

(1905) 12 CAL CK 0008
In the Calcutta High Court

Ferguson

APPELLANT

Vs

Um Chand Boid and Others

RESPONDENT

Date of Decision : 22-12-1905

Acts Referred:

Citation : (1906) ILR (Cal) 343

Hon'ble Judges : Pargiter, J; Ghose, J

Bench : Division Bench

Judgement

Ghose and Pargiter, JJ.—These two appeals arise out of two similar suits which were tried by the Subordinate Judge of Rajshahi. Both the suits were brought by money-lenders against Ferguson of Berhampore on account of suing of money, which had been lent to Moore, who was Ferguson's Manager at the Seroil Silk Factory in Rajshahi. In appeal No. 197 Um Chand Boid sued for Rs. 7,000, which he had lent to Moore on a hand note on the 20th February 1901, at 1 per cent, interest, and in appeal No. 389, Harak Chand and others sued for the balance of Rs. 5,000, which they had lent to Moore, on a hand note on the 16th February 1901, at one per cent. interest. In the former case, the hand note states that Moore borrowed Rs. 7,000 as Attorney for Ferguson and in the latter case, the hand note states that Ferguson borrowed Rs. 5,000 through his attorney and manager, Moore. The suits have been brought against both Ferguson and Moore, but only Ferguson contested them. The Subordinate Judge has decreed the claims against Ferguson only and he has appealed.

2. The questions for determination are: First, whether Moore had authority, express or implied, to borrow: secondly, was the money really lent to Ferguson or to Moore; and, thirdly, is Ferguson liable for these loans?

3. With regard to the first question, it is not disputed that Moore had no written authority to borrow, because the power of attorney, which Ferguson executed in his name, gave no such authority; but it is contended that Moore had by reason of his position authority to borrow. The evidence shows that the managers under Ferguson, who has eighteen silk factories, had no general authority to

borrow locally. Such authority was not given to them, because Ferguson himself (as he deposes) decided the time, when cocoons had to be bought and he gave no discretion to his managers in that respect. When they wanted money for such purpose he either sent them the money direct from Berhampore in notes, or he had the money sent in notes from his agents in Calcutta. Local borrowing was altogether , objectionable, because money was obtained locally at 12 per cent, interest, while Ferguson could get as much money as he wanted from his Calcutta agents at 5 per cent. Sections 187 and 188 of the Contract Act have been relied on by the plaintiffs, and they would no doubt authorize a manager to borrow, if necessary; but such general provisions are subject to modifications in particular cases, and in this case, they were so modified, for the managers had been allowed no power to borrow. Something has been urged that there was a custom that managers might borrow, but there is no evidence in this respect except in a few particular cases, which occurred in another factory belonging to other people.

4. It is, however, contended that Moore had an implied authority to borrow and that the circumstances in which he had been conducting this business indicate that he had such authority, for it appears that there had been previous transactions with the plaintiff Hark Chandel's firm and other mahajans. As those matters have been argued at great length, it is necessary for us to consider them. Moore and the managers, who preceded Moore at this factory, had, no doubt, borrowed from time to time as the plaintiff's books show. But the loans were of two kinds. In the first kind, money was sent either by Ferguson or by his Calcutta agents to the manager by half notes at a time, and the manager used to pledge the first halves of the notes with the local mahajans and take an advance of money, and used to complete the transaction, when the second halves arrived. In the second kind of loan, money was borrowed in the ordinary way with a promise to repay. Now, in the latter case, the plaintiffs charged batta or commission (as their books show) when advancing the loan and stipulated for interest. In the former case, no such charge was made and the transaction was not really a loan.

5. Loans of the first class were entered in the factory books. As regards loans of the second class these, when entered, were not entered as loans from the mahajans, but merely as advances to the funds of the factory from the manager himself and the mahajan's name never appeared in the factory books. In these cases no commission or batta or interest was ever debited in the factory books (except in one instance, which we shall notice further on), and such charges, if paid, must either have come out of the manager's own pocket and not been debited at all or, if paid from the factory money, must have been concealed under other items in the account. But the latter supposition was never alleged at the trial, and there is no evidence to prove it. On either supposition, therefore, the matter could not have come to Ferguson's notice.

6. All that the factory books, however, showed to Ferguson was that sums and

even large sums were sometimes credited in the factory accounts as advances from the manager himself, but there was nothing to indicate that the moneys had been obtained by local borrowing. The only noteworthy feature was the size of the advances. But Ferguson might have thought and indeed it might be that these advances were obtained on deposit of the first half notes with the mahajans. He had eighteen factories and money was often sent to the factories from Caloutta. It is not improbable, therefore, that he did not perceive the meaning of such advances. There was nothing particular to put him on enquiry. He has stated that he never knew that the managers had borrowed locally and there is no reason to doubt his word.

7. We have already mentioned that there was one exception and in that case interest was paid. There a sum of Rs. 12-8 was debited in the factory books on the 3rd January 1898 as interest on a loan of Rs. 5,000, which has been credited as advanced by the manager about the 20th December 1897. That money it appears was borrowed not from any of the plaintiffs, but from another mahajan, Hazari Mull, but no mention of his name occurs in the factory accounts and the loan was entered in the accounts simply as an advance from the then manager, Douglas. Ferguson, however, did not know that the money had been borrowed locally and he might have passed one single item of interest in regard to money advanced by his own manager. It is noteworthy that this entry in the factory books was not put to Ferguson. in the course of his examination by either side. That transaction proves nothing in favour of the implied authority, which it is contended Moore possessed. Moreover, it cannot advance the plaintiff's case because the loan was not given by the plaintiffs. It occurred nearly a year before Moore's appointment. The plaintiffs were not induced by that transaction to give these loans to Moore, and it is apparent that they did not know it and only discovered it afterwards. We may add that there are, no doubt, in one of the plaintiff's books entries of payment of interest upon other sums of money said to have been lent, but there are no corresponding entries in the Factory books, so that Ferguson's attention would have been called to them.

8. We, therefore, find that Moore had no authority whatever, either express or implied, to borrow the sums claimed in these two suits.

9. As to the second question, the evidence shows that the money was not lent to Ferguson, but to Moore. It appears that on the date, when these loans were taken by Moore, there were ample funds at the factory, as the account shows, and there was no need for the factory to borrow. On the other hand, it seems that Moore had used up money, for Ferguson says that he appeared to be living beyond his salary, and Moore explained that he had some private means besides. It is now suggested that Moore was betting or gambling. If that be so, it is intelligible that he himself might need money.

10. There can be no doubt upon the evidence that the plaintiffs knew that the money was lent to Moore and not to Ferguson. They seek to prove that they lent the money to Moore as manager of Ferguson's business, and they say that they

made some enquiries amongst other maliajans before lending. But it is clear that the enquiries they made were merely nominal. They never enquired whether Moore had authority and they admit that they did not even trouble themselves about seeing whether they had any definite authority. They explain that they did not do so, because they knew that the principal employee of any trading business has power to borrow for the purpose of the business. This, however, cannot be accepted; for the factory business had been going on for many years. The practice there must have been well-known. They were put upon enquiry and really made none.

11. Further, their subsequent conduct confirms this conclusion. The loan remained unpaid for nearly a year. They made repeated demands on Moore for repayment, but never made any demand on Ferguson nor even any reference to him. It does not appear that they ever sought to examine the factory books. No satisfactory explanation has been given of this behaviour. Moore was suspended on the 24th December 1901, yet even then the plaintiffs made to reference to Ferguson and filed these suits on the 10th and 14th January 1902. It thus appears that all through they treated the loans as Moore's and not Ferguson's. It is suggested that they did not make any refeience to Ferguson because, if he knew the truth, he would dismiss Moore and then their chances to recover the money would be vain. They acted as if they knew that Ferguson would repudiate these transactions and they went to law at once.

12. We, therefore, find that these loans were made to Moore and not to Ferguson.

13. On these findings, therefore, the decision upon the third question must be that the plaintiffs have no claim on Fereuson, but only on Moore. We therefore reverse the Subordinate Judge's decree against Ferguson. The plaintiff's proper remedy-would be against Moore, but it appears that we cannot pass such a decree against Moore only, because he was exempted by the Subordinate Judge, and the plaintiffs have not made any appeal to obtain relief against him.

14. The plaintiffs filed, a cross-appeal claiming interest at 12! per cent. from Ferguson from the institution of the suit until the date of the decree. It is unnecessary to deal with this question, because the suit against Ferguson has failed.

15. On all these grounds, therefore, the appeals are allowed and the cross-appeals dismissed. The result is that both the suits are dismissed and Ferguson will have his costs in both Courts.