PRIVY COUNCIL

Bombay Cotton Manufacturing Co.

Vs.

R.B. Motilal Shivlal

P.C.A No.17 of 1914
(Lords Dunedin, CJ, Shaw, Sir George Farwell, Sir John Edge J and Mr. Ameer Ali. JJ)

25.2.1915

JUDGMENT

Sir George Farwell J

1. This is an appeal from a judgment and decree of the High Court of Bombay in its appellate jurisdiction reversing a judgment of the High Court in its original jurisdiction. The question at issue is one of fact. The respondent is a banker and money-lender against whom personally no imputation is made; his manager was one Dani. Dani was on intimate terms with one Dwarkadas, and Dwarkadas was for some years, until his death in August 1909, Agent and Managing Director of the appellant Company, and of two other Companies, the Tricumdas and the Lakhmidas; in 1908 the appellant Company was a flourishing and solvent Company, and the two other Companies were largely insolvent; and both were heavily indebted to the respondent for advances, to the amount of about 5½ lacs. The respondent was pressing Dwarkadas for further and better security in respect of these sums, and also of other monies advanced by the respondent to Dwarkadas personally; and Dani and Dwarkadas accordingly arranged to shift part of the indebtedness of the Tricumdas and Lakhmidas Companies on to the appellant Company. This arrangement was carried out by entries which can only be characterized as a bare-faced swindle. Dani procured two cheques one from the Tricumdas Company for eighty-five thousand rupees and one from the Lakhmidas *Company* for one lac and fifteen thousand rupees and sent them over by his son to the office of the appellant Company, to be placed to their credit, but simultaneously Dwarkadas through his son Devji Damodhar telephoned to the cashier of that Company not to present the cheques, but to await further instructions; the two amounts were entered in the appellants' books to their

credit and appear as :- "Rs. 85,000 cheque 1 in number drawn on the Bank of Bombay (bearing) No. 95500 S.S., and 115,000 cheque drawn on the Bank of Bombay bearing No. 7, 94950 S.S. No. 2." The two cheques were then destroyed by Dani's orders. It is difficult to suggest any object for this transaction of drawing and paying in cheques for the purpose of being entered with every circumstance of identification and reality, and then of immediate destruction without presentation, except fraud. The transaction was merely a paper one for the purpose of shifting the respondent's security from the two insolvent to the one solvent company. The Judge of first instance has heard the evidence, which depends on the credit to be attached to the two sons of Dwarkadas on the appellants' side, and to Dani on the respondent's; he has stated that he has seldom seen in the box "such serviceable clear headed and absolutely truthful witnesses" as the two sons or a more "thoroughly unscrupulous, untrustworthy and untruthful man" than Dani and he finds that the transaction was a deliberate fraud on the appellants. The Appellate Court refused to accept as conclusive the judgment of the lower Court as to veracity of the witnesses. It is doubtless true that on appeal the whole case, including the facts, is within the jurisdiction of the Appeal Court. But generally speaking it is undesirable to interfere with the findings of all of the Trial Judge who sees and hears the witnesses and has an opportunity of noting their demeanor especially in cases where the issue is simple and depends on the credit which attached to one or other of conflicting witnesses. Nor should his pronouncement with respect to their credibility be put aside on a mere calculation of probabilities by the Court of Appeal. In making these observations their Lordships have no desire to restrict the discretion of the Appellate Courts in India in the consideration of evidence. They only wish to point out that where the issue is simple and straightforward and the only question is, which set of witnesses is to be believed the verdict of a Judge trying the case should not be lightly disregarded.

2. With all respect to the Appellate tribunal, their Lordships cannot accept their reading of the facts and inferences. They find no such contradictions or impossibilities in the evidence of two witnesses whom the Trial Judge in this case has believed as to justify their preferring the opinion of the Appellate Court formed on the written record to his deliberate conclusions after hearing it in Court. Again, several of the conclusions of fact adopted by the Appeal Court appear to their Lordships to be quite mistaken, e.g., that Dani had no reason to fear and did not fear that the respondent would lose the money owing to him by the Tricumdas Company. It would serve no useful purpose to comment in detail on the judgment of the Appeal Court, but their Lordships feel bound to take exception to the Chief Justice's statement that the cross-

examination of Dani, which convicted him of being party to a false and fraudulent balance sheet of the Tricumdas Company, was "not a very relevant point," and that Dani was prejudiced thereby by being placed "in an uncomfortable position and reduced to shuffling answers." The observation might be of disastrous effect if accepted. Cross-examination to credit is necessarily irrelevant to any issue in the action, its relevancy consists in being addressed to the credit or discredit of the witness in the box so as to show that his evidence for or against the relevant issue is untrustworthy; it is most relevant in a case like the present where everything depends on the Judge's belief or disbelief in the witness's story, and to excuse him and actually accept his story on the ground that he was uncomfortable when he was shown to be a fraudulent falsifier of accounts is to adopt a course which their Lordships cannot follow.

3. Their Lordships will humbly advise His Majesty that the judgment of the Appeal Court be set aside and that of the High Court in its original jurisdiction be restored and that the respondent do pay the costs of this appeal.

Appeal allowed.