Jammu & Kashmir Bank Ltd.

Vs

Attar-Ul-Nissa and Others

Civil Appeals Nos. 702 and 768 of 1964

(K. N. Wanchoo, J. M. Shelat, G. K. Mitter JJ)

07.10.1966

JUDGMENT

WANCHOO J.

These are two connected appeals on certificates granted by the Jammu and Kashmir High Court and raise a common question of law. We shall therefore give the facts of one appeal (No. 702) in order to appreciate the question of law which calls for decision.

Sultan Mohd. Matawali Khan (hereinafter referred to as Sultan Mohd.), Ilaqadar of Kathai was the predecessor-in-interest of the respondents. He had borrowed a sum of Rs. 40,000/- from the appellant-bank on the basis of a promissory-note on November 5, 1941. Before the bank advanced the loan, the Government of the then State of Jammu and Kashmir was approached and it was arranged that the debt would be liquidated through Government. For that purpose, an order was issued by the Government that land-revenue of certain villages from the Jagir of Sultan Mohd. amounting to Rs. 5076/9/6 would be collected by Government and the amount credited in the treasury to the credit of the bank till the sum of Rs. 40,000/- along with interest due thereon was liquidated. It was in consequence of this arrangement that the bank advanced the sum of Rs. 40,000/- to Sultan Mohd. After the loan had been taken and the pro-note executed the bank opened an account in the name of Sultan Mohd. which started with a debit of Rs. 40,000 on November 5, 1941. Thereafter whatever sum became due to the bank as interest and incidental charges was debited to the account of Sultan Mohd. and the amount received from Government was credited to the account. This went on till 1953 when the jagir of Sultan Mohd. was resumed. The account of Sultan Mohd. with the bank showed a debit of Rs. 2,995/12/- on June 3, 1953. On June 4, 1953, the bank filed the suit out of which this appeal has arisen against the respondents as legal representatives of Sultan Mohd. for a sum of Rs. 31,025/11/-. To explain the large discrepancy between the amount shown due in the account and the amount for which the suit was filed, the bank stated that a sum of Rs. 28,029/15/- had been erroneously credited to the account of Sultan Mohd. Consequently the erroneous entries with respect to this credit were corrected and after such correction the amount due came to be Rs. 31,025/11/-, for which the suit was filed.

The suit was resisted by the respondents on various grounds, but in the present appeals we are concerned only with one ground, namely, that it was not open to the bank to reverse the credit entries in the account of Sultan Mohd. after they had been made in the manner in which it was done at the instance of the Accountant General of the State of Jammu and Kashmir. Therefore, the bank would be only entitled to recover Rs. 2,995/12/-, which was the amount shown as due from Sultan Mohd. in the account on June 3, 1953.

The main question that arose in the trial court therefore was whether the bank was entitled to reverse the entries with respect to Rs. 28,029/15/- in the manner in which that was done. The facts with respect to what happened in connection with this sum are not now in dispute and may be briefly narrated. The procedure which was followed, after money was realised by Government from the villages mentioned in the Council Order of October 28, 1941, was that after deducting the collection charges, the amount used to be credited in the State's accounts and thereafter transferred by Government to the bank for credit to the account of Sultan Mohd. The transfer used to be made by hundis or treasury bills and on receipt of necessary hundis or treasury bills the bank used to credit the amount shown in them to the account of Sultan Mohd. It appears however that for about five years what happened was that hundis or treasury bills used to be sent to the bank both by the treasury and by the Accountant General with the result that for this period double the amount realised by Government was credited to the account of Sultan Mohd. on the basis of the hundis or treasury bills sent to the bank. In consequence, there was an over-payment by Government to the bank to the tune of Rs. 28,029/15/- and this over-payment was credited to the account of Sultan Mohd. in the bank. This mistake was realised by the Accountant General after about five years and thereupon the Accountant General asked the bank to reverse the entry and debit this amount to the account of Sultan Mohd. Apparently, the bank was unwilling to do so and it appears that the bank was then threatened that if the bank did not do so the amount would be realised from the subsidy given to the bank by Government. The bank thereupon reversed the entries and debited this amount to the account of Sultan Mohd., with the result that the figure of Rs. 2,995/12/- shown as debit balance against Sultan Mohd. was increased by this sum.

The trial court held that the amount was paid twice over by mistake and therefore the bank was entitled to reverse the entries at the instance of the Accountant General without reference to Sultan Mohd. It therefore decreed the suit in full. The respondents then went in appeal to the High Court and contended that the entries could not be reversed in this manner by the bank without the consent of Sultan Mohd. The High Court accepted this contention and rejected the argument on behalf of the appellant that the bank was justified under s. 72 of the Indian Contract Act, No. 9 of 1872, to reverse the entries. The High Court therefore allowed the appeal and disallowed the claim of the bank for Rs. 28,029/15/- and decree the suit for the balance (namely, Rs. 2,995/12/-). Thereupon the appellant obtained certificates from the High Court in both cases, and that is how the matter has come before us.

The only question in these circumstances is whether the bank was justified in reversing the entries and debiting the account of Sultan Mohd. with this sum. Now the legal position so far as this payment is concerned was this. The bank had advanced the money to Sultan Mohd. and an account was opened in his name on November 5, 1941 with a debit entry of Rs. 40,000/-. Into this account the bank went on debiting interest and incidental charges due to it from Sultan Mohd. It also credited this account with the amounts received from Government through hundis or treasury bills. Clearly therefore though the amounts to be credited to the account of Sultan Mohd. used to come by treasury-bills or hundis from Government they were amounts received by the bank on behalf of Sultan Mohd. to be credited to his account, and the Government was agent of Sultan Mohd. for the purpose of depositing the income from villages, management of which was taken over by Government under the Council Order, in order to liquidate the loan taken by Sultan Mohd. from the bank. The bank when it reversed the entries made no reference to Sultan Mohd. and did not take his consent thereto. In these circumstances the contention of the respondents is that it was not open to the bank to reverse the entries and thus saddle Sultan Mohd. with the liability for this sum after it had been credited into his account on the basis of hundis or treasury bills received by the bank from Government.

We are of opinion that this contention of the respondents is correct, and the High Court was right in the view it took of the legal position. It is true that on the facts shown there was double payment for a certain period due to mistake on the part of Government. The question however is whether it was open to the bank to reverse the entries in the manner it did without reference to Sultan Mohd. It was not been and cannot be disputed that it is not open to the bank to debit the account of a constituent like Sultan Mohd. with any sum without the authority of the constituent. What is however contended on behalf of the appellant is that Government paid the sum twice over by mistake and it was entitled to ask the bank to return the money paid by mistake and reliance in this connection is placed on s. 72 of the Contract Act. There is no doubt that s. 72 of the Contract Act provides that a person to whom money has been paid or anything delivered by mistake or under coercion must repay or return it. That section in our opinion will only apply when we are dealing with a case of two persons one paying the money and the other receiving the money on behalf of the person paying it. In such a case if the payment is made by mistake the person receiving the money must return it. But section 72 in our opinion has no application to a case where money is paid by a person to a bank with instructions that it should be deposited in the account of a third person who is a constituent of the bank. As soon as the money is so deposited in the account of the third person, who is a constituent of the bank, the money becomes the money of the constituent, and it is not open to the bank in such circumstances to reverse the entry of credit made in the account of the constituent and in effect pay back the money to the person who had deposited it even though might if have been deposited by mistake.

As soon as the money is credited into the account of the constituent, even though the person paying in may have paid it by mistake, it becomes the money of the constituent, and the bank cannot pay it back to the person who paid it to the account of the constituent on his representation that it was paid by mistake, without obtaining the consent of the constituent. As we have already said the legal position is that for the purpose of payment, Government was the agent of Sultan Mohd. and whatever money was paid to be credited to the account of Sultan Mohd., even though it was paid through Government, became his money and it could not be paid out of his account which is in substance the effect of reversing the entries without his consent. Section 72 could certainly have been availed of by Government against Sultan Mohd. and the Government could have sued Sultan Mohd. for return of the money which had been paid by mistake into his account. But the Government could not ask the bank to reverse the entries and thus in effect ask it to pay out the money from the account of Sultan Mohd. into which it had been deposited and the bank could not do so without taking the consent of Sultan Mohd. Further though Government was the agent of Sultan Mohd. for the purpose of payment of the money for liquidating the debt, the Government had no further authority on his behalf to ask the bank to pay back any sum once it had been credited into his account by Government. That could only be done on the authority of Sultan Mohd. and there was no authority in this case for paying back the sum paid in by mistake to Government, for the reversal of the entries in substance amounted to this.

It has been urged that on this view the bank would not be able to correct any mistake in the account of any constituent. That is not so. If, for example, a bank credits a cheque in favour of A by mistake into the account of B, the bank can always correct that mistake, for it had received the money on behalf of A. Similarly if the bank receives (say Rs. 5,000/- on behalf of A from some person, but by mistake enters Rs. 50,000/- in A's account, the bank can always correct that entry and mention the correct sum received. But the present case is very different from corrections of such mistakes. Here the bank had received certain moneys on behalf of Sultan Mohd. through treasury bills or hundis. There is no dispute that money was received for credit to the account of Sultan Mohd. and was correctly credited to that account. There was therefore nothing which the bank could correct, for the

bank had made no mistake in making the entries. The bank in our opinion in not concerned with any mistake made by the Accountant General or the treasury in sending the amounts to the bank for the credit of the same to the account of Sultan Mohd. If the Accountant General or the treasury had made any such mistake it was open to them to recover the amount paid in by mistake from Sultan Mohd. But the bank could not reverse the entries and thus pay out money from the account of Sultan Mohd. without his authority. It is obvious that the bank hesitated to reverse the entries and only did it on the threat that the amount would be deducted from the subsidy paid to the bank by the Government. We have no doubt that the High Court was right that in such circumstances where the amount had been paid even though by mistake into the account of a constituent of the bank it was not open to the bank to reverse the entries at the instance of the person paying-in the money into the constituent's account on the ground that the payer had made a mistake. We agree with the High Court that s. 72 has no application to the facts of this case. Learned counsel for the appellant has referred us to Imperial Bank of Canada v. Bank of Hamilton (L.R. [1903] A.C. 49.) in this connection. We are of opinion that that case has no application to the present cases, for the facts therein were different. The payment had been made by one bank to another bank by mistake; there is nothing to show that the money had been paid into a constituent's account and thereafter any entry had been reversed in that case.

We are therefore of opinion that the appeals must fail. They are hereby dismissed. As the respondents in C.A. 702 did not appear, we pass no order as to costs in that appeal. The respondent in C.A. 768 has appeared and will get his costs from the appellant.

G.C.

Appeals dismissed.

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