(1935) 06 BOM CK 0006

In the Bombay High Court

Case No : O.C.J. Suit No. 245 of 1935

Dorabji Nowrosjee Pajnigar APPELLANT

Vs

Jamshedji Pestonji Mehta RESPONDENT

Date of Decision : 27-06-1935

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 69

Citation : AIR 1936 Bom 218 : (1936) 38 BOMLR 395 : 163 Ind. Cas. 300

Hon'ble Judges : Blackwell, O.C.J.

Bench : Single Bench

Judgement

Blackwell, Officiating C.J.

1. This is a suit upon a promissory note dated May 11, 1932, to recover the sum of Rs. 5,000 and interest at the rate of one per cent, per mensem. The promissory note has been put in as exhibit A. It contains the following provision : " money to be payable at Poona, Bombay, or elsewhere." The note was endorsed by the present plaintiff to-Messrs. Juharmal Jivraj & Co., but was subsequently endorsed back by them to the plaintiff, and notice of that fact was given by Messrs. Juharmal Jivraj & Co. to the defendant. These facts appear from documents containing exhibit No. 1, which were put in by consent.

2. The only material part of the written statement is the first paragraph in which the defendant submits that the promissory note in suit not having been presented for payment, the suit is not maintainable; and the only issue raised is whether the suit is maintainable having regard to the fact that the promissory note in suit has not been presented for payment to the defendant. The question for decision in this case is whether on the wording of this promissory note, presentment for payment was required in law. It is not alleged in the plaint that any presentment for payment was in fact made.

3. The question turns upon Section 69 of the Indian Negotiable Instruments Act, which is in these terms:-

A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

4. Mr. Khergaumwalla for the defendant contends that this promissory note is a note payable at a specified place, inasmuch as it is payable at Poona and Bombay, and he submits that the words " or elsewhere " do not, as he says, deprive this note of its character of a note payable at a specified place.

5. Mr. Khergaumwalla has referred me to Chegganmull Sowcar v. Manicka Mudaliar (1925) 50 M. L. J. 242 In that case the promissory note mentioned " Madras or any other place where you (the creditor) have your shop as the place of payment." No presentment for payment was made either at Madras or at any other place, and it was held that the creditor had no right to sue without presentment being first made, and that the word " place " in Sections 68 and 69 of the Negotiable Instruments Act must be construed as including " places ", as it would be anomalous to require presentment if one place is mentioned, but none if two places are mentioned. Consequently, it was held that if more than one place is mentioned, there must be presentment at one or the other of those places. This decision, in my opinion, does not affect the present case. Madras was one of the specified places, and the other place was specified by providing that the presentment was to be at any other place where the creditor had a shop. So that the place was defined and" specified. Mr. Khergaumwalla also referred to Beeching V. Confer (1816) Holt. 313, but that case appears to me to be of no assistance in deciding the present case.

6. The question, in my opinion, turns upon what is the meaning of " specified place " in Section 69. In my opinion, it means a place so particularised that the promisee can know where he must present the promissory note for payment. The words of the present promissory note do not, in my opinion, fall within the section at all. It is true that the promissory note provides that it is payable at Bombay or Poona, and of course the promissory note could have been presented at Bombay or Poona; but the promissory note is not payable only at Bombay or Poona, being payable elsewhere, that is, at a place not specified, and it does not make it incumbent upon the promisee to present it at any specified place. Accordingly the contention that this promissory note is a note payable at a specified place within the meaning of that section is, in my opinion, untenable. In my judgment, therefore, this defence fails, and this is the only defence which is relied upon. I answer the issue in the affirmative.

7. Accordingly, I pass a decree in favour of the plaintiff for Rs. 5,000 with interest at one per cent, per mensem from May 11, 1932, till judgment, costs, and interest on judgment at six per cent, per annum,-less Rs. 32 for which the plaintiff has given credit in exhibit C to the plaint,-the particulars of his claim.

