

(1989) 11 KL CK 0003

In the High Court Of Kerala

Case No : A.S. No. 183 of 1981 and Memorandum of Cross Appeal

Jawahar Trading Corporation

APPELLANT

Vs

K.K. Ramadas and Others

RESPONDENT

Date of Decision : 03-11-1989

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 78, 8, 82, 87

Citation : (1990) CivCC 183 : (1990) KLJ 58

Hon'ble Judges : S. Padmanabhan, J

Bench : Single Bench

Advocate : P.V. Ayyappan and N.K. Sreedharan, for the Appellant; C.K. Sivasankara Panicker and P.B. Mohankumar, for the Respondent

Final Decision : Dismissed

Judgement

Padmanabhan, J.—The dismissal of three suits jointly tried and disposed of by the Subordinate Judge, Trichur by a common judgment gave rise to these three appeals by the Plaintiffs. Plaintiff in O.S. Nos. 361 and 362 of 1977 is a partnership firm, "Jawahar Trading Corporation". There are three Defendants in O.S. No. 361 of 1977 and four in O.S. No. 362 of 1977. Defendants 1 to 3 are common. First Defendant in these two suits is the sole Defendant in O.S. No. 165 of 1978 filed by one Krishnakumar, who is the husband of the Managing Partner of the firm, which is the Plaintiff in the other two suits. In O.S. Na 361 of 1977, the claim is for Rs. 49,000 due under three pronotes, Exts. A-1 to A-3, and in O.S. No. 362 of 1977 Rs. 30,500 due under Ext. A-4 pronote is claimed. In O.S. Na 165 of 1978, the transaction is oral loan of Rs. 29,700.

2. The sole Defendant in O.S. No. 165 of 1978, who is the first Defendant in the other two suits, alone contested. He is the Managing Director of ""Yadava Steels and Allied Industries, Trichur". His contention, in brief, is this. He wanted agency and dealership for Maruti cars in Kerala and for that purpose, as directed by Maruti Limited, he was working as its canvassing agent to get shareholders. Krishnakumar wanted shares and for that purpose, entrusted Rs. 1,19,200 to

him by several instalments for being forwarded to Maruti Limited. It was so done. As requested by him, by way of temporary measure till shares are obtained from Maruti Limited, for being shown to the income tax authorities in case of necessity, certain printed forms were filled up, signed and given. Maruti Limited went into liquidation. Therefore, these forms were utilised for manipulating the four pronotes as if they were executed jointly with the other Defendants. There was no pronote or loan transaction.

3. Accepting the contention of the first Defendant, all the three suits were dismissed without costs. Hence these appeals.

4. The amount claimed in the three suits together comes to Rs. 1,09,200. Admittedly, there was another suit for Rs. 10,000. Thus there is no dispute between the parties that the amount involved in the transaction is Rs. 1,19,200. The question for consideration is mainly whether these are advances made by Krishnakumar for the purpose mentioned by the first Defendant or whether they are repayable amounts advanced by the firm under four pronotes and oral loan by Krishnakumar. On the evidence, the trial court accepted the contentions of the first Defendant and also found that Exts. A-1 to A-4 are materially altered documents and as such void u/s 87 of the Negotiable Instruments Act.

5. On the evidence the trial court found that "Jawahar Trading Corporation" is a business run by Krishnakumar in the name of his wife as Managing Partner and the other Defendants in the pronote suits are his friends and associates. Those findings are well supported by the evidence and do not require any interference. In the written statement the first Defendant detailed the circumstances under which the four documents were executed and said that they were never intended as pronotes and nobody else joined with him. Just like Krishnakumar, the other Defendants in O.S. Nos. 361 and 362 of 1977 also advanced amounts to the first Defendant for getting shares in Maruti Limited. This is evident from Exts- B-2 to B-5 letters sent by them almost simultaneously to the first Defendant in the same language as if all were drafted by the same person. To all these persons, first Defendant sent replies on 15th December 1976 stating that he arranged for allotment of shares in Maruti Limited. There is absolutely nothing to show that the other Defendants had any need for any borrowing jointly with first Defendant. It is curious to note that all of them remained ex parte.

6. The alleged borrowings were by the end of 1975 and beginning of 1976. Collusion between Krishnakumar and the other Defendants is patent. The connection of the transactions with Maruti Limited is not a new case developed for the purpose of this case. That could be seen by a reading of Exts. B-2 to B-5 along with Exts. B-1, B-6 and B-7. Ext. B-6 is a letter received by the first Defendant from the Government of India, on the basis of the information received from the income tax authorities, asking him to furnish information regarding payment of dealership deposits to Maruti Limited. In response, he gave the original of Ext. B-7 reply informing a total remittance of Rs. 7,14,200. Item 9 therein is Rs. 1,19,200 received from Krishnakumar. Receipts from Defendants 2

to 4 in O.S. No. 362 of 1977 are also mentioned therein. Ext. B-1 current account pass book in the name of the first Defendant with the Union Bank of India evidences the remittances to Maruti Limited. In the light of these items of evidence, there is absolutely no reason to disbelieve the first Defendant when he gave evidence as D.W. 1.

7. There are sufficient indications in Exts. A-1 to A-4 to show that Defendants 1 to 4 were not executants when first Defendant signed. New stamps were affixed subsequently. Names of Defendants 2 to 4 were inserted later and their signatures were also obtained later. Corresponding corrections are also there. These facts were elaborately discussed by the trial court and I am in full agreement. I do not propose to add volume to this judgment by discussing the items of evidence in that respect including the deposition of the first Defendant. I am adverting only to two contentions of the Appellants that the trial court went wrong in considering the material alteration without a plea to that effect and that in a suit or pronotes the contention that the Plaintiff is not the holder cannot be entertained.

8. It is true that in a civil suit parties are bound by the pleadings and a contention not raised in the pleadings cannot be heard for the purpose of taking the opponent by surprise. But every rule has its exception in the interest of justice. In this case, it is not even necessary to seek an exception. In all probability, the written statements might have been filed without actually seeing the pronotes filed in court. Even then the first Defendant contended that the four documents executed by him are not pronotes and they were not executed jointly with anybody else. They were stated to be forms signed by him singly as a temporary measure as desired by Krishnakumar. That means execution of pronotes either singly or jointly with others was disputed. It is true that the material alterations were spoken to by him only in the box when he saw Exts. A-1 to A-4. What he said was found to be correct also. Even though material alteration and Section 87 of the Negotiable Instruments Act were not specifically mentioned, the written statement gives sufficient materials to show that what is pleaded is material alteration. If that is found to be true, the technical plea of lack of pleadings should not be allowed to stand in the way.

9. Any material alteration of a negotiable instrument renders the same void against any one who is a party thereto at the time of making the alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties. Addition of parties to a contract is a material alteration. Adding stamps and signatures and corrections in signatures and writings are also material alterations. Rangayya Naidu and Another Vs. Sundaramurthy Mudaliar, relied on by the trial court, is sufficient authority for the position that failings of parties to raise specific pleas in that respect should not deter the court in considering how the law should be applied to proved facts. The principle of law in this respect embodied in Section 87 of the Negotiable Instruments Act is essential to the integrity and sanctity of contracts. It is

intended to prevent fraud and deter men from tampering with written securities. It is repugnant to the policy of law to permit the holder of a negotiable instrument to attempt a fraud of this kind with impunity. By the alteration, the identity of the document itself is destroyed. To hold one liable under the circumstances is to make him liable for a contract which he never agreed. The burden is on the Plaintiff in such circumstances to show that the alteration was not improperly made. An alteration which varies the rights, liabilities or legal position of the parties ascertained by the deed in its original state or otherwise varies the legal effect of the instrument as originally expressed, or reduces to certainty some provision which was originally unascertained is a material alteration. To make an alteration material it is not necessary that it should adversely affect the party who raises that plea. In this case, Exts. A-1 to A-4 executed by first Defendant alone not intending to be used as promissory notes were corrected into pronotes jointly executed by Defendants 1 to 4 with material alterations to that effect. They are definitely hit by Section 87. The effect of Section 87 is that such a document is void and as such non est. The technical defence of absence of plea should not deter the court in such a situation especially in view of the contention and evidence.

10. Holder of a promissory note any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. In order to discharge the maker or acceptor payment will have to be made to the holder. That is the effect of Sections 8 and 78 of the Negotiable Instruments Act. In a case which does not fall u/s 82(c) a discharge could be given u/s 78 to the maker of the promissory note only when a payment is made to the holder thereof. A plea that the ostensible holder is not the real holder or only a benamidar is barred. Rights and liabilities of undisclosed principles are not intended to alter the well established rules as to negotiable instruments. In a suit on a negotiable instrument by the payee named therein or the endorsee, it is not open to the Defendant to plead that such payee or endorsee is a benamidar. But such rules have no application to cases like this when the pronote itself is denied and the real nature of the transaction is pleaded and proved and the document is established to be materially altered. These questions cannot arise in view of the pleadings and evidence regarding the real nature of the transaction and the unacceptability of Exts. A-1 to A-4 as material altered documents which cannot be accepted as pronotes.

11. In fact that Maruti Limited went into liquidation is undisputed. That explains why the material alterations were made and two suits brought in the name of the firm and one in the name of Krishnakumar when no document was available. The dismissal of the suits in these circumstances is fully justified.

All the three appeals are dismissed. No costs.

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