
(1929) 01 MAD CK 0033
In the Madras High Court

M. Chengalroya Chetty

APPELLANT

Vs

Nainiappa Naicker and Others

RESPONDENT

Date of Decision : 11-01-1929

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 120

Citation : 117 Ind. Cas. 133

Hon'ble Judges : Venkatasubba Rao, J;Reilly, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—In this petition the plaintiff attacks the decision of the Full Bench of the Court of Small Causes, Madras. The suit was filed on a promissory note against two defendants. The trial Judge found that the 2nd defendant was a minor and dismissed the suit as against him. The decision was confirmed by the Full Bench of the Court of Small Causes. The plaintiff (petitioner) relies upon Section 120 of the Negotiable Instruments Act which enacts that no maker of a promissory note shall in a suit therein by a holder in due course be permitted to deny the validity of the instrument as originally made. The point to decide is--Is a party precluded under this section from denying the validity of the note on the ground that he did not possess the capacity to contract? Section 26 of the same Act says that every person capable of contracting may bind himself by the making of a promissory note. According to this section, therefore, capacity to incur liability as makes of the note depends upon his capacity to contract under the general law. The Indian Contract Act makes minority at the time of the contract a disqualification. The specific provision contained in Section 120 is clearly subject to the general rule enacted in the earlier Section 26. If the party does not possess legal capacity to enter into a contract, Section 26 makes it clear that such person cannot render himself liable by executing a promissory note. The decision of the Full Bench is, therefore, correct. If authority is needed for this proposition, it is to be found in Ma Hnit v. Hashim Ebrahim Meter 55 Ind. Cas. 793 : 38 M.L.J. 353 : 18 A.L.J. 335 : (1920) M.W.N. 319 : 2 U.P.L.R. (P.C.) 58 : 22 Bom. L.R. 531 : 32 C.L.J. 214 : 27 M.L.T. 190 (P.C.).

2. Their Lordships say at page 359 Page of 38 M.L.J.--[Ed.]

Ali Hashim Meter certainly was a minor and Fatima Bibi apparently was a minor when the promissory note was made The suit should have been dismissed on that ground if there was no other ground for dismissing it.

3. This is clear pronouncement that a promissory note made by a minor is void.

4. As regards certain other point, which the petitioner wishes to raise, I agree with the Judges of the Fall Bench that he must not be allowed to raise that at a late stage. The petition fails and is dismissed with costs.

Reilly, J.

5. I agree.