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no stock register maintained by the assessee are not in my view materials upon which such a finding can be given, but these are circumstances which may provoke an inquiry. The Income-tax Officer must discover evidence or material *aliunde* before he can give such a finding. In the third place, I find that in increasing the taxable income he did not adopt any method or basis.

For these reasons I would answer the question referred to us in the negative. The assessee will recover costs. I assess counsel fee at Rs. 100.

Kapur, J.

KAPUR, J. I agree.

APPELLATE CIVIL.

Before Khosla and Kapur, JJ.

THE CENTRAL BANK OF INDIA, LTD.,—*Appellant.*

versus

RAM SARUP KHANNA AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 64-D of 1953

1954
———
March, 25th

Contract—Triparty—Whether could be revoked by one of the parties to it—Estoppel—When operates—Rule stated.

G. P. note held by R. S. endorsed by him to the Bank. On 9th September, 1946, R. S. wrote to the Bank that its amount be handed over to S. P. with interest and that he had no right, title and interest in the note. S.P. took this letter to the Bank. On 19th September, 1946, S.P. asked the Bank to pay him the amount due under the note or an advance against it. Bank advanced Rs. 2,000 to S.P. against the note. On 27th September, 1946, R.S. wrote to the Bank cancelling previous instructions, dated 9th September 1946. Thereafter, the Bank realized the amount of the note and

adjusted it in S. P.'s account. R.S. brought a suit against the Bank claiming the money due on the note since he had cancelled the instructions given to the Bank.

Bank's defence was instructions not revocable.

Held, that R.S. by issuing the instructions to the Bank gave the Bank authority to realize the sum due on the note and pay it to S.P. S.P. and the Bank agreed among themselves and privity of contract between the Bank and S.P. was thus established. R.S. in his letter clearly stated that he thereafter held no right, title or interest in the promissory-note and he therefore was transferring or assigning all rights held by him in the note to the Bank for a certain purpose. R.S. therefore could not be said to have any interest in the money due on the promissory note. On the other hand the Bank undertook to pay the money to S.P. and S.P. accepted this undertaking. This contract between the Bank and S.P. could not be revoked by R.S.

Held, also that R.S. is estopped from claiming any interest in the note because upon his instructions and representations the Bank acted to its deteriment and made payment in full to S.P. or undertook an obligation which could be legally enforced.

Regular Second Appeal from the decree of the Court of Shri Y. L. Taneja, 1st Additional District Judge, Delhi, dated the 9th of May, 1953, reversing that of Shree Chetan Dass, Subordinate Judge, 1st Class, Delhi, dated the 30th November, 1950 and granting the plaintiff a decree for Rs. 2,784-11-0, with costs of both the courts against the Central Bank of India.

BISHAN NARAIN and HANUMAN PARSHAD, for Petitioner.

N. S. BINDRA, HARNAM DASS and D. K. KAPUR, for Respondent.

JUDGMENT.

Khosla, J.

KHOSLA, J. This second appeal has arisen out of a suit brought by Ram Sarup for the recovery of a sum of Rs. 2,800, due on the basis of a Government promissory-note of the face value of Rs. 2,000. The defendants in the case were the Central Bank of India and Srikishan Parshad.

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The trial Court passed a decree for Rs. 721-6-0 in favour of the plaintiff against defendant No. 1. Against this decree an appeal was taken to the Court of the District Judge by the plaintiff. Defendant No. 1 filed cross-objections with regard to the amount decreed. The District Judge allowed the plaintiff's appeal and granted a decree for the entire sum of Rs. 2,784-11-0, which was the amount due upon the promissory-note including interest. The Central Bank has come up in second appeal to this Court.

The facts of the case briefly are that a Governent promissory-note for Rs. 2,000, was held by Ram Sarup, plaintiff. He endorsed it in favour of the Central Bank and delivered it to them. On the 9th of September 1946, Ram Sarup wrote the following letter to the Bank:—

"Dear Sir,

Re: 3½ per cent G. P. Note of 1865 No. 387997 for Rs. 2,000.

As desired by Mr. Srikishan Parshad, I request you to kindly submit the above note to the Reserve Bank of India for encashment, and hand over the sum of Rs. 2,000 with interest to L. Sirikishan Parshad.

I have no right, title, or interest in the above note.

The interest could not be recovered for many years because this note was lying as security in the High Court at Lahore. The aforesaid Court released it in 1940, but as half portion of the note had been mislaid about which I also

> reported to the Public Debt Office, Delhi, some time ago. Eventually the said half portion was found. There is no other special reason for non-realization of interest."

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This letter was taken to the Bank by Srikishan Parshad himself. On the 19th of September 1946, Srikishan Parshad wrote to the Bank asking for the money due upon the promissory-note or an advance against the note. On the same date the Bank advanced a sum of Rs. 2,000 to Srikishan Parshad and debited him with the amount in an account opened on that day. A copy of this account (Exhibit D. 6), has been placed on the record. On the 27th of September, 1946, Ram Sarup wrote to the Bank cancelling the previous instructions which he had issued on the 9th of September. The terms of this letter are as follows:—

> "With reference to my letter, dated 5th instant, I am sorry to say that as Mr. Srikishan Parshad has not fulfilled his part of the agreement, the instructions given by me in the aforesaid letter should not be acted upon, and further action should be stopped."

Thereafter the Bank realized the sum due upon the promissory-note and adjusted it in the account of Srikishan Parshad.

The plaintiff brought a suit against the Bank claiming that since he had cancelled the instructions given to the Bank, he was entitled to recover the money due upon the Government promissory-note. The Bank's defence was that the instructions were not revocable and that the amount due on the note had been paid in full to Srikishan Parshad.

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The matter may be viewed in two ways. The plaintiff by issuing these instructions to the Bank gave the Bank authority to realize the sum due on the promissory-note and pay it to Srikishan Parshad. Srikishan Parshad and the Bank agreed among themselves and privity of contract between the Bank and Srikishan Parshad was thus established. The plaintiff in his letter had clearly stated that he thereafter held no right, title or interest in the promissory-note and he, therefore, was transferring or assigning all rights held by him in the note to the Bank for a certain purpose. Ram Sarup, therefore, could not be said to have any interest in the money due on the promissory-note. On the other hand the Bank undertook to pay the money to Srikishan Parshad and Srikishan Parshad accepted this undertaking. This contract between defendants Nos. (1) and (2) could not be revoked by the plaintiff.

Viewed from another angle it may be said that the plaintiff is estopped from claiming any interest in the promissory-note because upon his instructions and representations the Bank acted to its detriment and made payment in full to defendant No. (2) or undertook an obligation which could be legally enforced. The plaintiff therefore, cannot now revoke his instructions and cannot be allowed to deny the position which he himself brought about.

From whichever angle the matter is viewed the plaintiff's claim must fail.

"A principal gives his agent authority to pay money to A, a third person. The agent promises A that he will pay him when the amount is ascertained. The agent is liable to A for the amount when it is ascertained, though in the meantime the principal * * * has countermanded his authority."

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These remarks appear in Bowstead's Digest of the Law of Agency, Eleventh Edition, at page 270, where reference is made to *Robertson* v. *Fauntleroy* (1). Another instance given in the same book is instance No. 3 at page 270 which is as follows:—

> "A principal writes a letter authorising his agent to pay to A the amounts of certain acceptances, as they become due, out of the proceeds of certain assignments. A shows the letter to the agent, who assents to the terms of it. Before the acceptances fall due, the principal becomes bankrupt, and the agent pays the proceeds of the assignments to the trustee in bankruptcy. The agent is personally liable to A for the amounts of the acceptances as they become due."

From these instances it is clear that when a tripartite agreement of this type takes place there is a complete assignment of the liability from the principal creditor to the debtor and the creditor can claim no further rights in the liability assigned. I may also refer to the observation on page 98 of Chitty on Contracts, Twentieth Edition—

> "A person cannot revoke an authority to his debtor to pay a debt to a third party, the creditor of the former, after the debtor has agreed with such third party to pay the money to him according to the authority. This agreement is said to be necessary in order to establish privity between them."

(1) (1823) 8 Moore 10

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The passage appears to be quoted from an English case *Hodgson* v. *Anderson* (1), a case we could not trace in our library.

The endorsement on the back of the promissory-note in favour of the Central Bank taken together with the plaintiff's letter, Exhibit D. 1, clearly amounts to assignment of the promissory-note in favour of the Central Bank. This assignment was irrevocable. It has been argued that the endorsement did not amount to an assignment because it was made merely in order to give the Bank authority to realize money on behalf of the plaintiff. The endorsement by itself would no doubt have that effect, but when it is taken together with the letter, Exhibit D. 1, the allegation of assignment receives support from the fact that the plaintiff made a complete surrender. The plaintiff therafter could not claim any rights in the promissory-note. Mr. Bindra drew our attention to *Reamah Ezeklel* v. *Province of Bengal* (2), as supporting the argument that the assignment of a negotiable instrument can only be made in a certain way, namely by an endorsement. It is no doubt correct to say that promissory-note can only be transferred by means of an endorsement, but we find in the present case that there was such an endorsement and it cannot be argued that the purpose of the endorsement was not to convey the interest in the promissory-note but merely to confer authority for realization. The plaintiff made his position quite clear by sending Exhibit D. 1 to the Bank whereby he surrendered all his rights in the promissory-note to the Bank.

With regard to the principle of estoppel, it is scarcely necessary to call it into assistance, although the Bank has pleaded successfully that

(1) (1825) 3 B and C 842
(2) I.L.R. (1939) 2 Cal. 52

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payment of the entire money due on the promissory-note was made to Srikishan Parshad. Even though the realization of the promissory-note was made after the instructions of the 27th of September, 1946, cancelling the previous instructions, the Bank had acted to its detriment by giving an undertaking to Srikishan Parshad and by advancing him a loan in furtherance of this undertaking. The plaintiff is thus estopped from claiming any interest in the promissory-note which he himself transferred.

From this it is clear that the plaintiff has no right in the pronote and his suit was liable to be dismissed. I would accordingly allow this appeal, set aside the decree of the Court below and dismiss the plaintiff's suit with costs throughout.

Kapur, J.

KAPUR, J. The facts of this case show that on the 9th of September 1946, the plaintiff Ram Sarup wrote a letter which indicated that the right, title and interest in the promissory-note really was of Srikishan Parshad and he went further in saying that he had no right, title or interest in the note. In pursuance of this on the 19th of September, 1946, Srikishan Parshad asked the Bank either to pay the proceeds of the promissory-note to him or to lend him some money. The Bank did the latter. In these circumstances, I would like to rest my judgment on the principle of estoppel. On the 19th September, 1946, the Bank, had, acting on the instructions of Ram Sarup, acted to its detriment and advanced money. In these circumstances, in my opinion, the plaintiff is estopped from going back on his instructions and claiming the money from the Bank. I agree, therefore, that this appeal should be allowed and the suit of the plaintiff dismissed with costs throughout.