

(2000) 08 GUJ CK 0046
In the Gujarat High Court
Case No : First Appeal No. 2247 of 1994

Bharat Agriculture Corporation		APPELLANT
	Vs	
Krushnakant Madhusudan Shroff		RESPONDENT

Date of Decision : 08-08-2000

Acts Referred:

Contract Act, 1872 — Section 25, 25(3)
Negotiable Instruments Act, 1881 (NI) — Section 118, 20, 4

Citation : (2000) 08 GUJ CK 0046

Hon'ble Judges : H.K. Rathod, J; D.C. Srivastava, J

Bench : Division Bench

Advocate : D.C. Dave, for the Appellant; Notice Served, for the Respondent

Final Decision : Dismissed

Judgement

D.C. Srivastava, J.—This is the defendant's first appeal against the judgment and decree dated 5.4.1994 rendered by the 2nd Joint Civil Judge, (Sr. Dn.), Nadiad decreeing the suit of the plaintiffs respondents for recovery of Rs. 4,42,449.00 together with interest at the rate of 18% p.a. and pendente lite and future interest also at the same rate.

2. Brief facts giving rise to this appeal are as under:

3. The plaintiffs respondents are carrying on business in finances in the name of Krushnakant Madhusudan Shroff and it is a partnership firm. The defendant appellant is carrying on its business in the name and style of M/s. Bharat Agriculture Corporation which is the proprietary concern of the defendant appellant. The defendant appellant was in need of finances for his business. So, he approached the plaintiffs and opened account on 10.7.1973. From time to time, the defendant was taking money from the plaintiff. For the outstanding dues including interest, the defendant executed promissory note on 3.2.1987 for a sum of Rs.4,42,449.00 in favour of the plaintiff and signed the same as a proprietor of the defendant firm. The interest was agreed to be paid at the rate

of 18% per annum. Since nothing was paid towards the principal and interest on the aforesaid amount, suit for recovery for principal and interest was filed.

4. The suit was resisted by the defendant appellant on the ground that no pro-note was executed by him and that the account opened in the year 1973 was cleared in the year 1977 and, thereafter, the defendant had no transaction with the plaintiff. It is also denied that the defendant executed the disputed pro-note in favour of the plaintiff on 3.2.1987. It is also pleaded that the suit was time barred. It was further pleaded that when the defendant opened account with the plaintiff firm on 10.7.1973, at that time, the plaintiff had obtained signatures of the defendants on many forms and in this way, false and fabricated pro note was created on 3.2.1987. It is also denied that there was any agreement for payment of interest. With these pleadings, it was prayed that the suit of the plaintiffs be dismissed with costs.

5. The trial Court framed as many as ten issues, relevant as well as irrelevant. It recorded findings on undisputed issues that the plaintiff is a partnership firm; Likewise, it recorded finding in affirmative on another issue which was not disputed that the plaintiff carries on business in finances. It also recorded finding in affirmative on undisputed question that the defendant opened account with the plaintiff firm. On material issues, finding of the trial court has been that the plaintiff established that the defendant had executed promissory note on 3.2.1987 for Rs.4,42,449.00 of the outstanding amount. It was further found by the trial court that the plaintiff is entitled to get interest at the rate of 18 % per annum. The trial Court repelled the defendant's plea that the suit is time barred. With these findings, the suit of the plaintiffs was decreed by the trial Court, hence, this appeal.

6. We have heard Shri D.C. Dave, learned counsel for the appellant, Shri P.V. Nanavaty, learned counsel for the respondents. We have also examined oral and documentary evidence on record as well as the judgment of the trial Court.

7. Shri Dave, learned counsel for the appellant has pressed three points in support of his contention that the suit was wrongly decreed by the trial court. His first contention has been that the suit was time barred. His second contention has been that no promissory note was executed by the defendant and that the defendant's signatures were obtained on several blank forms when he opened account with the plaintiff on 10.7.1973 and it appears that those signatures were used by the plaintiff in preparing the disputed promissory note. The third plea has been that there was no agreement for payment of interest and the court below was not justified in awarding interest at the rate of 18% per annum. It was also argued by him that the document in question is not a promissory note and that the suit is based on accounts, hence, it is time barred inasmuch as no transaction took place between the parties after 8.9.1977. He made reference to the statement of the plaintiffs in cross examination where he stated in cross examination of 2nd November, 1996 that the present suit is filed on the basis of the books of accounts but I now state that the suit is filed on the basis of pronote

(wrongly translated as books of account).

8. The first point for consideration, therefore, is whether the suit has been filed on the basis of accounts or on the basis of promissory note. It is clearly mentioned in the plaint that the suit was filed on the basis of the promissory note Exh. 59. However, under some mistake or confusion, the plaintiff's witness Rambhai Zaverbhai Patel stated that the suit was filed on the basis of the books but it was corrected immediately that it was filed on the basis of the promissory note. We are unable to accept the contention of Shri Dave that it was a suit based on the accounts or the books of accounts.

9. For determining the basis of the suit, we have gone into the plaint allegations. It is clear that the suit was based on the promissory note Exh. 59.

10. The next question for consideration is whether Exh.59 is a promissory note or something else. Section 4 of the Negotiable Instruments Act, 1881 defines the promissory note as an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

11. Translated version of the promissory note Exh. 59 reads as under:

"Rs. 4,42,449/- in words rupees four lacs forty two thousand four hundred forty nine only, today after accounts of our Khata (Ledger) was done after settling the amount due from us, that amount we are bound to pay to you or to pay to the owner (Dhani) where and when demanded and for this, we have executed this promissory note at town Nadiad, interest at the rate of 18% is fixed on this amount."

12. The contents of Exh. 59 will, therefore, clearly indicate that it is a promissory note which fulfills all the requirements of definition of "promissory note" as contained u/s 4 of the Negotiable Instruments Act. We have, therefore, no hesitation in concluding that Exh. 59 is a promissory note and the suit was based on the promissory note.

13. The next point for consideration is whether the plaintiff has proved the execution of the pronote and passing of consideration. Initially, burden of proof in such cases lies upon the plaintiff to prove that the promissory note was executed and it was executed for consideration. In order to discharge this burden, two witnesses have been examined by the plaintiff. First is Rambhai Zaverbhai Patel. He has proved due execution of the promissory note and also passing of consideration. It is not a case where the promissory note was executed for cash consideration. On the other hand, it was executed in respect of outstanding dues from running account opened by the defendant in favour of the plaintiff. This witness has stated that the account books were shown to the defendant who examined the same for about one hour and after being satisfied about the outstanding dues, he executed the pro note Exh. 59 and also signed the same as

a proprietor of the defendant firm and also affixed the rubber stamp on the revenue stamp of the promissory note. Nothing came in his cross examination on which his statement can be doubted. He frankly stated that the proforma of the promissory note is printed and blank spaces were filled in by his son Girishbhai Rambhai Patel. Girishbhai Rambhai Patel was examined as another witness who has likewise deposed that the promissory note was executed by the defendant; blank spaces were written by him and after understanding the account, the defendant signed the revenue stamps and also affixed his rubber stamp below his signature cancelling the revenue stamp.

14. We have examined the original promissory note and found that the statement of the plaintiff and his witness examined by the plaintiff are reliable, on the rubber stamp, there is signature of the defendant. We do not find any force in the argument of Shri Dave that blank forms were got signed by the plaintiff at the time of opening the account and one of those forms was used for preparing the pro note Exh. 59. The witness Rambhai has stated very clearly that at the time of opening account just as in case of banks, he obtained specimen signatures of the defendant on a separate form and not that the defendant's signatures were obtained on blank promissory note forms. Those specimen signatures are also there on the record as Exh. 57. If we look at the signatures in Exh. 57 and 59, it would indicate that the signatures of the defendant on Exh.59 are duly proved. Thus, the plaintiff has discharged onus of proof laid upon by him namely the plaintiff has proved due execution of the promissory note by the defendant and has also proved that the promissory note Exh.59 was executed for consideration.

15. Sri Dave, learned counsel for the appellant has, however, argued that since no cash consideration passed in this case, it is the requirement of law as contained under sec. 25(3) of the Contract Act to mention in the document that it was being executed in respect of time barred debt. Since this was not done, the suit claim is hit by section 25(3) of the Contract Act. Section 25 of the Contract Act contemplates three situations where agreement without consideration is not void. In the instant case, we are concerned with clause (3) of section 25 of the Contract Act which provides that an agreement made without consideration is void, unless it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. We are again unable to accept the contention of Sri Dave on the point for the obvious reason that section 25 would apply to those agreements which are in the nature of bond. We are concerned with the promissory note which is not a bond rather which is covered by the provisions of the Negotiable Instruments Act. If the promissory note fulfills the requirements of section 4 of the Negotiable Instruments Act, it cannot be considered to be bond and as such, there were no requirement that it should have been mentioned in the promissory note that it was executed in respect of time barred debt.

16. We are also unable to agree with the contention of Sri Dave that it was a case of time barred debt. No doubt the defendant opened with the plaintiff an account on 10.2.1973 but for this reason, we are unable to hold that the suit of the plaintiff is time barred. Last transaction is, of course, dated 8.9.1977 but the plaintiffs' first witness Rambhai Zaverbhai has categorically stated that the periodical interest was being debited in this account against the defendant till the accounts were finally settled and told to the defendant at the time of execution of the pronote in dispute on 3rd February, 1987. It cannot be said that the charging of interest was no transaction. Consequently, firstly, it cannot be said that the suit of the plaintiff is time barred.

17. Secondly, from the promissory note, it is clear that the defendant accepted that a sum of Rs.4,42,449/was worked out after settling the amount due from the account books and that under the settlement of accounts, the defendant was bound to pay to the plaintiff or to the owner where and when demanded and for this, promissory note was executed. It is, therefore, clear that it was a case where consideration was the amount outstanding against the defendant in respect of running account. This is a good consideration which has been proved by the plaintiff.

18. In addition to proof, presumption under the law is also in favour of the plaintiff. Section 118 of the Negotiable Instruments Act raises presumptions as to negotiable instruments and those presumptions are firstly of consideration; secondly as to the date and thirdly as to time of acceptance. Section 118(a) of the Negotiable Instruments Act provides that until the contrary is proved, it shall be presumed that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration. Thus, once the execution is proved, a presumption can be drawn u/s 118 of the Negotiable Instruments Act that it was executed for consideration. Further presumption can be drawn under clause (b) of section 118 of the Negotiable Instruments Act that the pronote bearing date was made or drawn on such date. In the case before us the date of the pro-note is 3rd February, 1987 and as such, presumption can be drawn that it was executed on 3rd February, 1987. These two presumptions could not be rebutted by the defendant appellant. Thus, in addition to the presumptions available u/s 118 of the Negotiable Instruments Act, the plaintiff has come out with definite oral evidence that Exh. 59, the pronote in question, was accepted for consideration and its due execution has also been proved.

19. Sri Dave has vehemently contended that on several blank forms, signatures of the defendant were obtained by the plaintiff on 10.7.1973 when the account was opened and it appears that one of those forms has been used for the pro note Exh. 59 in this case. The law, however, does not permit us to accept this contention. We have examined the original pronote on printed form. Blank spaces were filled in by second witness Girishbhai Patel and revenue stamps bear signature of the defendant so also his rubber stamp. We have already held that it

is a pro note and not a bond. Consequently, at this stage, section 20 of the Negotiable Instruments Act will go against the defendant. It provides that where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. It is, therefore, clear that if the executant of the pro-note signs blank form and delivers the same to the money lender, then, the money lender has option to complete it for such amount which is permissible to the extent the revenue stamps are affixed thereon and the defendant executant cannot complain that he has signed and delivered blank or incomplete form of pronote. Even if he delivered blank or incomplete form, section 20 of the Negotiable Instruments Act goes against him and he cannot complain that any fraud has been committed against him. The ingredients of fraud are neither specifically alleged nor set out in the written statement nor could be proved by the defendant.

20. For the reasons stated above, we are of the opinion that the execution of the pro-note and passing of consideration has been duly proved.

21. From the pro-note itself, it is clear that the defendant agreed to pay interest at the rate of 18% p.a. on Rs.4,42,449.00. In face of such agreement, we are unable to accept the contention of Sri Dave that the trial court was in error in awarding interest at this rate. The trial Court had no option but to award interest at the rate agreed by the parties as written in the promissory note Exh.59.

22. The last contention of Sri Dave that the suit is time barred has also no force. The pro note was executed on 3rd February, 1987. The suit was filed on 26th October, 1989 and it was registered on the same day. The period of limitation in such cases is three years. Thus, the suit was filed within three years from the date of execution of the pro-note and as such, the suit is well within the period of limitation. 23. We have already given our reasons for not accepting the argument of Sri Dave that the suit is time barred because no transaction took place between the parties after 8.9.1977. We have already indicated that the suit is not based on accounts books rather it is based on pro-note, hence, period of limitation will be calculated from the date of execution of the pro-note Exh.59 namely from 3rd February, 1987. The suit was filed on 26th October, 1989 Thus, it is within limitation.

23. Sri Dave has, however, referred to the case of Tulsi Ram Vs. Same Singh, and has contended that in view of this verdict also, the suit is time barred. In our view, this case is distinguishable on facts. Here, the facts were that a pro note was executed. Before it was going to be time barred, it was renewed and endorsement was made on the back of the pro-note. The endorsement was to this effect which has been translated by the Delhi High Court. "I accept this pronote and it is valid for the next three years." This endorsement was

considered by the Delhi High Court not amounting to promise to pay and consequently, the suit was dismissed. It was observed by the Delhi High Court that where the endorsement by a promisor under a promissory note, made on the back of the note after expiry of three years from the execution of the pronote, only admitted the pronote and stated that it was valid for three years but did not contain any words expressing any promise to pay, the endorsement could not be construed as a contract falling within the scope of section 25(3). In the case before us, the distinctive feature is that pronote Exh.59 in which consideration was the outstanding dues coming from the old accounts, there was an express promise to pay an amount of Rs.4,42,449.00 to the owner (Dhani) where and when demanded. Thus, there is clear endorsement that the amount was payable on demand and the debtor agreed to pay the amount whenever and wherever demanded. It was, therefore, a case where there was promise to pay made by the defendant expressly in writing in pronote Exh.59. Consequently, Delhi High Court's verdict does not before us.

24. No other point was pressed before us. We, therefore, do not find any merit in this appeal which is hereby dismissed with no order as to costs.