

(1925) 12 BOM CK 0020
In the Bombay High Court
Case No : Second Appeal No. 151 of 1925

Namdev Jayram Khole

APPELLANT

Vs

Swadeshi Vyapari Mandali Ltd.

RESPONDENT

Date of Decision : 11-12-1925

Acts Referred:

Citation : (1926) 28 BOMLR 944

Hon'ble Judges : Marten, J; Madgavkar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Marten J.

1. It has been found in both the Courts below that the surety bond, Exhibit 18, was not executed and passed on the date, which it now bears, via, May 31, 1922, but in October 1920. The present is a case between a surety and the person guaranteed, and is accordingly one where the utmost goodfaith is required. Prime facie, therefore, an alteration in the date of the document, while it is in the possession of the person guaranteed, would be a breach of that goodfaith,

2. I need refer only to two cases, via., Code ychand Boodaji v. Bhaskar Jagonnath ILR (1888) Mad. 239 and Govindasami v. Kuppusami ILR (1881) 6 Bom. 371 to illustrate that proposition, Code yohand v. Bhaskar was a case before Sir Charles Sargent and Mr. Justice Melvill, in which there had been an alteration in the rate of interest in one of the clauses of a promissory note. The Court held that the alteration vitiated the note, although the clause so altered was a final clause to which, even if unaltered, the Court would not give effect. The judgment stated (p. 374) :--

The conclusion be drawn from the English authorities is that an alteration which vitiates an instrument must be such ass to cause the instrument on the fact of it to operate differently from the original instrument [Davidson v. Cooper (1844) 13

M. & W. 313 Gardner v. Walsh (1855) 5 E. & B. 83 or, as it is expressed in Suffel v. Bank of England (1881) 7 Q.B.D. 270 must be one which alters or attempts to alter the character of the instrument itself, and which affects or may affect the contract which the instrument contains or is evidence of.

3. Govindasami V. Kuppusami was a suit on a bond, the date " of which had been altered from September 11 to September 25, while it was in the possession of the plaintiff. Fraud was not proved, and the period of limitation reckoned from September 11 had not expired. It was there held by Sir Arthur Collins and Mr, Justice Wilkinson that the alteration was material because it extended the time within which the plaintiff was entitled to sue. Accordingly, the bond was held to be vitiated and the suit was dismissed A fortiori these cases would apply to a transaction with a surety.

4. Now the instrument, Exhibit 18, we have to deal with, is one in a printed form and purports to refer to past dealings as well as to future ones. It states:

The sum of Rs. () together with interest is found due. We (the guarantors) jointly as well as severally held ourselves responsible to pay to the extent of Rs. 2,009 on account of the dues that would be found due on accounts including interest in respect of what is already found due as aforesaid, and what will be found due on account of the hundis and cheques that may be drawn by the said persons and accepted by you, or on account of cheques and hundis than will be given by you to them or on account of any other transaction you may enter into with them.

5. It is argued by the pleader for the respondent that in the present case it is immaterial whether this document is dated October 1920 or May 1922 having regard to its wide terms. In my opinion, that argument is wholly unsound. For one thing, the alteration in date clearly may " affect the contract which the instrument contains." For instance, supposing time was given to the principal debtor in March 1921, that would release the surety unless given with his consent. Whereas the result of postdating the document to May 31, 1922, would prevent that objection from being raised, if the postdating was valid, Many other illustrations can be given to the same effect. But I say nothing as to whether it would be a fraud on the Stamp Laws to alter an instrument like this, viz., from an instrument of October 20,1920,-as it really was-into one of some eighteen months later, nor whether such alteration could be operative in law.

6. Accordingly, on this short ground, I think, the judgment of the learned District Judge was wrong and should be reversed. Taking that view we think it unnecessary to go into the other facts of the case. Accordingly, I would allow the appeal and restore the judgment of the Subordinate Judge, which dismissed this suit with costs as regards the appellant-defendants Nos. 3-5. The respondent will pay the costs of these appellants throughout.

Madgavkar, J.—The question in this appeal is whether the defendants Nos, 3 to 5, appellants, sureties on the bond, Exhibit 18, are liable to the plaintiff-respondent in respect of the promissory note, Exhibit 17, dated May 31, 1922,

passed by defendant No, 3, Krishnabai, who is not a party to this appeal.

2. Both the lower Courts held that the promissory note-as it is called-was not executed, as the plaintiff-respondent claims, by Krishnabai's son, defendant No. 2, Shankar, Against this part of the decree, the plaintiff does not appeal.

3. It is admitted that the dealings between Krishnabai and the respondent commenced from about 1917, and that the surety bond, Exhibit 18, signed by the appellants, was actually executed in October 1920. It has also been found by both the lower Courts that the date was blank, when the surety bond was executed, and that the respondent subsequently filled in the blank with the date of the promissory note for the purposes of the present claim,

4. The question, therefore, is, whether the insertion of the date is or is not a material alteration. If it is, the appeal succeeds and the respondent's claim must fail.

5. The question of what is, or what is not, a material alteration and the English authorities thereon were considered by this Court in *Code ychand Boodaji v Bhaskar Jagonnath* I.L.R(1881) . 6 Bom. 371 and by the Madras High Court in *Govindasami v. Kuppusami* ILR (1889) Mad, 239 Prima facie, the date when the document is executed would be clearly material; and, speaking for myself, the onus, I think, would be on the person making the alteration, to show that so important an alteration, on the particular facts of any case, was not material. It is contended for the respondent that because the bond in question is a bond of continuing guarantee, it would, even without the insertion of the date of the promissory note, have saved limitation as against the present appellants, so that the date was not necessary and is not, therefore, material. It is not, however, merely the actual final effect on a consideration of all the facts and the law in each case that decides whether the alteration is material ; and, as was held in *Suffell v. Bank of England* (1881) 7 Q.B.D. 270 an alteration, which may affect the contract which the instrument contains, is also material, or even a false attestation on a document not required by law to be attested : *Sitaram Krishna v. Daji Devaji* ILR V 7 Bom. 418. In the present instance the respondent thought that, the debt as claimed might be barred by limitation, and he inserted the false date. Therefore, in my opinion, the alteration is material.

6. There was a further argument raised before us, not raised before the trial Court, that the respondent had no opportunity for giving evidence on this point, such as evidence of the appellants' consent But even consent would cure the defect only in certain cases : *Isac Mahomed v. Bai Fatma* I.L.R.(1886) 10 Bom. 487 and *Atmaram v. Umedram* I.L.R (1901) 25 Bom. 616 : 3 Bom. L.R. 213 . Here there is no allegation or evidence or admission of consent.

7. On the particular facts of this case I would hold that the respondent, being apprehensive of the bar of limitation, deliberately inserted a false date on the promissory note, instead of the actual date two years before. He has, therefore, been guilty of a material alteration and his claim against the surety must fail

without going into the question how far the bound was a continuing guarantee and how far the claim is or is not within limitation as against the present appellants.

Curiam, J.—The order we make is appeal allowed. The judgment of the District Judge reversed as regards the appellant defendants Nos. 3 to 5, and the decree of the Subordinate Judge, so far as it dismisses the suit against these defendants with costs, is restored. Respondent to pay costs of these defendants throughout.