
(1977) 08 MAD CK 0026
In the Madras High Court
Case No : App. No 132 of 1973

K.B. Ghani (died) and others

APPELLANT

Vs

M/s. Dena Bank, Bombay and others

RESPONDENT

Date of Decision : 03-08-1977

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 118, 119, 120, 121, 122

Citation : (1977) 08 MAD CK 0026

Hon'ble Judges : Mohan, J

Bench : Single Bench

Advocate : N. Sivamani and V. Narayanaswami, for the Appellant; K. Sarvabhauman and A.K. Kumaraswami, for the Respondent

Judgement

Mohan, J.—The first defendant, aggrieved by the decree rendered against him by the learned Subordinate Judge of Coimbatore in O.S. No. 471 of 1970, has come up in appeal to this Court. That suit was laid on two hundies, Exs. A6 and A7 dt. 28th March, 1967 drawn by the first defendant (the appellant) in favour of the plaintiff. The case of the plaintiff is that it is a Nationalised Banking Company having its head office at Bombay and branches all over India. The first defendant is carrying on business under the name and style of "Mars Hosiery Mills" at Coimbatore. The second defendant is a partnership firm transacting hundi business and as banker. Dena Bank Limited were the predecessors-in-title of the plaintiff. The second defendant, in the course of their dealings with Dena Bank, endorsed in favour of the Bank for valuable consideration two hundies, Exs. A6 and A7 for Rs. 5,000/- each, drawn in its favour on 28th March, 1967 by the first defendant promising to pay the second defendant at 90 days without days of grace. The second defendant represented to Dena Bank Limited that they obtained the said hundi from the first defendant after due and valuable consideration. The plaintiff endorsed the hundies for collection to the Union Bank of India Limited. When the hundies were presented for payment on maturity, they were not paid. The Union Bank of India Limited returned the hundies to the plaintiff. The plaintiff issued a notice of dishonour to the defendants on 21st

February, 1968 (Ex. A14). The first defendant had sent a reply notice with false allegations. In spite of repeated demands, the sum was not paid. Since the money had been wrongfully retained, the plaintiff would be entitled to interest at 12 per cent per annum. The second defendant has been adjudged as an insolvent in I.P. No. 4 of 1970. So, the Official Receiver has been impleaded as the third defendant representing the estate of the second defendant.

2. The first defendant filed a written statement that he did not execute the suit hundies. The plaintiff is not a holder in due course. The first defendant closed his Mars Hosiery Mills about three years back and no branch of the plaintiff is at Coimbatore. Even at the time of the alleged execution of the suit hundies, there was no such branch. The second defendant was a firm of bankers. The business was closed somewhere in February, 1967. The first defendant at no time had any dealings with the Bombay Office of the second defendant. The first defendant is not liable for interest. Defendants 2 and 3 remained ex parte.

3. On the above pleadings, the following issues were framed for trial:

- "1. Whether the plaintiffs are holders in due course to consideration ?
2. Whether the suit hundies are supported by consideration ?
3. Whether the plaintiffs are entitled to enforce the suit hundies?
4. Whether the plaintiffs are entitled to interest and if so, at what rate ?
5. To what relief the plaintiffs are entitled?"

The learned Subordinate Judge, on a consideration of the oral and documentary evidence, came to the conclusion that Exs. A6 and A7 were supported by consideration and the plaintiff was a holder in due course and that it is entitled to interest at 12 percent per annum. In the result the suit was decreed with costs as prayed for against defendants 1 and 2. It is under these circumstances, the present appeal has been preferred.

4. Mr. V. Narayanaswami, the learned counsel for the appellant strenuously urges that prima facie it should be held that Exs. A10 and A11 are spurious documents. That will be evident on a comparison of these two documents with Ex. A2. Normally as seen from Ex. A2 the letter-head is used, while Exs. A10 and A11 have been written on blank papers. Therefore, there is no proof of the fact that before the date of maturity the endorsement of the hundies took place. Secondly, it is alleged that the endorsement was only by one of the partners and having regard to the terms of S.27 of the Negotiable Instruments Act, it is not open to one of the partners to endorse the bill so as to bind other partners. The next contention is that originally the plaintiff came forward that the endorsement was made in its favour for the purpose of adjusting certain liabilities. But, later that mod was shifted to say that the endorsement was made only for the purpose of collection to discharge the liabilities of the bank. Because of this inconsistency, it has to be held that the plaintiff cannot succeed. Further, the plaintiff cannot be

considered to be a holder in due course. Lastly, it is contented that the instrument does not make any mention either about the rate or payment of interest. Hence, the Court below erred in awarding interest at 12 per cent per annum.

5. Mr. K. Sarvabhauman, the learned counsel for the first respondent submitted that this is a case in which no evidence was let in on the side of the appellant and what has been done is to pick holes in the evidence adduced on the side of the first respondent-plaintiff. There is absolutely nothing to show that Exs. A 10 and A 11 were spurious documents got up to the purpose of this case. Not even a suggestion was made dining the evidence of the plaintiff's witnesses in this regard. In view of the blank endorsement, certainly it will be Open to the plaintiff to frame its case in any manner it liked. But ultimately if it turned out that it was only for the purpose of collection, the first defendant-appellant cannot be heard to say that it was not so. Again, S. 27 of the Negotiable Instruments Act has no application to the facts of this case since that deals with the inter se dispute between agent and the principal. In the instant case no other partner has come forward to repudiate the endorsement. On the contrary, during the counsel of the insolvency proceedings, all the partners have stood by. As regards interest, S. 80 of the Negotiable Instruments Act should be made applicable to this case.

6. On a careful consideration of the above arguments. I am clearly of the view that the appellant has no case at all excepting with regard to interest. As rightly pointed out by the learned counsel for the first respondent, the (appellant) has woefully failed to let in any evidence. In the case of a negotiable instrument, the presumptions as are available under Ss.118 to 122 of the Act cannot be denied to the first respondent-plaintiff. Further, the plaintiff it a holder in due course. As against such a holder, no plea of lack of consideration or forgery etc. could be made. This a settled law. This is perhaps the reason why the learned counsel for the appellant raises all the above points to circumvent these handicaps under which he suffers.

7. There is no evidence to show that Exs. A10 and A11 are spurious documents got up for the purpose of this case. There is not even a suggestion to that effect in the evidence. Merely because Ex A2 came to be written on a letterhead and the documents, namely, Exs. A10 and A11 were written on a plain pacer cannot throw any suspicion. S.27 of the Negotiable Instruments Act has no application to the facts of this case since, as rightly pointed out by the learned counsel for the first respondent, all the partners have stood-by their endorsement. The endorsement was a blank one. Therefore, it is open to the plaintiff, being a holder in due course, to come forward with such a case as will suit its convenience. If ultimately after collection, the money is adjusted towards the liability to the bank, it is none of the concern of the appellant. On the contrary, the consistent stand of the plaintiff was that it was only an agent to collect the amounts nor again, merely because it was directed to be held as security till collection, that will in any way advance the case of the appellant. As regards

interest, the appellant has a good case. The instruments, Exs. A6 and A7 do not make any mention either about the rate of interest or payment of interest. Under these circumstances. S.80 of the Negotiable Instruments Act, which is in the following terms, will apply;

"When no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument) be calculated at the rate of six per cent per annum from the date at which the same ought to have been paid by the party charged until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Explanation:--When the party charged is the indorser of an instrument dishonoured by non-payment he is liable to pay interest only from the time that he receives notice of the dishonour."

On this account, the decree requires to be modified Accordingly, the claim of the plaintiff will stand decreed with six per cent interest and in the decree of the Court below 12 percent will be substituted as 6 percent. The appeal is allowed to this limited extent. The parties will bear their respective costs in this appeal. The substitution abovesaid will not affect the costs awarded in favour of the plaintiff in the trial Court.