

(1957) 01 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Civil Regular First Appeal No. 270 of 1950

The Punjab National Bank Ltd., Delhi

APPELLANT

Vs

Vinod Kumar and Others

RESPONDENT

Date of Decision : 25-01-1957

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 30, 98
Bankers Books Evidence Act, 1891 — Section 2(8), 3

Citation : AIR 1957 P&H 257

Hon'ble Judges : Falshaw, J; Bishan Narain, J

Bench : Division Bench

Advocate : H.R. Sawhney, for the Appellant; I.P. Dua, for the Respondent

Final Decision : Allowed

Judgement

Bishan Narain, J.—There was a joint family concern known as Ladha Mal and Sons consisting of Ladha Mal and his two sons Kundan Lal and Roshan Lal and their children. The family resided and carried on business in Wazirabad which now forms part of West Pakistan. On the 17th of December, 1945, a cash credit account was opened with the Wazirabad Branch of the Punjab National Bank Limited. The debit balance on the 31st of December, 1946, stood at Rs. 28,273/0/6 in the Bank's books and on the 31st July, 1947, the debit balance was Rs. 22, 595/4/9. Against this cash credit account Ladha Mal as karta of the family had given to the Bank as security gold jewellery weighing about 140 tolas 9 mashas and silver ornaments and utensils weighing about 1373 tolas. During the disturbances in August 1947 in Wazirabad Ladha Mal and his two sons lost their lives. The Wazirabad Branch of the Bank was closed on the 12th of August 1947 but, the Bank succeeded in bringing the pledged gold and silver to Delhi. The Bank filed the present suit for the recovery of Rs. 19, 320/2/6 against the surviving members of the family who are either widows of the family or minors. The suit was contested on various grounds and the trial Court framed the following five issues:--

1. What is the amount due to the plaintiff from firm Ladha Mal and Sons on the basis of the cash credit account ?
2. What is the effect of hundi for Rs. 5,000/- on firm Hari Das Gopal Das, Bombay, not having been presented to that firm?
3. Were the cheques for Rs. 950/- and Rs. 6/- presented to the Imperial Bank, Ranchi, and the cheques were not cashed?
4. What is the effect of the hundi for Rs. 5,000/- on firm Ganeshi Lal-Jagdish Pershad of Delhi having been presented late?
5. What is the effect of no notice of dishonour having been served upon the defendant regarding hundis and cheques? After recording the evidence the Court decided all the issues against the Bank and dismissed the suit. The Bank has filed this appeal in this Court.

2. It is necessary first to decide whether the Bank has proved the account (Exhibit P.W. 1/1) because this goes to the root of the case. The defendants' account was taken from Wazi-rabad to Lahore after August 1947. The original account is in Lahore and it cannot be brought to India in view of the orders of the Pakistan Government prohibiting transfer of these accounts outside Pakistan. The Manager of the Lahore Branch has brought a copy of that account and in the witness-box has certified the same to be correct. The copy that has been produced, has been certified in accordance with Section 2(8) of the Bankers' Books Evidence Act (XVIII of 1891). u/s 3 of this Act this evidence is prima facie evidence against the defendants, and the trial Court was obviously wrong in holding that the certified copy of the entries in the Bank's books required proof by production of cheques and vouchers etc. relating to each entry. The object of this Act is to render the entries in banker's books admissible in evidence and to enable copies of the entries to be used Instead of compelling the Bank to produce the original entries. Such "a copy must be received as prima facie evidence not only of the existence of such entries but also of the matters, transactions and accounts therein recorded vide: *Harding v. Williams* (1880) 14 Ch. D. 197 (A). It is, therefore, clear that issue No. 1 should have been decided in favour of the Bank. I, therefore, set aside the finding of the trial Court on this issue and hold that the defendants' account relating to the transactions between the Bank and the defendants has been proved on this record.

3. The real dispute between the parties revolves round the following three transactions.

- (1) Hundi for Rs. 5,000/- delivered to the Bank on the 2nd of August 1947;
- (2) Cheque for Rs. 950/- on the Imperial Bank, Ranchi, "delivered to the Bank on the 5th of August, 1947; and
- (3) Hundi for Rs. 5,000/- delivered to the Bank on the 7th of August, 1947.

The Bank on receipt of these documents credited these amounts to the firm's

account, but when the Bank failed to receive payments it debited the firm. The defendants' case is that the Bank had no right or authority to debit their account even after the hundis and the cheque had been dishonoured, and this contention has prevailed with the trial Court.

4. Now in the present case there; is no doubt that Ladha Mal was entitled to receive these amounts under these instruments and that the Bank acted in good faith in matters relating to these transactions. The only dispute relates to the legal right of the Bank to reimburse itself after it became impossible to receive payments under these negotiable instruments. It is well settled that a cheque ordinarily _operates as a conditional payment which is rendered ineffective if it is not honoured. The same position arises in the matter of hundis.

There is no suggestion in the present case that there was any special arrangement between the parties regarding the hundis and the cheque. When these documents were received the Bank put these amounts to the credit of the firm. The Bank, however, did not receive any payment under them. If the amounts had been received, then the entries made previously in the accounts of the firm would have remained intact and operative. In case of non-receipt of payments, it appears to me clear, that the Bank is entitled to reimburse the amount: that had been previously put to the firm's credit, and that is all that the Bank has done in the present case.

In other words, the customer's liability of repaying, the amounts which had been placed to his credit on receipt of the negotiable instruments is discharged only when the negotiable instruments have been honoured by payment and not otherwise. This being so, the Bank was entitled to debit these amounts to the defendants' account in the present case when the payments against these hundis and cheque had not been received, and Indeed this position was not seriously contested before us on behalf of the defendants.

All that was urged was that the Bank was negligent in not presenting these negotiable instruments to the drawers and in not giving any notice of dishonour to the defendants, and therefore, it was argued that the defendants were not liable to reimburse the Bank. As the facts relating to each of these transactions are elightly different, it is necessary to deal with each transaction separately.

5. On the 2nd of August, 1947, Ladha Bam and Sons drew a hundi for Rs. 5,000/- (payable en demand) on Messrs Haridas Go-paldas, Bombay. The trial Court has found that the bundi was sent by the Bank to Bombay for collection under registered cover but it was lost in transit. The defendants respondents do not challenge the correctness of this finding. The Wazirabad Branch of the Bank was closed on the 12th of August, 1947, but till then no reply had been received from Bombay. The Bank reconstructed the accounts in Delhi relating to its "Pakistan" customers and then on the 3rd of November, 1948, wrote to its Bombay Branch to find out as to what had happened to the hundi.

After some correspondence the Bombay Branch sent the news that the account

of Ladha Ram and Sons with Haridas Gopaldas was running a debit balance and therefore the amount relating to this hundi could not be realised. The Bank by that time knew that all the adult male members of Ladha Ram's family had died and did not "give any notice of dis-honour of this hundi to any person. The trial Court has found that the Bank was not responsible for the loss of this hundi in transit or for non-presentation of the hundi to Haridas Gopal Das. This finding was also not contested before us.

The trial Court, however, held that as the Bank had not given any notice of dishonour to the defendants therefore they were responsible for the loss inasmuch as want of this notice had caused loss to the defendants. These findings are not accepted by the Bank. Now the circumstances that prevailed at the relevant time were very abnormal. The Bank on hearing of the loss of the hundi and of the drawer's refusal to honour any such hundi in 1948 did not and could not give any notice to anybody. All the adult male members of the family had died in communal riots at Wazirabad.

All the male members of the family were then and are even now minors. There is no evidence that the Bank knew of the minors' addresses after they had migrated from Wazirabad and in the peculiar circumstances that prevailed there, it is impossible to hold that the Bank, even after reasonable inquiry, could have found the whereabouts of these minors or of the widows of the family. Notice of dishonour to any other person would not have been of any use to the parties. As the minors are not capable of contracting, it appears to me obvious that the notice of dishonour to the minors was not necessary and must be excused.

Moreover, the defendants in 1948 could not and did not suffer any damage for want of notice as the minors could not do anything in the matter when Haridas Gopaldas had reported that there was no money of the family lying with the firm. I am, therefore, of the opinion that the notice of dishonour in the present case was not necessary in view of the provisions of Section 98 of the Negotiable Instruments Act and that "the Bank is entitled to realise this amount from the defendants.

6. The cheque for Rs. 950/- was in favour of Ladha Mal drawn on the Imperial Bank Ban-chi. This cheque was delivered to the plaintiff Bank on the 5th of August, 1947. This cheque was posted to Ranchi and the Imperial Bank received it on the 12th of August 1947. The Imperial Bank, however, did not honour it on the ground that the drawer had had his account transferred from that Branch to Pakistan. These facts were not disputed before us. In this case also the defendants' plea is that the Bank should have given notice to the minor-defendants, but there is no force in this contention. Moreover, the minors did not suffer for want of notice as the amount had been transferred from Ranchi even before the cheque was delivered to the plaintiff-Bank, although without knowledge of such a transfer. Neither the Bank, nor the defendants could realise this amount from the drawer of the cheque considering the conditions prevailing at that time. I am, therefore, of the opinion that the Bank is entitled to receive

payment of this amount from the defendants.

7. The last transaction relates to a hundi drawn by Ladha Mal and sons on the 7th of August, 1947 for Rs. 5,000/- on Ganeshilal Jagdishparshad, of Delhi. This hundi was payable on demand. The Bank's case is that the conditions in Wazirabad after the 7th of August 1947 were so bad that the Bank could not effectively function, and Balkishan P.W.5, who was at that time working as a clerk in the Wazirabad Branch of the Bank, has stated that he had sent his chaprasi to the Post Office to get eight or ten articles registered, but the Post Office did not accept them on the 9th of August, 1947. He was of course unable to say whether this particular hundi was despatched or not. The fact, however, remains that this hundi was salvaged in February 1948 from the papers of the Bank that were received from Wazirabad. The Bank succeeded in bringing this hundi to India and presented it to the drawee on the 19th of March, 1948. The drawee, however, refused to honour this hundi. The trial Court has held that the Bank was responsible for the late presentation of the hundi, and, therefore the defendants are not liable to make payment of this amount. Taking into consideration the conditions that prevailed in Wazirabad in August 1947 and thereafter till February 1948, I am not inclined to hold that the Bank was negligent in presenting the hundi to Messrs. Ganeshilal Jagdishparshad of Delhi.

The Bank did all that it could in the peculiar circumstances of the case and there is no proof that the Bank was negligent in carrying out its duties in this matter, I am of the opinion that the Bank cannot be held to be liable for this late presentation of the hundi. The main argument advanced on behalf of the defendants was again that notice of dishonour was not given to the defendants. This matter I have already discussed in the other two transactions and it is not necessary to repeat this argument which is common to all the three transactions. I, therefore, hold that the Bank is entitled to receive payment of this amount from the defendants.

8. Now all that remains to be determined is the rights of the parties in view of the above findings. u/s 22(1) of the Displaced Persons (Debts Adjustment) Act no interest on debts owed by a displaced person can be charged on or from the 15th August, 1947. Admittedly, the debtors in the present case are displaced persons and therefore the Bank cannot charge any interest after the 15th of August, 1947. The other rights of the parties are governed by Section 17 of the Displaced Persons (Debts Adjustment) Act. u/s 17 the Bank is entitled to sell the pledged goods after reasonable notice to the defendants.

If the Bank realises by the sale of these articles any amount which is in excess of Rs. 18,580/3/9, then it shall be paid to the defendants, but if the amount that it realised falls short of the debt, then the defendants would not be liable for the shortfall. Reconstituting the accounts by reversing the entries relating to the three transactions that have been discussed above and after excluding the interest charged by the Bank, the amount due to the Bank from the defendants comes to Rs. 18,580/ 3/9-1 would, therefore, accept the appeal and pass a

decree for Rs. 18,530/3/9 against all the defendants and this amount is to be realised as indicated above. In the circumstances of the present case I leave the parties to bear their own costs throughout.

Falshaw, J.

9. I agree.