
(1991) 03 MP CK 0003
In the Madhya Pradesh High Court
Case No : M.P. No. 427 of 1991 (I)

Raghvendra Singh Bhadoria

APPELLANT

Vs

State Bank of Indore

RESPONDENT

Date of Decision : 11-03-1991

Acts Referred:

Citation : (1991) MPJR 41

Hon'ble Judges : V.S. Kokje, J; V.D. Gyani, J

Bench : Division Bench

Advocate : A.M. Mathur with C.B. Patne, for the Appellant;

Final Decision : Dismissed

Judgement

Hon. V.S. Kokje, J.

This is a petition by purchaser of a demand draft claiming a restraint order on the drawer and drawee Branches of State Bank of Indore injuncting them from honouring the demand draft even if presented by the payee.

It is necessary to state the facts in brief. The Petitioner purchased demand drafts bearing Nos. 509218 and No. 509219 both dated 22-2-1991 of the value of Rs. 8,00,000/- and Rs. 2,00,000/- respectively from Patrakar Colony Branch of State Bank of Indore. These drafts were drawn on the Marwadi Road, Bhopal Branch of the same bank and were drawn in favour of M/s. Mc Dowell & Co. Ltd; the Respondent No 3. On 22-2-1991 itself, the Petitioner wrote to the Patrakar Colony Branch of State Bank of Indore (the issuing Branch) informing of the loss of drafts and requesting to send instructions to drawee branch, not to honour the draft. A report of the loss of drafts was also lodged with M. G. Road Police Station, Indore. From the photocopy of the report annexed to the petition, it seems to have been lodged on 26-2-1991. On 26-2-1991 itself the Petitioner wrote to the Patrakar Colony Branch of State Bank of Indore, repeating the information about loss of the drafts. However, this time, curiously, a strange request was made to get the demand draft dishonoured even if presented by the

payee The Patrakar Colony Branch conveyed the information and request to the Marwadi Road, Bhopal Branch.

The story of loss of drafts lost all relevance because it transpired that the Respondeat No. 3 M/s. Mc Dowell & Co. Ltd; in whose favour the drafts were drawn, itself presented them in Marwadi Road, Bhopal Branch for payment. The Marwadi Road Bhopal Branch refused to stop payment of the drafts. Hence the Petitioner filed this petition contending that Respondent Bank was obliged to dishonour the drafts as the Petitioner, the purchaser of the drafts had instructed it to do so before they were honoured and payment was made to the payee.

Shri A. M Mathur, Senior Advocate submits that a demand draft is like a cheque and the Bank is under obligation to stop payment, if the purchaser of the draft instructs it to stop payment before the payment was actually made. In support of this contention a recent ruling of the Supreme Court in M/s. Hyderabad Commercials Vs. India Bank and others, was relied on.

Having heard the learned Counsel, we find no force in the petition which deserves to be dismissed in limine. In Polavarapu Venkataswarlu Vs. Polavarapu Subbayya, pointing out the difference between a cheque and a bank draft, it was observed as follows:

A demand draft is, of course, a bill of exchange drawn by a bank on another bank, or by itself on its branch, and is a negotiable instrument..... It is very nearly allied to a cheque, the difference between it and a cheque consisting largely in two facts. Firstly, it can be drawn only by a bank upon another bank, and not by a private individual as in the case of cheques. Secondly, it cannot so easily be countermanded as a cheque, either by the person purchasing it, as by the drawer of a cheque, or by the Bank to which it is, presented... That is why demand drafts have been held" not to be cheques.

In Pt. Sidh Nath Shukla Vs. Punjab National Bank of India Ltd., , it was observed" as follows:

The main point of difference between a cheque and a draft lies in the fact that while a cheque is an order by the drawer on his own agent, the bank, for the payment of a certain sum of money to the bearer or the order of the person in whose favour the cheque is drawn, a draft is not an order by a private person to his own agent...A draft...cannot be drawn by a private individual like a cheque.

If a person orders his agent to pay a certain amount to another person it is clearly open to him to stop the payment and to direct his agent not to make the payment, provided, of course, the payment has not already been made. The payment of a cheque can therefore be very easily stopped.

A draft cannot, however, be countermanded so easily because having issued the draft the bank does not necessarily remain the agent of the purchaser. By issuing it, the bank undertakes a liability which it is bound to discharge at the instance of the person in whose favour it has issued the draft or a person claiming through

him.

The Court went on to observe further as follows:

Before the draft is delivered to the payee therefore, it is open to the purchaser to get the draft cancelled and to instruct the bank not to pay the amount to any one else but to return it to him. Before the draft is handed over to the payee as long as it is retained by the purchaser in his own hands the purchaser can treat the bank which issued the draft as his own debtor and can as a creditor demand the amount from the bank and the bank would be liable to satisfy the demand. The only thing that it can insist on is that the draft should be handed back to it so that there may be no chance left to any other person making a claim on its basis. It is only after the draft has been delivered to the payee and his rights have come in that the purchaser's right to claim the money and to stop the payment becomes disputable. At that stage, the bank can reasonably say that in order to have an effective discharge from liability it is necessary to have the consent of the payee before the amount can be paid to the purchaser.

In AIR 1945 213 (Lahore) : (1945) II Company Cases 108 , following observations are made:

Ordinarily, a bank cannot stop payment of a draft unless there is some doubt as to the identity of the person presenting it as being or properly representing the person in whose favour it is drawn... The position of a bank in regard to its own drafts is not quite the same as its position in regard to cheques drawn on it since it has taken on commitments of its own in favour of a third person at the instance of the purchaser..

If a draft is lost, for example, a risk may arise that it will be presented by someone who is not entitled to be the holder and there may be a forged endorsement. In such cases, the purchaser may reasonably ask the bank to be on its guard against presentation by the wrong person; and if the bank does not exercise the necessary precautions, the purchaser may sue the bank for negligence.

....it does not appear that the purchaser is entitled to ask the issuing bank to stop payment on other grounds, such as matters relating to the consideration in respect of which the draft has been issued at his instance for this would often put the bank in an impossible position, as when the purchaser of the draft is dissatisfied with some bargain which he has made with the person in whose favour the draft has been issued.

In *Tukaram Bapuji Nikam Vs. The Belgaum Bank Limited*, after reviewing the case law *Vimdalal, J.*, observed as follows:

From a consideration of these authorities, in my opinion, the following propositions emerge:

(1) the relationship of the purchaser of a draft and the bank from which that

draft has been purchased is merely that of debtor and creditor;

(2) the purchaser of the draft can, therefore, call upon the bank from which he has purchased it to cancel the draft and pay back the money to him at any time before the draft has been delivered to the payee;

(3) if, however, the sole object of the issue of the draft was to transmit the money to another person, a fiduciary relationship is created between the purchaser of the draft and the bank which issued it, and the purchaser of the draft can countermand payment only if the bank has not actually parted with the money held by it as agent, thus terminating the relationship of principal and agent;

(4) ordinarily, a bank issuing a draft cannot refuse to pay the amount thereof, unless there was some doubt as to the identity of the person presenting it as being or properly representing the person in whose favour it was drawn, or in other words, unless there is reasonable ground for disputing the title of the person presenting the draft; and

(5) once the draft has been delivered to the payee or his agent, the purchaser is not entitled to ask the issuing bank to stop payment of the draft to the payee on other grounds such as matters relating to consideration, and the issuing bank can thereafter pay back the amount of the draft to the purchaser of the draft only with the consent of the payee.

Examining the Petitioner's case in the light of the aforesaid legal position, we find that on the ground that the drafts were lost, the Petitioner was entitled to get the payment of drafts stopped as against strangers. He could not, however, ask the Bank not to pay even the payee or any other holder in due course. The Marwadi Road Branch of State Bank of Indore was, therefore, right in refusing to stop payment when the drafts were presented by the payee. The decision of the Supreme Court in *M/s Hyderabad Commercial* (supra) has no application to the facts of this case. In that case a huge amount was transferred unauthorisedly by the Bank from account of one customer to another. In paragraph 5 of the judgment it was observed as follows:

Since the basis facts regarding the unauthorised transfer of the disputed amount from the Appellant's account as well as the Bank's liability was admitted, there was no justification for the High Court to direct the Appellant to file suit on ground of disputed question of fact. The Respondent Bank is an instrumentality of the State and it must function honestly to serve its customers.

Thus the basis facts that the transfer was unauthorised and the Bank was liable were admitted in that case. In the present case, the Petitioner started with loss of drafts and did not explain as to how the payee could be stopped from enforcing payment on the basis of drafts drawn in his favour. The case has, therefore, no application to the present one.

There is one more aspect of the case which has to be considered. Should the

Court interfere in the matters like this, to issue an injunction against the Bank restraining it from honouring the document issued by it ? In the decision in U.P. Cooperative Federation Ltd. Vs. Singh Consultants and Engineers (P) Ltd., the Supreme Court had occasion to consider a similar question relating to letter of credit and bank guarantees. In paragraph 28 49 and 53 of their judgment, Their lordships of the Supreme Court have made following observations:

In order to restrain the operation either of irrevocable letter of credit or of confirmed letter or credit or of bank guarantee, there should be serious dispute and there should be good prima facie case of fraud and special equities in the form of preventing irretrievable injustice between the parties. Otherwise the very purpose of bank guarantees would be negated and the fabric of trading operation will get jeopardised.

.. (Para 28)

It is somewhat unfortunate that the High Court should have granted a temporary injunction, as it has been done in this case, to restrain the Appellant from making a recall of the amount of Rs. 85,84,456 from the Bank of India in terms of the letter of guarantee or indemnity executed by it. The courts usually refrain from granting injunction to restrain the performance of the contractual obligations arising out of a letter of credit or a bank guarantee between one bank and another. If such temporary injunctions were to be granted in a transaction between a banker, restraining a bank from recalling the amount due when payment is made under reserve to another bank or in terms of the letter of guarantee or credit executed by it, the whole banking system in the country would fail.

..(Para 49)

Whether it is a traditional letter of credit or a new device like performance bond or performance guarantee, the obligation of banks appears to be the same. If the documentary credits are irrevocable and independent, the banks must pay when demand is made. Since the bank pledges its own credit involving its reputation, it has no defence except in the fraud. The bank's obligations of course should not be extended to protect the unscrupulous seller, that is, the seller who is responsible for the fraud. But, the banker must be sure of his ground before declining to pay. The nature of the fraud that the Courts talk about is fraud of an "egregious nature as to vitiate the entire underlying transaction". It is fraud of the beneficiary, not the fraud of somebody else.

..(Para 53)

There is no reason why the aforesaid observations should not apply with equal force to demand drafts issued by a Bank. It would be clear, therefore, that unless a serious allegation of fraud with prima-facie evidence of it is shown the Courts should not interfere in the matter and grant injunctions against the Bank restraining it to honour the documents presented by the payee or a lawful holder

in the course.

In the result the petition fails and is dismissed summarily.