
(1949) 07 BOM CK 0015
In the Bombay High Court
Case No : I.C. No. 18 of 1947

The Bank of India Ltd.

APPELLANT

Vs

The Official Liquidator

RESPONDENT

Date of Decision : 14-07-1949

Acts Referred:

Companies Act, 1913 — Section 166
Negotiable Instruments Act, 1881 (NI) — Section 31, 72

Citation : AIR 1950 Bom 375 : (1950) 52 BOMLR 587

Hon'ble Judges : Tendolkar, J

Bench : Single Bench

Advocate : H.M. Seervai, for the Appellant; S.T. Karani and H.D. Banaji, for the Respondent

Judgement

Tendolkar J.

1. This is a summons taken out by the Bank of India Ltd., (hereinafter called the claimants) for an order against the Official Liquidator as the liquidator of the National Security Bank Ltd., (hereinafter called the bank) to pay to the claimants an aggregate sum of Rs. 5,000 on the ground that such sum was held by the bank in trust for the claimants. The amount represents the proceeds of three cheques for RS. 1000, Rs. 2,000 and Rs. 2,000 respectively drawn on the Talod branch of the bank, which the claimants sent to the head office of the bank in Bombay for collection. The cheques were duly forwarded by the bank to their branch at Talod. The Talod branch debited the amounts to the account of its customer and credited them to the account of the head office and forwarded two credit notes in respect thereof to the head office. These credit notes are dated 15th and 21st February 1947, respectively; but they did not reach the head office until after they suspended payment on 21st February 1947. The earlier of these credit notes bears an endorsement that it was received on 26th February 1947. The other credit note bears no endorsement but could not obviously have been received on 21st February 1947, which is the date which it bears. On 21st

February 1947, a petition for winding up was presented to this Court on which an order for compulsory winding up of the bank has been made, which in law relates back to the time of the presentation of the petition.

2. Where a bank collects a cheque, it may do so as a holder for value or as a mere agent of the holder for the purpose of collection. In the latter case, it is well established that the proceeds of the cheque are held by the bank as a trustee for the holder of the cheque. See *The Indian Hume Pipe Company, Limited Vs. The Travancore National and Quilon Bank, Ltd.*, . Where a customer pays the cheque into his account with a bank, a question may well arise as to whether the bank received it as holders for value or as mere agents for collection. See *Farrow's Bank Ltd., In re* (1923) 1 Ch. 41 : 92 L. J. ch. 153. But inasmuch as, in the present case, the claimants had no account with the bank, no such question arises. Moreover, the letters with which these cheques were forwarded to the bank for collection have been produced and they are in these terms :

"We beg to enclose a cheque for Rs..... for collection on yourselves and request you to remit the proceeds less your charges by a cheque drawn in our favour on a bank in Bombay."

It cannot, therefore, be disputed that in the present case the bank acted as the agents for collection of the claimants in respect of these three cheques.

3. However, what is urged on behalf of the Official Liquidator is that no property representing the amount of the cheques was received by the bank, transfer from one branch to another not being receipt of money, and that, in any event, the bank did not collect the cheques before the winding up order which relates back to the presentation of the petition on 21st February 1947.

4. The first of these contentions is based on certain observations of their Lordships of the Privy Council in *Prince v. Oriental Bank Corporation* (1878) 3 A. C. 325 : 47 L. J. P. C. 42. In this case, *Prince & Co.*, lodged with the Bank of New South Wales for collection a promissory note drawn by *Hopkins & Gate* and payable at the M. Branch of Oriental Bank. *Hopkins & Gate* had an account not with the M. Branch but with the Y. Branch of the Oriental Bank. The Bank of New South Wales handed over the note to the S. Branch of the Oriental Bank for collection. The S. Branch sent it to the M. Branch where it was stamped as having been paid; and the manager of the M. Branch sent to the S. Branch a transfer draft in favour of the Bank of New South Wales. In the books of account of the M. Branch, the Y. Branch was debited with the amount. Thereafter *Hopkins & Gate* Stores were destroyed by fire and the manager of the M. Branch wrote to the S. Branch to cancel the transfer draft in favour of the Bank of New South Wales and to return the promissory note dishonoured, which the latter did after cancelling the endorsement of payment thereon. Thereupon, *Prince & Co.* filed a suit against the Oriental Bank to recover the amount on the ground that it had been received by them as trustees for *Prince & Co.* Sir Montague-Smith, who

delivered the judgment of their Lordships of the Privy Council, observed as follows (pp. 330-331) :

"It is contended on behalf of the plaintiffs that what passed between the Murrumburrah and Sydney branches of the bank and the remittances by the officer at Murrumburrah to the officer at Sydney of the transfer note, was equivalent to a payment of money to the Sydney branch. But even so, the whole case of the appellants must rest upon the foundation that these branches are to be treated for this purpose as if they were separate and independent banks. If they had been separate and distinct banks, it may be that the remittance by the Murrumburrah Bank to the bank of Sydney of this draft to be put to the credit of the New South Wales Bank, would, if so accepted, have been equivalent to a receipt on the part of the Sydney bank of money from the Murrumburrah Bank to be hold for the New South Wales Bank. But the difficulty of the plaintiffs' case is that these banks are not separate and distinct banks, but branches of one and the same banking corporation or establishment. They are, indeed, separate agencies, but agencies, of one principal, that principal being the corporation of the Oriental Bank. How, then, are the defendants liable? They have not received the money, nor anything equivalent to money, from any source outside their own establishment. Supposing, the Murrumburrah branch had sent money from their till to the branch at Sydney, whose money would it have been? Surely the money of the Oriental Bank. It would have gone from the till at Murrumburrah to the till at Sydney, but would remain, notwithstanding the transfer, the bank's own money. Then, if so, the remittance of the draft and the entries, which at most are only equivalent to a transfer of money, and might be so as between distinct banks cannot have greater effect than an actual transfer of money. They are entries and transactions only by and between the respective officers of the same bank."

There observations must, however, be read along with ether facts which have been emphasized in the judgment. These facts, which will be found at p. 330 of the report, were that there was no evidence as to whether the account of Hopkins & Gate was in funds or whether there was any arrangement between Hopkins & Gate and the bank for the bank to pay the amount of the promissory note; that Hopkins & Gate had not paid any moneys in respect of the promissory note into the bank and that there was no evidence that the amount at the promissory note was in fact debited to the account of Hopkins & Gate. Had those facts been otherwise, the result would, in my opinion, have been different. If the bank were under a legal obligation to pay the amount of the promissory note, either because the account of Hopkins & Gate was in funds or because they had validly agreed with Hopkins & Gate to give item credit and honour the promissory note, and if the bank had in fact debited the amount of the note to the account of Hopkins & Gate, I do not think it could have been contended that the amount of the note was not received by the bank, for a valid debit to the customer must of necessity import a corresponding credit to the bank. I do not think that their Lordships of the Privy Council intended to lay down that where one branch of a

bank, which is liable to honour a negotiable instrument, validly debits the account of its own customer and transfers the money to another branch or to its head office, the transaction involves no receipt of money by the transferee bank but merely a transfer of the bank's own money from one branch to another. In the present case, the cheques were drawn against an account which was in funds, as can be seen from the account of the customer which has been put in these proceedings. The amounts of the cheques were debited to this account and credited to the head office account in the books of account of the Talod branch and credit notes in respect thereof were sent to the head office. If these notes had been received by the Head Office before they suspended payment, in my opinion there could have been no doubt that the bank had received the amount of these cheques on behalf of the claimants.

5. But there is a further argument on behalf of the Official Liquidator that the cheques cannot be said to have been collected when the Talod branch debited its customers and credited its head office; they can only be considered as collected when the credit notes were received and accepted by the head office. If the cheques had been drawn not on a branch of the bank but on a different bank, then it may have been that until the credit notes sent by the Talod bank were accepted by the bank in liquidation there was no receipt of money by the latter. Thus, in the passage above cited Sir Montague Smith observed (p. 330) :

"If they had been separate and distinct banks, it may be that the remittance by the Murrumburrah Bank to the bank at Sydney of this draft to be put to the credit of the New South Wales Bank, would, if so accepted, have been equivalent to a receipt on the part of the Sydney Bank of money from the Murrumburrah Bank to be held for the New South Wales Bank"

It would appear from this passage that there must be acceptance of the credit (which incidentally is not the same thing as acceptance of a credit note) by the collecting bank before it can be said that they received money or its equivalent. In the case of distinct banks, unless there is any binding agreement between them, the collecting bank may well refuse to accept the credit and insist on payment in cash; and therefore until it accepts the credit, it cannot be said to have realised the amount of the cheque. Is the position any different when the cheque is drawn not on a separate bank but on a branch of the collecting bank ?

6. It is contended for the claimants that the bank and its branches are one; and the receipt of money by the branch is receipt by the bank in liquidation. On the other hand, it is contended on behalf of the Official Liquidator that for this purpose the bank in liquidation and its branch must be treated as if they were distinct banks. Now, while there is no doubt that a branch is an agency of the head office, it is well established that for certain special purposes of banking business they may be treated as different banks. Thus, for example, the obligation to honour a cheque of a customer rests on the branch on which the cheque is drawn and on no other. Similarly, where different branches of a bank are endorsers of a negotiable instrument, notice of dishonour must be given to

each branch in succession. See *Rex v. Lovitt* (1912) A. C. 212 : 81 L. J. P. C. 140. In the present case, the obligation to honour the cheques in question was that of the Talod branch, and that branch and the bank in liquidation must in my opinion be treated as if they were distinct banks. I will deal with the matter on this footing; but before doing so I may point out that the claimants would be in a much stronger position if the branch and the head office were treated as one bank, for in that case, when the branch debits its customers' account, it receives the equivalent of money which it can only receive on behalf of the holder of the cheque; and the receipt by the Talod branch is, therefore, in law, receipt by the head office.

7. Now treating the Talod branch and the head office as distinct banks, as I have pointed out before, there would be no receipt of money by the head office until it either actually accepts the credit of the Talod branch in respect of a particular cheque or there is a binding arrangement to accept the credit of the Talod branch and the Talod branch debits its customer and credits the head office. Mr. Seervai appearing for the claimants offered to lead evidence to show that according to the usage and custom amongst banks, where the head office of a branch sends a cheque drawn on a branch for the purpose of collection, it requires the branch to ascertain whether the cheque is good for payment, and if it is, to debit the customer and to credit the head office. The acceptance of the credit of a branch in advance is therefore a part of the usage and custom of bankers. I, however, prevented Mr. Seervai from leading this evidence because in my opinion no Court would hear a bank to say that it was not prepared to accept the credit of one of its own branches, who were its own agents and whom it had set up in different localities for the purpose of carrying out banking business. In the case, therefore, of a cheque drawn on a branch, it must be assumed that the head office is under an obligation to accept the credit of its branch; and if the cheque is honoured by the branch and the amount debited to the customer and credited to the head office, the head office must be deemed to have collected the cheque in the sense that they have received the equivalent of money.

8. The position, therefore, in the present case is that in so far as the cheque for Rs. 2,000 drawn by Sha. Manilal Narandas (part of Ex. A) is concerned, the account of the customer at Talod was debited and the account of the head office was credited on 16th February 1947. Quite obviously, therefore, in respect of this amount the bank in liquidation were trustees (or the claimants). The position with regard to the other two cheques requires further investigation, because, although these two amounts were debited to the account of the customers and credited to the account of the head office on 21st February 1947, it would have to be ascertained at what hour of the day they were so debited. It is common ground that the petition for winding up was presented at 2-45 P. M. on that day. If, therefore, in the books of account of the Talod branch, the debit to the customers and the corresponding credit to the head office took place before 2-45 P. M. on that day, the bank in liquidation would be trustees for the claimants for these two amounts. If, however, no such entries were made before 2-45 P. M. they must

rank only as ordinary creditors of the bank. In my opinion in this case the credit note or the receipt thereof by the head office is not a matter of much consequence. The credit note is merely an intimation of the fact that the account of the head office has been credited at the branch. It does not, in my opinion, create any rights, or affect any rights already created. I will, therefore, give liberty to the parties to prove when the two amounts of Rs. 2,000 and Rs. 1,000 were debited to the account of the customer at Talod and credited to the account of the head office at Talod branch. The claimants must have their costs of the chamber summons so far incurred and I order that the Official Liquidator do pay these costs. Costs of the Official Liquidator out of the assets.