
(1978) 06 MAD CK 0017
In the Madras High Court

M.M. Abbas Brothers and Others

APPELLANT

Vs

Seth Chethandas Fathechand and Another

RESPONDENT

Date of Decision : 21-06-1978

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 118, 27

Citation : (1977) ILR (Mad) 461 : (1979) 92 LW 152 : (1979) 1 MLJ 280

Hon'ble Judges : V. Sethuraman, J

Bench : Division Bench

Judgement

V. Sethuraman, J.—Defendants 2 to 4 in O.S. No. 2882 of 1971 in the City Civil Court at Madras are the appellants. The plaintiff filed the Suit for recovery of Rs. 17,500 due under three promissory notes, two of which for Rs. 4,000 each, were executed on 11th January, 1969, and the third for Rs. 3,500 on 24th January, 1959. The promissory notes carried interest at 24 per cent per annum. They were executed by one Mallik on behalf of the first defendant. One Moshin Bhai has signed the promissory note as a joint executant and according to the plaintiff he was a partner in the second defendant-firm and had executed the three promissory notes only as such partner so that the second defendant firm, and the partners thereof, defendants 3 and 4, are jointly and severally liable for the debt.

2. The first defendant is a proprietary concern of one Khatija Bee. She filed a written statement stating that the plaintiff had advanced only Rs. 7,000 in each, that a sum of Rs. 6,000 had been paid back and that only the balance of Rs. 1,000 was due on the promissory notes. The rate of interest viz., 24 per cent per annum shown in the promissory notes was said to be usurious and illegal.

3. Defendants 2 to 4 filed a common written statement for themselves. They did not admit the signature to be that of Moshin Bhai. He was said to have been ill and for about 2 or :3 years prior to his death, his memory was alleged to have failed. According to them, there was no need for any borrowal and no amount had been brought into the firms account on the relevant dates. They, therefore,

contended that the promissory notes were not supported by consideration.

The following issues were framed:

- (1) Whether the promissory notes are not fully supported by consideration?
- (2) What are the amounts actually advanced?
- (3) Did the second defendant execute the promissory note along with the first defendant?
- (4) Are not the defendants liable to pay the suit claim?
- (5) To what relief?

The additional issue which was numbered as Issue No. 6 ran as follows:

- (6) Are the suit promissory notes validly executed by the first defendant?

4. The learned trial Judge held on issue No. 1 that the promissory notes were fully supported by consideration. On issue No. 3 it was held that the second defendant represented by Moshin Bhai, who was the partner, executed the promissory notes along with the first defendant represented by Mallik. On Issue No. 4 he held that the amounts due under the promissory notes would have to be paid by defendants 1 to 4 and on issue No. 5 that the plaintiff would be entitled to Rs. 11,500 being the principal advanced with interest at 12 per cent per annum as against defendants 1 to 4. On issue No. 6 the finding was that the validity of the promissory notes and their execution had not been contested in the written statement and that no evidence had been let in to substantiate the case, of absence of liability. The result was that there was a decree in favour of the plaintiff for Rs. 11,500 with interest at 12 per cent per annum with proportionate costs. The first defendant has not filed any appeal and defendants 2 to 4 raised two points viz., whether there is proof that the three promissory notes are supported by consideration and that the signature of Moshin Bhai binds them. I shall first examine the question whether the promissory notes are supported by consideration.

5. On this point, as mentioned earlier, the first defendant had categorically accepted the execution of the promissory notes, while as regards the payment of consideration, it was stated that only Rs. 7,000 had been paid in cash as against Rs. 11,500 appearing on the face of the three promissory notes. The execution of the promissory notes on behalf of the first defendant is thus a matter of admission. As regards the second defendant it was stated that the signature is not that of Moshin Bhai. If the appellants had any doubt as regards the same, one would have expected them to have replied to Exhibit A-4, which is the copy of the suit notice issued by the plaintiff's counsel to the defendants denying the signature of Moshin Bhai. Exhibits A-6 to A-8 are the acknowledgments signed for or by defendants 2 to 4. Except the mere denial of D.W. 2, there is absolutely nothing to doubt the signature of Moshin Bhai. If really there were any documents in which Moshin Bhai's signature was undisputed and if the signatures in those documents were different from those in Exhibits A-1 to A-3,

D2 could have produced them. They have not done so. Thus, there was no scope for the trial Court to compare the admitted signatures with the signatures in Exhibits A-1 to A-3 for the purpose of accepting the theory put forward by the defendants.

6. In the absence of the production of the admitted signatures of Moshin Bhai, the Court below was compelled to infer that the material piece of evidence which should be available with defendants 2 to 4 had not been placed before the Court and that if it was favourable it would have been so produced before Court. Moshin Bhai is unfortunately no more, he having died on 5th of February, 1971 about two years after the execution of the promissory notes. Therefore, the question as to whether Moshin Bhai signed or not has to be considered only in the light of the other evidence on record. The credibility of D.W. 2 has to be considered in the light of his own contradictory evidence in the chief and cross-examinations. While in the chief examination he stated that the notice Exhibit A-4 was received after his father's death on 5th of February, 1971, and that he did not reply because he was not concerned with it, in cross-examination he stated that Mallik was contacted and that Mallik said that he would deal with the matter mentioned in the notice. If really the defendants 2 to 4 were not concerned with the notice, there is no reason why they should have contacted Mallik and accepted his statement that he would deal with the matter. If, however, defendants 2 to 4 were concerned with the notice, there was no proper explanation as to why it was not replied to. The plea of non-execution taken by defendants 2 to 4 was rightly rejected by the Court below. There is a presumption u/s 118 of the Negotiable Instruments Act that every negotiable instrument was made or drawn for consideration. It is for the defendants to prove absence of consideration. There is no such proof.

7. Now, I consider the next point that the signatures of Moshin Bhai cannot bind these defendants. As mentioned earlier, two promissory notes were executed on 11th January, 1969. Both are identical in form. It is, therefore, enough if reference is made to the language employed in one of them. Exhibit A-2 runs as follows:

On demand we jointly and severally promise to pay to Mr. Seth Chetandas Fatehchand, Hindu Undivided Family or order the sum of Rupees four thousand only together with interest at the rate of 24 per cent, per annum for value received in cash

Per Pro Zulaikha

goods.

Industries, Received cash. Mallik for M.M. Abbas & Bros. Rs. 4,000 Moshin Bhai, Partner.

Exhibit A-3, dated 24th January, 1969 is also, in identical terms.

But the signatures are found as follows:

Per Pro Sulaikha Industries,

Mallik

Moshin Bhai,

Partner

M.M. Abbas & Brother,

8. The learned Counsel for the appellants confined his contention that the signature of Moshin Bhai did not bind them only as regards Exhibit A-3. His contention was that the promissory note did not, on its face, indicate the responsibility of the firm and that the signature of Moshin Bhai should be taken only as binding him and not the firm. Stated differently, the words "Partner, M.M. Abbas & Bros." in Exhibit A-3 represented only a description and did not indicate that as a partner Moshin Bhai signed this instrument. If Moshin Bhai had the intention of binding the firm, then he would have signed, it is argued, for and on behalf of the firm.

9. The contention in this form had not been taken in the written statement in specific language, and did not also appear in the grounds of appeal. Mr. R. Krishnaswami appearing for the respondents objected to the said contention being taken at this stage. For the appellants the submission was this contention was a purely legal one, which could, under the law, be taken at any stage of the proceedings. Reference in this context was made to the decision of the Supreme Court in Chitturi Subbanna Vs. Kudapa Subbanna and Others, and particularly the passage in paragraph 4 at page 1328 and also to a decision in M. Kesava Gounder (died) and Others Vs. D.C. Rajan and Others, .

12. The point to be examined is whether the content ion described above is one of pure law requesting no fresh investigation of facts so as to be liable to be urged at any stage of the proceedings. According to the learned Counsel for the respondents the plea that is now sought to be taken is also an inconsistent plea, which cannot be allowed to be urged without amendment of the written statement.

11. There were two main pleas set out in the written statement. One was that no consideration passed and the other was that the second defendant-firm was not liable. It is on the latter aspect that evidence was let in to show that the second defendant-firm had no need to borrow funds. The point now raised does not appear to be so inconsistent a plea as to merit rejection in limine at this stage. It is an alternative case. The point now raised does not appear to be no inconsistent a plea as to merit rejection in limine at this stage. It is an alternative case. It is not necessary to investigate any further facts, as the plea is taken only on the basis of the evidence already on record. In a Bench decision of the Bombay High Court in Sitaram Krishna Padhye Vs. Chimandas Fatehchand, a similar point was taken only before the appellate Court at the time of the hearing and was examined, j, therefore, overrule the objection taken by Mr. R.

Krishnaswami and examine the contention urged for the appellants on its merits.

12. The general principle of law is that every one of the partners in a mercantile firm is liable upon a bill drawn by a partner in the recognised trading name of the firm for a transaction incidental to the business of the firm, although the particular partner's name does not appear on the face of the instrument, and although he is "a sleeping and secret partner". Section 27 of the Negotiable Instruments Act, 1881, also provides that every person capable of binding himself may so bind himself or be bound by a duly authorised agent acting in his name. Partners are mutual agents and can bind the firm by their acts. The Judicial Committee in the Firm of Sadasuk Janki Das v. Maharaja Sir Kishan Pershad Bahadur and Anr. I.L.R.(1919) Cal. 663 : 36 M.L.J. 429 : 10 L.W. 143 : 46 I.A. 33 : AIR 1918 P.C. 146 examined this question of the liability of a third party (so to say). In that case hundies were drawn by one Mohanlal in favour of Seth Sadasuk Chandra Sahu. Below the signature of Mohanlal there were the following"?

Acting Superintendent of the Private Treasury of His Excellency Sir Maharaja the Prime Minister of H.H. the Nizam.?

"Maharaja" referred to was Maharaja Sir Kishan Pershad Bahadur, who was the Prime Minister of the Nizam in or about the year 1913. Seth Sadasuk Janki Das filed a suit on those hundies implicating not only Mohanlal, but also the Maharaja. The District Judge, who tried the suit, passed a decree only against Mohanlal. But on appeal, this judgment was reversed and the case was remanded with the finding that the hundies had been drawn in a form sufficient to charge the Maharaja if the agency was proved. However, on further appeal, the trial Court's judgment was restored. The plaintiff, therefore, appealed to the Privy Counsel at page 434 of the Firm of Sadasuk Janki Das v. Maharaja Sir Kishan Pershad Bahadur and Anr. I.L.R.(1919) Cal. 663 : 36 M.L.J. 429 : 10 L.W. 143 : 46 I.A. 33 : AIR 1918 P.C. 146 Lord Buckmaster in delivering the judgment of the Privy Council observed as follows:

...It is of the utmost importance that the name of a person or firm to be charged upon a negotiable document should be clearly stated on the face or on the back of the document, so that the responsibility is made plain and can be instantly recognised as the document passes from hand to hand...It is not sufficient that the principal's name should be "in some way" disclosed, it must be disclosed in such a way that on any fair interpretation of the instrument his name is the real name of the person liable upon the bills.

The appeal in that case was dismissed thereby confirming the exoneration of the liability of the Maharaja.

13. In Katta Venkatannagari Sreenivasayya Vs. Kutagulla Mudda Nagappa by guardian Mr. C.P. Venugopal (Pleader) and Others, the body of the promissory note stated that it was a pronote executed by Pedda Mallappa, partner of the firm. This was held inadequate to disclose that it was executed on behalf of the

partnership of which Pedda Mallappa was a partner. Similarly in *Penumatsa Rangaraju Vs. Sait Devichand Bhootaji Firm* partner Sait Seshmull Kasturji and Another, a promissory note had been executed by one Satyanarayanaraju who was the managing partner of a firm. It was recited in the note itself that the money was borrowed for the purpose of the partnership business. It was held that neither the recital in the note that the borrowing was for the purpose of the partnership business nor the description of the executant in the preamble as a partner could be regarded as sufficient to disclose that the firm was a party liable on the note. It was pointed out by Patanjali Sastri J., as he then was, that the description of the executant in the preamble as a partner of a named firm was perfectly consistent with his executing the note as the party liable on the note and could not be taken, on a fair interpretation of the instrument, as disclosing the name of the firm, it was not made liable on the instrument. To the same effect is the decision of the Bombay High Court in *Sitaram Krishna Padhye Vs. Chimandas Fatehchand*, , to which reference was made earlier. In that case the signature ran as follows;

G.V. Athale, Managing Proprietor,

Gangadhar & B. Friends, Sandhurst Road, Bombay No. 4.

The suit was filed against not only G.V. Athale, but also as against the firm Gangadhar & B. Friends. After referring to the Privy Council decision in *Sadasuk Janki Das v. Kishan Pershad* I.L.R.(1919) Cal. 663 : 1919 36 M.L.J. 429 it was held that the person liable on these hundies was Athale and not any firm under the name of Gangadhar and B Friends.

14. Even where a promissory note which was signed by two persons, who formed a partnership with another person, in their own names without any words following their signatures to describe in what capacity they signed the note, it was held that the firm was liable on the promissory note as the name of the firm as a party liable was sufficiently disclosed in the instrument. See *Indur Pattabhirami Reddi Vs. Kamisetty Balliah*, . Thus, even in the absence of an indication under the signature that a person was signing as a partner, it may be possible to infer a liability on the firm provided it is found on the face of the instrument that the borrower is the firm and not the individual partner, who signed the instrument. A person merely describing himself as a partner, cannot, however, bind the firm. There must be some indication in the instrument to show that he was signing on behalf of the firm. Exhibits A-2 and A-3 bring out the contrast. In Exhibit A-2 the signature is for M.M. Abbas and Brothers. In Exhibit A-3 he has signed the instrument only as "partner of M.M. Abbas and Brothers." The latter is a description and does not disclose the firm's liability. It is true that different legal result follows from the mere change in the collocation of the words. But it is inevitable, as different results are produced in law by the mere change in the collocation of the words.

15. The result is that the appellants' case as regards Exhibit A-3 that it is not

binding on defendants 2 to 4 has to be accepted. The appeal is accordingly partly allowed. The 1st respondent will be entitled to his costs, as substantially the appellants have failed.