
(1960) 09 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 81 of 1953

Punjab National Bank Ltd.

APPELLANT

Vs

Iqbal Singh Kalyan Singh and Others

RESPONDENT

Date of Decision : 19-09-1960

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 93, 94, 98

Citation : AIR 1962 P&H 158 : (1961) 1 ILR (P&H) 450

Hon'ble Judges : G.D. Khosla, C.J; Gurdev Singh, J

Bench : Division Bench

Judgement

Gurdev Singh, J.

(1) This is a plaintiff's appeal against the judgment and decree of Shri Mehr Singh Chaddah. Senior Subordinate Judge, Gurgaon dated the 5th of February, 1953, dismissing the suit for the Punjab National Bank Ltd., for recovery of Rs. 11,930/3/9 from the respondents. The appellant has also been burdened with costs of defendants Nos. 1 to 5.

(2) Before the partition of the country, the Punjab National Bank has its head office at Lahore. One of its pay offices was at Jamke Chatha where the firm Messrs. Iqbal Singh-Kalyan Singh defendant No. 1 was carrying on the business as merchants and commission agents. The defendants No. 2 to 5 are the partners of that firm. Balwant Singh defendant No. 6 then carried on the business of Clearing Agents at Lyallpur (now in Pakistan) under the name and style of Messrs Narain Singh-Sunder Singh.

(3) According to the averments in the plaint, the defendant firm Messrs. Iqbal Singh-Kalyan Singh had a case credit account against the pleader of agricultural commodities with the local branch of the Punjab National Bank at Jamke Chatha. In, the beginning of August, 1947, they requested the plaintiff Bank to deliver stocks to defendant No. 6, who were Clearing Agents, against the receipt of a cheque for Rs. 10,110/7/- and to credit its proceeds to the account of defendant

No. 1 by discounting the same. Accordingly on the 9th of August 1947, a cheque for that amount drawn by the firm Messrs. Narain Singh-Sundar Singh (defendant No. 6) on the Bharat Bank Ltd. Lahore in favour of the plaintiff bank was discounted by the Branch Office of the plaintiff Bank at Jamke Chatha and the proceeds of the same were credited to defendant No. 1's account, after releasing a portion of the pledged stocks. This was at a time when serious communal disturbances broke out in Lahore. On account of the complete break down of law and order which is a matter of recent history, the cheque in question remained lying with the other records of the plaintiff Bank at Jamke Chatha. It was only in the year 1948, when those records were salvaged, that the cheque was presented to the Bharat Bank Ltd. Lahore on or about the 30th of June, 1948 but it was dishonoured as evidenced by Exhibit P. 18. Prior to that on the 23rd of April, 1948 notices copies of which are Exhibits P. 3 and P. 4, were issued to the firm defendants Nos. 1 to 6.

(4) Later the plaintiff Bank filed a claim with the Director General of Food East Punjab Government against the Clearing Agents defendant No. 6. A committee was set up by the Government to settle the disputes between the sellers and Clearing Agents. Balwat Singh defendant No. 6 appeared before that Committee and admitted his liability for the amount of the cheque adding that he was awaiting the payment from the Imperial Bank of India, Lahore, who had realised the amount from the consignee for the stocks. Despite subsequent notices of demand neither defendant No. 1, nor defendant No. 6, paid a single penny towards the amount due to the plaintiff Bank.

(5) Proceedings against Goverdhan Lal defendant No. 5, one of the partners of Messrs Iqbal Singh-Kalyan Singh, were ex parte. For the purpose of this appeal it is not necessary to go into the details of the pleas taken up by defendants Nos. 1 to 4. It will suffice to say that while admitting that they had instructed the plaintiff Bank to release stocks on receipt of the cheque for Rs. 10,110/7/- from defendant No. 6, they disclaimed liability for this amount on the plea that the cheque had not been presented within a reasonable time and no notice of dishonour had been given. These defendants further asserted that the suit against the firm defendant No. 1 (of which they were partners) for the amount in dispute was not maintainable as it was one of the items in the running account which Messrs Iqbal Singh-Kalyan Singh had with the plaintiff Bank.

(6) Balwant Singh defendant No. 6 proprietor of Narain Singh-Sunder Singh disputed the liability of the firm inter alia on the plea that the cheque was without consideration, that the Bank was never instructed to discount the cheque but was merely asked to realise the amount and credit it to the account of Messrs Oqbal Singh-Kalyan Singh, that defendant No. 6 never admitted his liability before the Committee appointed by the East Punjab Government to settle the disputes between the Clearing Agents and sellers and that in any case, defendant No. 6 was absolved from the liability as no notice of demand or dishonour was ever served upon it. The trial before the Senior Subordinate Judge

proceeded on the following issues:

1. Did defendant Nos. 1 to 5 request the plaintiff to deliver the goods of defendants Nos. 1 to 5 to defendant No. 6 against the receipt of cheque Exhibit P/1 on 9th August 1947, and credit the amount to the account of defendants Nos. 1 to 5 and was this amount so credited?
2. Was the cheque Exhibit P. 1 presented to the plaintiff by defendants Nos. 1 to 5?
3. Was cheque Exhibit P. 1 presented by the plaintiff to the Bharat Bank within reasonable time?
4. If issue No. 3 is negative, was the presentation not necessary legally or on account of the circumstances mentioned in the plaint?
5. Whether the notice of dishonour was sent by the plaintiff to the defendants within reasonable time, if not what is its effect?
6. Is the plaintiff entitled to interest, if so, at what rate from which date and to what amount?
7. Was the transaction in suit a part of a running account and, therefore, this suit does not lie against defendants Nos. 1 to 5?
8. Is the suit barred by Order 2, Rule 2?
9. Did defendants Nos. 1 to 5 deposit stocks of rice and toria with the plaintiff as security and what was its value and therefore the plaintiff is not entitled to sue without accounting for the stocks?
10. Are the defendants entitled to relief under the provisions of Act 25 of 1949, if so, in what manner and to what extent?
11. If it is proved that the amount of cheque was credited to the account of defendants Nos. 1 to 5 is not the defendant No. 6 liable for the amount?
12. Is J. Jasvant Rai entitled to bring this suit on behalf of the Bank?
13. Did the plaintiff release defendant No. 6? Issues Nos. 1 to 3, 8 and 10 to 13 were decided in favour of the plaintiff, while issues Nos. 4 to 7 and 9 were found against it. The suit against defendants Nos. 1 to 5 was dismissed on the ground that the transaction of the cheque in suit was a part of the running case credit account which the firm Messrs Iqbal Singh-Kalyan Singh had with the Bank and not suit for recovery of one of the items could lie without the Bank accounting for the agricultural commodities which were pledged with it as security.

(7) So far as defendant No. 6 was concerned the learned Senior Subordinate Judge found that he was clearly liable as drawer of the cheque but in view of the fact that the notice of dishonour of the cheque was not served upon him till more than two years after the date on which the drawee Bharat Bank had refused to

honour if, the defendant No. 6 was exonerated from all liability in respect of it.

(8) Though in the grounds of appeal the decision of the trial Court on issues Nos. 7 and 9 holding that the suit was no maintainable against defendants Nos. 1 to 5 was assailed, yet at the hearing of the appeal the learned counsel for the appellant, Shri Shambhu Lal Puri, did not address any arguments on this point and expressly stated that he disputed the findings of the trial Court regarding the liability of defendants No. 6 alone.

(9) As observed earlier while dealing with issues Nos. 1 to 3 the learned Senior Subordinate Judge has held that the cheque Exhibit P. 1 for Rs. 10,110/7/- was issued on behalf of the Clearing Agents defendants No. 6 in favour of the plaintiff Bank in compliance with the instructions of Messrs Iqbal Singh-Kalyan Singh defendant No. 1 and the same was for consideration. This cheque was presented for payment to the Bharat Bank Ltd. at Lahore on the 29/30th of June, 1948, but was dishonoured. There was no doubt a gap of several months between the date the cheque was received by the plaintiff Bank of Jamke Chatha and the day it was presented for payment to the drawee, yet the learned Subordinate Judge has found that in view of the communal disturbances and its aftermath, the presentation of the cheque was within a reasonable time and it did not absolve defendant No. 6 from liability. While dealing with issue No. 5 he, however, held that the notice of dishonour having not been served upon the defendant within a reasonable time as required by S. 94 of the Negotiable Instruments Act, the defendants were exonerated from liability under the cheque. It is the latter finding which has been vehemently contested on behalf of the appellant.

(10) It is the plaintiff's own case that the cheque in question Exhibit P. 1 was presented for payment to the Bharat Bank at Lahore and was dishonoured on the 29th of June, 1948. In para No. 7 of the plaint it was asserted that after the return of the cheque from the drawee Bank, notices of the dishonour were issued to the defendant. These notices according to the appellant's counsel, are Exhibits P. 7 dated the 29th of July, 1948 and P. 5 dated 31st of July, 1950 addressed to defendants Nos. 1 to 6 respectively. In fact these were the notices which were issued by the plaintiff only a couple of days prior to the institution of the suit calling upon the defendants to pay the amount of the dishonoured cheque. In other words the notice of dishonour was given to the defendants two years after the date on which the payment had been refused by the drawee. This certainly is not due compliance with the provisions of S. 93 of the Negotiable Instruments Act which lays down that a notice of dishonour must be given to all parties whom the holder seeks to make severally liable thereon except the drawee of the dishonoured cheque.

(11) From the letter Exhibit P. 2, which the plaintiff Bank has placed on record, we find that on the 4th of May, 1948, it was informed by the Manager of its Branch at Panipat within the territory of the Indian Union that Balwant Singh defendant No. 6 proprietor of firm Messrs Narain Singh-Sunder Singh owned a bungalow at Mathura and was putting up there. This information was in

possession of the plaintiff nearly two months before the cheque was dishonoured but we find that no notice of dishonour was issued to defendant No. 6 or any other defendant till the end of July 1950. No explanation for this inordinate delay in issuing the notice is forthcoming. In the circumstances the learned Subordinate Judge was perfectly justified in holding that the provisions of S. 93 of the Negotiable Instruments Act had not been complied with as the notices had not been served on the defendants within a reasonable time.

(12) Mr. Puri in fact accepts this finding but he contends that in the circumstances of the present case no notice of dishonour was necessary because: (a) defendant No. 6 was aware of the fact that the cheque had not been cashed and despite that promised before the Committee appointed by the East Punjab Government to settle the disputes between the Clearing Agents and sellers to make payment of the amount of the cheque and (b) the defendant No. 6 could not suffer any damage for want of notice because on the day the cheque was presented at the Bharat Bank Ltd. at Lahore defendant No. 6 had no account. Reliance in this connection is placed upon clauses (c) and (g) of S. 98 of the Negotiable Instruments Act which lays down:

"98. No. notice of dishonour is necessary-

*** (c) when the party charged could not suffer damage for want of notice;

*** (g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument".

Referring to clause (c) of S. 98 quoted above, the learned counsel for the appellant has invited our attention to the fact that the cheque was dishonoured by the Bharat Bank Ltd. Lahore solely on the ground that defendant No. 6 had no longer any account with that Bank as the same had been transferred to Delhi Branch. The question for consideration is whether the non-service of notice upon the drawee (defendant No. 6) in such circumstances could result in any damage to him. After giving my anxious consideration I am of the opinion that this question must be answered in the negative. The object of giving notice is not to demand payment for the party giving notice but to warn the party of his liability and in the case of drawer to enable him to protect him as against the drawee or acceptor who has dishonoured his draft. In a case like the present where the cheque is dishonoured merely because the drawer had closed his account there is no question of giving him a notice with the object of protecting himself against the drawee because the possibility of his being held liable by the drawee had ceases as soon as the account was closed. Generally where the drawer has no funds belonging to himself in the drawee's hands neither the presentment for payment nor notice of dishonour is necessary to charge the drawer.

(13) In *Chunilal Bhoopal Vs. Amarendra Chandra Dutta and Others*, it was held that when a cheque is dishonoured on account of the fact that the drawer has no account no question of damages to the drawer or his representative by reason of absence of notice of dishonor arises. This view finds support from *Bickerdike v.*

Bollman (1786) ITR 405, where Mr. Justice Buller observed as follows:

"The law requires notice to be given for this reason, because it is presumed that the bill is drawn on account of the drawee's having effects of the drawer in his hands; and if the latter has notice that the bill is not accepted, or not paid, he may withdraw them immediately. But if he has no effects in the other's hands then he cannot be injured for want of notice. Soon after I set on this bench I tried a cause at Guildhall, on a bill of exchange which was neither drawn or accepted by a person residing in Holland and a full special jury, under my direction, found a verdict for the plaintiff notwithstanding no notice had been given to the drawer of the bill's having been dishonoured, because he had no effects in the hands of the person on whom the bill was drawn. That verdict was never objected to: and if it be proved on the part of the plaintiff that from the time the bill was drawn, till the time it became due, the drawer never had any effects of the drawee in his hands, I think notice to the drawer is not necessary; for he must know whether he had effects in the hands of the drawee or not; and if he had none, he had no right to draw upon him, and to except payment from him; nor can he be injured by the non-payment of the bill or the want of notice that it has been dishonoured".

Dealing with a similar question, Bramwell J. in *Carew v. Duckworth* (1869) 4 Exch 313 stated:

"The true rule should be that no notice of dishonour is required where it would convey no information, that is, when the party sued knew beforehand that the bill would not be paid; but that where he did not know, it is right that he should be informed of the non-payment. If this rule should be adopted, the question would be did he, practically speaking, know beforehand that the bill would not be honoured? This may depend on a variety of circumstances; he might think that the cheque would be honoured by favour, though in fact, there were no assets to meet it".

The Court then held that want of effects which will excuse notice of dishonour need not be a want of any effect; it is sufficient if there are no effects sufficient for the payment of the cheque. In *Subrao Manjaya v. Sitaram Shivrambhat* 2 Bom LR 891 despite the finding that the hundi had not been presented within a reasonable time and no notice of it was given to the drawer, *Fulton and Crowe JJ.* held that neither of these facts could exonerate the drawer who admittedly had not funds belonging to him in the hands of the drawee and had suffered no loss owing to the failure of the holder in presenting the hundi in time or giving notice of dishonour. I thus find that clause (c) of S. 98 of the Negotiable Instruments Act is fully applicable to the facts of the present case and no notice of dishonour was necessary to charge defendant No. 6 the drawer of the cheque in question with liability.

(14) Another ground on which the learned counsel for the appellant has claimed exemption from notice is that defendant No. 6 in the course of the meeting

convened by the Director General of Food East Punjab in August 1949 had accepted his liability and promised to pay the amount. Defendant No. 6 Balwant Singh appearing as his own witness admitted that he was present at such a meeting and made a statement that the price of the goods to which the cheque related should be paid to the plaintiff Bank, but he asserts that it was not an unconditional promise to pay as he had also stated at the same time that thus would be paid to the plaintiff if it was collected by the Imperial Bank. The plaintiff's witness Chaman Lal Sethi P.W. 1, Law Assistant of the Punjab National Bank who had also attended the meeting, however, deposed that Balwant Singh defendant had not only admitted that he had issued the cheque in dispute and the amount was due from him but had also stated that the money was lying with the Imperial Bank of India and he would pay off the amount to the plaintiff Bank.

We have however, not to depend upon the statement of these interested persons, as Charanjiva C. W. 4. Assistant Accounts Controller, Food Department, Simla, was examined and he has deposed to the proceedings of the Committee appointed by the Punjab Government. He tells us that in the meeting of 5th of August, 1949, the Clearing Agent (defendant No. 6) had stated that he had sent a bill for the realisation of Rs. 10,110/7/- to Messrs. Volkart Brothers who were the agents for Madras Government consignees of consignment in question and he was quite prepared to make the payment if the Imperial Bank who had realised the same from Volkart Brothers paid it to him. The witness then placed on record extracts from the proceedings of the meeting held on the 19th December 1949, wherein the following passage occurs:

"As regards the second item of Rs. 17,000/- the Bank's representative present states that the Bank should be paid Rs. 10,110/7/- on account of the cheque issued by the clearing agents in their favour. This amount according to S. Balwant Singh, representative of the clearing agents, has now been realised by the Imperial Bank of India, Lahore from Messrs. Volkart Brothers, who had previously refused to make the payment on behalf of Madras Government. The Controller of Food Accounts would now realise this amount of Rs. 10,110/7/- and pay the same to the Punjab National Bank. S. Iqbal Singh of Messrs. Iqbal Singh-Kalyan Singh is also present and he has no objection to this decision".

(15) This clearly goes to show that Balwant Singh defendant No. 6 made an unconditional acknowledgment of his liability and promised to pay the amount of the cheque in question. It is significant that though Charanjiva C. W. 4 was examined as far back as 2nd January 1952 and the defendant Balwant Singh came into the witness-box thereafter about a year later in January 1953, he did not even assert that the record of the proceedings Exhibit C. W. 4 produced by Charanjiva was not correct. In this state of evidence the plaintiff's plea that defendant No. 6 had admitted his liability and promised to pay the amount unconditionally must be accepted. Though it is true that when this admission was made no formal notice of dishonour had been served upon defendant No. 6, yet the proceedings of the meeting referred to above clearly indicate that Balwant

Singh defendant was aware of the fact that his liability in respect of the cheque had not been met by the drawee Bank and the amount was still outstanding against him. If that was not so there would have been no occasion for him to make even a conditional promise to pay the amount of the cheque to the plaintiff Bank. Thus the case falls under clause (g) of S. 98 of the Negotiable Instruments Act and the claim of the plaintiff cannot be thrown out against defendant No. 6 on account of his failure to serve a notice of dishonour of the cheque within a reasonable time.

(16) The respondent's learned counsel has urged relying upon *Nenu Ram Vs. Shivkishen*, that this Court should not extend the benefit of S. 98 to the appellant as he had never pleaded exemption of notice in the trial Court nor was the matter put in issue. All that the two decisions referred to above lay down is that the onus of proving that the holder was excused from giving a notice of dishonour lay upon him and he must also prove that non-service of notice has occasioned no damage to the drawer. The facts on which these decisions proceed are entirely different from the case which is before us. In the instant case it has been found by the learned Subordinate Judge, and rightly so, that the cheque was presented to the drawee within a reasonable time but it was dishonoured because the drawer had closed his account with the drawee who had no funds of the drawer in its hands from which any payment could be made. The onus which rested on the plaintiff is thus amply discharged and I see no justification for refusing to apply the law contained in S. 98 of the Negotiable Instruments Act and depriving the plaintiff of the relief on a mere technicality.

The defendant No. 6 had to prove that a notice of dishonour was necessary despite the circumstances which bring the case within S. 98, Negotiable Instruments Act before he can urge that the notice was not served upon him within a reasonable time.

(17) For the reasons stated above I reverse the findings of the trial Court on issue No. 5. I, however, agree with the findings of the trial Court on issue No. 6 that non-payment of the amount, was due to the circumstances beyond the control of defendant No. 6. Thus there is no justification for allowing interest on the principal amount. I would, therefore, accept the appeal and modifying the judgment and decree of the Sr. Subordinate Judge pass a decree for Rs. 10,110/7/- in favour of the plaintiff Bank against defendant No. 6. In view of the circumstances of the case I would leave the parties to bear their own costs.

G.D. Khosla, C.J.

(18) I agree.

(19) Order accordingly.