Duli Chand Vs. Jwala Prasad and Sons

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Court : Allahabad

Decided On : Jan-04-1934

Reported in : AIR1934All568

Appellant : Duli Chand

Respondent : Jwala Prasad and Sons

Judgement :

Bennet, J.

1. This is an application in revision on behalf of a defendant against whom a decree has been passed by the Small Cause Court of Agra in favour of the plaintiff which is a bank. The plaintiff bank lent money to the defendant on an overdraft and a printed letter dated 18th May 1931 was sent by the defendant offering as security against this overdraft 'our R/Rts, sent to you for collection.' The finding is that certain railway receipts were sent to the bank to collect a certain sum from a consignee or consignees and that the bank endeavoured several times to collect these amounts but the consignees refused to accept the consignment. The letter of 18th May 1931 in the second paragraph stated:

In case the R/Rs. are returned unpaid I will settle your account and will take delivery of the R/Rts. immediately I hear from you, failing which authorize you to clear and store the goods) etc.

2. Now, a distinction must be drawn between a right and a duty. In the first paragraph of the letter there is a duty-cast on the bank of collection of the payments on the R/Rs. The bank attempted to collect that payment and therefore fulfilled its duty in that particular. In the second paragraph the letter does not impose any duty on the bank to clear and restore the goods but it gives the bank a right to do so. It was optional to the bank to exercise that right or not as the bank chose. In the present case the bank did not choose to exercise that right and the bank did not clear the goods or take possession of them. The bank has now sued on the loan and the defendant claims that there was a bailment under Section 151, Contract Act, and that the bank had failed to take the necessary care of the goods and that defendant was entitled to a set off for loss that occurred to defendant.

3. Learned Counsel points out that his client applied by a letter of 4th January 1932 to the Railway company asking for the consignment to be rebooted to the defendant. The reply of the railway company, dated 11th January 1932, is not produced, but a letter in continuation of that reply dated 8th February 1932, is produced and that letter states that on a reference to the plaintiff bank the bank wrote that the railway should not rebook the consignment to defendant as defendant had taken money on

the security of the R/R from the plaintiff and R/R was still in possession of the plaintiff. Now, the claim of the learned Counsel for the defendant is that a bailment arose when the bank received the railway receipt. Under Section 148, Contract Act, a bailment is the delivery of goods by one person to another for some purpose upon a contract that they shall when the purpose is accomplished be returned or otherwise disposed of according to the directions of the person delivering them. Under Section 149 the delivery may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf. It is an essential element of these two sections that there must be the putting into the possession of the bailee or of his agent of the goods in question.

4. In the present case in my opinion the goods were not put into the possession of the bank at all. All that was done was that the bank received a document of title to the goods, and the bank received that document in order that the document might be handed to the consignee by the bank and the consignee would pay a sum of money to the bank. By such a transaction the goods would never come into the possession of the bank. During this period the goods would remain in the possession of the railway company as common carriers and it would be the railway company who would be the bailee and not the bank. A reference to Section 172, Contract Act, will not help the applicant in revision. That section deals with a pledge and a pawnor and a pawnee; but these words also imply the bailment of goods as security. In my opinion, there was no bailment of the goods in the present case. What the bank received as security was not the possession of the goods, but the possession of a document of title to the goods. In some cases no doubt a bank does take actual possession of goods and place them in godowns under its charge and in that case the bank no doubt becomes a bailee of the goods; but where a bank merely takes possession of a document of title the responsibility of the bank under Section 151 is for the safe custody of the document of title and not for the safe custody of the goods. As learned Counsel has some doubt on this question of the legal result of placing documents of title with the bank, I may refer to the well-known case where a person deposits as security a document of title to immoveable property such as a sale-deed under which he obtained his title. The deposit of such a document with the bank will give the bank certain rights in regard to that document, but it does not produce the legal effect that the bank becomes in possession of the immoveable property. Reference has been made to a decision of a learned Single Judge of this Court in Civil Revision No. 395 of 1933 in a case in which the same bank was a party under similar circumstances and the same letter authorizing an overdraft was proved. In that case the Small Cause Court Judge without expressly stating that there was a bailment assumed that there was a bailment as he said

the plaintiff ought to have taken as much care of the goods as he would have taken if the goods were his own;

and he also construed the second paragraph of the letter as casting a duty on the plaintiff to get the goods rebooked to Agra. At the same time he held 'nor the plaintiff took delivery of the railway receipt.' Apparently he meant; that the plaintiff did not exercise his rights under the second paragraph of the letter and did not take possession or delivery of the goods. As I have already stated I consider that this construction of the letter is erroneous and under such circumstances there was no possession taken by the plaintiff and therefore no bailment. A revision was brought in this Court, but the point was not taken in revision that there was no bailment and no duty of a bailee was cast on the plaintiff. Consequently as the point was not before

the learned Judge who heard the revision he gave no decision on the point. The ruling therefore is not on the point. The point however does occur to me and for that reason I have considered it and on this ground I dismiss this application in revision.