, had come into force after the decree of the trial Court, yet he was entitled to its benefit inasmuch as it was the law of the land before the appeal came up for hearing. The same view was reiterated in *Ghaki Mal Hukam Chand and Others Vs. Punjab National Bank Ltd.*, That the provisions of Section 17 of the Act were retrospective in operation and a relief under the Act could be claimed on appeal to the High Court, even though this Act was not in force when the suit was filed or even when the suit was decided. Similar is the view of this Court regarding subsequent legislation.

9. There can be no speck of doubt that an appeal is only a projection of the suit, which remains pending till the decision of the appeal. Therefore, if a change of law has been effected during the pendency of the suit or the appeal, it has to be taken cognizance of by the Court of trial or of appeal as the case may be. The above view has further been strengthened by a recent decision of the Supreme Court in *Raman and Raman Ltd. Vs. The State of Madras and Others*, where it was laid down that "Even in the case of appeals strictly so called, the Court hearing the appeals may take cognizance of new laws which are made applicable to pending cases." In the instant case the new law had come into being during the pendency of the suit itself. The Court below was, therefore perfectly justified in giving the benefit of Section 17(1)(b) of the new Act to the defendants and was right in holding that the suit of the plaintiff was barred.

10. Even if the provisions of Section 17 of the said Act were kept out of the view the plaintiff-bank had no case on merits. It is the admitted case of the parties that the plaintiff-bank had secured the loan of Rs. 30,000 advanced to the defendants by pledging with it 425 bags of Mash. However, the plaintiff's case was that the bank had delivered back the security to the defendants by returning to them the key of the godown which contained the pledged goods. This allegation was stoutly repudiated by the defendants, who stated that the plaintiff-bank had not even delivered back constructive possession of the pledged goods to them by handing over the key of the godown or otherwise, and that the goods had continued to remain with the plaintiff bank. It was on that account that the defendants were compelled to stop the encashment of the cheque and the payment order issued by them in favour of the plaintiff bank, in satisfaction of its dues. The documentary evidence on record, discussed in detail by the learned

trial Judge, fully established the fact that the goods pledged by the defendants with the plaintiff-bank had continued to remain in its possession and had not been delivered back to the defendants.

Even the statement of (P. W. 1) Trilok Nath, who was the Manager of the plaintiff-bank at Peshawar at the relevant time, leaves no room for doubt that the theory of return of the goods set up by the plaintiff-bank was nothing but a tissue of lies. The plaintiff has not even filed the original or copy of the security bond executed by the defendants in its favour. In his examination in chief. P. W. Trilok Nath had stated.

"When the defendant issued the cheque, I handed over the key of the godown to him. After the delivery of key, the Bank did no longer have any concern with these goods. . . .".

Yet in his cross-examination, the Manager had to admit.

. . .the security from the defendant was left at Peshawar. . I think that the key was of this very godown. The defendants did not issue a receipt against the key, although I demanded it ... An entry relating to return of key was not made in the account books also The key was with me. From the cheque or payment order I thought that the amount had arrived. I wrote to the head office to return the key and release the goods It was written after a long time. I did not write during my stay at Peshawar."

11. From the above quoted admission of P. W. Trilok Nath, Manager of the appellant-bank, it is quite clear that the pledged goods remained under the lock and key of the bank and the bank had never returned the key of the godown to the defendants; so the plea taken by the bank to the contrary is absolutely false. It is regrettable that a banking institution like the appellant should have stooped down to taking such a false plea and instituting a frivolous claim against the defendants. It is abundantly clear that in the instant case, the creditor had continued to retain the security for the debt and yet had demanded its payment from the defendant-debtors.

12. It was then maintained by Mr. Gopal Behari, learned counsel for the appellant that the defendants had admittedly issued a cheque and a payment order for Rs. 5,200 and Rs. 400, respectively. At least the cheque for Rs. 5,200 was a negotiable instrument, within the meaning of the Negotiable Instruments Act, 1881 and, therefore, u/s 118 of that Act, there was a presumption that the same had been made or drawn for consideration. It has, however, been conceded on behalf of the appellant that the presumption u/s 118 was a rebuttable one. It is the admitted case of the parties that the defendants had issued the cheque and the payment order for the satisfaction of the secured debt, created by pledging 425 bags of Mash by the defendants with the plaintiff-bank. Thus it is clear that on handing over the cheque and the payment order by the defendants to the plaintiff, the pledge was to be redeemed. This was obviously the only consideration for issuing the cheque and the payment order in question by the

defendants to the plaintiff-bank. No other consideration for issuing the cheque and the payment order has been suggested on behalf of the plaintiff-bank. It has already been found above that the plaintiff-bank had failed to return the pledged goods to the defendants. Therefore, the only consideration for issue of the cheque and the payment order totalling Rs. 5,600 having altogether failed, the cheque and the payment order were left without any consideration whatsoever. In this view of the matter, the plaintiff-bank could not possibly take advantage of the rebuttable presumption envisaged by Section 118 of the Negotiable Instruments Act. The suit was rightly dismissed by the Court below.

13. The appeal fails, being without merit, and is hereby dismissed with costs.