

THE PEOPLE'S BANK
v.
NEW LANKA MERCHANTS LTD.

COURT OF APPEAL.

S.P. GOONEWARDENE, J. AND K. VIKNARAJAH, J.

C.A. NO. 510/79 (F) - D. C. COLOMBO No. C/1169/M.

JANUARY 21, 1989.

*Negligence - Customer of Bank suffering loss on wrong information by Bank employee
Re-realization of cheque - Liability of Bank.*

A customer of a firm on tendering cheque for goods purchased was told the balance cash and goods would be delivered to him only upon realisation of the cheque. An employee of the firm's bank inquired from a Bank employee whether the cheque was realised. The Bank employee told the employee of the firm that the cheque had been honoured whereupon the firm released the goods and the balance cash to its customer. Later it was found that the cheque had been in fact dishonoured.

Held :

The Bank's employee was entitled to furnish the information in response to the inquiry made by the employee of the firm. As a result of the Bank employee giving the wrong information that the cheque was honoured when in fact it was not, the firm suffered loss in the value of the cheque. The firm was entitled to act on the information given by the Bank's employee and the Bank is liable for the negligence of its employee and must make good the loss sustained by the firm.

APPEAL from a judgment of the District Court of Colombo.

S. Sivarasa with *W. D. D. Weerasinghe* for the Defendant - Appellant.

H. L. de Silva, P. C. with S. Mahenthiran for the Plaintiff - Respondent.

Cur. adv. vult

March 17, 1989.

S. B. GOONEWARDENE, J.

The plaintiff filed this action seeking recovery of a sum of Rs. 9,213.66 from the Defendant Bank the appellant in this case. The factual background of the case was thus. The plaintiff was at all times material a customer of the defendant bank and maintained a current account with it. On 12.11.74 a person representing himself as one G. M. Perera presented himself at the business establishment of the plaintiff and tendered to it a cheque p1 which on the face of it was for a sum of Rs. 9,213.66 and drawn in the name of G. M. Perera by George Stewart & Co on The National & Grindlays Bank. It was so tendered after a purported endorsement, against the purchase of some goods from the plaintiff. The amount on the cheque being in excess of the value of the goods the plaintiff gave him a sum of Rs. 5.31 in cash and it was agreed that it was only after the realisation of the cheque that a further sum of Rs. 8,000 was to be paid to such person. The balance then represented the value of the goods purchased which goods too were to be delivered only after the realization of the cheque. On the same day the plaintiff credited this cheque P1 to its current account with the defendant Bank. On 15th November, 1974 Francis an employee of the plaintiff called over at the defendant Bank to inquire whether the cheque had been realised and was directed to call over again around 12.30 p.m. to be notified whether that had happened. Such person when he presented himself accordingly was informed that the cheque had been realised. In consequence of that statement the person who tendered the cheque to the plaintiff was paid a sum of Rs. 8,000 and the goods purchased were also delivered to him. On the 18th of November, 1974 the defendant Bank had been notified by the National & Grindlays Bank that the cheque had been dishonoured and the defendant Bank received it back as a 'late return cheque'.

The issue in the case as the District Judge saw it was whether in these circumstances where an employee of the defendant Bank by the name of De Silva made this representation to the plaintiff's agent Francis that the cheque P1 had been honoured, which resulted in the plaintiff parting with the value of the cheque on its face in goods and cash and consequently sustained this loss upon the defendant Bank subsequently

debiting this amount to its account, the plaintiff was entitled to recover such loss from the defendant Bank.

The District Judge was of the view that there was as he termed it, negligence on the part of the defendant Bank and the principal argument of Counsel for it at the hearing before us was that in the absence of an issue with respect to negligence the District Judge misdirected himself in coming to that finding and therefore his judgment cannot be allowed to stand.

It cannot be doubted that a customer of the Bank is entitled to make an inquiry of this nature as was done by the agent of the plaintiff here and act upon the basis that the information so given is correct. Counsel endeavoured to contend that such an inquiry must be directed to a responsible officer who has authority to give that information and that was not so in this case. I am of the view that this contention is scarcely consistent with the testimony of the Bank Manager Hewa who was functioning in that capacity at the material time and who was called as its witness by the defendant Bank. There can be no doubt upon an examination of the evidence of that witness that the inquiry made by the plaintiff's agent from witness De Silva, the Bank's employee, entitled such employee to give that information in the manner he did. It follows therefore from that, that the plaintiff was entitled to act upon a footing of the correctness of the information so given. The comment, it is apt to state at this point has been made by the District Judge that De Silva, the Bank's employee, was present in Court and was not called as a witness for the defendant to refute the testimony of the plaintiff's agent Francis who made the inquiry from him. The District Judge's conclusion therefore that in the event De Silva had provided this information to Francis is in my view warranted in the circumstances of the case.

To hark back to the point taken relating to the finding of negligence, there was evidence before the District Judge to suggest that at the time this information was provided by De Silva to Francis, National & Grindlays Bank had notified the defendant Bank by telephone that the cheque was being dishonoured. That information unfortunately had not been communicated by the Manager Hewa to De Silva nor had he made any entry in the ledger which would have enabled any one examining such ledger to learn that fact. This, the District Judge has thought was a singular lapse

for which the defendant must ultimately bear responsibility. One cannot quarrel with such a view that the bank must hold itself responsible for a lapse of this nature on the part of its branch manager.

The case presented to the District Court by the plaintiff upon its pleadings as Counsel for the respondent pointed out to us contained the following assertions:

"In the afternoon of the 15th of November, 1974

The plaintiff on inquiry was informed by the defendant Bank that the plaintiff could draw on the said cheque.....

The plaintiff states that the defendant had acted in breach of its duty to the plaintiff as a customer of the Bank.....".

One sees therefore at a glance that that essentially was the case presented by the plaintiff and the case in answer of the defendant upon its pleadings with respect to that was substantially a denial. In the circumstances attending the events of the day this information which was given to the plaintiff's agent by De Silva the defendant's employee, as the District Judge found, resulted in the subsequent action taken by the plaintiff in parting with its money and goods whereas if the defendant's officers had acted circumspectly such an incorrect statement would not have been made. It was therefore not unreasonable for the District Judge to have thought as he did that responsibility must be attributed to the defendant. In whatever way one characterises this lapse on the part of the bank officials, whether as negligence or carelessness or indifference, it does not seem to me that there can be any doubt upon the pleadings and upon the issues in the case that the defendant had to make good the loss the plaintiff was called upon to bear which loss undoubtedly was attributable to the acts of the defendant's agent.

I must observe in passing that it would appear from the evidence that the defendant was not obliged to take back from National & Grindlays Bank this 'late return cheque' as P1 was termed. If it chose to do that in a display of generosity towards National & Grindlays Bank, the plaintiff in my view cannot be called upon to meet the cost of that generosity.

Taking the case as a whole I am of the view that the pleadings and issues were adequate for the purposes of giving the plaintiff the relief it

sought and the answer to the issues before the District Judge which in my view were amply supported by the evidence also rendered it necessary that the plaintiff should have such relief. I find it difficult to characterise the findings of the District Judge as unreasonable or the result which he reached as unwarranted. Indeed I would say that any other view taken here in appeal to the effect that the defendant must succeed could hardly be described as meeting the justice of the case.

I would therefore affirm the judgment of the District Judge and dismiss this appeal with costs.

VIKNARAJAH, J. - I agree.

Appeal dismissed.
