
(1912) 02 AHC CK 0041
In the Allahabad High Court

Mithan and Another

APPELLANT

Vs

Paltu and Others

RESPONDENT

Date of Decision : 20-02-1912

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 76(b), 76(c)

Citation : 14 Ind. Cas. 51

Hon'ble Judges : Henry Griffin, J; George Knox, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The subject-matter of this appeal is a bill of exchange payable after 31 days. The drawers of the bill were Kamta and Garhu; it was drawn on the firm of Matru Mal-Lachmi Narayan of Hatras and the payee was one Birju. The bill passed from the hands of Birju to Paltu and from Paltu to Mithan and Kanchan. All these transfers were for consideration.
2. The bill was drawn on December 31st, 1907. Mithan and Kanchan allege that they presented the bill for payment to Matru Mal-Lachmi Narayan, who refused to accept it. They then gave notice to Paltu from whom they had received it and on the 18th of February 1910, instituted the suit out of which this appeal arises. They arrayed as defendants Kamta and Garhu, the drawers and Paltu, a holder in due course from whom they received it. All the defendants raised, inter alia, the defence that the plaintiff did not present the bill within a reasonable time. Paltu added that notice was not given to him of non-acceptance for nearly three years.
3. The Court of first instance accepted this plea as fatal to the claim and dismissed the suit.
4. The lower Appellate Court found that, by reason of the admitted non-presentment for payment to the acceptor at maturity, the defendants were not liable and dismissed the appeal.

5. In appeal, it is contended that as Paltu had promised to pay the amount of the hundi after maturity, no presentment was necessary u/s 76(b) and (c) of the Negotiable Instruments Act.

6. Following the learned Judge of the Calcutta High Court, Amiruddi Bepari v. Bahadoor Khan 30 C. 977 notice of dishonour was in this case absolutely necessary to give plaintiff a cause of action. Notice can only be dispensed with under the circumstances mentioned in Section 98 of Act XXVI of 1881. The plaintiff has not shown that any of these circumstances exist and his plaint is absolutely silent on the point. The Judge was right in refusing to consider the matter when taken for the first time in appeal.

7. The appeal fails and is dismissed with costs, which will in this Court include fees on the higher scale.