
(1975) 06 KL CK 0001

In the High Court Of Kerala

Case No : Civil Revision Petition No. 1449 of 1973

Federal Bank Ltd.

APPELLANT

Vs

P.S.P. Panicker Simon Carves India Ltd.

RESPONDENT

Date of Decision : 09-06-1975

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 36, 43, 59

Citation : AIR 1976 Ker 5

Hon'ble Judges : N.D.P. Namboodiripad, J

Bench : Single Bench

Advocate : Joseph Augustine, for the Appellant; P.K. Kurien and K.A. Nayar, for the Respondent

Final Decision : Allowed

Judgement

N.D.P. Namboodiripad, J.—In view of the pleadings in the case and the concurrent findings entered by the courts below certain facts are beyond dispute. For disbursement of wages to certain workmen, the second defendant, a company, issued Ext. P1 cheque dated 26-6-1964 for an amount of Rs. 593.93 in the name of their employee, the first defendant and drawn on the State Bank of Travancore. The first defendant, who had an account in another bank by name the Federal Bank Limited, assigned the cheque for valid consideration in favour of that bank and collected the proceeds. In the meanwhile, the second defendant, "the drawer", getting information that the first defendant did not pay off the workmen, advised the drawee Bank to withhold payment when Ext. P1 is presented. The result was that Ext. P1 was not honoured by the drawee bank when it was forwarded for collection by the holder bank. The holder bank thereupon sued for realisation of the amount covered by Ext. P1 with interest thereon from defendants 1 and 2, the "payee" and the "drawer" respectively of the instrument. The first defendant did not contest. The second defendant resisted the action on the ground of failure of consideration. That contention found favour with the trial Court, which granted a decree only against the first

defendant. An appeal by the plaintiff for fastening the liability on the second defendant as well, do not succeed.

2. Through this revision, the plaintiff challenges the correctness of the decision rendered by the court below exonerating the second defendant from liability under the instrument. The decision of the lower court rests on Section 59 of the Negotiable Instruments Act, 26 of 1881 (for brevity, the "Act"), and the relevant provision is extracted below:--

"59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor".

The specific contention put forward by the second defendant, the "drawer" is that since the holder acquired Ext. P1 after maturity, the plaintiff has, as against the drawer, only such rights which the payee had against the "drawer". It is obvious that the weight of this contention depends upon the premise that the holder acquired the instrument after "maturity". The question is whether the premise is correct? What constitutes "maturity" is dealt with u/s 22 of the Act and according to the courts below Ext. P1 obtained maturity the moment it was executed. That proposition is attacked by the plaintiff as incorrect and reliance is placed upon a decision of the Madras High Court reported in Uppalapati Hemadri Vs. Kodali Seshamma and Others, . While considering the scope of Section 35 of the Act, it was held in that case that the concerned section does not apply to the case of a promissory note payable on demand. The view taken is that in the case of an instrument payable on demand, the question of maturity does not arise. The correctness of that decision was not challenged before me. Ext. P1 being a cheque that is payable on demand, it cannot be held that it became mature forthwith. That being the situation it is not possible to hold that in the instant case the plaintiff acquired Ext. P1 after maturity especially because it is common case that the instrument was assigned before the payee demanded payment from the drawee. It follows, therefore, that the rights and the obligations of the holder and the drawee in this case are not to be adjudged on the basis of Section 59 of the Act.

3. The provision that directly deals with instruments unsupported by consideration is Section 43 of the Act. Avoiding exceptions 1 and 2 which are not relevant in this context, the material portion of Section 43 may be read:--

"43. A negotiable instrument made drawn, accepted, indorsed, or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto."

The first part of the Section provides that where there is initial want of consideration or where there is subsequent failure of consideration for a negotiable instrument, such instrument does not create an obligation for payment as between the parties to the transaction. The expression "parties to the transaction" clearly indicates that the plea of avoidance of the liability is available only to the immediate parties to the transaction. The very essence of a negotiable instrument is its negotiability and as is well-known there may be one or more assignments of the rights under an instrument. Absence of consideration or failure of consideration could avoid the liability only as between the parties to the particular transaction for which there was no initial consideration or there was a subsequent failure of consideration. That the legislature never intended to extend such avoidance of obligation to other transactions pertaining to the same instrument is clear from the second part of the provision. The second part lays down that as far as a holder for consideration or a subsequent assignee for consideration are concerned, any one of them can recover the amount due under the instrument not only from his transferor but from any prior party to the instrument. The expression "prior Party" is found in other provisions of the Act, like Sections 36 and 38. The latter part of Section 43 apparently is to safeguard the rights of a holder in due course. Such a positive provision was necessary because Section 36 of the Act provides that every prior party to the negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied. Section 36 of the Act, thus, confers a special right on a holder in due course in the matter of realisation of the amounts due under the instrument, he holds. Section 43 has, therefore, to be read in conjunction with Section 36 of the Act. The rights conferred to a holder in due course u/s 36 are not intended to be defeated on the ground that a prior transaction relating to the instrument was bad for want of consideration. The latter part of Section 43, thus, is to preserve intact the rights conferred on a holder in due course under the general provision contained in Section 36 of the Act. An analogous position came up for consideration before the Assam High Court in the decision reported in *Jeth-mal Ganeshmal Firm v. Haridas Roy* AIR 1949 Ass 6. In that case it was held that the plaintiff, who was the holder in due course, was entitled to recover the amount not only from the payee, but also from the drawer, even though there was failure of consideration for the transaction between the drawer and the payee. The second respondent made a faint attempt to show that the plaintiff is not a holder in due course. Such a contention has no basis in the pleadings in the case. The pleadings as well as the decisions of the Court below proceeded on the basis that the plaintiff is a holder in due course.

4. Thus, by virtue of Section 36 and the latter part of Section 43 of the Act, the plaintiff is entitled to recover the amounts due under Ext. P1 not only from the first defendant payee but also from the second defendant drawer even though as between defendants 1 and 2 there was failure of consideration.

5. In the result, in modification of the decisions rendered by the courts below, the plaintiff is granted a decree against defendants 1 and 2 as prayed for in the

plaint. The plaintiff may realise his costs in the trial court from the first defendant and in other respects the plaintiff and the second defendant will suffer their cost throughout. The revision is allowed as shown above.