
(2001) 08 MAD CK 0103
In the Madras High Court

Malar Finance Corporation

APPELLANT

Vs

G. Rathinam and Others

RESPONDENT

Date of Decision : 31-08-2001

Acts Referred:

Bills of Exchange Act, 1882 — Section 20
Civil Procedure Code, 1908 (CPC) — Section 100
Negotiable Instruments Act, 1881 (NI) — Section 20

Citation : (2001) 3 MLJ 753

Hon'ble Judges : K. Sampath, J

Bench : Division Bench

Judgement

K. Sampath, J.—The plaintiff in O.S.No. 1914 of 1986 on the file of I Additional District Munsif, Pondicherry is the appellant in the second appeal.

2. The plaintiff which is a partnership firm filed the suit for recovery of Rs. 10,000 with interest at 24% per annum from the respondents herein on

the following averments:

The defendants borrowed a sum of Rs. 10,000 on 17.11.1984 from the plaintiff and executed a promissory note agreeing to repay the amount

jointly and severally with interest at 24% per annum. In spite of repeated demands, the defendants failed to pay the amount due under the

promissory note. The plaintiff caused a lawyer's notice to be issued on 8.8.1986 calling upon the defendants to repay the amount with interest.

Though the defendants received the notice, they did not choose to repay or send any reply to the suit notice, necessitating the filing of the suit.

3. The first defendant resisted the suit contending inter alia as follows:

He received Rs. 10,000 by way of cheque from the plaintiff and he repaid the

same with interest in three installments on different dates. He denied having borrowed Rs. 10,000 from the plaintiff along with other defendants, jointly and severally. When the plaintiff issued the cheque for Rs. 10,000 it obtained the signatures of the three defendants in blank promissory notes. Apparently, it had fabricated the suit promissory notes and filed the suit.

4. Defendants 2 and 3 adopted the written statement of the first defendant.

5. The trial Court framed the following issues:

(1) Whether the defendants signatures were obtained on stamped blank papers and blank pronotes and used it as suit pronote after filling it up?

(2) Whether no cash was paid for the suit pronotes?

(3) Whether the defendants are not liable to pay any amount?

(4) To what relief the parties are entitled to?

6. On the side of the plaintiff, the Managing Partner himself was examined as P.W.1 and Exs.A-1 to A-6 were marked. On the date of the defendants the first defendant was examined as D.W.1 and two other witnesses are examined as D.Ws.2 and 3.

7. The trial Court on the oral and the documentary evidence held that the defendants' signatures were obtained on the stamp blank papers and blank pronotes and the suit pronote was one among them, that the plaintiff had not established that any consideration passed for the suit pronote, and that the defendants were not liable to pay any amount under the suit promissory note. So holding, the trial Court by judgment and decree, dated 21.7.1987 dismissed the suit.

8. The plaintiff filed appeal in A.S.No. 188 of 1990 before II Additional District Judge, Pondicherry. The learned District Judge by judgment and decree dated 16.10.1989 confirmed the decision of the trial Court and dismissed the appeal. Aggrieved, the present second appeal has been filed.

9. At the time of admission the following substantial question of law was raised for decision:

Whether the lower appellate Court was right in holding that when once the respondents contended that they signed and delivered a blank or inchoate negotiable instrument, the burden is on the appellant to establish that the negotiable instrument was duly executed especially in view of the

specific provisions of Section 20 of the Negotiable Instruments Act?

10. Mr. R. Subramanian, learned Counsel for the appellant submitted that u/s 20 of the Negotiable Instruments Act (hereinafter referred to as the

Act) the presumption arises regarding the due execution of the promissory note, that in the instant case the defendants had admitted that they had

signed and delivered to the plaintiff a paper duly stamped in accordance with law relating to the Act and thereby had given prima facie authority to

holder to make or complete as the case may be upon it a negotiable instrument, then the presumption follows that the persons so signing shall be

liable upon such instrument, in the capacity in which they signed the same, to any holder in due course of such amount.

11. The learned Counsel for the appellant also relied on the following judgments in support of his contentions:

(1) M.P. RM. Irulandi Mudaliar Vs. Syed Ibrahi and Others, ; (2) Sesharal Bajna Vs. V.C. Subramanian, ; and (3) Shaha v. Dulah Meah AIR

1939 Rang. 334.

12. The learned Counsel further submitted that the defendants had pleaded discharge and with regard to discharge they had no consistent case,

that they had put forward one case in the written statement, spoke to another case in their evidence and their witnesses gave a third version. The

learned Counsel also submitted that the Courts below had grievously erred in appreciating the pleadings and the evidence with regard to discharge

put forward by the defendants, that there had been total misapplication on the principles of law, improper reading of the evidence and that the

appellant was entitled to a decree.

13. Per contra, Mr. Mathivanan, learned Counsel for the respondents, submitted that Section 20 of the Act was not absolute in its terms, that the

appellant had not established the due execution of the suit pronote, that it had not examined the Accountant in its office, who according to P.W.1

had completed the pronote, and that the appellant was not a holder in due course. The learned Counsel submitted that Section 20 of the Act would

not apply to the facts of the present case. The learned Counsel further submitted that two Courts had accepted the plea of discharge put forward

by the defendants and absolutely no case had been made out for interference u/s 100, C.P.C. The learned Counsel also relied on the following

judgments in support of his submissions:

(1) S. Ramiah Thevar Vs. Balasundaram, ; (2) Kadarkarai Reddiar Vs. Arumugam Nadar, .

14. This is a case where the full import of Section 20. of the Act requires to be considered. There are conflicting decisions by this Court on Section

20 of the Act.

Section 20 runs as follows:

Inchoate stamped Instruments: Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable

instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima

facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and

not exceeding the amount covered by the stamp, the person so signing shall be liable upon such instrument, in the capacity in which he signed the

same, to any holder in due course for such amount: Provided that no person other than a holder in due course shall recover from the person

delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

Section 9 which defines "Holder in due course", runs as follows:

Holder in due course"" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable

to bearer,

or the payee or endorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to

believe that any defect existed in the title of the person from whom he derived his title.

15. In interpreting Section 20, the Bombay High Court, in Tarachand Kevalram Vs. Sikri Brothers, has held that the word "holder" in the Section

only means the person who receives the paper and not a holder as defined in Section 8 of the Act in which case there is no negotiation. The facts

were as follows: The plaintiff advanced a sum of Rs. 5,000 to one H. H gave the plaintiff an inchoate hundi drawn by the defendants for that

amount. The plaintiff discounted the hundi with the Central Bank. The Bank presented the hundi to the defendants for acceptance, but, the hundi

was dishonoured. The Bank recovered the amount of Rs. 5,000 from the plaintiff because it was the plaintiff who had discounted the hundi with the

bank. He paid the amount to the bank and thereafter filed a suit against the defendants to recover Rs. 5,000. The case of the defendant was that

they did not receive any consideration from the plaintiff and they themselves had been defrauded by H against whom they had proceeded criminally

and H was subsequently convicted. The question before the Bombay High Court was whether the plaintiff had any right u/s 20 of the Negotiable

Instruments Act under which he could seek to recover the amount from the defendants who were the makers of the inchoate instrument. On facts it

was found that the defendants had received no consideration whatever for the execution of the inchoate hundi and there was failure of

consideration, but the principal basis for the decision of the Division Bench was that the plaintiff could not maintain the action by

virtue of anything contained in Section 20 of the Negotiable Instruments Act. The Bombay High Court summarised the effect of provisions of

Section 20, as follows:

The Section provides for two rights in respect of two different persons. One is the right given to the holder of the document, the person who is in

possession of the document, the document being an inchoate document and that right is the right to complete it. The other right conferred is upon

the holder in due course and that right is that even though the holder in due course might come into possession of a negotiable instrument which

was not wholly completed by the maker, he has the same right against the maker as if the maker had himself written out the whole of the document,

if the document has been completed by the person who has come into possession of it as contemplated by Section 20. The further question

whether the person who himself filled in the document by making himself the payee, can be regarded as a holder in due course so as to exercise the

rights under that instrument and render the maker of the instrument liable thereunder?

The Bench answered as follows:

It is only where a person comes into possession of a negotiable instrument having paid consideration for it and being a bona fide transferee, he can

be regarded a holder in due course within the meaning of Section 9. The Section

implies and contemplates that there must be a negotiation or a transfer to the holder in due course by someone who had the authority to transfer or negotiate the negotiable instrument. The transfer and the negotiation must be of a negotiable instrument and not the transfer of an inchoate document which is not a negotiable instrument at all under the Act.

The Bench concluded that a person who under the first part of Section 20 had the prima facie statutory authority to fill in an inchoate instrument and make it into a negotiable instrument, cannot be said to have become the holder in due course, since he does not become holder by virtue of negotiation or transfer of a negotiable instrument. What he did was to convert an inchoate document into a completed instrument, and this process, which is authorised by Section 20, does not amount to negotiation or transfer of full fledged negotiable instrument. Hence, a person who makes himself the payee of an inchoate document by writing up or completing the negotiable instrument in a blank paper cannot be regarded as a holder in due course of that document. It follows, therefore that he cannot render liable the maker or the person who signed that blank document as a person who is liable under the Negotiable Instruments Act within the meaning of the second part of Section 20.

16. This reasoning was adopted by V. Balasubrahmanian, J, in S. Ramiah Thevar Vs. Balasundaram, as an authority for the position that a person, who might have lawfully exercised the right u/s 20 of the Negotiable Instruments Act, to convert a mere inchoate instrument into a full-fledged instrument making himself a payee thereunder, cannot by the mere act of conversion of the inchoate instrument into a pucca instrument, render the person who signed the inchoate instrument, as the maker of the negotiable instrument. The learned Judge has held as follows:

Section 20 of the Negotiable Instruments Act, talks of an inchoate stamped instrument which is the very negation of a negotiable instrument, since all that it contains is the signature of the maker on a stamp paper. Section 20 lacks the material, words ""unconditional undertaking"". The mere implied prima facie authority conferred by Section 20 of the Act, on the person to whom such a paper is delivered to write out the instrument or to complete the instrument is not enough by itself to clothe the instrument with all

the characteristics of a full-fledged negotiable instrument. All that Section 20 confers on the deliverer of the stamped paper is an implied prima facie statutory authority authorising him to complete the instrument or to write up the full text of the instrument delivered to him. The Section does not say that by the very act of his filling up the blanks, the person to whom the paper is delivered acquires the right of a promisee under a promissory note. Even the second part of Section 20, which deals with the consequence of filling up the instruments, does not, in so many words, confer on the holder in due course any right of recourse against the maker of the instrument. All it does is to lay down that a holder in due course who has got such an instrument is liable under that instrument in the same way as a regular holder in due course of an instrument which has never been an inchoate instrument, but has been an inchoate instrument, but has been from the very start a full-fledged negotiable instrument. To spell out from Section 20 of the Act, that the person to whom an inchoate instrument has been delivered and who has filled it up by himself would be entitled to all the rights of a promisee under a promissory note, is to read words in the Section which are simply not there.

17. In *Sesharal Bajna Vs. V.C. Subramanian*, *Singaravelu, J.*, held that until the drawee's name is inserted before the filing of the suit, the instrument is not a promissory note in the eye of law. In other words, unless the plaintiff or the holder exercises the authority u/s 20 and until it is filled up, it does not import a contract with him and he cannot recover the amount on the instrument. In such a case, permission granted by the Court to fill in the blanks does not cure the defect in the instrument when the permission granted by the Court was without prejudice to the contentions of the executant of the document regarding all points of dispute. It was, in such a case, certainly open to the executant to claim that the instrument was not valid on the date of the filing of the suit. In the case before the learned Judge, the date of the promissory note and the name of the promisee were not filled up in the promissory note. The plaintiff chose to file the suit on the promissory note in his own name. The material particulars, namely, the date and the name of the promisee were not filled up at the time the suit was filed. The defendants filed a written statement contending that the claim was barred by limitation and that they never borrowed

any money from the plaintiff and that the suit laid on the incomplete promissory note was not maintainable. Two years and nine months after the filing of the suit the plaintiff filed an application praying for permission of the Court to allow him to fill up the blanks in the incomplete promissory note. There was an order passed by the learned Judge allowing the application, permitting the plaintiff to fill up the name of the payee and the date of the promissory note without prejudice to the contentions of the defendants with regard to limitation, material alteration, validity of the instrument etc. The plaintiff had filled up the blanks and the suit was taken up for trial. At that stage, the defendants requested the Court to take up two additional issues, namely, ""Is the suit liable to be dismissed for reasons set out in the additional written statement? and, Whether the suit promissory note is vitiated by material alteration?"" as preliminary issues. The learned Judge held that until the drawee's name was inserted before the filing of the suit, the instrument was not a promissory note. In other words, unless the plaintiff or the holder exercises the authority u/s 20 of the Act and until it is filled up, it does not import a contract with him and he cannot recover the amount on the instrument. The learned Judge answered both the issues against the plaintiff and held that the instrument was not valid in law and the suit based on it had to be dismissed. The learned Judge distinguished the decision of Ramachandra Iyer, officiating Chief Justice (as he then was) in M.P. RM. Irulandi Mudaliar Vs. Syed Ibrahi and Others, on the ground that in the case before Ramachandra Iyer, O.C.J., the name of the promisee alone was left blank, and in the case before him, even the date of the instrument was left blank. The learned Judge further observed that the same decision said that it would not preclude the defendant from raising the contention that the promissory note was inadmissible in evidence. However this decision of Singaravelu, J. was taken in appeal and it was reversed by the Bench consisting of P.S. Mishra and S.N. Ali Mohamed, JJ. in Sesharal Bafna v. P.C. Subramanian (1993) 2 L.W. 505 holding that the issue as to the material alteration in the promissory note had not been tried in accordance with law and the learned Judge had decided to dispose of the suit on preliminary issues and that had resulted in error of law. The Bench posed the question whether it was right to say that the suit was not maintainable

as held by the learned Judge as the alleged promissory note which was filed with the plaint had blanks in particulars, such as the name of the

promisee and the date of the promissory note. The Bench answered that the filing of the suit on a claim based on a promissory note was a fact

which was independent of the filing of the document itself and the validity or otherwise of the document was not dependent upon the time of the

presentation of the document in the court, but the proof thereof in accordance with law.

The Bench further observed as follows:

A promissory note has to be understood not only with reference to its definition u/s 4 of the Negotiable Instruments Act but also in the light of such

provisions which permit endorsements and filling up the blanks. A rule that something not done within a reasonable time may give rise to suspicion

about its genuineness is different from a rule requiring that all document should be presented in Court in full and complete. While the former is a rule

of prudence, the latter is a rule of procedure.

The essential requisite of a promissory note is that there should be a person signing a document, on unconditional undertaking, to pay a certain sum

of money only to or to the order of the certain person or the bearer of the instrument. It shall be a negotiable instrument even if it does not contain

the name of the promisee, because the maker of the instrument promises his attachment to the instrument, and his liability is always to the bearer of

the instrument. Section 20 of the Act, however, has taken notice of inchoate stamped instrument and the inchoate situation is no bar to

endorsements as are found recognised in Section 49 of the Act, but this has a limitation recognised by Section 87 of the Act.

The Bench referred to the decision of the Patna High Court in *Brijbhusan Pande and Others Vs. Ramjanam Kuer*, in which the hand-note in suit,

Ex.A-1 did not mention the name of the payee at all. The argument before the High Court was that no decree could be passed on such an

instrument and also stated that u/s 20, Negotiable Instruments Act, it was open to the payee to fill in the blank instrument, but unless he did so, he

was not entitled to obtain any decree. Reliance was placed on the judgment of this Court in *V.C.T.M. Chidambaram Chettiar v. Ayasami Thevan*

31 M.L.J. 401 : ILR 40 Mad. 585 : 4 L.W. 261.

The following propositions were laid down by the Patna High Court:

(1) Where a hand-note does not mention the name of the payee at all, no decree can be passed on such instrument, the payee can fill in the blank

instrument and unless he does so, he is not entitled to sue and obtain decree on the instrument.

(2) The presumption u/s 118 of the Negotiable Instruments Act, that every Negotiable Instrument was made or drawn for consideration and that

the holder of a negotiable instrument is a holder in due course do not arise in the case of a promissory note which is not a negotiable instrument

within the definition in Section 4 of the Act and such a case is not a suit based on hand-note, as it does not mention the name of the payee. The

onus is on the plaintiff to prove that he made advance to the defendant and that the hand-note was executed in his favour.

(3) The plaintiff, who sues on a distinctive hand-note and hand-note without filling up the blanks is entitled to sue on the loan after amending the

plaint.

The Bench also referred to certain improvements in the approach brought about by another judgment of the same High Court in Hridayasingh Vs.

Kailash Singh and Others, , (I have referred to this decision elsewhere in this judgment). The Bench referred to Subha Narayana Vathiyar v.

Ramasami Aiyar 16 M.L.J. 508 : ILR 30 Mad. 88 which is relied on in Hridhaya Singh's case, for the proposition that once the instrument is

proved, the maker is precluded from denying the payee's right to sue. Section 20 of the Act is the provision giving to the holder of the promissory

note authority to make or complete as the case may be, a wholly blank or incomplete negotiable instrument. Section 87 of the Negotiable

Instruments Act which declares that any material alteration of a negotiable instrument would render the same void as against anyone who is a party

thereto, if such alteration is effected without his consent, but, it will not be void if alteration is made in order to carry out the common intention of

the original parties. Section 87 is made subject to Section 20 of the Negotiable Instrument Act and the expression ""material alteration"" cannot

mean filling up the blanks, but something different that would show that the original instrument has become different, that changes in the document

cannot be explained by Section 20 of the Act and that is not thus filling up the

blanks by the holder in due course.

18. The Bench specifically referred to and approved M.P. RM. Irulandi Mudaliar Vs. Syed Ibrahi and Others, . In that case, a suit was filed on a

duly stamped promissory note in which there was a blank space left for filling the name of the payee and it was held that the promissory note could

be returned to the plaintiff for filling in his name as payee, on the ground that the person to whom such a promissory note was given had prima facie

the authority to fill the payee's name.

19. The decision of Balasubrahmanyam, J., S. Ramiah Thevar Vs. Balasundaram, . was followed by Abdul Hadi, J, in Kadarkarai Reddiar Vs.

Arumugam Nadar, . The learned Judge held as follows:

Where the defendant signed blank stamp paper and delivered it to plaintiff and the plaintiff completed it, made himself the payee and filed a suit for

recovery of said amount, he would not be entitled to recover the amount because though Section 20 authorises him to complete the inchoate

instrument delivered to him, by completing it he does not become holder in due course of that document. The payee who takes an incomplete

stamped instrument and completes it, cannot be said to be a holder in due course of that document because the transfer and negotiation in such a

case to the payee is not of a negotiable instrument but is only of an inchoate instrument which is not a negotiable instrument. And as he is not the

holder in due course of that document he cannot recover the amount.

The learned Judge as already noted, followed the judgment of Balasubrahmanyam, J. in S. Ramiah Thevar Vs. Balasundaram, and the decision of

the Bombay High Court in Tarachand Kevalram Vs. Sikri Brothers, . The learned Judge did not follow another decision of this Court in S. Ahmed

Ibrahim Vs. D. Ramadas, . The learned Judge also dissented from the decision of the Patna High Court in Hridayasingh Vs. Kailash Singh and

Others, .

20. In S. Ahmed Ibrahim Vs. D. Ramadas, the facts were as follows:

The revision petitioner filed a small cause suit for recovery of about Rs. 500 on the foot of a promissory note, the defendant admitted execution of

the pronote and the receipt of consideration therefor, but contested the suit on the ground that there was no transaction between him and the

plaintiff, that it was one Ismail, the brother of the plaintiff who had advanced the loan, that the promissory note was executed in his account book

leaving the name of the payee blank, that it was delivered not to the plaintiff but to Ismail, that subsequently the amount due under the note was

repaid to Ismail on 8.2.1950 and a receipt also taken, that the debt had thus become discharged, that owing to misunderstandings which had arisen

subsequently, Ismail had in collusion with the plaintiff entered his name as payee in the instrument and that the plaintiff was not a holder in due

course and was entitled to recover under the promissory note. The lower Court accepted the case of the defendant that the plaintiff knew of the

true nature of the instrument when it was executed and that of its discharge and that his name was entered as a result of collusion between him and

his brother Ismail, only about a week prior to the institution of the suit. The learned Judge found that the debt in respect of which the instrument

was given, had become discharged even before it was completed and that the plaintiff took it with knowledge thereof, the suit was rightly

dismissed. It was argued before the learned Judge by plaintiff that when his name was entered on the note he became, by virtue of Section 20, its

holder and that u/s 78 of the Act it was only payment to a holder that would operate as discharge, that evidence of payment to any person other

than the holder would under that Section be inadmissible and that he was, therefore, entitled to recover the full amount without reference to such

payment. This argument was discountenanced by the learned Judge. After referring to Section 20 of the Act, the learned Judge observed as

follows:

It will be seen that under this Section, when an incomplete instrument is signed by A and delivered to B, that clothes the latter with prima facie

authority to complete it and if in execution of that authority the instrument is completed A will be liable on it to a holder in due course. But where

that authority comes to an end before the instrument is completed, then Section 20 becomes inapplicable and no rights can be based on the

instrument if it is completed thereafter, except by a holder in due course.

According to the learned Judge, the position of the person to whom an incomplete instrument is delivered is that of an agent and the scope of his

authority must be determined on principles applicable to agents. Applying this

principle, when the defendant gave an incomplete instrument to Ismail, the latter became his agent with authority to complete the instrument, but when the debt in respect of which the imperfect instrument was executed became discharged on 8.2.1950 the authority to complete the instrument also terminated on that date. When Ismail therefore entered the name of the plaintiff as payee on that instrument long afterwards, he did what he had no authority to do and no claim could accordingly be founded on that instrument, unless the plaintiff established that he was a holder, in due course.....Until, the name of the payee was entered on the instrument, there was no promissory note as defined in Section 4 of the Negotiable Instruments Act. The instrument might be converted into a promissory note by exercise of the authority conferred by Section 20 of the Act. But, until that is done, there was no promissory note in existence, but only an instrument which was capable of being converted into a promissory note.

21. In *Hridayasingh Vs. Kailash Singh and Others*, , it has been held as follows:

The holder of a blank but stamped and duly signed paper described as a hand-note by the drawer in his own handwriting can convert it into a negotiable instrument payable to any specified person and not necessarily to himself. In such a case it was not open to the drawer to plead that the person to whom the money was due was not the specified payee. The onus of proving that no consideration had in fact passed lies on the drawer and he was not entitled to deny that the document was a hand-note. In a suit by the payee of a hand-note against the drawer the defence that payments have been made to some one who was not the payee could not be taken into consideration.

This decision was referred to and distinguished by Venkatarma Aiyar, J, in *S. Ahmed Ibrahim Vs. D. Ramadas*, in the following manner:

It does not appear from the statement of facts whether the payments pleaded were made before the name of the plaintiff was entered or after. If the latter, the decision would clearly be correct because on completion, the instrument became a promissory note and therefore, the rights of the parties would thereafter be governed by the provisions of the Negotiable Instruments Act. But if the payments were made before the instrument was completed and before it had acquired the status of a negotiable instrument, it was difficult to see how Section 78 could have any application.

22. In *Hari Prasad Agarwal Vs. Nathuni Sahu*, there was an endorsement in blank made across the stamp by the defendant, and the endorsement itself mentioned the amount and the words ""hand-note haza likh diya"". The suit was to recover the amount mentioned in handnote. Though there was no unconditional undertaking in handnote to pay yet held that the word ""hand-note"" as used in the endorsement conveyed an unqualified undertaking as was necessary in the case of promissory note. The handnote was a promissory note and provisions in Sections 20 and 118 of the Negotiable Instruments Act applied.

23. In a suit by a payee named in a negotiable instrument or an endorsee, plea that such payee or indorsee is benamidar is not allowable.

Subha Narayana Vathiyar v. Ramasami Aiyar 16 M.L.J. 508 : ILR 30 Mad. 88.

24. It has been very aptly said by Fletcher Moulton Lawrence, J. in *Glenie v. Bruce Smith* (1908) 1 K.B. 263 : 98 L.T. 515 while dealing with

Section 20 of the English Bills of Exchange Act, as follows:

The logical order of operations with regard to a bill is, no doubt, that the bill should be first filled up, then that it should be signed by the drawer,

then that it should be accepted, then that it should be negotiated, and then that it should be endorsed by the persons who become successively

holders; but it is common knowledge that parties very often vary, in a most substantial manner, the logical order of those proceedings, and Section

20 of the Bills of Exchange Act is intended to deal with those cases. That Section says that where a person signs his name on a blank stamped

sheet of paper, and delivers it in order that it may be converted into a bill, it prima facie gives authority to fill it up as a complete bill for any amount

the stamp will cover, using the signature for that of the drawer or the acceptor or an endorser; and in like manner when a bill is wanting in any

material particular the person in possession of it has a prima facie authority to fill up the omission in any way he thinks fit. If you choose to

anticipate the logical order of events and give that document to a person in order that it may be made a complete bill, then he has a prima facie

authority to fill up the omission.

With regard to the rights of the parties, as against persons who do not become parties to the bill until after it is complete, it is a complete bill, and

all the ordinary rules of law with regard to complete bills apply. Their case

therefore does not need to be dealt with specially. It is sufficient to say that the bill is enforceable in the hands of a holder in due course.

25. In *Punjab and Sind Bank v. Ram Prakash Jagdish Chander* 70 C.C. 20, it has been held, u/s 20 of the Negotiable Instruments Act, a person who signed a blank stamped paper relating to a negotiable instrument is made liable upon such instrument in the capacity in which he signed it to any holder in due course.

26. It has been held by a Full Bench of Rangoon High Court in *Shaha v. Dulah Meah* AIR 1939 Rang. 334 (F.B.), that the production of the promissory note itself, once the signature is proved or admitted, shifts the burden to the maker. Consideration is presumed in the case of negotiable instruments and need not be proved independently as in the case of an ordinary suit founded upon contract. Circumstances may, of course, exist which would weaken the ordinary presumption that a negotiable instrument has been executed for value received and when all the facts are before the Court, the presumption raised by Section 118, Negotiable Instruments Act, may be rebutted and the burden of proof shifted back to the plaintiff. It is however in plain contravention of the statute to ignore the presumption raised in the first instance. If, therefore the plaintiff sues on a promissory note, and the defendant admits, or has had proved against him conclusively his signatures or his thumb impression on the promissory note, but the defendant asserts that he did not sign the promissory note in the condition in which it is filed, the burden is on the defendant to prove that the promissory note is not what it appeared to be.

27. In *M.P. RM. Irulandi Mudaliar Vs. Syed Ibrahi and Others*, the facts in which have already been noticed in an earlier paragraph, the then

Officiating Chief Justice referred to Section 20 of the Negotiable Instrument Act and observed that Section 20 of the Negotiable Instruments Act

says that where a promissory note is signed and delivered to another person on a paper, properly stamped, leaving blanks, the person to whom the

promissory note is delivered will prima facie have authority to make the document complete. The Officiating Chief Justice applied that Section to

the case on hand and held that the petitioner would have the authority to fill in his name. Such an authority is a statutory one and also one coupled

with an interest. The death of a person giving the authority which is a statutory

one could not affect the right. The Officiating Chief Justice further observed that it was unnecessary at that stage to decide whether, in the circumstances of that case, the petitioner had authority statutory or otherwise to fill up the blanks. That question could be agitated by taking an issue in the suit. At that moment justice required that the petitioner should be allowed to fill in the name in the promissory notes. The plaintiff was allowed to do that in the presence of the Head Clerk of the District Munsif's Court. The Head Clerk was directed to add an endorsement on the note that the name of the payee was inserted on the date on which it was done. The learned Judge, however, observed that it would not preclude the respondents from raising the contention that the promissory note was inadmissible in evidence for want of proper stamp or that there was circumstances in the case to show that the petitioner had no authority. The learned Judge went on a literal interpretation of Section 20 of the Negotiable Instruments Act.

28. In Seth Tulsidoss Lalchand Vs. G. Rajagopal and Others, it was held, where in a promissory note executed the rate of interest was left blank and it was filled up later, it was held to be a material alteration invalidating the instrument.

29. In Chidambaram v. P.T. Ponnuswamy (1995) 2 L.W. 719, the case arose against an order of the lower Court dismissing the petition filed to summon an expert witness to compare the handwriting in the suit promissory note with the admitted signature of the defendant. The learned District Munsif, dismissed the petition on the ground that the Court itself could compare the handwriting of the defendant with the handwriting in the suit promissory note. The order of the learned District Munsif was sustained by this Court. The defendant himself had admitted his signature in the promissory note in his written statement, but, he had taken the stand that he gave a blank signed promissory note ten years back for earlier money transactions. The learned Judge referred to and extracted Section 20 of the Negotiable Instruments Act, and observed that the said Section itself was authority to holder of an inchoate stamped and signed instrument to fill up the blanks and to negotiate the instrument, that the instrument might be wholly blank or incomplete in particulars and in either case the holder had the authority to make or complete the instrument as a negotiable one,

and that it was also not necessary that the blanks in the promissory note should be in the handwriting of the defendant.

30. In *Talamalai Chetty v. Rathinasamy* (1997) 2 M.L.J. 147, it was held by a learned single Judge of this Court relying on Section 20 of the

Negotiable Instruments Act that when once the defendant admitted signing blank promissory note, he could not deny his liability.

31. In *N. Narayanaswamy Vs. Madanlal*, it was held that where in a printed pronote form all the particulars were filled up but the interest column

was left blank it was not an incomplete document u/s 20 of the Negotiable Instruments Act entitling the promisee to fill it up since Section 80 made

a specific provision that in such a case interest at 6% per annum was payable. The filling up of the note by the promisee without the consent of the

promisor would render it void u/s 87 of the Negotiable Instruments Act.

32. In *Lloyd's Bank Ltd. v. Cooke* (1907) 1 K.B. 784, where a defendant in an action brought by the payees of a promissory note against him, as

maker of the note, had signed his name on a blank stamped piece of paper, and had entrusted the paper to another person with authority to fill it

up as a promissory note for a certain sum payable to the plaintiffs and deliver it to the plaintiffs as security for an advance to be made by them, and

that person had fraudulently filled the paper up as a promissory note for a larger amount and obtained by means of it an advance of that amount

from the plaintiffs, who had no notice of the fraud, it was held that the defendant was estopped from denying the validity of the note as between

himself and the plaintiffs, and therefore the action was maintainable against him for the full amount of the note.

33. In my considered view, the decision of the Bombay High Court in *Tarachand Kevalram Vs. Sikri Brothers*, . as followed by *v.*

Balasubrahmanyam, J, in *S. Ramiah Thevar Vs. Balasundaram*, . and in turn followed by *Hadi, J* in *Kadarkarai Reddiar Vs. Arumugam Nadar*, ,

does not lay down the correct position of law. u/s 20, a person signs and delivers to another a paper stamped in accordance with the law relating

to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby

gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified

therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same to any holder in due course for such amount: Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder. The Bombay decision proceeds on the assumption that the person to whom the incomplete negotiable instrument had been given is not a holder in due course. It appears that the Bombay decision has over looked the provisions of Section 9 defining as to who a holder in due course is. Holder in due course, as per Section 9, will include a payee. Consequently, if the person to whom the blank inchoate stamped instrument is given for filling up the same, and such person fills up his name as the payee and completes the document in all respects he will be a holder in due course entitled to recover the amount due under the note from the person delivering the instrument to him. The Section provides that if after receipt of such an inchoate stamped instrument, the person who receives such an inchoate stamped instrument fills it up and endorses in favour of a third person, that person is entitled to recover the amount due under the completed instrument as a holder in due course. Provisions of Section 20 and Section 9 of the Negotiable Instruments Act have to be read in conjunction and if so done, the payee will also be a holder in due course entitled to recover the amount due under the completed document. As per Section 20 the person giving such an inchoate instrument shall be liable upon the instrument in the capacity in which he signed the same to any holder in due course including the payee for such amount. But as per the proviso, no person other than a holder in due course will be able to recover from the person anything in excess of the amount intended by him to be paid thereunder. Thus, in a given case, the stamp affixed to the instrument may allow filling up for a larger amount than what was actually intended and holder in due course can sue to recover the larger amount, uninhibited by any contrary arrangement between the promisor and the original individual who was authorised to fill up the blanks. The decision of Bombay High Court has not referred to this aspect of the matter, nor did Balasubrahmanyam, J, or Hadi, J, notice this. If the interpretation placed by the learned Judges is to be accepted, then the very purpose for which Section 20 has been enacted will be defeated.

34. I have already referred to the observation of Fletcher Moulton, J. in *Glenie v. Bruce Smith* (1908) 1 K.B. 263 : 98 L.T. 515, that parties very

often vary the logical order of those operations relating to execution of negotiable instrument and that Section 20 of the Bills of Exchange Act,

corresponding to Section 20 of our Negotiable Instruments Act, is intended to deal with those cases. The payee before seeking to recover, on the

document should have the instrument complete in all respects, that would enable him either to negotiate further or to file a suit as plaintiff. There is a

noticeable difference between English Law and Indian Law with regard to Section 20. English Law requires that the blanks must be filled up within

a reasonable time, which for this purpose is a question of fact. Section 20 of the Negotiable Instruments Act does not stipulate any such time limit.

35. The decision of Venkatarama Iyer, J., in *S. Ahmed Ibrahim Vs. D. Ramadas*, in my view, lays down the correct position of law. When an

incomplete instrument is signed by A and delivered to B, that clothes the latter with prima facie authority to complete it and if in execution of that

authority the instrument is completed A will be liable on it to a holder in due course. But where that authority comes to an end before the instrument

is completed, then Section 20 becomes inapplicable and no rights can be based on the instrument if it is completed thereafter, except by a holder in

due course. The decision of V. Balasubramanyan, J. in *S. Ramiah Thevar Vs. Balasundaram*, must be deemed to have been impliedly overruled by

the Bench in *Sesharal Bajna Vs. V.C. Subramanian*, and the decision of Hadi, J. in *Kadarkarai Reddiar Vs. Arumugam Nadar*, following V.

Balasubrahmanyam, J. in *Ramiah Thevar*'s case cannot be stated to lay down the correct law.

36. In the instant case, the defendants had admitted having affixed their signatures in a blank promissory note. The plaintiff was well within its

powers to fill up the promissory note and on the basis of the completed promissory note, entitled to sue for recovery of money due under the note.

The contrary view expressed by the Courts below cannot at all be sustained. Section 20 of the Act had not been brought to the notice of the

Courts below.

37. It is next to be considered as to whether the defendants has proved discharge. Before proceeding to deal with that, it would be necessary to

refer to the case of the plaintiff in the pleadings vis-a-vis its oral evidence through P.W.1. It is not stated in the plaint that the plaintiff paid cash consideration. In the course of evidence, P.W.1 stated that he paid Rs. 10,000 in 10s and 100s. He further stated that there was another payment of Rs. 10,000 by cheque to the defendants and that the amount had not been repaid by the defendants. It would be interesting to refer to certain dates pertaining to transaction. The plaintiff caused the suit notice to be issued on 6.8.1986. It gave three days time to the defendants to settle the claim. Two of the defendants received the notice on 14.8.1986. The suit came to be filed on 18.8.1986. The defendants, before they knew about the filing of the suit, and had received summons, caused a replay to be sent on 4.9.1986. In the reply notice it is specifically stated that there was only one amount paid by cheque and that no amount was paid on the date of the promissory note, namely 17.11.1984. The plaintiff is a financial concern. If really there had been two loans advanced to the defendants, it could very well have produced the accounts and demonstrated before the Court that there were two loans given to the defendants. That had not been done. In fact, the promissory note gives a loan account number in its body. In my view, the plaintiff had not come to Court with the truth. There should have been only one payment and that payment should have been by cheque as contended by the defendants. Defendants pleaded discharge. It is in this connection the learned Counsel for the appellant contended that the defendants had no consistent case with regard to plea of discharge. May be there are some minor variations in the case of the defendants in this regard, but those by themselves cannot discredit the defendant's case. The Courts below have concurrently found that the plea of discharge was true.

38. It has been held in *Thimmaiah and Others Vs. Ningamma and Another*, that if there is some evidence for the findings, but the appreciation of the evidence is erroneous, a second appeal will not lie. I do not find any perversity in the conclusion reached by the Courts below with regard to the plea of discharge put forward by the defendants. Taking into consideration the cumulative effect of the entire materials on record, I am of the view that the Courts below had come to the right conclusion in accepting the plea of discharge. Consequently while answering the substantial

question of law that the provisions of Section 20 of the Negotiable Instruments Act, indeed, put the onus on the drawer to show that either the promissory note was not supported by consideration or that the amount claimed in the promissory note had, indeed, not been paid, in the instant case, the onus having been discharged by the defendants, the second appeal fails and the same is dismissed. No costs.