

SUPREME COURT OF INDIA

Bharat Nidhi Ltd.

Vs.

Takhatmal

C.A.No.133 of 1965

(S. M. Sikri, R. S. Bachawat, K. S. Hegde, JJ.)

07.08.1968

JUDGEMENT

BACHAWAT, J.:-

1. M. R. Malhotra was working as a contractor to the military and other authorities. He needed funds for the execution of his contracts. The appellant Bank formerly known as the Bharat Bank Ltd., agreed to finance the contracts and to advance monies to Malhotra against his bills for supplies under the contract. For the purpose of carrying out this arrangement Malhotra executed an irrevocable power of attorney in favour of the appellant on July 13, 1946. The power of attorney recited.

"Whereas we are working as contractors to the Government in its various departments and have entered into certain contracts and will in future enter into other contracts and whereas an agreement dated 13th July 1946 has been made between us and the Bharat Bank Ltd., in pursuance of which the attorneys have agreed to finance contracts and to advance us sums of money, against supply bills for payments to be received by us under the contracts issued by the Government in various

departments on conditions mentioned therein; and whereas we, for the purpose of carrying out the terms of the said agreement more effectively and to secure the interest of the attorneys are desirous of appointing the Bharat Bank Ltd., as our lawful attorneys in all matters relating to the receipt of all payments under the contracts made or to be made hereafter."

The document appointed the appellant to be the attorneys of Malhotra.

"to present and submit supply bills regarding our contracts to the proper officers and/or authority of the Government Departments concerned; to obtain cheques for sums payable to us under the contracts directly in their own name or in our names in payment of such bills or other amount and to cash and to receive the amount thereof and appropriate such receipts towards and in repayment of the advances made or to be made hereafter and all other monies due from us to the attorneys in any account whatsoever." The appellant was also authorised to sue for, recover and receive the monies due in connection with the contracts with the approval of Malhotra, to conduct and defend proceedings in consultation with him and to take steps in his name and on his behalf. Malhotra promised and declared that "all powers hereby granted are and shall be irrevocable as long as any claims of the attorneys against us whether for principal, interest, costs, charges or otherwise remain outstanding and unpaid." Intimation of the power of attorney was given by the appellant to the military authorities. On July 19, 1948 Malhotra made out a bill on the military authorities for Rs. 49,633/8/7 then due to him in respect of his supplies under the contracts during 1945-46 and handed over the bill to the appellant for collection. On the bill Malhotra made the following endorsement: "Please pay to Bharat Bank Ltd. Jabalpur." The appellant sent the bill to the military authorities for payment. Before the appellant received the payment, the amount due under the bill was attached by Takhatmal in execution of a money decree obtained by him against Malhotra. The appellant filed objections in the execution proceedings. On September 11, 1952 the objections were dismissed. On December 12, 1952 the appellant filed a suit in the court of the 1st Additional District Judge, Jabalpur, against Malhotra And Takhatmal asking for a declaration that the appellant was an assignee of the bill and that Takhatmal had no right to attach it. The Trial Court held that the appellant was the assignee of the bill and decreed the suit. Takhatmal filed an appeal against the decree. The High Court of Madhya Pradesh allowed the appeal and dismissed the suit. The present appeal has been filed by the plaintiff after obtaining a certificate from the High Court.

2. The sole question in this appeal is whether the power of attorney dated July 13, 1946 coupled with the endorsement on the bill dated July 19, 1948 amounts to an equitable assignment of the monies due under the bill in favour of the appellant. There are many decisions on the question as to what constitutes an equitable assignment. The law on the subject admits of no doubt. In *Palmer v. Carey*, 1926 Ac 703 at p. 706 Lord Wrenbury said:

"The law as to equitable assignment as stated in *Rodick v. Gandell*, (1852) 1 De G.M. and G. 763, (777,778) is this: The extent of the principle to be deduced is that an agreement between a debtor and a creditor that the debt owing shall be paid out of specific fund coming to the debtor, or an

order given by a debtor to his creditor upon a person owing money or holding funds belonging to the giver of the order, directing such person to pay such funds to the creditor, will create a valid equitable charge upon such fund, in other words, will operate as an equitable assignment of the debts or fund to which the order refers."

In construing the power of attorney it is necessary to bear in mind that the relationship of the two parties, Malhotra and the Bank was that of borrower and lender and that the document was brought into existence in connection with a proposed transaction of financing of Malhotra's contracts. The loans were to be advanced by the Bank against Malhotra's bills for supplies under the contracts. The obvious intention of the parties was to provide protection for the lender and to secure repayment of the loans. With that object in view the lender was authorised to receive payment of the bills and to appropriate the receipts towards repayment of the loans. As the lender had an interest in the funds the power of attorney was expressed to be irrevocable. On a proper construction of the document the conclusion is irresistible that there was an agreement between the lender and the borrower that the debt owing to the lender would be paid out of a specific fund of the borrower in the hands of the Government authorities. The power of attorney coupled with the endorsement on the bill dated July 19, 1948 was a clear engagement by Malhotra to pay the appellant Bank out of the monies receivable under the bill and amounted to an equitable assignment of the fund by way of security.

3. The question whether a document amounts to an equitable assignment or not is primarily one of construction but we may mention a few decisions which throw light on the matter. In *Jagabhai Lallubhai v. Rustamji Nausarwanji*, (1885) ILR 9 Bom 311 the Bombay High Court held that an agreement to finance the borrower and a power of attorney of even date to receive the monies due to the borrower under certain contracts had the effect of an equitable assignment of the funds. In *Loonkaran Sethiva v. State Bank of Jaipur*, C. A. No. 644 of 1966, D/- 25-4-1968 = (AIR 1969 SC 73) this Court held that a power of attorney authorising a lender to execute a decree then pass in favour of the borrower or which might be passed in his favour in a pending appeal and to credit to the borrower's account the monies realised in execution of the decree amounted to an equitable assignment of the funds.

4. In the last case the Court held that there was no transfer of the decree, or of the claim which was the subject-matter of the pending appeal as the borrower continued to be the owner and the lender was merely authorised to act as his agent, Nevertheless the Court held that the power of attorney amounted to a binding equitable assignment. An actionable claim may be transferred under S. 130 of the Transfer of Property Act. Where a document does not amount to a transfer within S. 130 it may apart from and independently of the section operate as an equitable assignment of the actionable claim.

5. In the present case the power of attorney authorised the appellant to receive all monies due or to become due to Malhotra in respect of pending of future contracts with the government authorities. Counsel argued that there was no engagement to pay out of specific fund and therefore can be valid

equitable assignment of future debts, see *Tailby v. Official Receiver*, (1888) 13 A. C. 523. As and when the debt comes into existence it passes to the assignee.

6. As a matter of fact when the debt due to Malhotra came into existence, he specifically appropriated it for payment to the appellant. On July 19, 1948 he made out a bill for the monies then due to him and endorsed on it: "Please pay to Bharat Bank Ltd., Jabalpur." The bill with the endorsement was sent to and acknowledged by the military authorities. Counsel submitted that this document was a pay order. Now there is an essential distinction between a pay order and an assignment. A pay order is a revocable mandate. It gives the payee no interest in the fund. An assignment creates an interest in the fund and is not revocable. Read in the light of the power of attorney the endorsement on the bill dated July 19, 1948 created an interest in a specific fund and was irrevocable. There was thus a sufficient equitable assignment of a specific fund in favour of the appellant. The High Court was in error in holding that there was no equitable assignment.

7. In the result, the appeal is allowed, the decree passed by the High Court is set aside and the decree passed by the 1st Additional District Judge Jabalpur, is restored. The respondents who are the legal representatives of Takhatmal shall pay out of his assets in their hands the costs of this appeal as also the costs in the courts below.

Appeal allowed.