

(1948) 12 GAU CK 0002
In the Gauhati High Court
Case No : A.F.A.D.No. 1275 of 1915

Jethmal Ganeshmal

APPELLANT

Vs

Haridas Roy

RESPONDENT

Date of Decision : 21-12-1948

Acts Referred:

Contract Act, 1872 — Section 17, 17
Negotiable Instruments Act, 1881 — Section 43
Negotiable Instruments Act, 1881 (NI) — Section 43

Citation : AIR 1949 Guw 6

Hon'ble Judges : Lodge, C.J. and Thadani, J

Bench : Division Bench

Advocate : Jogesh Chandra Sen, Hemanta Kumar Lahiri, Advocates appearing for Parties

Judgement

1. This is a second appeal from the judgment and decree of the learned Special SubJudge, Assam Valley Districts, dated 30th January 1945, by which he set aside the judgment and decree of the trial Court which had dismissed the plaintiff's suit against defendants 1 and 2 with costs while decreeing the suit for Rs. 1000 against defendants 3 and 4. On appeal by the plaintiff, the lower appellate Court decreed the suit against defendants 1 and 2 also with costs. The facts material to the appeal are these.

[2] It appears that appellant defendant 2, Jethmal Ganeshmal, a firm, drew a cheque in the sum of Rs. 1000 upon the Tripura Modern Bank, defendant 1 in favour of defendant 3 one Lohit, who endorsed the cheque in favour of the plaintiff for consideration. When the plaintiff presented the cheque on the drawee bank, it dishonoured the cheque on the strength of instructions received in that behalf from the drawer Jethmal Ganeshmal. The plaintiff informed defendants 2 and 3 of the dishonour of the cheque but they took no notice of the dishonour and the plaintiff instituted the present suit. Defendants 3 and 4 are alleged to be father and son and parties.

[3] The case of the appellant was that defendant 3 Lohit who had contracted to supply paddy had taken the cheque from him for the price of the paddy but that as he failed to supply the paddy, he instructed the drawee bank to dishonour the cheque. The drawee bank alleged that they had dishonoured the cheque on instructions received from the drawer. The drawee bank admitted that the drawer had an account with the drawee bank. Defendants 3 and 4 denied the plaintiff's claim. On the pleadings the trial Court framed the following issues. The liability of defendant 4 does not appear to have been put in issue.

1. Whether the plaintiff has any cause of action against the defendant ?
2. Whether the plaintiff is entitled to present or cash cheque in question ?
3. Whether defendant 3 broke the contract as alleged in the written statement of defendant 2 ?
4. Whether defendant 3 endorsed the cheque in favour of the plaintiff ?
5. To what relief, if any, the parties are entitled ?

[4] The trial Court took the view that defendant 2 who drew the cheque had power to countermand payment and was therefore not liable. The trial Court also held that defendant 1, the drawee bank, was not liable because it had acted in accordance with the instructions of defendant 2, and accordingly dismissed the plaintiff's suit against defendants 1 and 2. There were no crossobjections filed by defendants 3 and 4 against the judgment and decree of the trial Court and the question of their liability does not arise. The lower appellate Court decreed the suit against defendants 1 and 2 in view of the provisions of Ss. 36 and 37, Negotiable Instruments Act.

[5] The drawee bank had not appealed. Mr. Sen for the appellantdefendant 2 has contended that the cheque drawn in favour of defendant 3 was obtained by him by fraud within the meaning of S. 17, Contract Act. But the only allegation in the written statement of the appellant was that the payee, defendant 3, had committed a breach of the contract for the supply of paddy. We are unable to accept the view that every breach of, contract amounts to a fraud within the meaning: of S. 17, Contract Act. On the facts before us it is open to the appellant to contend that there was, a failure of consideration undertaken by defendant 3. But the instrument having been transferred the rights of the parties to the instrument would be governed by the provisions of S. 43, Negotiable Instruments Act. The plaintiff being a holder in due course would be entitled to recover the amount from the appellant. We think the lower appellate Court was right in decreeing the suit against the appellant.

[6] The result is that the appeal is dismissed with costs.