(1998) 12 P&H CK 0132

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3726 of 1998

Punjab National Bank APPELLANT

Vs

Kaka Ram Babu Ram Aggarwal RESPONDENT

Date of Decision : 17-12-1998

Acts Referred:

Citation : (1999) 121 PLR 375 : (1999) 2 RCR(Civil) 561

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : H.R. Bansal, for the Appellant;

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—The main submission of the learned counsel for the appellant, in this Regular Second Appeal, while relying upon the case of H.P. Gupta Vs. Hiralal, , is that once the appellant had despatched the bank draft by the registered post to the respondent, the appellant stood discharged of all his liabilities.

2. The principle of law enunciated by the Hon''ble Supreme Court of India is obviously the law of the land, but the sole question that arises for consideration in this case is whether the appellant had acted within the instructions issued by the respondent to take benefit of the said principle.

3. In order to appreciate this contention, reference to basic facts would be necessary. A suit for recovery was filed by the plaintiff against the defendant bank on the averments that in pursuance of the arrangement, the plaintiff had took goods valuing Rs. 43,560/- vide invoice No. 1313 dated 29.11.1986 with Bharat Motor Transport Company under G.R. No. 18355 dated 1.12.1986 for M/s Panipat Woollen Mills (NTC) Kharar. The buyer had retired the documents from the bank on payment of amount on 29.12.1986. But the bank did not remit the amount to the plaintiff as according to them, they had not received the payment from the buyer. However, according to the buyer, they had released the amount.

4. On pleadings of the parties, the learned trial court framed as many as 8 issues and by a lengthy judgment dated 30th September, 1997, decreed the suit of the plaintiff for recovery of Rs. 71,000/- alongwith interest at the rate of 18% per annum from the date of the filing of the suit till the date of decree and future interest at the rate of 6% from the date of the decree till the realisation. The said judgment and decree of the learned trial court was assailed, of course, unsuccessfully by the bank before the learned first appellate Court. Learned first appellate court, vide its judgment and decree dated 8.9.1998 dismissed the appeal, while affirming the findings of fact and conclusion arrived at by the learned trial court.

5. As already noticed, the basic point that arises for consideration is that whether the defendant-bank has acted in consonance with the instructions issued by the respondent and had retired the documents as per the instruction and practice. In this regard reference can be made to the observations of the learned first appellate court, which reads as under :-

" .... It (defendant) was also instructed that in case buyer retired the documents within 15 days from the date of the presentation, the defendant will allow 3% cash discount and if the documents are retired within 30 days from the date of presentation it will allow them cash discount at rate of 1%. In case buyer does not retire the documents, it was directed to charge interest at the rate of.... . . after 45 days from the date of presentation. Defendant bank was to collect the bank charges from the draws. Further instructions were given to the defendants to remit the amount to it (plaintiff) through Punjab National Bnk, Chaura Bazar, Ludhiana only by bank draft. Accordingly, goods valuing Rs. 43,650/- were booked vide invoice No. 1313 dated 29.11.1986 with Bharat Motor Transport Company under G.R. No. 18355 dated 1.12.1986 for M/s Panipat Woolen Mills (NTC) Kharar. The buyer retired the documents from the defendant on payment of the amount on 29.12.1986 ...."

6. In view of the above observations, following findings of the courts below are relevant to be referred at this stage.

" .... No doubt in Ex.D2 which is the copy of the entries in the registered letter despatch register the name of the respondent No. 2 has been correctly recorded, but this does not absolve the appellant from its liability as it was to send the amount through draft through Punjab National Bank, Chaura Bazar, Ludhiana. Another violation of the instructions of the respondent is that it has been admitted by Harjit Singh that draft Ex.D3 has been prepared for Punjab National Bank, Brown Road, Ludhiana. DW-1 further stated that on account of the mistake the draft has been prepared in the name of Punjab National Bank, Ludhiana, Brown Road instead of Punjab National Bank, Ludhiana Chaura Bazar. He, further stated that the draft was not sent to Punjab National Bank, Chaura Bazar, Ludhiana. It is abundantly clear from his statement that the instructions given by the respondent have been violated by the appellant.

No evidence has been brought on the file that the payment of the drafts has been received by the respondent. The appellant cannot say that it was not at all negligent as an agent of the respondent and the loss has been caused not on account of its part. The appellant acted in utter disregard of the instructions issued by the respondent, even if it is taken that there is some negligence on the part of the postal authorities or some other bank, i.e. a matter between the appellant and those parties. Respondent had no connection with the postal authorities or Syndicate Bank . . . ."

7. Thus, where it is found as a matter of fact that the instructions given by the account holder were not carried by the banker, the banker cannot be absolve of its responsibility and the consequences arising therefrom. It will be more so when the courts below, as a matter of fact, comes to the conclusion that there was negligence on the part of the bank, may be to limited extent. Thus, facts would constitute sufficient ground, which would deprive the bank of any benefit, which may have been available to them in terms of judgments of Hanuman Prasad Gupta (supra) and the other case i.e. The Indore MalweL United Mills Ltd., v. The Commissioner for Income Tax (Central), Bombay AIR 1966 SC 1466.

8. Learned Counsel for the appellant has not been able to state as to how the bank was not responsible to make the payment good even if the alleged bank draft was misplaced in transaction after demand has been raised by the plaintiff. It is a case of admitted liability which could be discharged by showing that the payment due has been credited to the account of the plaintiff or it stood satisfied otherwise. Having failed to prove the discharge of the liability, the bank cannot take benefit of a mistake between the buyer of the goods and the bank to the disadvantage of the plaintiff.

9. Consequently, I find no merit in this Regular Second Appeal and the same is dismissed in limine.

