(1978) 08 DEL CK 0036

In the Delhi High Court

Case No : Second Appeal No. 170 of 1974

The Central Board of Industries and Commerce and Others — APPELLANT

Vs

Sham Lal Gupta — RESPONDENT

Date of Decision : 21-08-1978

Acts Referred:

Citation : (1978) 14 DLT 254

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : C.M. Oberoi and J.R. Goel, for the Appellant;

Judgement

(1) This case raises a point of banking law and practice. The point raised is a short one but it arises in a tortuous litigation.

(2) Sham Lal Gupta is the landlord of building No. 16-B]IV situated at Asaf Ali Road, New Delhi. He let the ground floor of the building to one T. N. Mathur who was carrying on business under the names and style of the Central Board of Industries & Commerce at a monthly rent of Rs. 800.00 per month. The tenant did not pay rent. The landlord filed an eviction case against him. Arrears of rent were due from the tenant from 1st December, 1965.

(3) On 17th December, 1969, the Additional Rent Controller passed an order under s. 15(1) of the Delhi Rent Control Act 1958 (the Act). Against the order the tenant appealed to the Rent Control Tribunal. The tribunal dismissed the appeal on 5th August, 1970. The tenant appealed to the High Court. His appeal was admitted. The tenant asked for stay of the operation of the order of the Additional Controller. On 2nd September, 1970, Sachar J. made an order that if the tenant deposits Rs. 20,000.00 in cash before the Registrar on that very date and furnishes a security in the sum of Rs. 25,000.00 within a week before the Additional Controller there shall be a stay. The tenant paid Rs. 20,000.00 in cash. On 9th September 1970 his wife Mrs. Usha Nath Mathur furnished the security in the sum of Rs. 25.000.00 .

(4) The wife had a fixed deposit receipt of the Bank of India (the bank) No. F-6/328 dated 29th August, 1970 of Rs. 25,000 for the period of one year. She had deposited Rs. 25,000 with the bank and obtained this deposit receipt. She furnished the security in terms of the court''s order by pleading the receipt. The wife executed a surety bond wherein she said that her husband "Shri T. N. Mathur shall produce at the disposal of the court when required the amount of Rs. 25,000" and "in default of his so doing I bind myself, my executors, to pay to the said court, at its order, the said sum of Rs. 25.000 or such sum not exceeding Rs. 25,000 or any portion thereof as the said court may adjudge against my Fixed Deposit Receipt No. F-6/328 dated 29-8-70 due on 19-8-71 on the Bank of India, Connaught Place, New Delhi for Rs. 25,000 in the name of Mrs. Usha Nath". She handed over the fixed deposit receipt to the Additional Controller where she filed the surety bond. Before the Additional Controller Mrs. Usha Mathur made the following statement on 9th September, 1970 :

"Ipledge this fixed deposit receipt in the name of the court according to the order of the High Court as security. My amount of Rs. 25,000 is in deposit with the Bank of India vide F. D. R. No. F-6/328 dated 29-8-1970. I pledge it in favor of the court and undertake that I will not withdraw the amount except with the order of the court. I shall be bound by the decision of the court."

(5) After Mrs. Mathur had furnished the security the Additional Controller sent a notice to the bank on 3rd October 1970 directing it not to pay Rs. 25,000 to Mrs. Usha Mathur till the decision of the suit because, it was stated, "she had pledged the same in favor of the court by way of security". It is not disputed that this notice was received by the bank on 3rd October, 1970 itself.

(6) On 3rd May 1970 the second appeal of the tenant was dismissed by D. K. Kapur J. The tenant fell into further arrears of rent. A sum of Rs. 61,600 became due from him on account of arrears from 1st December, 1965 to 30th April 1972. A sum of Rs. 20,000 had already been paid in cash to the landlord. The balance of Rs. 41,600 remained due which the tenant did not pay. The Additional Controller passed an eviction order against the tenant on 25th October 1972 and in pursuance thereof the landlord took possession.

(7) After taking possession the landlord on 13th November, 1971 made an application to the Additional Controller for the enforcement of the surety bond of Mrs. Usha Mathur. On 22nd December, 1973, the Additional Controller dismissed the objections of the tenant and his wife and made an order for attachment of the aforesaid sum of Rs. 25,000. The tenant appealed. The Rent Control Tribunal dismissed the appeal on 26th August 1974. Thereupon the tenant and the surety came to the High Court and filed Sao 170 of 1974. In this appeal the tenant and the surety questioned the competence of the Additional Controller to enforce the surety bond. H.L. Anand, J. decided the appeal on 27th October 1975. He held that the surety bond could be enforced only by the High Court and not by the Additional Controller. As a result the Additional Controller returned the application for enforcement of the security to the landlord for presentation to the

High Court.

(8) On 25th February 1976 the landlord presented the application in this court. This application was heard by B. C. Misra, J. On 13th September 1976 he made an order directing the Registrar to send for the money from the bank to the extent of Rs. 25,000 for which amount Mrs. Usha Mathur had furnished the surety bond.

(9) In answer to the notice the bank appeared before the Additional Controller and filed objections on 11th January, 1977. The Additional Controller then sent the file to this court for the decision of the objections of the bank as it had already been decided that the Additional Controller was incompetent to enforce the security. In addition to the objections, the law officer of the bank has also made a supplementary affidavit in this court dated 5th September, 1977. In this order I propose to decide the objections of the bank to the enforceability of the surety bond of Mrs. Usha Mathur.

(10) The fixed deposit receipt was made over by the surety to the Additional Controller. On its reverse certain conditions are printed. Two of these conditions are important. These are :

"2.The deposit receipt must be surrendered at the time of repayment or renewal of the deposit. 3. The deposit receipts are not transferrable by endorsement. In the absence of special instructions the amount of a deposit can be paid only to the depositor in person. Payment to any third parly must be sanctioned by a letter of authority which should accompany she deposit receipt."

(11) The bank has raised two principal objections. In the first place it. is said that the deposit receipt is "not transferrable" and Therefore could not be pledged or assigned. Secondly, it is submitted that assuming an assignment can be made the assignment will be subject to the banker''s lien and the right of set off as provided in s, 171 of the Contract Act, It is said that the tenant T.N. Mathur was heavily indebted to the bank and his wife Mrs. Usha Mathur had stood surely for the repayment of the loans advanced to her husband. It is further said that Mrs. Usha Maihur was herself indebted to the bank. The bank has pleaded that it has obtained decrees both against the husband and wife for substantial sums and in exercise of its right of set off the bank on 9th March 1975 "liquidated and adjusted" the amount of P.. 25,000 towards the debt due to it.

(12) Now the question is : What is the nature of the fixed deposit receipt ? Can it be assigned ? The fixed deposit receipts are not negotiable or even transferrable on the face of them. A deposit receipt even if in terms it is expressed to be transferable, has never been recognised as a negotiable instrument or as giving the transferee a right to sue in his own name, (Halsbury Law of England 4th ed. Vol. 3 p. 58). But the deposit receipt can be assigned. The receipt represents a debt. And a debt, as Paget says, "is always there ; always a chose in action, with the attributes of such, including assignability" [Law of Banking (7th ed.) p. 146]. The receipt is an essential indicia of title. The debt is an actionable claim. Under

s. 130 of the Transfer of Property Act an actionable claim can be assigned. According to the general law as to assignment notice should be given to the debtor in such a case, and the banker should and ought to wait for such notice. It is true that the mere transfer of the fixed deposit receipt does not constitute an assignment. But if there is an assignment in writing and the instrument is handed over to the assignee and a notice of assignment of the actionable claim has been given to the debtor the assignment is complete. In Sheldon''s Practice and Law of Banking (10th ed.) the law is stated as follows : "This (deposit) receipt is merely a written acknowledgement by the banker that he holds a certain sum to the use of the customer. The document is usually marked "Not transferable", and it is also not negotiable. The customer, Therefore, by writing his name on the receipt and transferring it to another person for value, confers no legal right on the person to whom he gives it [Moore v. Ulster Bank (1877)] (1). But though a deposit receipt does not appear to be transferable by simple endorsement the judgments on the point are not conclusive the debt of which it is a memorandum may be duly assigned in the ?amc v/ay as any other debt, provided that due notice of the assignment is given to the banker. Nevertheless, the banker, before paying over the money to the assignee, is entitled to take into consideration any debt due to him by the depositor at the time he received notice of the assignment."

(13) In Paget''s Law of Banning (7th ed.) it has been said :

" THE truth is that the deposit receipt itself, whether it says so on its face or not, is not transferable, certainly not negotiable. The more passing it to another person has no effect in transferring the deposit balance. But that which it represents, the money deposited, lent to the banker, is a debt or chese in action assignable like any other debt or chose in action, independent of the receipt and despite any restriction on the transferability of that receipt."

(14) Applying this law we find that all the conditions of assignment have been fulfillled in this case. The deposit receipt was handed over to the court. The assignor Mrs. Usha Mathur made a statement in writing that she was pleadging the receipt in favor of the court. In her surety bond she bound herself to pay to the court a sum of Rs. 25,000 "against my fixed deposit receipt". It is true that the surety used the word "pledge" in her statement, but that in my opinion docs not make any difference. The nature of the transaction has to be seen. No particular form of words is necessary in order to effect an assignment if the intention is clear from the language used. (Sec Brahmayya & Co. v. Thangavelu Air 1956 Mad. 570. Mulla says : "an assignment can be absolute or by way of security". (Transfer of Property Act 6th ed. p. 811).

(15) From the surety bond, her statement and the delivery of the receipt to court it is quite clear that Mrs Usha Mathur was assigning the deposit receipt in favor of the court. The court gave a notice of assignment to the bank. Therefore, a deposit receipt even if in terms "is not transferable by endorsement" can certainly be assigned under the law of transfer of property as embodied in

chapter Vii of the Transfer of Property Act. I will Therefore reject the first objection and hold that there is a valid assignment of the fixed deposit receipt in favor of the court which the court can enforce for the benefit of the landlord.

(16) Secondly, it is said that the bank has already "liquidated and adjusted" the amount of Rs. 25,000 towards the moneys due to it from Mr. and Mrs. Mathur. This objection of the bank is without merit. The adjustment is alleged to have been made on the 9th March 1976 as is stated in the affidavit. But the assignment was made by Mrs. Usha Mathur in favor of the court on 9th September, 1970. The bank received the notice of assignment on 3rd October, 1970. When the bank received the notice of assignment it did not raise any objection. The bank never informed the court at that time that Mrs. Usha Mathur was indebted to it and that it had a superior right, a right of set-off or adjustment, against her. If later on the bank discovered that both Mr. and Mrs. Mathur were indebted to it the bank will have no right to enforce its lien or right of set off against a deposit receipt which already stood assigned in favor of the court as early as 9th September, 1970. The bank is estopped by conduct from claiming a right of set off or adjustment.

(17) The contention that as a banker has a lien over all properties in his hands he can exercise a right of set-off whenever he thinks fit is opposed to authority. In Brahmayya & Co. (supra) Balakrishna Ayyar J. said :

"Iagree that a banker has a right of set off, but it seems to me that he cannot exercise that right after the money in his hands has been validly assigned or in any case, after he has been notified of the fact that there has been an assignment."

(18) If on receiving notice of the assignment the debtor stands by and keeps quite he is deceiving the assignee for he allows him, the assignee, to be defrauded. Silence is equivalent to representation where a duty to speak exists. In such circumstances the debtor will not be allowed to set up an equity which he has against the assignor. (Mulla T. P. A. 6th ed. p. 821). If the banker has a claim against the creator of the security he cannot remain mute. He must, if he wishes to exercise his right of adjustment, correct the delusion in the assignee''s mind.

(19) For these reasons I dismiss the objections of the bank. The bank is directed to deposit Rs. 25,000 in this court within two weeks from today. If this is not done an order of attachment will issue. If the amount of Rs. 25,000 is deposited the F. D. R. will be returned to the bank duly discharged. The parties are however left to bear their own costs.

(20) The landlord and the counsel for the bank are directed to appear before the Registrar on 11th September, 1978.

