1961

Governor-General in Council v. Musaddi Lal

Shah J.

of the Limitation Act upon ss. 72 and 77 of the Railways Act and to hold that a suit for compensation for loss because of non-delivery of goods does not fall within s. 77. The view we have expressed is supported by a large volume of authority in the courts in India —for instance *The Madras and Southern Mahratta Railway Co., Ltd.* v. *Haridoss Banmalidoss* (1), *Hill Sawyers and Co.* v. *Secretary of State* (2), *Martab Ali* v. *Union of India* (3), *Union of India* v. *Mitayagiri Pullappa* (4), *Assam Bengal Railway Co., Ltd.* v. *Radhika Mohan Nath* (5) and *Bengal Nagpur Railway Co. Ltd.* v. *Hamir Mull Chhagan Mull* (6).

The view expressed to the contrary in the Allahabad High Court in *Governor-General in Council* v. *Mahabir Ram* (7) and by the Patna High Court in *Jais Ram Ramrekha Das* v. *G. I. P. Railway* (8), is in our judgment erroneous.

This appeal will therefore be allowed and the respondent's suit will stand dismissed. As the Union of India was permitted to appeal for obtaining the decision of this Court which may settle the conflict of views even though the amount involved is small, we think that it is just and proper that there should be no order as to costs throughout.

Appeal allowed.

1961

January 31.

THE ORIOL INDUSTRIES LTD.

v.

THE BOMBAY MERCANTILE BANK LTD.

(P. B. GAJENDRAGADKAR, K. N. WANCHOO and K. C. DAS GUPTA, JJ.)

Bank—Payment in company's account—Cheques drawn by authorised agents without so describing themselves or stating as on behalf of the company—Payment if wrongfully made—Indian Companies Act, 1913 (VII of 1913), s. 89.

The Managing Agents of the appellant company withdrew certain sums of money from its account with the respondent

(1) (1918) I.L.R. 41 Mad. 871.
(2) (1921) I.L.R. 2 Lah. 133.
(3) [1954] 56 Bom. L.R. 150.
(4) I.L.R. [1958] A.P. 323.
(5) A.I.R. 1923 Cal. 397.
(6) (1926) I.L.R. 5 Pat. 106.
(7) (1953) I.L.R. 1 All. 64.
(8) (1929) I.L.R. 8 Pat. 545.

Bank, which the company had by a resolution authorised the Managing Agents to operate on. The Managing Agents had no other account with the said Bank. The company brought the suit, out of which the present appeal arises, against the Bank for recovery of the said amounts on the ground that the cheques issued by the Managing Agents had been wrongfully honoured by the Bank in that they were signed by them without describing themselves as Directors of the Managing Agents firm and on behalf of the company, as required by the resolution. The trial Judge decreed the suit except with regard to a part of the claim which he found to have actually been received by the company. The appeal court dismissed the suit holding that the Bank had paid in good faith and that the company was not entitled to rely on s. 89 of the Indian Companies Act.

Held, that the court of appeal was right in holding that s. 89 of the Indian Companies Act could not be invoked by the appellant in the present case.

There can be no doubt that before a negotiable instrument can be enforced against a company under s. 89 of the Indian Companies Act, it must on the face of it show that it was drawn, made, accepted or endorsed by the company, and this may be done either by showing the name of the company itself on the instrument, or by statement of the person making the instrument that he was doing so on behalf of the company.

Sadasuk Janki Das v. *Sir Kishan Pershad*, (1919) I.L.R. 46 Cal. 663, applied.

The Bank of Bombay v. *H. R. Cormack*, (1880) I.L.R. 4 Bom. 275 and *Miles' claim*, L.R. 9 Ch. App. 635, referred to.

But the said principle is applicable only to the claim made against a company on a negotiable instrument and cannot be extended to a dispute between a bank and its constituent where the claim is not so based and proceeds on the basis that in honouring the cheques wrongfully drawn the bank acted improperly.

Mahony v. *East Holiford Mining Co.*, (1875) 7 Eng. & Irish Reports 869, referred to.

Held, further, that the object of the resolution as well as its effect was merely to conform to the requirements of s. 89 of the Indian Companies Act, 1913, and not to prescribe any condition precedent independently of that section.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 221 of 1956.

Appeal from the judgment and decree dated August 5, 1955, of the Bombay High Court in Appeal No. 128/X of 1954.

S. N. Andley, J. B. Dadachanji, Rameshwar Nath and *P. L. Vohra*, for the appellants.

1961

Oriol Industries Ltd.
v.
Bombay Mercantile Bank Ltd.

Gajendragadkar J.

A. V. Viswanatha Sastri and *Tarachand Brijmohan Lal*, for the respondents.

1961. January 31. The Judgment of the Court was delivered by

GAJENDRAGADKAR, J.—This appeal which has come to this Court with a certificate issued by the Bombay High Court raises for our decision a short and interesting question about the scope and effect of the provisions contained in s. 89 of the Indian Companies Act, 1913, in relation to the law of banking. This question arises in this way. The appellant, the Oriol Industries, Ltd. (hereafter called the company) was incorporated on May 15, 1945, and it appointed as its managing agents M/s. Poddar Chacko & Co. Soon after its incorporation the company passed a resolution on May 21, 1945, whereby it decided to open an account with the respondent, the Bombay Mercantile Bank, Ltd. (hereafter called the bank) and in accordance with the said resolution an account was opened with it on May 28, 1945. Twenty-eight cheques were drawn on this account aggregating the total amount of Rs. 28,882-13-0 during the period between May 28, 1945 and July, 31, 1945. These cheques were drawn by K. Poddar and M. J. Chacko in pursuance of the authority conferred on them by the company. On September 28, 1948, by its liquidator the company brought the present suit claiming to recover from the bank the said amount of Rs. 28,882-13-0. The case for the company as set out in the plaint was that the payment of the said amount had been made by the bank wrongfully and negligently and the amount drawn under the said cheques had been wrongfully debited to the company in its account kept by the bank. It appears that the resolution for winding up of the company was held by the court to be null and void, and so the plaint was subsequently amended whereby the name of the liquidator was struck out and the suit then purported to be one which was instituted by the company itself. The plea raised by the company that the cheques in question had been negligently and wrongfully honoured by the bank was

seriously disputed by the bank in its statement. Mr. Justice Tendolkar, who tried the suit on the Original Side of the Bombay High Court, however, upheld the plea raised by the company and came to the conclusion that the cheques had been wrongfully honoured. Even so, Mr. Justice Tendolkar held that out of the total amount in dispute an amount of Rs. 8,882-13-0 had been actually received by the company and so on equitable grounds he rejected the company's claim in regard to the said amount. The company's claim was, however, decreed in respect of the balance of Rs. 20,000.

The decree thus passed by Tendolkar, J. was challenged by the bank in its appeal, whereas the rejection of the company's claim in respect of Rs. 8,882-13-0 by the trial judge gave rise to cross-objections by the company. The Court of Appeal has reversed the finding of Tendolkar, J., and has held that the bank was not liable to repay any amount to the company since it had accepted and honoured the cheques issued on it in good faith. It may be stated at this stage that the plea of negligence which had been originally urged by the company in its plaint was expressly given up at the trial. Since the Appeal Court accepted the bank's case on the principal question of law it did not think it necessary to consider the question of limitation or the question about the applicability of the equitable doctrine on which the trial judge had relied. In the result the appeal filed by the bank was allowed, the cross-objections preferred by the company were rejected, and the suit filed by the company was dismissed with costs. The company then moved the High Court for a certificate, and on a certificate being granted it has come to this Court; and on its behalf Mr. Andley has urged that in coming to the conclusion that the company's claim was unsustainable the Appeal Court has misjudged the effect of the provisions of s. 89 of the Indian Companies Act in relation to the conduct of the bank in the present case. That is how the principal question which falls for our decision is about the scope and effect of the provisions of s. 89 of the Indian Companies Act,

1961

Oriol Industries Ltd.
v.
Bombay Mercantile Bank Ltd.

Gajendragadkar J.

Before dealing with the said question of law it is necessary to dispose of a minor point raised by Mr. Andley. He contends that the cheques issued by K. Poddar and M. J. Chacko and honoured by the bank had not been issued in the form required by the resolution which gave them authority to operate on the company's account with the bank. The relevant resolution passed by the company provided that "the banking accounts of the company be opened with the bank and another bank and that the said banks be and hereby authorised to honour cheques, bills of exchange and promissory notes, drawn, accepted or made on behalf of the company by the Managing Agents M/s. Poddar Chacko & Co., by both the Directors of the Managing Agents firm, namely, Mr. Keshavdeo Poddar and Mr. M. J. Chacko and to act on any instructions so given relating to the account whether the same be overdrawn or not or relating to the transactions of the company." The argument is that two conditions had to be satisfied before the bank could accept a cheque issued under this resolution; the cheque had to be signed by both the Directors of the Managing Agents firm, and it had to be drawn on behalf of the company. In point of fact, all the cheques have been signed by the two individuals without describing themselves as Directors of the Manging Agents firm and without showing that they had drawn them on behalf of the company. These defects, it is urged, made the cheques irregular and inconsistent with the mandatory requirements of the resolution, and the bank was therefore not justified in honouring the said cheques. In our opinion, this argument is unsound. On a fair and reasonable construction of the resolution it is difficult to uphold the contention that the resolution required the drawers of the cheques to specify on each cheque that they were made or drawn on behalf of the company. The object of the resolution as well as its effect merely was to conform to the requirements of s. 89 of the Indian Companies Act to which we will presently refer. It cannot be said that the resolution required that the drawers of the cheques had to comply with the said condition apart from the requirements of s. 89; and so it would be unreasonable

to treat the said requirement as a condition prescribed by the resolution independently of s. 89.

In this connection the subsequent resolution passed by the company is significant. It appears that on October 22, 1945, a resolution was passed by the company authorising M. J. Chacko to sign cheques for the company, and when this resolution was communicated to the bank it was told that the cheques on behalf of the company would thereafter be signed as: "For and on behalf of the Oriol Industries Limited, For Poddar Chacko & Co."; in other words, by this communication the bank was told that it is only cheques signed by M. J. Chacko in the manner specified in the communication that the bank should honour. This communication affords an eloquent contrast to the communication made by the company to the bank in regard to the earlier resolution by which M/s. Poddar and Chacko were authorised to issue cheques on its behalf. Therefore, in our opinion, the argument that the impugned cheques accepted by the bank were inconsistent with the specific mandatory requirements authorised by the resolution cannot be accepted.

That takes us to the principal question of law. In dealing with the said question it is first necessary to refer to s. 26 of the Negotiable Instruments Act, 1881 (26 of 1881). This section provides that "every person capable of contracting according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, endorsements, delivery and negotiation of a promissory note, bill of exchange or cheque." This section further provides, inter alia, that "nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered." This section does not purport to make any provision of substantive or procedural law. The latter part of the section merely brings out that a company cannot claim authority to issue a cheque under its first part. The law in regard to the company's power to issue negotiable instruments has to be found in the relevant provisions of the Companies Act

1961

Oriol Industries Ltd. v. Bombay Mercantile Bank Ltd.

Gajendragadkar J.

itself. We must, therefore, turn to s. 89 of the said Act.

Section 89 provides that "a bill of exchange, hundi or promissory note shall be deemed to have been made, drawn or accepted or endorsed on behalf of a company if made, drawn, accepted or endorsed in the name of, or by or on behalf of, or on account of, the company by any person acting under its authority express or implied." It is clear that in order that a company may be bound by a negotiable instrument purporting to have been issued on its behalf two conditions must be satisfied; the instrument must be drawn, made, accepted or endorsed in the name of or by or on behalf of or on account of the company, and the person who makes, draws, endorses or accepts the instrument must have the authority given to him by the company on that behalf. This authority may be either express or implied. There is thus no doubt that before a company can be bound by a negotiable instrument one of the essential conditions is that the instrument on its face must show that it has been drawn, made, accepted or endorsed by the company. This may be done either by showing the name of the company itself on the instrument, or by the statement of the person making the instrument that he is doing so on behalf of the company. In other words, unless the plain tenor of the negotiable instrument on its face satisfies the relevant requirement the instrument cannot be validly treated as an instrument drawn by the company. This position is not disputed.

The importance and significance of the said requirement can be illustrated by reference to a decision of the Privy Council which had occasion to consider a similar requirement under s. 27 of the Negotiable Instruments Act. The said section provides that "every person capable of binding himself or of being bound, as mentioned in Section 26, may so bind himself or be bound by a duly authorised agent acting in his name." In *Sadasuk Janki Das* v. *Sir Kishan Pershad* (1) the Privy Council held that the name of the person or the firm to be charged upon a negotiable document should be stated clearly on the face or on

(1) (1919) I.L.R. 46 Cal. 663.

the back of the document so that the responsibility is made plain and can be instantly recognised as the document passes from hand to hand. It is not sufficient that the name of the principal should be in some way disclosed; it must be disclosed in such a way that on any fair interpretation of the instrument his name is the real name of the person liable on the bill." According to the Privy Council "ss. 26, 27 and 28 of the Negotiable Instruments Act contained nothing inconsistent with the principles just set out, and there was nothing to support the contention urged before it that in an action on a bill of exchange or promissory note against a person whose name properly appears as a party to the instrument it is open either by way of claim or defence to show that the signatory was in reality acting for an undisclosed principal." This decision was no doubt given under s. 27 of the Negotiable Instruments Act, but the principles enunciated in it apply with equal force to a negotiable instrument issued under s. 89 of the Indian Companies Act.

The inevitable consequence of this requirement is that wherever a negotiable instrument is issued without complying with the said requirement it would not bind the company and cannot be enforced against it. In *The Bank of Bombay* v. *H. R. Cormack* (1) it was held by the Bombay High Court that in order to make a company liable on a bill or note it must appear on the face of such bill or note that it was intended to be drawn, accepted or made on behalf of the company, and no evidence dehors the bill or note is admissible under s. 47 of the Indian Companies Act, X of 1866, equal to s. 89 of the present Act. In support of this decision Sargent, C.J., has cited the observations of Lord Justice James in *Miles' Claim* (2) "that it is the law of this country, and always has been the law of this country, that nobody is liable upon a bill of exchange, unless his name, or the name of some partnership, or body of persons of which he is one, appears either on the face or the back of the bill." Thus there can be no doubt that the failure to comply with the essential requirements of s. 89 must necessarily mean that the negotiable instrument in question

(1) (1880) I.L.R. 4 Bom. 275. (2) (1874) L.R. 9 Ch. App. 635, 643.

1961

Oriol Industries Ltd. v. Bombay Mercantile Bank Ltd.

Gajendragadkar J.

defectively issued cannot be enforced against the company.

But the question which arises for our decision is whether this principle can be invoked in the present case where the action is not based on a negotiable instrument. The present dispute is between the bank and its constituent the company, and the claim made by the latter proceeds on the assumption that in honouring the cheques irregularly drawn the bank has acted improperly and exposed itself to the charge that it has honoured the cheques wrongfully and improperly. In considering this question it may be relevant to recall that both the courts below have found that the bank has acted bona fide and that the charge of negligence levelled against it by the company had been expressly given up. It is also necessary to bear in mind that when the company opened its account with the bank it was furnished with a book of cheques and it is from the said book that the impugned cheques have been issued. Evidence also shows that K. Poddar and M. J. Chacko had no other joint account with the bank so that it is clear that when the impugned cheques were issued the bank was justified in thinking that the said cheques must have been issued by the two drawers on behalf of the only account on which they could operate, and that the bank thought was done in pursuance of the authority conferred on them by the company by its resolution. In such a case, if the bank honours the cheques can it be said that the company on whose behalf the cheques were purported to have been issued can contend that the cheques should not have been honoured and that the amount debited to the company by the bank in its accounts has been improperly and wrongfully debited? It would be noticed that the principle underlying s. 89 which is a very healthy and salutary principle affords to the companies protection against claims made on negotiable instruments defectively or irregularly drawn; but, when we deal with a dispute between a company and the bank of which it is a constituent it is difficult to extend the said principle. The said principle in terms is applicable only when a claim is made against a company on a negotiable instrument; in other words,

it is only in the matter of enforcement of negotiable instrument against a company that the principle comes into play. It is, therefore, difficult to see how the principle enunciated in s. 89 can be extended to a claim made by the company against the bank. In our opinion, therefore, the High Court was right in coming to the conclusion that s. 89 cannot be invoked by the company against the bank in making the present claim. The decisions on which the company relied are all decisions in cases where a negotiable instrument was sought to be enforced against the company and had thus given rise to a cause of action. No case has been cited before us in which s. 89 has been extended to a claim like the present.

On the other hand, there is authority of the House of Lords in support of the view which the High Court has taken in the present case. In *Mahony* v. *East Holyford Mining Co.* (1), a similar point arose for the decision of the House of Lords. One of the two points in that case had reference to eight cheques which had been defectively or irregularly drawn on behalf of the company and honoured by the bank. In rejecting the company's claim against the bank in respect of the amount covered by the said cheques Lord Chelmsford observed as follows:

> "With respect to the objection that the name of the company is not on eight of the cheques paid by the Bank, and therefore by the Companies Act, 1862, they are invalid, and the official liquidator is entitled, at all events, to the amount of these cheques the short answer is, that although the bankers might have perhaps required that these cheques should be made formally correct before they were paid; yet having paid them upon the demand of the only persons whom they knew as representing the company in the operations upon the account, there is not the slightest pretence for insisting upon the liability of the Bank to repay the amount of these cheques on the ground of an unauthorised payment of them."

The Lord Chancellor Lord Cairns disposed of the point in these words: "The question being merely as

(1) (1875) 7 Eng. & Irish Reports, 869.

1961

Oriol Industries Ltd. v. Bombay Mercantile Bank Ltd.

Gajendragadkar J.

to the authority given to the bankers to make the payment, it appears to me that when those who drew and those who honoured the cheque knew the account on which it was intended to operate, the result was the same as if the account had been mentioned on the face of the cheque, and that no distinction is to be made as to the money paid upon these cheques." Lord Penzance agreed with this opinion and observed that "looking at the way in which the cheques were drawn, and understood by those who drew them, and by those who paid them, they stand in no different way from the rest of the cheques in the case." It would thus be clear that the authority of this decision of the House of Lords is in favour of the view taken by the High Court that the principle enunciated by s. 89 of the Indian Companies Act cannot be extended to a claim made by a company against its bank on the ground that the cheque which the bank accepted and honoured was defective in that it did not comply with the requirements of s. 89 and could not have been enforced against it. We ought to add that s. 47 of the corresponding English Act of 1862 is exactly in the same terms as s. 89 of the Indian Act.

It also appears that Chalmers has expressed the same opinion for he says, "So, too, bankers may be justified in paying cheques out of the funds of a company, where clearly, by the form of the cheques the company would not be liable as drawers if they should not be paid" (1). Similarly, Halsbury approves of the same principle in these words: "although documents omitting the name of the company therefore cannot be relied on as against the company, monies paid under them to persons known to represent the company are not on that account payable over again" (2).

The result is the appeal fails and is dismissed with costs.

Appeal dismissed.

(1) Chalmers on "Bills of Exchange", p. 63.

(2) Halsbury's Laws of England, 3rd Edn., Vol. 6, p. 429, paragraph 830.