
(1942) 03 BOM CK 0014

In the Bombay High Court

Case No : O.C.J. Appeal No. 20 of 1941 and Suit No. 1177 of 1938

Jivatlal Purtapshi

APPELLANT

Vs

Lalbhai Fulchand Shah

RESPONDENT

Date of Decision : 24-03-1942

Acts Referred:

Contract Act, 1872 — Section 49

Citation : AIR 1942 Bom 251 : (1942) 44 BOMLR 495

Hon'ble Judges : Somjee, J; John Beaumont, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Beaumont, C.J.—This is an appeal from a decision of Mr. Justice B. J. Wadia. The plaintiffs sue upon a promissory note dated November 10, 1937, and headed "Ahmedabad". The note is in these terms :

On demand I, Shah Lalbhai Fulchand of Ahmedabad promise to pay to the order of Sheth Jivatlal Purtapshi of Bombay the sum of Rs. 22,500, twenty-two thousand five hundred only at the rate of six per cent. per annum for value received.

2. The note was made at Ahmedabad, and the question is whether this Court has jurisdiction to entertain a suit upon the promissory note. That depends upon whether any part of the cause of action arises within the jurisdiction of this Court. As the note was not made within the jurisdiction of this Court, and contains no express provision as to place of payment or otherwise conferring jurisdiction upon this Court, the only ground upon which such jurisdiction can be founded must be that the money is in law payable in Bombay. The plaintiff demanded payment in Bombay, and if the money is payable in Bombay, then undoubtedly this Court has jurisdiction to entertain the suit. The learned Judge held that this Court had no jurisdiction to entertain the suit, and I agree with his conclusion and also with his reasoning. But in deference to the exhaustive and

able arguments which have been addressed to us, I will express my reasons in my own language.

3. In the first place, it is necessary to notice that the cause of action is the promissory note, and not the consideration which gave rise to the promissory note. That is important, because Mr. Bhagwati for the appellants has contended that by implication the moneys under the note are made payable in Bombay. It is clear that from the express terms of the note one cannot extract any reference to the place of payment. The only allusion to Bombay is as being the place of the promisee, but that is clearly not enough to found a right to payment in Bombay. But Mr. Bhagwati says that when one looks at the circumstances which gave rise to the promissory note and the previous dealings between the parties, it must be implied that the moneys were payable in Bombay. But, in my opinion, in a suit founded on a promissory note it is not permissible to go into the consideration for the note, and to read into the note something founded on the circumstances which gave rise to it. That would be a very dangerous principle to apply to negotiable instruments.

4. Mr. Bhagwati relied on a decision of the Privy Council in *Soniram Jeetmull v. R. D. Tata & Co.* (1927) L.R. 54 I. A. 265 But that was not a case of a promissory note. It was a case of moneys payable under a commercial contract, and the Privy Council held that, although there was no express provision in the contract as to the place where the moneys were to be paid, it was to be implied from the terms of the contract that the moneys were to be paid in Rangoon, and that gave jurisdiction to the Rangoon Court. That case really has no bearing upon the matter before us, though it is of interest in one respect, because the effect of Section 49 of the Indian Contract Act, 1872, was discussed in relation to the common law rule that a debtor must seek out his creditor anywhere within the realm in order to pay him. Their Lordships, as I read their judgment, were not prepared to accept the view, which had found favour in some cases in this country, that the common law rule was entirely abrogated by the terms of Section 49. Now, Section 49 of the Indian Contract Act provides that when a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place. It was held by the High Court of Madras in *Roman Chettiar v. Gopalachari* (1908) I. L.R. 31 Mad. 223 which was followed by Mr. Justice Lort-Williams in *Srilal Singhania v. Anant Lal Mandal* [1940] 1 Cal. 323 that if the promissory note is payable on demand, that takes the case out of Section 49 because of the opening words "When a promise is to be performed without application by the promisee." I am not prepared to accept that view, because, in my opinion, it is well settled law that a promissory note payable on demand does not imply that a demand must be made. The words "on demand" only mean that the note is payable immediately, or at sight, and, in my view, the words "on demand" do not in themselves take the promissory note out of the terms of Section 49. As to the meaning of those words I need only refer to a

decision of this Court in *Ganpat v. Sopana* (1927) 30 Bom. L.R. 1, F.B. and the cases there discussed. But it seems to me very difficult to hold on the language of Section 49 that it applies at all to negotiable instruments. It deals with a contract between a promisor and a promisee, and, of course, a negotiable instrument may be held by somebody who is not the promisee. If a negotiable instrument has been endorsed over, the holder is not a promisee, and in such a case it is difficult to see what would be the point of requesting the promisee to fix the place for performance, seeing that he has ceased to have any interest under the contract. In my view, Section 49 is one of those provisions of the Indian Contract Act which have no application to matters governed by the law merchant, which is contained, for the most part, in the Negotiable Instruments Act. On that question I follow the view expressed by the Madras High Court in *Subba Narayana Vathiyar v. Ramaswami Aiyar* (1906) ILR 30 Mad. 88. In the present case the defendant did not ask the plaintiffs to fix a place for payment, but the question whether the section is applicable is relevant, because, if it is, there would be force in the argument that the defendant ought not to be allowed to benefit by his failure to carry out a statutory duty. However, in my view, the section has no application.

5. That brings me to the really substantial question whether the common law rule, that a debtor must seek out his creditor in order to pay him applies to negotiable instruments, and it seems curious that there is no binding-authority upon that question. The only case which is directly in point to which we have been referred is the case of *Srilal Singhanian v. Anant Lal Mandal* (supra) in which Mr. Justice Lort-Williams held that the common law rule did apply to the case of a promissory note. In that case the promissory note did not specify any place of payment. It had not been made within the jurisdiction of the Calcutta Court, but the learned Judge held that the Calcutta Court would have jurisdiction to entertain a suit upon it, because at the time when the suit was instituted the promisee, who had ceased to be the holder of the note, and who had therefore no interest in the proceedings, resided in Calcutta. That, to my mind, is not a very convincing reason for the application of the rule. As pointed out by Mr. Justice B. J. Wadia in the judgment under appeal, it is very difficult to apply such a rule to the case of a negotiable instrument. The holder may be residing in any part of the country, and the debtor may have: no notion where he is, or where to seek him. Where presentment is necessary, the difficulty is solved by the rules laid down in Sections 68-70 of the Negotiable Instruments Act, the latter section, which is the residuary section, providing that a promissory note must be presented for payment at the place of business (if any), or at the usual residence, of the maker thereof. No doubt, under the exception to s. 64, where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof, so that presentment in this case was not necessary in order to charge the defendant. But Section 70 does give some indication as to the way in which the maker can be notified of the holder of the note for the time being. In my view, in the

absence of any authority binding upon this Court, we ought to accept the view, which appealed to the learned Judge, that the common law rule about place of payment does not apply to negotiable instruments, and that the plaintiff had no right to demand payment in Bombay.

6. I ought to mention one decision of this Court, which binds us, and which, it is suggested, has a bearing on the matter, and that is *Chunilal Mayachand V. Millard* (1937) 40 Bom. L.R. 252. In that case the promissory note was made payable "in Poona, Bombay or elsewhere," and this Court held that payment could be demanded in Bombay. But that note really involved a provision that the money should be payable at any place where it was demanded. The terms of the note, therefore, were quite different from those of the note with which we have to deal, and the case is clearly distinguishable. So far as my recollection goes, however, the general question whether the common law rule as to a debtor seeking his creditor applies to negotiable instruments was not discussed or considered in that case. The Court went entirely on the terms of the particular promissory note.

7. In my view, the judgment of the learned Judge was right, and the appeal must be dismissed with costs.

Somjee, J.

8. I agree and have nothing to add.