Supreme Court of India
Gurbax Rai And Ors. vs Punjab National Bank, New Delhi on 20 March, 1984
Equivalent citations: AIR 1984 SC 1012, (1984) 3 SCC 96 a, 1984 (16) UJ 439 a SC
Author: D Desai
Bench: A Sen, D Desai, V B Eradi
JUDGMENT D.A. Desai, J.

1. M/s. Ralla Ram Gurbax Rai, a firm ('firm' for short) which Ralla Ram, Gurbax Rai and Kartarchand were partners carried on business at Khanewal, District Multan (now in West Pakistan). A cash credit account was opened in the name of the firm with the branch of the Punjab National Bank ('Bank' for short) at Khanewal in the year 1946, the ceiling for borrowing having been fixed at Rs 15 lacs. There were numerous transactions in this cash credit account. The firm used to draw and reimburse the advances according to its requirements subject to ceiling. In the year 1948, the Bank terminated the facility and called upon the firm to clear the account in which there was a debit balance of Rs 3 lacs. The bank filed a Suit No. 67 of 49 against the firm and its partners for recovering Rs. 3,17,470/2/-.

2. The firm in turn filed Suit No. 304 of 1949/16 of 1964 against the Bank proving for rendition of accounts in respect of the cash credit account. The principal contention in the suit by the firm was that the firm had pledged certain goods with the Bank and the Bank as a pledgee had not taken reasonable care of the goods pledged. It appears that the goods were destroyed in a fire and the Bank recovered from the insurer Rubi General Insurance Co., a sum of Ps. 59,570/2/- which the Bank was bound to give credit. The firm as defendant sought amendment of its written statement to raise the plea which was granted.

3. Both the suits are consolidated.

4. The suit filed by the Bank was dismissed. The first and second appeal preferred by the Bank also met with the same fate.

5. Similarly, the suit filed by the firm for rendition of accounts was also dismissed. The firm carried the matter in appeal. The appeal of the firm was accepted by the learned Additional District Judge, Amritsar and the suit filed by the firm for rendition of accounts was held to be maintainable and the matter was remanded to the trial court for taking accounts. On remand the trial court took accounts and passed a decree in favour of the firm in the amount of Rs. 1,58,287/7/5 with interest at the rate of 6% p.a. on Rs. 93,717/5/5 from the date of the suit till the date of the decree and on Rs. 59,570/2 from May 27, 1949 to the date of the decree, with future interest at 6% and costs. In arriving at the figure of the decretal amount the trial court took notice of the fact that in the suit filed by the Bank against the firm there were specific issues being issues No. 8,9 and 10 about the liability of the Bank to account for the pledged goods and to give credit for the amount received from the insurer and the findings inter parties on these issues are resjudicata.

6. The Bank preferred F.A. No. 190 of 1965 against the decree by the trial court in favour of the firm. This first appeal came up for hearing before a learned Single Judge of Punjab and Haryana High

Court who held that the pledged goods were lost or destroyed on account of the negligence of the pledgee and the Bank cannot be absolved from accounting for the value of the pledged goods to the pledged i.e. the firm and agreed with the trial court that findings on these issues, are res-judicata inter partes. The learned Judge further held that the firm was entitled to recover the amount recovered by the Bank from the insurer in respect of the pledged goods as the Bank had not given credit or adjustment of the same in the cash credit account. Accordingly, the decree passed by the trial court was confirmed and the appeal preferred by the Bank was dismissed with costs.

7. The Bank preferred Letters Patent Appeal No. 165 of 1978. A Division Bench of the High Court held that the firm in its plaint had not claimed the amount of Rs. 59,570/2/- on the allegation that the same was recovered by the Bank from the insurer. It was further held that the fire in which the pledged goods were alleged to have been destroyed, took place after September 6, 1947 and the amount must have been received thereafter and therefore, claim of Rs. 3,90,936/-upheld in favour of the Bank takes care of the burnt pledged goods also and therefore the firm is not entitled to adjustment. Accordingly, the Letters Patent Appeal was allowed and the claim for adjustment of Rs. 59,570/2/- given in favour of the firm was set aside. Hence this appeal by special leave.

8. The recital of the pleadings and the findings recorded on the relevant point would focus the attention on the only question raised in this appeal by special leave. It is whether the firm was entitled to credit for Rs. 59,570/2/- which was received by the Bank from the insurer in respect of pledged goods. It is not in dispute and it was clearly admitted by Mr. G.L. Sanghi, learned Counsel appearing for the respondent that the fire took place prior to September 6, 1947 and the finding in the Letters Patent Appeal on that point is clearly unsustainable. It is not disputed that the pledged goods were destroyed in fire. It was conceded that the pledged goods were insured. It was admitted that the Bank as the pledgee of the pledged goods received an amount of Rs. 59,570/2/- from the insurer. Ordinarily, this would tantamount to payment of the same amount in cash credit account. The pledged goods were of the firm. They could have been sold and the amount recovered and if so credit would have to be given in the account for the same. If they were destroyed in fire and the amount was recovered from the insurer which would be substitution of the pledged goods and to that extent it would be payment in the cash credit account. This was not even questioned.

9. It also appears that the Bank has not given credit for the aforementioned amount in the cash credit account. Therefore, there was no question of the amount of Rs. 3,90,936/- taking care of the amount of Rs. 59,570/2/- though the amount was already recovered by the Bank.

10. While granting special leave in this case, we called upon the Bank to produce its books of accounts relevant to the cash credit account to show whether it has given credit to the firm in its cash credit account while claiming on September 6, 1947 Rs. 3,90,936/-. There was visible disinclination to file an affidavit and it was not filed. Ultimately at the hearing of the appeal, it was conceded that this amount of Rs. 59.570/2/- was adjusted not in the cash credit account of the firm but it was used to wipe out the personal liabilities of some ether partners. This truth was revealed in the course of the hearing.

11. The question is : is it open to the Bank which held pledged goods against the cash credit facility to adjust the amount recovered from the pledged goods for wiping out separate dues of the individual partners ? The goods were of the firm. They Were not the goods of the partners. The goods were not offered as security for the individual debt of the partners. The goods were pledged against cash credit facility of the firm. Therefore, when the amount on account of the destruction of the pledged goods of the firm was recovered from the insurer, it must be given credit only in the cash credit account and to that extent the liability in the cash credit account would be reduced, That having not been done the Letters Patent Appeal Bench was clearly in error in setting aside the finding of the trial court.

12. Further the High Court completely overlooked the fact that in the suit filed by the Bank the firm had contended that it was entitled to the adjustment of the account received by the Bank from the insurer. This claim was put in issue and decided in favour of the firm. The finding inter partes became resjudicata and it was so held by the learned Single Judge and the trial court. The Division Bench overlooked this well-established legal position and erred in reversing the concurrent findings.

13. Accordingly, this appeal succeeds and is allowed, and the Judgment and Order of the Letters Patent Appeal Bench in First Appeal No. 165 of 1978 on the file of the High Court of Punjab and Haryana is set aside and the Judgment and Order of the learned Single Judge affirming the decree of the trial court is restored with costs.