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RAMLAL ONKARMAL FIRM

v.

MOHANLAL JOGANI RICE AND ATTA MILLS

February 16, 1965

B [RAGHUBAR DAYAL, J. R. MUDHOLKAR, R. S. BACHAWAT AND V. RAMASWAMI, JJ.]

Debt—Discharge of on payment by cheque—acceptance by collecting bank draft in payment of cheque—Whether debt discharged.

In payment of an amount due from them to the respondents, the appellants sent to the respondents on August 31, 1948 a cheque C which had been drawn on the Sibsagar branch of a Tripura Bank in favour of the appellants by a third party and thereafter endorsed by the appellants to the respondents. On September, 4, 1948, the respondents forwarded the cheque to their bankers, a Gauhati Bank who, in turn, sent the cheque to the Tripura Bank at Sibsagar for encashment. That bank debited the amount of the cheque to the account of the third party and sent to the respondent's Gauhati Bank D a draft which was payable at its own Head Office at Calcutta. Thereafter the respondents' Gauhati Bank forwarded the draft to their Head Office at Calcutta for collection but the latter never presented the draft and made no attempt to collect the amount of the draft.

In the meantime, the respondents bank closed its business on September 17, 1948 and was ordered to be wound up. About a month E later, the Tripura Bank also closed its business and was compelled to enter into a scheme of arrangement with its creditors.

Upon the failure of their attempts to obtain payment of the draft amount from the Tripura Bank, the respondents instituted a suit against the appellants claiming payment of their dues on the ground that the cheque dated August 31, 1948 was received by the respondents as a conditional payment, and as the cheque had not F been cashed, the respondents were entitled to enforce their original claim. The sub-Judge dismissed the suit but the High Court in appeal reversed the decision and decree the suit.

On appeal to the Supreme Court,

HELD: (*per* Raghubar Dayal, Bachawat and Ramaswami, JJ)—Although the respondents originally received the cheque as a conditional payment of their dues, and if nothing else had happened, the G original debt would have revived on non-payment of the cheque, having regard to the laches of the respondents in the collection of the draft and the consequential prejudice to the appellants, the respondents must be deemed to have retained the draft as absolute payment of the cheque and on the payment of the cheque, the original debt stood discharged. [105 E-F]

H *Chetty on Contracts,* 22nd Edn. Art. 1079; *Addison's Treating on the Law of Contracts,* 11th Edn. p. 156;

Hobkins v. *Ware,* L.R. (1869) 4 Ex. 268;

Chamberlyn v. *Delarive,* 2 Wils. K.B. 353, referred to.

(*per* Mudholkar, J.): There was evidence to show that respondents' bank, instead of collecting cash from the Tripura Bank at Sibsagar, sought, for reasons of their own, to collect the amount by draft. Furthermore, after the respondent bank went into liquidation, the respondents wrote to the Tripura Bank stating that the

amount of the demand draft belonged to them and not to their bankers who were only acting as their agents for collection purposes and that accordingly the draft amount should be paid to them. Thus, though the cheque endorsed by the appellants in favour of the respondents was only a conditional payment of the amount for which the cheque was drawn, the respondents, by accepting the demand draft drawn by the Tripura Bank must be deemed to have accepted the draft as a legal tender or, as absolute payment of the amount payable under the cheque endorsed in their favour by the appellant. Their rights thereafter would rest only upon the demand draft and not upon the original debt which the appellant owed to them. The remedy of the respondents, therefore, could be against their own bank, or against the Tripura Bank, but not against the appellants. [108 E, 109 C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 638 of 1962.

Appeal by special leave from the judgment and decree dated May 21, 1957 of the Assam High Court in First Appeal No. 7, of 1962.

N.C. Chatterjee and D.N. Mukherjee, for the appellants.

S.C. Nath, P.K. Chatterjee for *R. Gopalakrishnan*, for the respondent.

The Judgment of RAGHUBAR DAYAL, BACHAWAT and RAMASWAMI JJ. was delivered by BACHAWAT J. MUDHOLKAR J. delivered a separate Judgment.

Bachawat J. The appellants carrying on business at Raha in Nowgong District had dealings with the respondents, carrying on business at Gauhati. As a result of the said dealings, the appellants were indebted to the respondents in a sum of Rs. 9,447-4-9. In order to satisfy the dues of the respondents, the appellants sent to the respondents a cheque for Rs. 9,461-4-0 dated August 31, 1948. The cheque was drawn by a third party, Messrs. Nathuram Jaidayal of Sibsagar on the Tripura Modern Bank, Sibsagar Branch, in favour of the appellants, who endorsed it to the respondents. On September 4, 1948, the respondents sent the cheque to their bankers, the Calcutta Commercial Bank, Gauhati for collection. On the same day, the Calcutta Commercial Bank, Gauhati sent the cheque to the Tripura Modern Bank, Sibsagar for encashment. The Tripura Modern Bank, Sibsagar debited the accounts of their constituents. Messrs Nahuram Jaidayal with the sum of Rs. 9,461-4-0, and after deducting Rs. 6-4-0 on account of commission charges, sent to the Calcutta Commercial Bank, Gauhati a draft for Rs. 9,435/- dated September 14, 1948 towards payment of the cheque. The draft was drawn by the Tripura Modern Bank, Sibsagar on its Calcutta Head Office, and was marked current for three months from the date of the issue. On receipt of the draft, the Calcutta Commercial Bank, Gauhati sent it to their Head Office at Calcutta for collection. But the Calcutta Commercial Bank never presented the draft to the Tripura Modern Bank, and made no attempts to collect the amount of the draft.

A In the meantime, the respondents wrote to the appellants informing them that cash payment for the cheque has not been received, and on September 18, 1948 the appellants replied asking the respondents to get back the cheque. But the cheque was never returned to the respondents. On September 17, 1948, the Calcutta Commercial Bank closed its business, and subsequently, it was B ordered to be wound up. On October 16, 1948, the Tripura Modern Bank also closed its business, and in view of its inability to pay its dues, was compelled to enter into a scheme of arrangement with its creditors.

On November 19, 1948, the respondents requested the Tripura Modern Bank to pay the amount of the draft to them and not to C the Calcutta Commercial Bank. But no payment was made by the Tripura Modern Bank either to the respondents or to the Calcutta Commercial Bank. On March 8, 1949, the respondents instituted the suit, out of which the appeal arises, claiming payment of their dues from the appellants on the footing that the cheque dated August 31, 1948 was received by the respondents as a conditional D payment, and as the cheque was not cashed, the respondents were entitled to enforce their original claim. The Subordinate Judge, Lower Assam District, dismissed the suit. On appeal, the High Court reversed the judgment appealed from, and decreed the suit. The appellants now appeal to this Court by special leave.

E The High Court rightly held that the respondents originally received the cheque dated August 31, 1948 as a conditional payment of their dues, and if nothing else happened, the original debt would have revived on non-payment of the cheque. But we think that having regard to the laches of the respondents in the collection of the draft and the consequential prejudice to the appellants, the F respondents must be deemed to have retained the draft as absolute payment of the cheque, and on the payment of the cheque, the original debt stood discharged.

In Chitty on Contracts, 22nd Edn., Art. 1079, the law is stated thus:

G "Where a negotiable instrument, upon which the debtor is not primarily liable, is accepted by the creditor as conditional payment, he is bound to do all that a holder of such an instrument may do in order to get payment; thus it is his duty to present a cheque within a reasonable time, and if he fails to do so, and the debtor is H thereby prejudiced, the creditor is guilty of laches and makes the cheque his own, so that it amounts to payment of the debt."

In Addison's Treatise on the Law of Contracts, 11th Edn., p. 156, it is stated:—

"If the debtor makes an order upon his banker for payment of the amount of the debt, and the creditor accepts it, and keeps it in his hands an unreasonable time before

presenting it for payment, and the banker becomes insolvent, the debtor is discharged on account of the laches of the creditor." A

In *Hobkins* v. *Ware*(1), it was held that a creditor who takes from his debtor's agent on account of the debt the cheque of the agent, is bound to present it for payment within a reasonable time; and if he fails to do so and by his delay alters for the worse the position of the debtor, the debtor is discharged, although he was not a party to the cheque. In the old case of *Chamblerlyn* v. *Delarive*(2), it was held that if a creditor accepting a note or draft of his debtor upon a third person holds it an unreasonable time before he demands the money, and the person upon whom it is drawn becomes insolvent, it is the creditor's own loss, though the draft be not a bill of exchange or negotiable. B C

Now, in the instant case, the respondents accepted from their debtors, the appellants, a cheque drawn by a third party on the Tripura Modern Bank and endorsed by the appellants. The respondents through their collecting agents, the Calcutta Commercial Bank, presented the cheque for collection to the Tripura Modern Bank, and instead of obtaining cash payment, received a draft drawn by the Sibsagar Branch of the Tripura Modern Bank on its Head Office. Having accepted this draft in course of collection of the cheque, the respondents *vis-a-vis* the appellants were in no better position than they would have been, if they had accepted the draft from the appellants directly as conditional payment of the cheque. In the circumstances, the respondents owed a duty to the appellants to present the draft for payment within a reasonable time. The draft could be presented for payment at any time during the period of three months from the date of its issue. Instead of presenting the draft for payment, the respondents' collecting agents kept it in their hands, and made no attempts to cash it. P.W. 3, an employee of the Calcutta Commercial Bank, said that the draft, was sent by the Gauhati Office of the Bank to its head office by registered post, but the head office had closed its business and the draft came back to the Gauhati office undelivered. The closure of the business of the collecting agents was not a lawful excuse for not obtaining delivery of the draft and not presenting it for payment within a reasonable time. P.W. 3 admitted that had the draft been presented for payment to the Tripura Modern Bank before October 16, 1948, it would have been paid on presentation, and the money could not be realised only because the Calcutta Commercial Bank had closed in the meantime. The Tripura Modern Bank closed its business on October 16, 1948. Because of its inability to pay its debts, the Tripura Modern Bank is now working under a scheme of arrangement. The failure of the respondents and their agents to cash the draft within a reasonable time altered the position of the appellants for the worse, and caused prejudice to them. In the circumstances, the respondents must be regarded as having kept the D E F G H

(1) L. R. [1869] 4 Ex. 268. (2) 2 Wils. K. B. 353; 95 E.R. 854.

A draft in absolute payment of the cheque. The cheque must be treated as duly paid and consequently, the original debt stood discharged.

The High Court was in error in holding that the failure to obtain payment of the draft was not due to the laches of the respondents' collecting agents. In one part of the judgment, the High B Court wrongly assumed, contrary to fact, that the Tripura Modern Bank had stopped business on September 16, 1948 and therefore the draft could not be cashed on presentation, whereas, in fact, the Tripura Modern Bank had stopped business a month later on October 16, 1948. Moreover, the High Court wrongly assumed that the appellants did not suffer any loss on account of the delay in the C presentation of the draft. There is clear evidence on the record that the draft would have been cashed, if it had been presented for payment before October 16, 1948.

Mr. Chatterjee also contended that the respondents' collecting agents must be deemed to have accepted the demand draft on D September 14, 1948 as absolute payment of the cheque, and that the cheque was, in the eye of law, paid and discharged on that date. There is a lengthy discussion on this point in the judgment of the High Court, but we do not think it necessary to decide this question.

In the result, the appeal is allowed, the judgment and decree E passed by the High Court are set aside, and those of the trial Court are restored. The respondents shall pay to the appellants the costs in this Court. The parties will pay and bear their own costs in the Courts below.

Mudholkar, J. I agree with my brother Bachawat that this F appeal should be allowed; but I would prefer to rest my decision upon a different ground.

It is not necessary to repeat here the facts which have been set out in my learned brother's judgment. Mr. N. C. Chatterjee, appearing for the defendants-appellants, urged two grounds, the first of which was that the plaintiffs-respondents had accepted the G draft for Rs. 9,455/- dated September 14, 1948 drawn by the Tripura Modern Bank, Sibsagar on its Head Office at Calcutta in payment of the cheque for Rs. 9,461-4-0 drawn on the Tripura Modern Bank, Sibsagar which the appellants had endorsed in favour of the respondents in satisfaction of the amount due upon that cheque and that, therefore, the subsequent dishonour of the H draft would not revive the appellants' liability to pay Rs. 9,455/- to the respondents. The other ground was that the appellants were discharged from liability because of the laches of the respondents in not presenting the draft for encashment within reasonable time of the drawing of that draft. My learned brother has rested his decision on the second ground. In my view, however, it is not necessary to express any opinion upon the second ground as the first ground urged by Mr. Chatterjee is a good answer to the respondent's claim.

It is a well accepted rule of English law, which has been applied in this country also, that when a debt becomes due the debtor must tender to the creditor the exact amount of the debt in cash or other legal tender and that where a cheque is tendered by the debtor to the creditor the payment may be absolute or conditional, the strong presumption being in favour of conditional payment. (see Chalmers on Bills of Exchange, p. 301, 12th ed.). Therefore, when the respondents accepted the cheque drawn by Messrs Nathuram Jaidayal of Sibsagar in favour of the appellants and endorsed by the appellants in their favour and sent it to the Calcutta Commercial Bank Ltd., Gauhati Branch for collection they must have accepted it as conditional payment. The respondents' bank, instead of collecting cash from the Tripura Modern Bank Ltd., Sibsagar, sought to collect the amount by draft. The reason for this given by Debendra Chandra Mazumdar, P.W. 3, who was Assistant Accountant at the Gauhati Branch of the Calcutta Commercial Bank Ltd. at the relevant time was that the Bank usually collected money from other banks by draft. There is nothing to indicate in his evidence that this was the prevailing practice in the Banks carrying on business in Assam. According to him, the respondents' bank asked for a draft payable at Gauhati but the Tripura Modern Bank Ltd. sent one payable at Calcutta. The respondents' bank, however, accepted the draft and sent it by registered post to Calcutta for collection. Some time thereafter the respondents' bank closed business and the demand draft was returned undelivered. The respondents' Bank made over the draft to the respondents. It may be mentioned that though the Tripura Modern Bank Ltd., had branch at Gauhati the respondents' Bank did not object to a draft payable at Calcutta thinking that the money due thereunder could be collected earlier from the Calcutta branch of the Tripura Modern Bank. The matter, however, did not rest there. After the respondents' Bank went into liquidation the respondents wrote a letter on November 19, 1948 to the Agent of the Tripura Modern Bank Ltd., Calcutta saying that the demand draft belonged to them and not to the Calcutta Commercial Bank Ltd., who were only acting as their agents for collection purposes and that the amount for which the draft was drawn should be paid to them and not to the Calcutta Commercial Bank or any one on its behalf. This letter clearly shows that the respondents accepted the draft in full payment of the amount due to them under the cheque which the appellants had endorsed in their favour. Thus, though the cheque endorsed by the appellants in favour of the respondents was only a conditional payment of the amount for which the cheque was drawn the respondents by accepting the demand draft drawn by the Tripura Modern Bank, Sibsagar on its Calcutta Branch must be deemed to have accepted that draft as a legal tender or as absolute payment of the amount payable under the cheque endorsed in their favour by the appellant. Their rights thereafter would rest only upon the demand draft and not upon the original debt which the appellant owed to them. It may be mentioned that the

A Tripura Modern Bank had not gone into liquidation till a month later and would, as stated by Debendra Chandra Mazumdar, P.W. 3, have been able to meet the draft had it been presented to its Calcutta Branch within reasonable time from the date on which it was drawn. It is because the respondents' Bank went into liquidation just about the time the registered letter containing the draft B was sent to Calcutta and no one took delivery of it that the draft could not be presented to the Calcutta Branch of the Tripura Modern Bank. The remedy of the respondents, therefore, could be against their own bank, that is, the Calcutta Commercial Bank or against the Tripura Modern Bank but certainly not against the appellants. Reliance, however, was placed by Mr. S. C. Nath for the C respondents upon the letter dated September 10, 1949 written by the appellant to the respondents in which the appellant wrote as follows.

".....and received your letter. You wrote that the payment of Rs. 9,461-4-0 had not been received. Please get the cheque D back. We have written to the drawer, which please note."

According to learned counsel, therefore, the appellant must be deemed to have accepted its liability upon the cheque which it had endorsed in favour of the respondents. There is no reference in this letter to the demand draft and it is quite clear therefore what the appellant said was in ignorance of the fact that the respondents' bank had accepted a demand draft in payment of the E cheque. It may be mentioned that the Tripura Modern Bank, Sibsagar had actually debited the account of the drawer of the cheque with the amount for which the cheque had been drawn. The cheque had thus been honoured by them. But instead of paying cash they issued a demand draft at the instance of the respondents' bank. This letter, therefore, does not improve matters for the F respondents.

For these reasons the appeal is allowed, the decree of the High Court is set aside and that of the trial court restored. The respondents will pay the appellants' costs in this Court and in the Courts below and bear their own costs.

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Appeal allowed.