(1948) 12 CAL CK 0006

In the Calcutta High Court

Case No : Civil Revision No. 5 of 1948

The Bengal Bank Ltd. APPELLANT

Vs

Satyendra Nath Das and Others RESPONDENT

Date of Decision : 01-12-1948

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 30, 31

Citation : AIR 1952 Cal 385

Hon'ble Judges : Sen, J

Bench : Single Bench

Advocate : Sitaram Banerjee and Jajneswar Majumdar, for the Appellant; Apurbadhan Mukherjee, Amar Nath Banerjee for Nos. 1 and 2 and Ram Krishna Pal, (for No. 3), for the Respondent

Judgement

Sen, J.—This is an application u/s 25, Provincial Small Cause Courts Act by the Bengal Bank Limited, who was deft. 2 in a suit brought by the plffs Satyendra Nath Das & Prithwiraj Das.

2. The facts leading to this application briefly are as follows: Satyendra Nath Das & Prithwiraj Das sold some timber to deft. 1 Basanta Kumar Nag & demanded the price thereof, Basanta Kumar Nag thereupon drew a cheque on the Economic Bank Limited, Sonamukhi Branch, for the amount claimed & made it over to the plffs. in payment of their debt. The plffs. sent this cheque to the petitioner, the deft. 2 (the Bengal Bank Limited) for collection & credit to their account. The Bengal Bank sent the cheque to the Bankura Branch of the Economic Bank Limited for realisation. The Bankura Branch realised the amount from the Sonamukhi Branch but did not make over the sum realised to the Bengal Bank on account of some "internal trouble" & asked for time. Thereafter, the Economic Bank Limited went into liquidation & the Bengal Bank Limited could not realise the money. The plffs. were informed of this and the plffs. brought this suit out of which this application arises making Basanta Kumar Nag, the drawer of the cheque deft. 1, the Bengal Bank Limited, deft. 2, the Bankura Branch of the

Economic Bank Limited, deft. 3, & the Economic Bank Limited, Sonamukhi Branch, deft. 4. The plffs'' case was that they were entitled to get this money from one or other of the defts. The learned Judge of the Court of small causes has held that the only party liable to pay this money to the plffs. is the Bengal Bank Limited. As far as I can ascertain from the judgment the learned Judge thinks that the Bengal Bank Limited, employed the Bankura Branch of the Economic Bank Limited as its agents to collect the money & as its agents had failed to collect the money the plffs. would be entitled to recover it from the Bengal Bank. He has accordingly decreed the suit against deft. 2 & dismissed it against the rest. Against this decision the Bengal Bank Limited has obtained this Rule.

3. The learned Advocate for the Bengal Bank contends that in no way can the petitioner be held liable in this case. The petitioner was merely asked to collect the amount from the drawee bank. The drawee bank having gone into liquidation the money could not be collected. There was no liability on the part of the petitioner to pay this sum to anybody until it got it from the payee Bank. On behalf of the plffs. the argument is that the plffs. do not mind from whom they get the money so long as they realise their dues. It was contended by the learned Advocate on behalf of the plffs., however, that the Bengal Bank Limited was liable on the ground that the money was not realised owing to default of the agents of the Bengal Bank Limited, their agents being the Bankura Branch of the Economic Bank. Further, the learned Advocate contended that even if the Bengal Bank is not liable he is entitled to get a decree from the deft. Basanta Kumar Nag. He concedes that as there is no privity of contract between his clients & the Economic Bank Limited he cannot enforce any claim against them.

4. On behalf of the deft. Basanta Kumar Nag the argument as I understood, it was that the failure to collect the money was due to the laches of the Bengal Bank Limited & that therefore the Bengal Bank Limited was liable. It was pointed out that at the time the cheque was issued the deft, had money enough in the Sonamukhi Branch, of the Economic Bank Limited to pay the sum. It was also pointed out that the Sonamukhi Branch actually paid the sum to the Bankura Branch who were the agents of the Bengal Bank Limited. The learned Advocate says that if the Bengal Bank Limited had directly sent the cheque to the Sonamukhi Branch, they would have realised the money because at that time the Bank had not gone into liquidation.

5. In my opinion the case is an extremely simple one & complexities have been introduced into it quite unnecessarily, The result of this had been that the only party not liable to pay has been made to pay. The liability of the Bengal Bank Limited could only arise if the money was paid by the Economic Bank by honouring the cheque. If the Economic Bank failed to pay the money I cannot see how on any reasonable grounds-it can be held that the Bengal Bank Limited was liable. As regards the argument that there were "laches" on the part of the Bengal Bank Limited I am afraid that it is of no substance. The learned Judge

seems to have decided the case on the basis: that the different branches of the Economic Bank were separate juridical persons. This view is entirely wrong. The branches are merely limbs of, the Economic Bank Limited which is the juridical; person. There was no such delay on the part of the Bengal Bank Limited which would in any way raise a bar against the defence of the Bengal Bank Limited in a claim of this description. It is no use loosely using the word "laches". The Bengal, Bank can only be made liable if it can be shown that under the law it has prevented itself from taking the defence that it has taken. The cheque was-presented by the Bengal Bank within time. The cheque was dishonoured. The learned Judge seems to think that the cheque was not dishonoured because one branch of the Economic Bank paid the money to the other branch. The liability to pay the amount of the cheque is in the juridical person, the Economic Bank Limited. It is true that for convenience branch accounts are opened at different banks & the branches make the payment. Payments are always made on behalf of the Bank, the Branch not being a juridical person, & the liability lies with the bank if a branch does not pay. As I have said before I am unable to follow the reasoning of the learned Judge in making the Bengal Bank Limited liable & in absolving the principal party liable, namely, the drawer of the cheque. It was contended by Basanta Kumar Nag that it was not his fault that the Bank could not! realise the money on the cheque. He says that if. the cheque had been promptly presented before the Bank had gone into liquidation, the amount might have been paid.; This argument is on the face of it absurd. Even if the Bank went into liquidation, the liability of the drawer remains. He cannot plead that his Bank had gone into liquidation. He is bound to pay his dues to the plffs. & if payment of the cheque has .failed by reason of his bank going into liquidation his liability still remains to pay the plffs. He may have some remedy against his bank, with that I am not concerned.

6. Having regard to what has been said above I set aside the decree passed by the learned Judge of the Court of small cause & decree the suit with costs against Basanta Kumar Nag. The petitioner (the Bengal Bank Limited) will get the costs of this application from the opposite party Basanta Kumar Nag. The suit against the Bengal Bank Limited is dismissed with costs against the plffs.

