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(1958) 03 BOM CK 0051

Bombay High Court (Nagpur Bench)

Case No: A.F.A.D. No. 613 of 1954

Haji Sheikh Hasanoo		APPELLANT
	Vs	
S. Natesa Mudliar and Co.		RESPONDENT

Date of Decision: March 28, 1958

Acts Referred:

- Contract Act, 1872 - Section 50
- Negotiable Instruments Act, 1881 (NI) - Section 13, 72, 84, 84(1)

Citation: AIR 1959 Bom 267 : (1959) 61 BOMLR 1127

Hon'ble Judges: Mudholkar, J

Bench: Single Bench

Advocate: V.M. Kulkarni, for the Appellant; B.B. Ranade, for the Respondent

Final Decision: Allowed

Judgement

1. This is a plaintiff''s second appeal from the dismissal of his claim for the recovery of Rs. 1367-8-0 alleged to be due to him from the respondent.

2. It is common ground that the appellant is a fruit seller carrying on business at Narkhed. The respondent carries on business of a broker in Madras. The appellant sent 485 baskets of oranges to madras sometime in the year 1949 for being sold through the respondent. The latter submitted an account to the appellant on 22-3-1949 showing that the oranges had been disposed of for a sum of Rs. 1585/-, and that after deducting the usual charges, a sum of Rs. 1417-8-6 was found due to the appellant. A draft dated 31-3-1949 drawn by the Exchange Bank of India and Africa, Madras Branch, on its Branch at Nagpur for the aforesaid amount was sent by the respondent to the appellant. The appellant tried to cash the draft, three weeks or so after he received the draft, the Bank having gone in liquidation in the meanwhile, he could not cash it. He therefore proceeded to Madras and handed over the draft to the respondent. According to the appellant the respondent

accepted that draft, paid a sum of Rs. 50/- and promised to send him the balance shortly thereafter. While the respondent admits that the appellant handed over the draft to him, he says that his only object in taking the draft was to see what could be realised from the Bank and send to the appellant whatever was realised by him from the Bank. He also says that he gave Rs. 50/- to the appellant when he visited Madras, because the appellant said that he was short of funds and had no money even to pay his railway fare for the return journey.

3. The trial Court decreed the suit. The lower appellate Court dismissed it on he ground that the appellant was guilty of delay in the presentation of the draft, that this delay on his part caused injury to the respondent and that therefore the latter was protected by Section 84 of the Negotiable Instruments Act. Upon this ground it dismissed the suit.

4. Section 84(1) of the Act reads thus:

"Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheques paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid."

5. This provision is limited in its application to the cheques. If it was the intention of the Legislature to make it applicable to every negotiable instrument or to drafts drawn by one Branch of a Bank on another Branch thereof, there was nothing easier for the Legislature than to use appropriate expressions. Indeed, when the provisions of Section 84 were enacted, the difference between the position of the drawer of a cheque and of the drawer of a negotiable instrument was present in the mind of the Legislature. It has been pointed out in Aggarwal''s Law of Hundies and Negotiable Instruments, (1954 Edition) at page 287:

"The position of the drawer of a cheque is different that of the drawer of a bill on demand in one respect. The drawer of a bill on demand has given consideration to the drawee against which he is entitled to draw the bill and if it is not paid on presentation he has a right to sue the drawee on the original contract." He has also a right against the holder to be informed of the dishonour by a notice of dishonour within reasonable time. The drawer of a cheque on the other hand knows that the banker will not pay unless he ha money of his (i.e. drawer) to pay with. He has no recourse to the drawee if the cheque is not paid when the funds are not sufficient. He remains liable on the cheque as principal debtor and yet has no remedy against any one. He is therefore bound to keen money at his bankers to meet the cheque whenever presented and it would be unfair if by reason of delay in presentation of the cheque on the part of the holder he should suffer loss of the money he was

keeping at the bankers to meet it. That is the underlying principle of Sections 72 and 84."

Then again, the same author has pointed out

"Cheques are generally intended for immediate presentation and not for general circulation. Cheques are drawn against funds of the drawer in his bank. If the holder delays presentation and bank fails in the meanwhile the drawer might be seriously prejudiced thereby. Nor can the drawer be expected to retain his money in the bank at his risk for an indefinite time."

Dealing with the question of delay in presentment, Byles on Bills of Exchange, Twenty-first Edition, at page 21, has observed:

"A cheque, nevertheless, is virtually an appropriation of a sum of money in the banker''s hands to lie till called for; but by delay the holder takes the risk of the bank''s failure, the revocation of bank''s authority to pay owing to the drawer''s death, countermand of payment by the drawer or the exhaustion of the balance of further drawings."

6. Thus, the main reason for drawing a distinction between a cheque and an instrument of other kind is that if a cheque is drawn by a drawer on a bank he is forced to keep sufficient funds in that bank for enabling the person in whose favour he has drawn the cheque to cash it. As he has to keep his money tied up in that manner, he cannot properly withdraw it even if he knew that the condition of the bank was not satisfactory. It is for this reason necessary that cheques should be presented for payment without undue delay. That however is not the case with respect of demand drafts. Where, as here, the draft is one drawn by one branch of a bank on another branch thereof it cannot, by any stretch of imagination even be suggested that the draft is a negotiable instrument. Nor again, can it be said that it is an instrument under which there is a remedy against the drawer because in fact the drawer and the drawee are the same person.

7. Shri Ranade, who appears for the respondent, has referred to a decision of a Division Bench of the Assam High Court in Mohanlal Jogani Rice and Atta Mills and Others Vs. Ramlal Onkarmal Firm and Others . In that case, the principles of Section 84 were applied to drafts and it was stated that a demand draft, which is very nearly allied to a cheque, should be presented for payment as early as possible, be cause delay in presentation in commercial practice might lead to complications and cause some loss or damage to the parties concerned. With respect to the learned Judges, I am unable to see how the provisions of Section 84 of the Negotiable Instruments Act could be extended to negotiable instruments other than cheques. Indeed, if the Court were to apply the provisions of Section 84 to negotiable instruments of other kinds, it would be legislating which, of course, it has no power to do. Again, as already stated, even if the principles underlying Section 84 could be applied to negotiable instruments generally, they certainly cannot be applied to a draft of the

kind which we have in this case. As already pointed out, a draft drawn by one branch of a bank on another branch thereof is not a negotiable instrument at all. For all these reasons disagreeing with the lower appellate Court, I hold that the delay in the presentation of the draft to the Nagpur branch of the Exchange Bank is not fatal to the appellant''s suit.

8. It was next contended by Shri Ranade that the appellant having accepted the draft in payment of the amount due to him has no right of action for the price of oranges which he had sold through the respondent. Now, where money is due to a person from another, then the liability to pay that money can be discharged only by repaying it in cash unless the parties expressly agree to some other mode of discharging that liability. If the respondent''s case was that the parties had agreed that the respondent''s liability to pay the price would be deemed to have bene satisfied by sending the draft to the appellant, the matter would have been different. There are no express pleadings of the respondent on the point. But even assuming that it can be deducted from the pleadings of the respondent that the appellant had agreed to accept, or had accepted, the draft in satisfaction of the amount due to him, no proof of this has been adduced by the respondent. In the circumstances, therefore, this contention fails.

9. Upon this view, I allow the appeal, set aside the decree of the lower appellate Court and restore that of the trial Court. Costs throughout shall be borne by the respondent.

10. Appeal allowed.