

(1923) 01 AHC CK 0069
In the Allahabad High Court

Nand Lal	Vs	APPELLANT
Firm Gulab Rai-Narain Das and Others		RESPONDENT

Date of Decision : 30-01-1923

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 63, 83

Citation : AIR 1923 All 345 : 71 Ind. Cas. 610

Hon'ble Judges : Daniels, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Daniels, J.—The question in dispute in this appeal is as to the liability of the appellant, Nand Lal, on a hundi. The appellant was the fourth defendant in the suit. The hundi was drawn by the defendant's first party, the firm of Murli Dhar Bakhshi Ram, through their agents, the second and third defendants, in favour of the plaintiff firm, Ghulab Rai-Narain Das, for Rs. 400. The plaintiffs sent it to Nand Lal with instructions to realise the amount and place it to the plaintiff's credit in the account between him and the plaintiffs. Nand Lal sent it to the defendants fifth party, the firm of Ram Prasad-Ram Gopal, his commission agents, to realise it from the drawees, the sixth party. The defendants fifth party showed it to the drawees on 22nd June 1917. The drawees kept it for seven days and then wrote "seen" on it and returned it to the defendants fifth party. Possibly owing to delays in the post it did not reach Nand Lal till 5th July (this date is given in the Munsif's judgment which the lower Appellate Court has affirmed). Nand Lal returned it to the plaintiffs the same day. The firm of the drawers, the defendants first party, failed on 4th July, and the plaintiffs were unable to realise their money. They claimed that Nand Lal should be treated as having received the money, though in fact he had not received it, and should be required to credit it to the plaintiffs in his account or, in the alternative, that a decree for the amount with interest should be passed against him. Both the Courts below decreed the suit for the second relief. The ground or decision was that, u/s 63 read with Section 83 of the Negotiable Instruments Act the drawees should only

have been allowed 24 hours within which to accept the hundi (the time has since been extended to 48 hours by Act XII of 1921) and that by allowing them to retain it for seven days Nand Lal through his agents, the defendants fifth party, were guilty of negligence, in consequence of which all previous parties to the hundi were discharged from liability. The plaintiffs as a result of this negligence were prevented from realising the amount of the hundi and are, therefore, entitled to recover it from Nand Lal. The appellant's case in this Court is that sections 63 and 83 of the Negotiable Instruments Act are not applicable. u/s 61 of the Act it is only a bill payable after sight which requires to be presented to the drawee for acceptance and it is only to such a bill that Section 83 applies. This view is, in my opinion, correct. The hundi in suit was payable on demand and under the provisions of the Act no presentment for acceptance is necessary in the case of such a bill. The law is stated in Chalmers Negotiable Instruments Act, 4th Edition, page 186:

Ordinarily, there is no necessity for the bill to be presented for acceptance; the drawer is liable on the bill as principal debtor and it is optional with the holder whether it will substitute therefore the liability of the acceptor and constitute the drawer a surety for the acceptor.

2. Sections 63 and 83 regulate the conditions under which a presentment for acceptance is valid and the consequence of not complying with these conditions, and have no application to a bill which does not require to be presented for acceptance at all. The only presentment necessary in the case of a bill payable on demand is presentment for payment u/s 64 of the Act and there are no provisions corresponding to sections 63 and 83 requiring payment to be made within 24 hours on penalty of all previous parties being discharged from liability I am informed that the same view was taken by Lindsay, J., as Judicial Commissioner of Oudh in two unreported cases. I, therefore, allow the appeal and, modifying the decree of the Court below, dismiss the suit as against the appellant Nand Lal. As, however, the plea on which the appeal has succeeded was not taken in either of the Courts below, I allow the appellant no costs in either of those Courts. He will be entitled to his costs of the appeal in this Court from the plaintiffs. There is a deficiency of Rs. 29/8 Court-fees payable by one of the respondents in the lower Appellate Court. In accordance with the practice of this Court, the appellant must pay this amount before he can realise his decree for costs of this Court, and will then be entitled to add it to the costs recoverable from the plaintiffs.