
(1976) 07 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 420 of 1973

Balwant Singh

APPELLANT

Vs

The State Bank of India and others

RESPONDENT

Date of Decision : 30-07-1976

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 98

Citation : (1976) 07 P&H CK 0009

Hon'ble Judges : O. Chinnappa Reddy, J

Bench : Single Bench

Advocate : B.S. Gupta, for the Appellant; R.K. Chhibbar and Rajinder Paul, for the Respondent

Final Decision : Dismissed

Judgement

O. Chinnappa Reddy, Act. C.J.—Defendant No. 4 in the lower court is the petitioner in this petition u/s US of the Code of Civil Procedure. The Plaintiff-respondent, the State Bank of India, filed the suit to recover a sum of Rs. 1,17,269,59. The case of the plaintiff was that defendants 2 and 3 were partners of the first defendant firm. The first defendant was granted facility of overdraft against bills to the extent of Rs. 10,000/-. In consideration of the overdraft facility, the second defendant representing the first defendant executed an agreement dated 18th July, 1966. The amount availed of by the first defendant under the facility was not repaid by the first defendant (sic) 11th November, 1967, Defendant No. 4 executed a guarantee bond guaranteeing the advance to be made under the facility. Defendant No. 4 also endorsed a demand promissory note in favour of the plaintiff. The promissory note was executed by Defendant No. 1 in his favour. Thus, according to the plaintiff Defendant No. 4 became liable for the debts outstanding in respect of the overdraft facility. Again, Defendant No 1 was also granted Cash Credit Loan Accommodation to the extent of Rs. 80,000/- by the plaintiff Bank. The defendant executed a demand promissory note in favour of the fourth defendant, the guarantor who in turn endorsed the

same in favour of the plaintiff-Bank Defendant No. 4 stood guarantee for the repayment of the loan taken by Defendant No. 1 under the Cash Credit Accommodation. He also executed a guarantee bond. Thus, he became liable for the debt outstanding under the Cash-Credit facility.

2. The contention of Defendant Mo. 4 in the lower Court was that the plaint did not disclose any cause of section against him and, there fore, it should be reflected as against him. The objection was overruled by the lower court. In this civil revision petition, Shri B. S. Gupta, Learned Counsel for the petitioner, argued that the plaint was liable to be rejected as against Defendant No. 4 on the ground that it did not disclose a cause of action against him. His submission was that the plaint did not allege that the promissory note was dishonoured by non-payment and that notice of such dishonor was given to the fourth defendant. In the absence of such an allegation, it could not be said that the plaintiff had any cause of action against the fourth defendant. In support of this proposition, he relied on the decisions is Kanhyalal and Others Vs. Ramkumar and Others, and Ahmed Hossein Vs. Mt. Chembelli and Others, 262. In the first case, it was pointed that notice of dishonour must be given to the endorser of a promissory note and that it was a matter of principle and not a mere technicality Failure to give a notice would absolve the endorser from all liability to the holder. The learned Judges, however, did not lay down that the mere non-mention of in the plaint that notice of dishonour was not given to the endorser would be sufficient by itself to entail a rejection of the plaint as not disclosing a cause of action. In the second case, the plaint did not state that any notice of dishonour had been given or there existed any circumstances which rendered it unnecessary to give such notice. The learned Judge held that notice of dishonour was a part of the cause of action of a dishonoured cheque and that it was necessary to make the necessary allegations as to the notice of dishonour in the plaint. The learned Judge permitted the plaintiff to amend the plaint to make the necessary allegation. In other words, the learned Judge did not think that the failure to make the necessary allegation in the plaint was fatal to the plaint so as to lead to rejection of the plaint and disentitling the plaintiff from asking for an amendment of the plaint.

3. It is true that a plaintiff should ordinarily allege either that he had given notice of dishonour or that it was not necessary to give notice of dishonour of a cheque or promissory note But it does not follow that failure to do so should necessarily result in the rejection of the plaint. The very act of suing the endorser implies a claim by the plaintiff that there were circumstances which made it unnecessary to send a notice of dishonour to the endorser. Section 98 of the Negotiable Instruments Act enumerates the various occasions when notice of dishonour is not necessary. The object of notice of dishonour is to protect a party making the endorsement from suffering any avoidable damage or loss to himself by taking appropriate steps. It is not intended to give him an unconditional and absolute discharge from liability regardless of the circumstances which may exist which render it unnecessary to give him such a notice. It is always open to an endorser

when sued upon to plead that he had no notice of dishonour and that there were not circumstances making notice of dishonour unnecessary. Necessary issues will then be settled and enquired into. Rules of procedure like rules of evidence are intended to secure and not to defeat justice. It is in that spirit that they have to be construed. I, therefore, hold that the plaint was not liable to be rejected against Defendant No. 4 on the ground that it did not disclose a cause of action against him. The Learned Counsel for the respondent urged that the suit was based not merely on the dishonour but also on the original consideration as well as the guarantee bond executed by Defendant No. 4. It is unnecessary to go into this question. The civil revision petition is dismissed with costs.