

THE INDIAN LAW REPORT S

PUNJAB SERIES APPELLATE CIVIL.

Before Falshaw and Kapur, JJ.
S. SUMMAN SINGH,—*Plaintiff-Appellant,*
versus

THE NATIONAL CITY BANK OF NEW YORK, BOMBAY
AND OTHERS,—*Defendants-Respondents.*

Regular First Appeal No. 122 of 1947.

Indian Contract Act (IX of 1872)—Section 192—Privity of Contract—Whether exists between principal and sub-agent—Whether an agent can contract out of his liability.

S. S. residing in Panama instructed his bankers, the National City Bank of New York to remit money to P. S. B. in India on condition that it could employ sub-agent in India for the purpose and that it would not be liable for the mistakes, negligence or fault of the sub-agent. The National City Bank employed the P. N. Bank, Bombay as its sub-agent in India to pay the amount to P. S. B. on proper identification. Payment was made to a wrong person but bearing the same name as the payee because of want of full particulars. S. S. sued both the banks to recover the amount on the plea that they were negligent in making the payment. The National City Bank pleaded that there was no negligence and in any case it was not liable by virtue of the clause in the contract for any negligence, etc., of the sub-agent. The P. N. Bank pleaded that it was a sub-agent and was not liable to the plaintiff as there was no privity of contract between the two. These pleas prevailed with the Trial Court and the suit was dismissed. S. S. appealed to the High Court.

Held, that there is no privity of contract between the principal and the sub-agent and the sub-agent is not liable to the principal even if the negligence of the sub-agent's servants is held to be proved. In India it is open to a person to contract out of his liability under section 192 of the Indian

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Contract Act. There is nothing in the Indian Law which prevents a man saying "that we shall not remit your money unless you agree to absolve us from all liability even if it is due to the negligence of our sub-agents" and that such a contract can be entered into and enforced.

Calico Printers Association v. Barclays Bank (1) and *Newzealand and Australian Land Company v. Rouston* (2), relied upon.

Case-law reviewed; view of Sankarā Nair, J. in *Sheikh Mahmud Revruther v. R. I. S. N. Co. Ltd.* (3), not followed.

Regular First Appeal from the decree of Shri Zia Ullah Khan, Sub-Judge, 1st Class, Hoshiarpur, dated the 31st January, 1947, dismissing the plaintiff's suit with costs against defendants Nos. 1 and 2, but granting a decree for recovery of Rs. 12,000 with costs against defendant No. 3 Pritam Singh.

R. P. KHOSLA and R. L. KOHLI, for Appellant.

A. N. GROVER, J. L. BHATIA, M. L. PURI and S. L. PURI, for Respondents.

JUDGMENT

Kapur J.

KAPUR, J. This is a plaintiff's appeal against a judgment and decree of Mr. Zia Ullah Khan, Sub-Judge, 1st Class, Hoshiarpur, dismissing the plaintiff's suit. On the 13th August 1941 Summan Singh, appellant, who was residing in Panama at the time instructed his bankers, the National City Bank of New York, to transfer a sum equivalent to Rs. 2000 to "Pritam Singh, Baddon, Mahilpur, Jullundur India," and signed the instructions along with the conditions which are printed at page 98 of the paper book. The Bombay Branch of the National City Bank of New York instructed the Punjab National Bank, Bombay, on the 16th August 1941 to remit by wire Rs. 2,000 to their Jullundur office to be paid to Pritam Singh, Baddon, Mahilpur, Jullundur, against strict identification and receipts in duplicate. This was by a document Ex. D2/24 at page 73. On the 19th August 1941 the Punjab National Bank, Bombay, instructed by telegram their Jullundur City Branch to pay Rs. 2,000

(1) (1931) 145 L. T. 51 C.A.

(2) 44 L. T. 675.

(3) 32 Mad. 95.

to Pritam Singh, Baddon, Mahilpur, on account of Summan Singh. They also instructed them to pay against strict identification and receipts in duplicate and also to inform the payee that the sum had been received from Panama on account of Summan Singh. It appears that a letter was sent by the Punjab National Bank, Jullundur, to Pritam Singh, Baddon, Mahilpur and was received by Pritam Singh Chhimba at Baddon who on the 26th of August 1941 received the money and executed receipts, Ex. D. 2,10 and D. 2,11. As this Pritam Singh was not known to the Bank, Ram Lok Sharma, a customer of the Bank, identified Pritam Singh and wrote "I know Pritam Singh" and signed his name. That a letter was sent by the Punjab National Bank, Jullundur City, to Pritam Singh, Baddon, is proved by document, Ex. D. 2,16, printed at page 75.

On the 9th May 1942, Summan Singh again instructed the National City Bank of New York to send the equivalent of Rs. 10,000 by wire to Pritam Singh, Village and Post Office Baddon, District Hoshiarpur. The document which is signed is similar to the one which is signed when he sent Rs. 2,000 previously. The conditions are printed at page 100 and are as follows :—

"In this transaction the funds are accepted only on the following conditions, unless it is expressly and specially agreed to the contrary in writing :—

The National City Bank of New York can, at its discretion, convert into foreign currency the funds received from the client at the selling rate of exchange ruling at this Bank on the date on which the funds are received; the Bank's written statement according to the due entries in its books showing such conversion has been effected being considered as decisive and final. Once this has been done, and by way of an individual transaction, the Bank shall take the necessary steps for effecting the remittance in accordance with this contract; in fulfilling it, the

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