

NON-REPORTABLEIN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**CIVIL APPEAL NO.7552 OF 2002**

Britannia Industries Limited ... Appellant
Versus
Punjab National Bank & Ors. ... Respondents

JUDGMENT**Aftab Alam,J.**

1. This appeal, by special leave, is directed against the judgment and decree dated April 3, 2001 passed by a Division Bench of the Calcutta High Court in Appeal No.114/1991. By the impugned judgment, the Division Bench allowed the appeal preferred by Punjab National Bank (respondent no. 1 before this Court), set aside the judgment and decree dated December 12, 1990, passed by a learned single judge of the High Court in Suit No. 780/1983 filed by the appellant-plaintiff under Order XXXVII of the Code of Civil Procedure.

2. The claim of the appellant-plaintiff is based on a purported bill of exchange dated February 15, 1983 for a sum of Rs. 1 crore only. The bill of

exchange was drawn by two persons namely, Raghunath Dutta and Amit Dutta (respondent nos. 3 & 4 respectively) as partners in the firm Metropolitan Construction (respondent no. 2). The bill of exchange was accepted by M/s Lgee Enterprises (not made a party to the suit) and was further shown to be accepted by Punjab National Bank (respondent no. 1). It was then shown to be endorsed by respondent no. 2 in favour of the appellant-plaintiff and was delivered to it, who, thus, claims to have become the endorsee and the holder of the bill of exchange in question. The bill of exchange was presented for payment, but respondent no. 1 refused to make payment, thereby dishonoring the bill.

3. The appellant-plaintiff filed the suit, being Suit No. 780/1983, for recovery of the amount of the bill of exchange along with statutory interest.

4. From the averments made in the plaint it is clear that the bill of exchange is drawn by respondent nos. 3 & 4 (defendant nos. 3 & 4 in the suit) as partners of the firm, respondent no. 2 (defendant no. 2 in the suit). Admittedly, suit summons were not served on defendant nos. 2, 3 & 4 and they never contested the suit at any stage. The acceptor of the bill of exchange is M/s Lgee Enterprise which was not impleaded in the suit on the facile plea that, based in Mumbai, it was beyond the jurisdiction of the

Calcutta High Court. The contest was, therefore, directly with PNB which was described in the plaint as the “acceptor” of the bill.

5. PNB (respondent no.1) completely denied the case of the appellant-plaintiff made out in the plaint and was granted leave to defend the suit in terms of rule 3(5) of Order XXXVII.

6. In the written statement it was stated on behalf of PNB that the bill of exchange was never accepted by it; that A.B. Das, who was the Branch Manager of PNB’s Zakaria Street Branch, Calcutta and who was shown to have “accepted” the bill of exchange was not authorized to accept any bill of exchange on behalf of the Bank. In any event, the “co-acceptance” of the bill of exchange by A.B. Das in Bombay was not in discharge of his official duty as Branch Manager of a branch in Calcutta. The co-acceptance of the bill of exchange shown to have been made by A.B. Das was fraudulent and not binding on the Bank.

7. It was also stated in paragraph 10(f) of the written statement that A.B. Das was arrested by the West Bengal Bureau of Investigation relating to his involvement in connection with M/s Sanchita Investment and then on November 8, 1983, A.B. Das was again arrested by C.B.I. and various investigations were pending against A.B. Das.

8. It was also stated in the written statement that the Metropolitan Construction was a non-existent firm and never had any place of business at A-18 Kings Acres Plot No. 75, Saraswati Road, Santacruz (West) at Bombay – 400054 or at 29, Creek Lane, Calcutta – 700014 (the addresses given in the bill of exchange). The telephone number given in the said purported bill was in the name of M/s Jayadas and Co., whose proprietress is Mrs. Jayashree Das, the wife of A.B. Das's brother. The acceptor, Lgee Enterprise, is also a non-existing firm and has no office at Plot No. 154, Juhu Tara Road, Bombay 400049, which is the address of one Sunlight Firm, an associate of Sanchita Investments.

9. The allegation of fraud, directly against Britannia, was made in subparagraph (h) of paragraph 11 of the written statement which is set out below:

“The said purported Bill of Exchange was not drawn on Punjab National Bank, this defendant and the said Mr. A.B. Das fraudulently in collusion and conspiracy with the plaintiff and/or its Authorized Officer and/or officers purportedly put a remark thereon as “Co-accepted”. The purported remark “co-accepted” was put on the said Bill of Exchange in collusion and conspiracy with the plaintiff and/or its duly authorized officers and is illegal, invalid and not binding on this defendant. There was no acceptances of the said purported bill by this defendant.”

10. Here it needs to be stated that after the filing of the written statement of the respondent-Bank the appellant-plaintiff sought to amend the plaint and to describe the respondent Bank as the “co-acceptor” of the bill of exchange which, in the plaint, as noted above, was described as the “acceptor” of the bill. The amendment petition was rejected by the trial court and the order rejecting the amendment petition was upheld right upto this Court.

11. On the basis of the pleadings, the parties went to trial and the trial court by judgment and order dated December 12, 1990, decreed the suit.

12. Against the judgment and decree passed by the trial court, the respondent-Bank preferred an intra-court appeal before the Division Bench of the High Court and the Division Bench, as noted above, allowed the appeal, set aside the judgment and decree passed by the single judge and dismissed the plaintiff's suit.

13. The Division Bench has rendered a long and learned judgment that deals with practically the entire gamut of the law on bill of exchange.

14. On a careful consideration of the materials on record, the Division Bench found that there was no material to hold that the alleged bill of exchange was a validly executed instrument as the appellant-plaintiff failed

to adduce any evidence in regard to its execution. The Division Bench further held that it was incumbent upon the appellant-plaintiff to prove the execution of the bill of exchange and its validity as it was repeatedly asserted in the written statement filed by the respondent-Bank that the alleged bill of exchange was brought into existence by practicing fraud and collusion and it was not a valid instrument and binding on the respondent.

15. The Division Bench further found that by allegedly giving the guarantee for payment under the guise of “co-acceptance” of the bill, A.B. Das acted in excess of his authority and the so called co-acceptance endorsed by him could not and did not bind the respondent-Bank.

16. The Division Bench also found that the circumstances in which the alleged bill of exchange was said to have been drawn up and accepted by M/s Lgee Enterprise and “co-accepted” by the respondent-Bank appeared to be highly curious and unusual and lent credence to the case of the respondent-Bank that the bill of exchange was fraudulent.

17. The Division Bench also held that the statutory requirement of presentment under section 64 of the Negotiable Instruments Act for payment is mandatory and the words “must be” clearly expressed the legislative intent. The consequence of failure to present was also made clear that the

failure will absolve the liability of any of the “other parties thereto”. It was also made clear that in the case of a bill of exchange it must be presented for payment to the “acceptor”. In this case, admittedly the bill was not presented to M/s Lgee Enterprise, the named acceptor in the bill and as a consequence “other parties thereto” were totally absolved of their liability.

18. The Division Bench also rejected the contention made on behalf of the appellant-plaintiff that co-acceptance by the respondent-Bank should be treated as acceptance. The Division Bench pointed out that the case of the appellant-plaintiff in the plaint is that the respondent-Bank is the “acceptor”. After receiving the written statement filed by the respondent-Bank, the appellant-plaintiff wanted to introduce the case of co-acceptance by the Bank. The attempt to amend the plaint did not succeed right up to this Court. Hence, the case of the appellant-plaintiff was liable to fail, as on the face of the document the Bank was not the acceptor of the bill of exchange.

19. Each of the findings noted above, have been arrived at by the High Court with great care in regard to the facts of the case and the relevant provisions of the law. Each of the findings is unimpeachable and each of the finding on its own is fatal to the case of the appellant-plaintiff.

20. On hearing Mr. Shyam Divan, senior advocate counsel for the appellant-plaintiff and Mr. Dhruv Mehta, learned senior advocate appearing for the Bank, we find ourselves in complete agreement with the view taken by the Division Bench of the High Court.

21. We find no merit in this appeal and is, accordingly, dismissed with costs.

.....J.
(Aftab Alam)

.....J.
(Ranjana Prakash Desai)

New Delhi;
April 17, 2013.

JUDGMENT