(1955) 12 CAL CK 0001

Calcutta High Court

Case No: Civil Rule No. 3746 of 1954

Jasoda Dulal Adhikary		APPELLANT
	Vs	
United Bank of India Ltd.		RESPONDENT

Date of Decision: Dec. 12, 1955

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Presidency Small Cause Courts Act, 1882 - Section 37, 38

Citation: (1957) 2 ILR (Cal) 706

Hon'ble Judges: Debabrata Mookerjee, J

Bench: Single Bench

Advocate: Hemanta Krishna Mitra, for the Appellant; Salil Kumar Datta, for the Respondent

Judgement

Debabrata Mookerjee, J.
This application in revision is directed against an order of a Full Bench of the Calcutta Court of Small Causes dated September 7, 1954, dismissing the Petitioner''s application for a new trial u/s 38 of the Presidency Small Cause Courts Act.

2. The facts briefly are that the Plaintiff-opposite party, United Bank of India Limited, brought a suit against the Defendant for recovery of a balance of Rs. 537-10as.-8p. found due from the Defendant-Petitioner in respect of an overdraft account which the Defendant-Petitioner had with the Bank.

3. In March, 1949, the Petitioner was granted privilege of overdraft on his account and the limit of accommodation was later on increased to a sum of Its. 4,000 on condition that the Defendant agreed to pay to the Bank the sum due on the account with interest at 6 per cent, per annum at monthly rests. A further condition attached was that the Defendant would furnish some security. This condition was fulfilled by the Defendant-Petitioner by assigning in favour of the Bank a life insurance policy issued by the East Insurance Company Limited. This policy was accepted as security

for due payment of the overdraft account. If the Defendant-Petitioner failed to repay, the Plaintiff Bank in pursuance of their right to surrender the policy, could appropriate proceeds of such surrender towards the liquidation of the debt. In addition to this, a promissory note was executed in favour of the Bank and a letter of continuity incorporating the terms and conditions of the accomodation was given. A certain sum of money having fallen due the opposite party upon due notice to the Petitioner, surrendered the policy and obtained the surrender value which was appropriated towards liquidation of the debt which the Petitioner owed to the Bank in respect of the overdraft account. After adjustment a sum of Its. 537-10as.-8p. was still found due and owing to the Bank ; for realisation of which the suit was instituted in the Court of Small Causes at Calcutta.

4. The Defendant-Petitioner contested the proceedings and denied his liability to pay. Several grounds of objection were urged and one of them is that there was no agreement whatever that he would pay the money due on the overdraft account on demand or that the Plaintiff Bank would have the right to surrender the policy in case of failure on the part of the Defendant-Petitioner to deposit the premium due in respect of the policy., A further question was raised that the policy having been issued in the name of the Defendant''s minor daughter, the proceeds of the surrender value of that policy could not possibly be appropriated by the Bank towards liquidation of debts for which the Defendants Petitioner was alleged to be liable. There was a further averment by the Defendant that there was a stipulation between him and the Bank that the policy would be treated merely as a collateral security and that as a result of an understanding between the Defendant and the Bank, the latter would go on making payments on account of the premium which amount might be debited to his overdraft account. Lastly, it was said that if the Bank had gone on making payments by way of premium for the purpose of keeping the policy alive, the loss which accrued to the Defendant-Petitioner might have been prevented and in any event the beneficiary under the policy, viz., the minor, would not have been adversely affected.

5. The learned Judge who dealt with the matter came to. the conclusion that the pleas taken by the Defendant-Petitioner set out above had not been substantiated and it was held that the case made by the Plaintiff Bank had been proved. The result therefore was that a decree was made in favour of. the Bank in the sum of Rs. 537-10as.-8p. with costs.

6. An application was thereafter made u/s 38 of the Presidency Small Cause Courts Act by the Defendant-Petitioner praying for a new trial. This application was heard and disposed of by an order of the Full Bench dated September 7, 1954. The learned Judges held that the application was fit to be dismissed for the reasons that given in the order against which the present application is directed.

7. It is to be observed that in view of the provisions contained in Section 37 of the Act the application for new trial could not, possibly have been granted unless there

was a substantial point of law involved invalidating of the decree, or unless the decree was suffered in consequence of illegality or material irregularity of procedure adopted by the trial court. The language of Section 37 is, to my mind, quite precise and it controls Section 38 which follows. Section 37 provides that every decree of the Small Cause Court shall be final and conclusive while Section 38 gives power to order a new trial to be held or to set aside or alter or reverse the decree or order made. Nevertheless Section 38 coming as it does after Section 37 of the Act, it must be held that in the absence of anything fundamentally wrong vitiating the decision, there can be no new trial granted under the provisions of Section 38 of the Act. There cannot be any doubt that despite the apparently wide ambit of Section 38 that a new trial can be granted or a decree made by the court below might be altered or set aside or reversed, nevertheless, these powers cannot be exercised by ignoring the clear provisions of Section 37 of the Act. That section declares that all decrees and orders made by a Court of Small Causes shall be conclusive and final. The true import of these words cannot possibly be said to have been completely neutralised by the words used in Section 38. Taking therefore the provisions of Sections 37 and 38 together, I hold that a court when called upon to deal with an application for new trial u/s 38, has to bear in mind the provisions of the previous section which says that every decree or order of a Court of Small Clauses shall be final and conclusive. The finality or conclusiveness of a decree or an order can only be challenged upon what I consider to be substantial grounds of jurisdiction or grounds of like nature fundamentally affecting the decree or the order complained of; and despite the use of wide words in Section 38 or the mention of different forms of interference which are permitted u/s 38, relief under the latter section must be held to be circumscribed by the effect of the language of Section 37 which declares without qualification that every decree or order of a Small Cause Court shall be conclusive and final. I do not agree therefore that the court below acted illegally or with material irregularity in the excise of its jurisdiction in making the order it did.

8. Turning to the merits of the matter I do not think that there are any circumstances discoverable in the record of this case which might be said to have the effect of even remotely raising the question of jurisdiction or questions of similar importance which might give occasion to the exercise of powers given u/s 38 of the Act.. Nevertheless, the learned Judges who dealt with the matter went into the different facets of the question raised before them, viz., that the Plaintiff-opposite party-exceeded their authority by surrendering the policy with the result that the Defendant-Petitioner was prejudiced by it. The learned Judges have come to the conclusion that there was in fact an overdraft account which the Petitioner was operating and in order that repayment might be guaranteed, the Bank accepted as security the insurance policy. Upon the question raised by the defence that it was a part of the understanding between the Plaintiff Bank and the Defendant that the former would go on making payments in respect of the premium that might fall due from time to time for the purpose of keeping alive the policy, the learned Judges

have come to the conclusion that there was no such understanding proved as between the Plaintiff Bank and the Defendant. The Petitioner cannot now be heard to say that the Plaintiff Bank had acted beyond the bounds of their authority by surrendering the insurance policy which had been expressly assigned to them in order that the same might be treated as security for guaranteeing payments of dues from the Petitioner on account of the overdraft. Upon this finding the Petitioner''s case was bound to fail. If the Plaintiff Bank, after having given due notice of their intention to surrender the policy, did surrender it, and, if, after having obtained the surrender proceeds, appropriated them towards liquidation of the debt which the Defendant owed to the Bank, no exception can be taken to such course of conduct on the part of the Bank. In order that the Defendant might succeed he had to prove affirmatively that there was a contract between him and the Bank that the policy would be kept alive by advancing premium from time to time on his account. As I have said there was no such understanding or contract proved; consequently it must be held that the Plaintiff Bank acted perfectly within their rights by surrendering the security, viz., the insurance policy with notice to the Defendant-Petitioner. Even after the notice was received by the Defendant-Petitioner as respects the intention of the Bank to treat the policy as an ordinary pledge or security to guarantee payment of the overdraft account, the Defendant, it must be observed, did nothing but maintained silence. There was not even a protest from him.

9. These questions, do not, strictly speaking arise; but since they have been raised and agitated before me, I refer to them out of deference to the learned advocate''s arguments. The real question to my mind is the question whether it can be said that there was an overdraft account subsisting, whether certain sums of money had been paid by the Plaintiff bank which the Defendant failed to repay, whether as a result even after appropriation of the surrender value of the insurance policy, the Defendant was still owing to the Bank the sum of Rs. 537-10as.-8p. These are questions which really fell to be considered in the Small Cause Court suit. The other questions do not strictly speaking arise and if the Defendant feels that the Bank by surrendering the policy went beyond the limits of authority, that is perhaps a question for the decision of which the venue was not the Small Cause Courts; the venue lay elsewhere.

10. In these circumstances and on the findings arrived at by the courts below, I do not find it possible to interfere u/s 115'' of the Code of Civil Procedure. It has been clearly found that there was no contract as between the Bank and the Petitioner obliging the former to keep alive the insurance policy. That the Bank should have surrendered the insurance policy seems to be the substantial grievance of the Defendant-Petitioner. Within the frame of the present suit the contention cannot be raised that the Bank exceeded their authority in treating the insurance policy as an ordinary pledge or security and not treating it as something sacrosanct which could not be touched since the beneficiary under the policy was the Defendant''s minor

daughter. I do not find any substance in this contention in the context of trial of a small cause. The beneficiary being a minor did not, however, prevent the Defendant from pledging the policy by treating it on the footing of an ordinary security; again it did not prevent him from keeping quiet despite receipt of notice from the Bank that the security was going to be surrendered. It was too late to speak of the policy in terms of a "trust" which was sought to be set up before me as respects the proceeds of the insurance policy. The courts below were right, in my view, in negativing the contentions of the Defendant-Petitioner and in decreeing the claim made by the Plaintiff-opposite party.

11. The result, therefore, is that this Rule is discharged with costs.