(1925) 03 AHC CK 0022

In the Allahabad High Court

Firm Jhandu Lal-Mithu Lal APPELLANT

Vs

Mt. Wilayati Begum and Others RESPONDENT

Date of Decision : 02-03-1925

Acts Referred:

Citation : AIR 1925 All 442

Hon'ble Judges : Lindsay, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Lindsay, J.—This is a plaintiff''s appeal arising out of a suit which was brought on a hundi. The document in suit is printed at page 27 of our record and it appears that it was drawn on the 25th September, 1918, by a person named Muniruddin. Muniruddin drew on himself and also accepted the hundi on the date just mentioned. He afterwards delivered it to a person named Muhammnd Husain who negotiated it with the plaintiff firm and obtained cash therefor. The amount of the hundi was Rs. 8,500.

2. The suit out of which this appeal has arisen was brought by the plaintiff firm against the legal representative of Muhammad Hussain who is dead and against the drawer and acceptor Muniruddin.

3. In the Court below the suit has been decreed against Muniruddin but it has been dismissed as against the representatives of Muhammad Husain. The basis of the judgment is this, namely, that there was no proper presentment of the bill for payment so as to render Muhammad Husain liable as an endorser.

4. The plaintiffs now appeal, and the argument is that the decision of the Court below is wrong.

5. We may mention here that an application has been made to this Court to admit additional evidence in the case in the shape of a letter. This application is made for the purpose of proving to the Court that the bill in suit was an

accommodation bill; in other words, that Muniruddin drew and accepted the bill without valuable consideration. He did so merely for the purpose of enabling Muhammad Husain to raise money on it.

6. It is stated that this evidence only became available after the suit had been decided in the Court below.

7. After hearing the arguments in this case, however, we are of opinion that there is no necessity to admit any additional evidence in the case. Whether the bill was an accommodation bill or not does not appear to us to make any difference to the legal situation of the parties.

8. We have now to consider what took place in the matter of presentment for payment. The hundi was declared to be payable 359 days after the 25fch September, 1918. It therefore, came to maturity on the expiry of the period of grace that is the third day after the 19th September, 1919, that is to say, on the 22nd September, 1919.

9. Now the only evidence regarding presentment is to be found in the statement of Chandan Lal who is a partner in the plaintiff firm, and according to Chandan Lal''s story he presented the bill for payment to the drawer Muniruddin and also to the endorser Muhammad Husain on the 19bh September, 1919.

10. We agree with the learned Judge of the Court below that this was not a good presentment in law for no presentment is valid unless it is made after the bill has reached maturity. The bill had not reached that stage on the 19th September, 1919. There was therefore no valid presentment.

11. As against Muniruddin we think the Court below was right in granting a decree for, in any view, it appears to us that he was liable whether there was presentment or not. In the form in which the bill was drawn, Muniruddin himself being drawer and acceptor, it was to the holder to treat the document as a promissory note, and we have the further fact that Muniruddin has not appealed against the decree of the Court below.

12. There remains the question of the liability of the endorser Muhammad Husain.

13. Mr. Iqbal Ahmad who appears on be-half of the plaintiff-appellant relies upon the terms of Section 76(b) of the Negotiable Instruments Act. This section and Clause (b) lay down that no presentment for payment is necessary, as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment.

14. There can be no doubt that a party to a Bill of Exchange can waive a presentment for payment as all the provisions relating to presentment are made for the protection and benefit of the party liable-In support of his argument, Mr. Iqbal Ahmad relies upon the statement of Chandan Lal, which is uncontradicted and which we have no reason to disbelieve. Chandan Lal''s statement is that on the 19th of September he went first of all to the house of Muniruddin with the

hundi. Ho allowed the hundi to Muniruddin and asked for payment. Muniruddin told him to go to Muhammad Husain saying that be did not think that Muhammad Husain would be likely to pay as sales were slow and the money was locked up in business.

15. Chandan Lal says that ha then went to Muhammad Husain with the hundi and said:

Please pay this money. I have come here after seeing Muniruddin; he (Muhammad Husain) said the money is not procurable at present, you may charge interest at the rate of 13 annas per cent. I shall pay the money in a youi: or six months when it is received.

16. Mr. Iqbal Ahmad contends that if this evidence is believed it is sufficient proof of a waiver of presentment for payment on the part of the endorser, Muhammad Husain.

17. On the other hand, it is argued on behalf of the respondents that Clause (b) of Section 76 cannot be applied in the light of this : evidence because it is not made to appear that Muhammad Husain engaged to pay "notwithstanding non-presentment." The contention of the learned Advocate for the respondents is that unless the fact of the engagement is disclosed in the endorsement made in the present case the evidence before us could not be treated as evidence of an engagement to pay notwithstanding non-presentment-

18. It seems to us that this is putting too narrow a construction of Clause (b) of Section 76, and we think that if three is reliable evidence before us of a parol promise on the part of the endorser to pay the note that is sufficient. We think we may fairly say that when Muhammad Husain informed the holder that he would pay the money in a year or six months when he had it available, that was an undertaking to pay without any further presentment of the bill.

19. We are of opinion, that the plaintiff firm ought to succeed in this appeal and that a decree should have been passed also against the legal representatives of Muhammad Husain. We therefore allow this appeal and substitute for the decree of the Court below a decree against all the defendants with costs including in this Court fees on the higher scale. It is, of course, to be understood that the decree in so far as it concerns the legal representatives of Muhammad Husain, can be executed only against the assets of Muhammad Huaain in the hands of these parsons.

