(2005) 02 P&H CK 0051

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2143 of 1984

Pushpa Wati APPELLANT

Vs

Oriental Bank of Commerce and Others RESPONDENT

Date of Decision : 23-02-2005

Acts Referred:

Citation : (2006) 2 BC 450 : (2005) 128 CompCas 135

Hon'ble Judges : Ashutosh Mohunta, J

Bench : Single Bench

Advocate : Ashish Handa, for the Appellant; Gaurav Chopra, for the Respondent

Final Decision : Allowed

Judgement

Ashutosh Mohunta, J.—Whether or not the bank with which the fixed deposit receipts are kept as security for any overdraft made by the purchaser, is empowered to make the payment to a third party without any authority from the purchaser in order to discharge his debt liability of a third party, is the only question of law that arises for determination in the present appeal.

2. Smt. Pushpa Wati plaintiff along with her husband Chaman Lal (now deceased) purchased two fixed deposit receipts by depositing Rs. 25,848.27 in the Oriental Bank of Commerce, branch office at Batala (for short "the bank"), which were to mature on June 26, 1979. On the date of maturity the amount was to swell to Rs. 33,060.63. Smt. Pushpa Wati and her husband Chaman Lal were also partners of the firm M/s. Khullar Trading Company, G. T. Road, Batala (for short "the firm"). The firm was having cash credit facility from the bank. They deposited the said F. D. Rs. with the bank as security for any amount which may be advanced to the firm by the bank. The plaintiffs adjusted the cash credit account with the bank by making payments from some other source, and, as such they did not owe anything to the bank with regard to the cash credit account. In the meantime, a demand was raised by the Excise and Taxation Officer, Excise and Taxation Department, Batala. On the pretext of discharging

the liability of Chaman Lal plaintiff (now deceased) towards the Department as he had stood as a guarantor on behalf of some other persons. Thus, a payment of Rs. 55,000 was made to the Excise and Taxation Department by way of banker''s cheque. The said amount also included the amount of F. D. Rs. in question and certain other amounts. When on maturity of the F. D. Rs., the plaintiffs raised a demand from the bank to make the payment of the F. D. Rs., to them, the bank refused to make the payment as the said amount had already been paid to the Excise and Taxation Department. Smt. Pushpa Wati and her husband Chaman Lal filed a suit for recovery of Rs. 33,060.63 against the bank. The bank contested the suit. On the pleadings of the parties, the Sub Judge First Class, Batala, inter alia, framed the following issue:

"Whether the amount in dispute has been lawfully adjusted and the defendant is not liable to pay the amount to the plaintiff ?"

3. Ultimately, the trial court, vide judgment dated December 6, 1982, decreed the suit in favour of the plaintiffs by holding that the bank was not at all justified in making the payment of the amount to the Excise and

4. Taxation Officer. The appeal filed by the bank was accepted by the Additional District Judge, Gurdaspur, vide the judgment and decree dated April 9, 1984 and the judgment and decree passed by the Sub-Judge 1st Class, Batala, were set aside. During the pendency of the appeal before the district judge, the husband of Smt. Pushpa Wati, who was co-plaintiff with her, died. Now Smt. Pushpa Wati has filed the present appeal to challenge the judgment and decree dated April 9, 1984, passed by the Additional District Judge, Gurdaspur.

5. I have heard learned counsel for the parties and gone through the evidence adduced on record.

6. There is no dispute with regard to the purchase of the F. D. Rs. in question by the plaintiffs which were to mature on June 26, 1979. There is also no dispute to the fact that the said F. D. Rs. were deposited by the plaintiffs with the bank as security for any amount which may be advanced to the firm by the bank and which may remain unpaid. It is also the admitted case of the bank that the firm had cleared and adjusted all the dues with the bank and nothing remained to be paid to the bank on the date of maturity. The bank failed to bring any evidence on record to show that the plaintiffs had ever given any authority to them to adjust the amount of the F. D. Rs. as and when any demand is raised from any other quarter. Even if Chaman Lal plaintiff had stood guarantee in respect of Kultar Singh or any other person, as depicted in the letter mark A, the plaintiffs never gave any authority to the bank to make the payment out of the F. D. Rs. in question to the Anumati Vs. Punjab National Bank, , it has been held that the tripartite agreement under a joint deposit cannot be bilaterally modified by one of the joint account-holders. In the present case, the bank has made the payment to the Excise and Taxation Department in order to discharge the liability of Chaman Lal deceased as a guarantor on behalf of some other persons though

the bank was not authorised to do so by the purchasers of the F. D. Rs. Thus, it is held that the bank had wrongly and illegally made the payment to the Excise and Taxation Officer, Batala, without getting any authority from the purchasers of the F. D. Rs. in question.

7. Consequently, I allow the appeal and set aside the judgment and decree dated April 9, 1984, passed by the Additional District Judge, Gurdaspur. The judgment and decree dated December 6, 1982, passed by the Sub Judge 1st Class, Batala, decreeing the suit of the plaintiffs, are hereby upheld. However, the bank is given liberty to effect the recovery.

