(1991) 03 CAL CK 0030

In the Calcutta High Court

Case No : Suit No. 297/87

R.K. Agencies Ltd. APPELLANT

Vs

Central Bank of India RESPONDENT

Date of Decision : 26-03-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 3
Contract Act, 1872 — Section 171
Foreign Exchange Regulation Act, 1973 — Section 73, 73(3), 9, 9(1)

Citation : AIR 1992 Cal 193

Hon'ble Judges : Ajit K. Sengupta, J

Bench : Single Bench

Judgement

1. This application has been made by the plaintiff-company for final judgment under Chapter XIIIA of the Rules of this Court in its Original Side against the defendant-Bank.

2. The case of the plaintiff-company is that on the 27th November, 1984 it caused a Cheque No. J 148553 dated 27th November, 1984 for Rs. 20,00,000/- drawn on the Allahabad Bank in favour of its Solicitors and Advocates M/s. Khanna & Co. to be deposited with the defendant-Bank. The plaintiffs Solicitors M/s. Khanna & Co., by and under cover of their letter dated the 27th November, 1984 made over the said cheque (o the Chief Manager of the defendant-Bank with a request to have the cheque encashed and put the proceeds thereof in a Short Term Fixed Deposit for six months carrying usual interest. The said Solicitors acting under instructions of the plaintiff recorded that the original fixed deposit receipt may be kept as lien by the defendant-Bank and the same would remain under lien and may be renewed from time to time for identical periods of six months pending the permission of the Reserve Bank of India for crediting of the said sum to the Foreigner''s Account as and when such permission is granted.

3. In pursuance of the said letter the defendant-Bank granted the Fixed Deposit Receipt No. 11/190 for the sum of Rupees 20,00,000/- in favour of "Khanna &

Co., A/C R. K. Agencies Limited."

4. On the 1st December, 1984 the Letter of lien on the printed form of the defendant was executed by the plaintiff''s Solicitors creating a lien on the said Fixed Deposit Receipt No. 11 /190 for Rs. 20,00,000/-.

5. The plaintiff claims that it intended that the sum of Rs. 20,00,000/- would be remitted to a Foreigner''s Account, London provided the permission of the Reserve Bank of India was obtained in that behalf. As no permission of the Reserve Bank of India was forthcoming the plaintiff through its Solicitor''s letter dated 28th May, 1985 duly demanded the return of the said sum of Rupees 20,00,000/- with all interest accrued thereon. The defendant-Bank refused to return the said sum alleging that it had a lien on the amount of fixed deposit and was not liable to return the same to the plaintiff. The plaintiff thereupon instituted the instant suit against the defendant-Bank.

6. After the defendant entered appearance on or about the 26th June, 1987 the plaintiff has made this application for final judgment for the sum of Rs. 28,04,027,75 together with interim interest, interest on judgment as claimed in the plaint against the defendant and in favour of the plaintiff. This application is contested by the defendant-Bank.

7. The main contention of the learned counsel for the defendant is that Bank has a lien on the amount of fixed deposit. Reliance has been placed in this connection on the letter of lien dated the 1st December, 1984 on the defendant-Bank''s printed form executed on behalf of the plaintiff by its Solicitors M / s. Khanna & Co., which is reproduced below:

"Manager, CENTRAL BANK OF INDIA Calcutta Dear Sir,

In consideration of the advances already made and of those which you may at your discretion make to us/me from time to time I we hereby give you a lien on my our S.D.R./F.D.R./L.T.D. Receipt No. 11/190 of your Bank of Rupees 20,00,000/- handed over to you duly discharged by me/ us to be held by you on account of M/s. R. K. Agencies Ltd. for the outstanding general balance of all and every my/our Loan. Current Cash Credit or other Accounts with you with power to utilize the proceeds thereof for adjustment of my/our various Accounts with you. And I/we undertake to execute such Deeds and Instruments as you may require hereafter to further secure the said S.D.R./F.D.R./L.T.D. Receipt and shall bear the costs thereof.

I/we hereby declare that I/we have not encumbered assigned or otherwise dealt with the said S.D.R./F.D.R./L.T.D. Receipt in any way and that the said S.D.R./ F.D.R./ L.T.D, Receipt is free from all encumbrances.

I/We remain,

Dear Sir, Dated 1st December, 1984Yours faithfully, Khanna & Co. R. K. Khanna Partner"

8. On a bare reading of the said letter of lien it would appear ex facie that the lien was confined to the deposit itself. Such lien could only be in respect of claim, if any, of the defendant-Bank against the plaintiff.

9. The concept of Banker''s lien is generally in respect of what are called collaterals, i.e. documents, securities etc. which come into the hands of the Banker and are intended to cover the Banker''s claim against the customer.

10. Reliance was placed on the following observation by Lord Kenyon in Davis v. Bowsher (I794) 5 TR 488 .

"Whenever a Banker has advanced money to another, he has a lien on all the papers, and securities which came into his hands for the amount of his general balance."

A Letter of Lien commonly includes the following provisions:--

(a) The customer agrees that the bank is to have a pledge upon all goods delivered by the customer or by his agents into the possession of the bank or of its agents and upon all bills of lading and other document of title deposited by the customer or by his agents, with the bank or with its agents.

(b) The customer agrees the goods and documents of title are pledged as a continuing security for the payment of all sums owed by the customer, either solely or jointly with any other person or persons, whether on balance of account or on guarantees or in respect of bills of exchange, and including interest with half yearly rests and other banking charges.

(c) The customer agreed that in case of default in repayment of such sum or sums on demand, the bank may sell the goods or any part theroef.

(d) The customer agreed to keep the goods fully insured in such office as the bank may approve.

(e) The customer undertakes to pay al! rent and other expenses of and incidental to the warehousing of the goods.

(f) The customer agrees that the bank is not to be responsible for default of any broker employed to sell the goods."

(See the Law and Practice of Banking, J. Milnes Holden, 7th Edition).

11. Admittedly in the present case there are no documents in the hands of the defendant-Bank, nor does the Bank have any claim against the plaintiff. There cannot be a Banker''s Lien on a deposit created by the customer in favour of the Bank. Even assuming in favour of the defendant-Bank that there could be such a lien in favour of the defend ant-Bank on the deposit, it must necessarily in view of the language of the Letter of Lien be confined to the claim of the Bank against the plaintiff. Admittedly, there was never nor is any such claim ever raised by the defend ant-Bank against the plaintiff. The claim of the defend ant-Bank, if any, against parties other than the plaintiff cannot be by the above Letter of Lien. If

the defendant''s Foreign Branch has any claim against any non-resident foreign third party, the defendant-Bank is perfectly within its rights to pursue its lawful remedies against the third parties abroad. In the correspondence between the plaintiff and the defend ant-Bank, it has never been the defendant-Bank''s contention that there was any agreement, oral or in writing between the defendant-Bank and third party with regard to such a lien.

12. On a construction of the said letter of lien it cannot be held that the Bank has a lien on the deposit made by the plaintiff in favour of the defendant. The Bank has a right to proceed against the deposit of the customer in any claim against the customer. Admittedly this Bank has no claim against the plaintiff. The letter of lien has, therefore, no legal effect.

13. It has been contended by the learned counsel for the defendant-Bank that there was no responsibility on the part of the defendant-Bank to apply for necessary permission for Reserve Bank of India. The defendant-Bank in its letter dated 12th August, 1985 to the plaintiff''s Solicitors alleged that the Bank did not agree that the Bank had wrongfully not complied with or carried out the conditions in the plaintiff''s Solicitor''s letter dated 27th November, 1984, and that the Bank''s, lien never stood discharged and the deposit continued and that the Bank was not liable to release the proceeds of the said deposit.

14. It was also submitted that in certain civil action commenced by the defendant-Bank in the English Court against S. L. Sethia Liners Ltd. and one Mr. Ranjit Sethia, the English Solicitors of Mr. Sethia had declared that their client had given a sum of Rupees 20,00,000/ - to be deposited with the Calcutta office of the defendant-Bank against their indebtedness to the London Office of the defendant-Bank. The Bank further claimed that the amount deposited under lien was in connection with the dues of S. L. Sethia Liners Limited.

15. In the affidavit-in-opposition of one Sujit Chandra Bandopadhyay affirmed on the 30th July, 1987 on behalf of the defendant-Bank, certain allegations were sought to be brought on record as to certain dealings and transactions the London Office of the Bank had with some third parties. It was alleged in the said affidavit-in-opposition that certain decrees were obtained from the English Courts against Ranjit Singh Sethia who was controlling the said S. L. Sethia Liners Ltd. When Sethia came to know that the Bank would take action for execution of the decree, such deposit of Rs. 20,00,000/-was caused to be made with the Calcutta Main Office of the defendant by Sethia through the plaintiff.

16. In the said affidavit-in-opposition reliance was placed on a letter dated 5th September, 1986 of the Reserve Bank of India whereby in exercise of powers conferred by S. 73(3) of the Foreign Exchange Regulation Act, 1973, Reserve Bank directed that no withdrawal on any amount would be allowed in relation to the above fixed deposit account and the said account shall not be closed or transferred to any other office. The defendant-Bank alleged that in view of the said Reserve Bank order the plaintiff had no right to demand any payment.

17. In course of hearing, on prayer made on behalf of the plaintiff-company, liberty was given to the plaintiffs Advocates M/s. Khanna & Co. to issue notice to the Reserve Bank of India to appear at the hearing. By an order dated 16th May, 1990 the Reserve bank was directed to produce the original records before this Court.

18. The learned counsel appearing on behalf of the Reserve Bank of India produced the original records on the 1st June, 1990 before me.

19. I have perused the original records which have revealed certain startling facts to this Court.

20. It appears from the said original records that the affidavit-in-opposition on behalf of the defendant-Bank affirmed by the said Sujit Chandra Bandopadhyay on the 30th July, 1987 does not reveal the true and correct facts and on the contrary contains gross suppression of facts from this Court.

The said affidavit is worthy of no credence and no reliance can be placed thereon.

21. It appears from the original records of the Reserve Bank of India that the defendant-Bank by its letter No. CO:ID:LS:85:718 dated 29th November, 1985 approached the Reserve Bank of India, Department of Banking Operations and Development, Bombay for necessary permission of the Reserve Bank of India for repatriation of the said sum of Rs. 20,00,000/- to set off against the dues of S. L. Sethia Liners Ltd., London. By Letter No. DBOD No. 1BS/C212 (Spl II) 86 dated 14th January, 1986, the Assistant Chief Officer of the Reserve Bank of India, Central Office, Department of Banking Operations of Development, Bombay informed the Gffieral Manager of the defendant-Bank that the Reserve Bank of India had refused to accede to the request of the defendant-Bank for remittance of the said amount from India in view of the Exchange Control Regulations which do not permit remittance from India towards recovery of dues of foreign borrowers of overseas branches of Indian banks from amounts held under lien in India.

22. There is a series of correspondence exchanged by and between the defendant-Bank and the Reserve bank of India pertaining to the said deposit which has been completely suppressed from this Court by the defendant-Bank. The Reserve Bank brought the facts pertaining to the deposit of Rs. 20,00,000/- to the notice of the Enforcement Directorate, Calcutta. The Deputy Director, Enforcement Directorate, Foreign Exchange Regulation Act, Calcutta by this letter No. T-1/1590/CAL/86/9317 dated 3rd September, 1986 had advised the Joint Controller, Exchange Control Department, Reserve Bank of India, Calcutta that such deposit was in contravention of the provisions of S. 9(1)(f)(i) of the Foreign Exchange Regulation Act, 1973. The Deputy Director requested the Reserve Bank of India to consider issuing an order under S. 73(3) of the Foreign Exchange Regulation Act, 1973 blocking the said amount in the hands of the defendant-Bank.

23.Consequently,letterNo. CA.EC. TPM/ 764/494(ED)-86 dated 5th September. 1986 was issued by the Reserve Bank of India to the defendant-Bank immobilising the account in the name of ''Khanna & Co. A/c R. K. Agencies''. The said letter was never communicated to the plaintiff-company. The said letter was disclosed and only made known to the plaintiff in course of hearing in the instant proceedings.

24. From the original records of the Reserve Bank of India it appears that the defendant-Bank represented that suit in English Court had been decreed against S. L. Sethia Liners Ltd., London and when pressurised by the defendant-Bank, Sethia had arranged for deposit by plaintiff-Company. The documents produced by the defendant-Bank in course of hearing suggest that at the time of deposit on 27th November, 1984, no decree had been passed by the English Court in favour of the foreign branch of the defendant-Bank. The affidavit-in-opposition of the defendant-Bank, therefore, contains false statement and is unreliable.

25. Inasmuch as the deposit was made by the plaintiff, an Indian Company through its Indian Solicitors & Advocates in Indian Currency with the Central Bank of India, Calcutta for being transferred to a Foreigner''s Account subject to the permission of Reserve Bank, I do not prima facie find that there could be any contravention of any of the provisions of the Foreign Exchange Regula-:ion Acl. The foreigner had no interest in the plaintiff-company. The plaintiff-company acted on its own and not at the instance of the "ortilgner in causing the deposit to be made. It was a case of simple Deposit by the plaintiff with the defendant-Bank and no money was being placed to the credit of a foreigner. The whole object of deposit by the plaintiff with the defendant-Bank was to comply with the Exchange Control Regulations and obtain the prior permission of the Reserve Bank of India for transfer to a Foreigner''s Account. The Reserve Bank of India did not grant sermission to the defendant-Bank and the money remained with the Calcutta Branch of the defendant-Bank. As such, in my view, there could have been no question of any contravention of the provisions of the Foreign Exchange Regulation Act. Moreover in my considered view the provisions of S. 9(1)(f)(i) of the Foreign Exchange Regulation Act have no application on the facts and circumstances of this case.

Section 9(1)(f)(i) of Foreign Exchange Regulation Act, 1973 provides as follows:

"9(1) Save as may be provided in and in accordance with any general or special exemption from the provisions of this subsection which may be granted conditionally or unconditionally by the Reserve Bank, no person in, or resident in India shall

(f) make any payment to, or for the craflit of, any person or receive any payment for, or by order or on behalf of, any person as consideration for or in association with

(i) the receipt by any person or a payment or the acquisition by the person or property outside India."

26. Admittedly there was no decree when Fixed Deposit was made. Even if there was intention of the plaintiff to repatriate the said amount for payment to the foreign branch of Indian Bank, this could not be done without any permission of the Reserve Bank of India. There is, thus, no question of any receipt of payment by any person outside India. Therefore, there is no violation of S. 9(1)(f)(i) of Foreign Exchange Regulation Act, 1973. Had there been any contravention, the contravention would have been of the bank. The bank by claiming lien on the said sum with a view to repatriate the sum to a person residing outside India intended to create or transfer a right whether actual or contingent in favour of a person residing outside India. Precisely, this is the reason why the bank being aware that the fixed deposit could not be withheld after the Reserve Bank of India had refused permission to repatriate the amount of fixed deposit sought to obtain an order or direction from Reserve Bank of India withholding the release of the fixed deposit. Such an order on the face of it is illegal and the Bank cannot rely on such an uncommunicated direction to the Bank made at its instance affecting adversely the interest of the plaintiff.

27. It has been submitted by the learned counsel on behalf of the plaintiff that the idea of keeping the amount in fixed deposit and placing the fixed deposit under the lien was only to enable interest to be earned and the amount not to be withdrawn in the event the permission of the Reserve Bank of India was granted. The permission of the Reserve Bank of India having not been granted, the defendant-Bank had no right to withhold the deposit and the amount was liable to be refunded with all accrued interests.

28. Had the aforesaid refusal of the Reserve Bank of India to grant permission for transfer of the said amount been disclosed by the defendant-Bank in the said affidavit-in-opposition, the defendant-Bank would have nothing to resist the plaintiffs claim in the suit. The conclusion is inescapable that such suppression was motivated to delay and defeat the claim of the plaintiff.

29. A Division Bench of this Court in the case of Kapil Deo Pandey Vs. Vasudeb Devshankar Shukla, after considering the decision of this Courl in the case of Sm. Kiranmoyee Dassi and another Vs. Dr. J. Chatterjee and the decision of the Supreme Court in the case of Mechelec Engineers and Manufacturers Vs. Basic Equipment Corporation, observed that substantial defence or good defence must be understood in the context of the facts and circumstances of each particular case. But where on the facts disclosed in the affidavits, it appears that there is a triable issue, it can be said that the defence raised by the defendant is not frivolous or vexatious or no defence at all. In my view on the facts and in the circumstances of the case, as 1 have already indicated, the defence of the bank is patently dishonest and so unreasonable that it cannot reasonably expect to succeed. That is precisely the reason why the intervention of the Reserve Bank of India was sought for, for blocking the said amount in the hands of the defendant-Bank. The bank has no defence to the claim of the plaintiff. Not a single document has been produced before this Court to support the claim of the bank

either of Hen or of contravention of Foreign Exchange Regulation Act. In my view, therefore, the defendant is not entitled to any leave to defend. It has unduly and wrongfully delayed the payment of the proceeds of the fixed deposit.

30. For the foregoing reasons, this application succeeds. There will be an order in terms of prayers (a) and (b) of the summons. Bank shall pay the costs of this application.

31.Stay asked for is refused.

32. Let the parties act on a signed copy of the operative part of the judgment and decree made herein on usual undertaking.

33. Order accordingly.

