
(1973) 03 AHC CK 0020
In the Allahabad High Court
Case No : First Appeal No. 163 of 1960

Narain Food Products Ltd.

APPELLANT

Vs

Tikam Chand and Others

RESPONDENT

Date of Decision : 23-03-1973

Acts Referred:

Transfer of Property Act, 1882 — Section 130

Citation : AIR 1973 All 573

Hon'ble Judges : T.S. Misra, J;A.K. Kirtu, J

Bench : Division Bench

Advocate : Narendra Kumar, for the Appellant; Sudhir Chandra, for the Respondent

Final Decision : Dismissed

Judgement

Misra, J.—This is an appeal by the defendant No. 1 arising out of a suit for recovery of Rs. 63,786/- on the basis of two bonds dated 5th February 1952 and 29th March, 1952 respectively. The material facts may be briefly stated as follows:

The defendant No. 1 was a public limited company duly incorporated under the Indian Companies Act. Sri N.L. Bidani was its General Manager and a director. The defendant No. 1 promised to pay a sum of Rs. 48,000/- and another sum of Rs. 15,000/- under two bonds dated 27th March, 1952 and 5th February, 1952 respectively with interest at 7 per cent, per annum within two years from the date of the respective bonds. The plaintiff alleged that on 29th August, 1952 the defendant No. 1 paid a sum of Rupees 10,000/- to the defendants Nos. 2 and 3 as part payment of the loan dated 27th March, 1952 but nothing was paid towards the loan due under the bond of 5th February, 1952. Subsequently the defendants Nos. 2 and 3 assigned the said debts under the said bonds to the plaintiff by virtue of two assignment deeds dated 21st February, 1955. The plaintiff asked the defendant No. 1 to make payment of the debts due under the said two bonds but it failed to do so; hence the suit for the aforesaid relief was

filed.

2. The suit was contested by the defendant No. 1. Originally on 20th July, 1955 a written statement was filed by N.L. Bidani on behalf of defendant No. 1. However, on 3rd December, 1955 another written statement was filed on behalf of the defendant No. 1, which was signed by Lachman Das, a director of the company. It was admitted in the second written statement filed on behalf of defendant No. 1 that the defendants Nos. 2 and 3 had received a sum of Rupees 10,000/- from the funds of the defendant No. 1. The other allegations made in the plaint were denied and it was asserted that the alleged two bonds, which were the subject-matter of the suit, had not been executed by any person having the authority to do so and those bonds had been obtained by coercion, misrepresentation and fraud and were, therefore, not binding on defendant No. 1. In regard to payment of Rs. 10,000/- it was stated that the same was not made towards any particular bond in suit. In regard to the deeds of assignment in favour of the plaintiff it was alleged that the same were collusive, sham, fictitious and not bona fide. It was further alleged that pursuant to the resolution No. 3 of 29th December, 1951 the entire Sindhwani Agricultural Farm, and the stocks in hand with all the implements were to be purchased for a sum of Rs. 1,75,000/- and out of that only a sum of Rs. 50,000/- was to be paid in cash and the remaining amount was to be paid within two years from the date of the registration. However, instead of carrying into effect the resolution No. 3 the defendants Nos. 2 and 3 gave possession of the entire farm to an employee of the company on 6th February, 1952 but fraudulently and in collusion with Sri N.L. Bidani executed a sale deed in respect of 246-52 acres only for a sate consideration of Rs. 70,000/- out of which a sum of Rs. 55,000/- was received in cash by defendants Nos. 2 and 3 and the balance of Rs. 15,000/- was shown due from the company.

The bond dated 5th February, 1952 was executed in lieu of this consideration and was obtained by fraud and in collusion with the General Manager and was, therefore, void. It was further asserted that the defendants Nos. 2 and 3 on 6th February, 1952 executed only an agreement of sale of the remaining farm which was also made to defraud the company and was not in accordance with the resolution of 29th December, 1951. The bond dated 27th March, 1952 was a counter part of that agreement according to which defendants Nos. 2 and 3 were not entitled to recover the balance but could only take possession of tractor etc. and so the bond was not enforceable. As defendants Nos. 2 and 3 remained in possession of the tractor and other stocks mentioned in the agreement dated 27th March 1952 the defendant No. 1 was not liable for the price of the same. As the bonds were without consideration and executed by an unauthorised person the same were void. It was also contended that the plaintiff is the brother-in-law of defendant No. 3 and was closely related to the defendants Nos. 2 and 3. The suit had been filed at the instance of defendants Nos. 2 and 3 for their benefit and the plaintiff had no right to sue.

3. On these pleadings the Court below framed as many as six issues. It found that the bonds in suit were duly executed on behalf of defendant No. 1 and for consideration. They were not obtained by practising fraud or misrepresentation and were not void. It also held that the plaintiff was a bona fide assignee of the bonds in suit for consideration. It recorded a finding that the bond dated 5th February, 1952 was not without consideration as alleged in para No. 15 of the written statement. Having found that the plaintiff was entitled to the sum claimed it decreed the suit for the same against the defendant No. 1. Aggrieved by that decision the defendant No. 1 has preferred this appeal.

4. The learned counsel for the appellant attacked all the findings recorded by the Court below. He contended that the bonds in suit were not executed for consideration and by a person competent to do so on behalf of the defendant No. 1. He also contended that the said bonds had been obtained by practising fraud and misrepresentation and were without consideration, hence void and unenforceable. Lastly it was contended that the assignment of the bonds in suit was not bona fide and for consideration and as such the plaintiff was not entitled to maintain the suit. The following points, therefore, arise for consideration in this appeal:

1. Whether the two bonds in suit were duly executed for consideration and by a person competent to do so?

2. Whether the said bonds were obtained by practising fraud and misrepresentation on the defendant No. 1 and were void and unenforceable?

3. Whether the alleged assignment of the said bonds in favour of the plaintiff was bona fide and for consideration and whether the plaintiff is entitled to maintain the suit? Points Nos. 1 and 2.

5. These points may be conveniently disposed of together. The first bond (Ex. 14) was for Rs. 15,000/- and was executed on 5th February, 1952. The second bond (Ex. 7) was for Rs. 48,000/- and was executed on 27th March, 1952. Both these bonds were executed on behalf of the defendant No. 1 by Sri N.L. Bidani. In the written statement filed on behalf of defendant No. 1, which was signed by Lachman Das, it was admitted that N.L. Bidani was the then General Manager of the Company defendant No. 1. This fact is also borne out from the statement of P. W. 4 as well as Ex. 12 which is an account opening form by which defendant No. 1 opened an account in the Punjab National Bank on 6th July, 1951. The principal object of the defendant No. 1 company was to purchase the Sindwani farm. It appears that in fulfilment of that object the two bonds in question were executed on behalf of the defendant No. 1. These acts of N.L. Bidani were also ratified by the defendant No. 1 as would be evident from Ex. 25/1 which is a photo-stat copy of the agenda of the meeting which was to be held on 26th June, 1952 wherein the purpose of the meeting was stated to consider all the three transactions in connection with the purchase of Sindwani farm. Ex. 25 is the resolution passed at that meeting. The ratification of the acts of N.L. Bidani by

the defendant No. 1 is further borne out by the resolution dated 29th August, 1952 contained in the proceedings book. Pursuant to this resolution a cheque dated 29th August, 1952 for Rs. 10,000/- (Ex. 11) was given by the defendant No. 1 to the defendants Nos. 2 and 3. The proceedings dated 29th August, 1952 as well as the said cheque for Rs. 10,000/- were also signed by Lachman Das, who had signed the written statement on behalf of defendant No. 1. The cheque was cashed vide Ex. 28.

It was thus amply proved that the bonds in question were executed on behalf of the defendant No. 1 by an officer competent to do so and the act of the execution of those bonds by N.L. Bidani was duly ratified by the defendant No. 1. These two bonds were also for consideration and had not been obtained by practising fraud or misrepresentation. Had it not been so the defendant No. 1 would not have ratified the execution of the same and would in fact have repudiated the same. As indicated above the defendant No. 1 was floated with the main object of purchasing the Sindwani farm including the tractor, machinery etc. and with that end in view a resolution was passed by defendant No. 1 on 29th December, 1951 to purchase that farm for Rs. 1,75,000/-. The defendants Nos. 2 and 3 executed a sale deed (Ex. A.12) in respect of 246 acres of land of that farm for Rs. 70,000/- and the defendant No. 1 paid them a sum of Rupees 55,000/- in cash and for the balance amount of Rs. 15,000/- the bond Ex. 14 was executed. P. W. 4 Govind Ram has proved the due execution and also the consideration of the bond. The action of Sri Bidani in executing the bond, as pointed out above, was also subsequently ratified. We, therefore, find no substance in the contention that the bond Ex. 14 was not for consideration and was not executed by a competent person. We also concur with the finding recorded by the Court below that the other bond Ex. 7 was also for consideration and was executed by a competent person. In fact the subsequent ratification made by the defendant No. 1 exposes the hollowness of the contention raised by the appellant. The resolution dated 29th August, 1952 and the payment of Rs. 10,000/- coupled with the statement of P. W. 4 go to establish that the bond was for consideration and was executed on behalf of the defendant No. 1 by a person competent to do so.

6. The contention that the two bonds in suit were obtained by practising fraud and misrepresentation has also no legs to stand. It was urged that the defendants Nos. 2 and 3 did not disclose to defendant No. 1 the defect of their title and that they purported to have sold the standing crop whereas those crops did not actually exist at the spot. This contention has no force inasmuch as the defendants Nos. 2 and 3 had disclosed as to what their title was. It appears that no objection was taken in regard to the standing crop at the time of the taking of possession of the land. We find no convincing and cogent evidence to establish fraud or misrepresentation said to have been practised by the defendants Nos. 2 and 3 on the defendant No. 1. We, therefore, on the consideration of the evidence on the record and the surrounding circumstances are in agreement with the Court below in holding that the two bonds in suit were for consideration and

had been executed on behalf of the defendant No. 1 by the person competent to do so and were not obtained by practising fraud or misrepresentation on the defendant No. 1 by the defendants Nos. 2 and 3.

Point No. 3 :

7. The plaintiff has alleged that defendants Nos. 2 and 3 had assigned the two bonds in suit in his favour by the deeds of assignment (Exts. 5 and 6). It was contended on behalf of the appellant that the said assignment of the bonds in suit was collusive, sham, fictitious and without consideration and was, therefore, void and the plaintiff was not, therefore, entitled to maintain the suit. The execution of the assignment deeds (Exts. 5 and 6) was proved by the oral evidence adduced on behalf of the plaintiff. No plausible reason was advanced to show as to why the defendants Nos. 2 and 3 had colluded with the plaintiff to assign the two bonds in suit in favour of the plaintiff. It is well settled that an assignee would not get better rights than that of the assignor. The assignment would, therefore, not place the plaintiff in a better position than his assignors. There was, therefore, no reason to make a fraudulent or collusive assignment in favour of the plaintiff. It was, however, vehemently argued that the assignment was fictitious, sham and without consideration. It was pointed out that the assignment deeds (Exs. 5 and 6) were executed on 21st January, 1955. On the same date two cheques for Rs. 4,000/- and Rs. 10,000/- (Exs. 8 and 9 respectively) were issued by Asa Ram Tikam Chand in favour of Govind Ram Narain Das. Both these cheques were cashed on 2nd February, 1955. However, on 22nd January, 1955 one Shanti Devi Sindwani, who is said to be the wife of defendant No. 2, drew a cheque for Rs. 17,000/- in her favour. From Ex. A.6 it appeared that on 22nd January, 1955 a draft for Rs. 7000/4/6 was required to be purchased on the basis of the amount from Shanti Devi Sindwani. Similarly another draft of Rs. 10,006/4/6 was to be purchased from Central Bank on the basis of the amount from Shanti Devi Sindwani.

From Ex. A.7 dated 22nd January, 1955 it appeared that a request was made to the Central Bank to issue a demand draft for Rs. 10,000/- favouring Tikam Das Taneja. From Ex. A.8 dated 22nd January, 1955 it appeared that a request was made to Punjab National Bank to issue a demand draft favouring Tikam Das Taneja and from Ex. A.9 it appeared that a sum of Rupees 14,000/- was debited to Govind Ram Narain Das and transferred to Narain Das and Shanti Devi on 2nd February, 1955. Ex. A.10 dated 2nd February, 1955 disclosed that a sum of Rs. 14,000/- being the amount of the two cheques for Rs. 10,000/- and Rupees 4,000/- respectively was paid to the credit of Govind Ram Narain Das. The same also appeared from Ex. A.10. On the basis of these bank transactions it was contended that no amount was actually paid by the plaintiff to the defendants Nos. 2 and 3 against the assignment of the two bonds in question made in his favour. These documents have, however, to be viewed in the light of the other evidence on record and the surrounding circumstances. P. W. 4 had deposed that he had received the consideration. Exs. 8 and 9 which were the cheques issued

by the plaintiff against the consideration for the assignment were duly cashed by the assignors. The plaintiff had deposed that he had borrowed money from Swadesh Lata. It would make no difference if Swadesh Lata had in her turn obtained money from Shanti Devi and Narain Das. The plaintiff's contention that he had borrowed money from Swadesh Lata finds corroboration from the entries made in his account books. We are, therefore, satisfied that the plaintiff had established that the assignment of the two bonds made in his favour was for consideration.

8. Even assuming that consideration was not paid it would not affect the right of the plaintiff to maintain the suit nor it would invalidate the assignment inasmuch as an assignment of an actionable claim u/s 130 of the Transfer of Property Act may be with or without consideration. Passing of the property would not depend on the payment of consideration only. The assignors were impleaded as parties to the suit. They did not raise any objection to the assignment. They did not allege that the said assignment of the two bonds in suit was without consideration and unenforceable. In these circumstances it was not open to the defendant No. 1 to challenge the assignment. The question of payment of consideration is in fact one between the assignor and the assignee and the debtor can take no advantage of the non-payment of the consideration for the assignment: See *Baldeo Sahai v. Harbans* ILR (1911) All 626) and *Mangal Prasad and Another Vs. Nabi Bakhsh and Another*, .

9. The learned counsel for the appellant, however, referred us to the decision in the case of *Kanraj Vs. Vijai Singh*, in support of his contention that the assignment can be challenged on the ground of want of consideration on which any other contract can be impeached. That case, however, is not of much assistance. In that case the assignor, who was impleaded as one of the defendants, had alleged that the agreement of assignment was without consideration and void. The debtor had not challenged the validity for want of consideration. On these facts it was held that the assignment could be challenged on the ground including one of want of consideration on which any other contract could be impeached. The plea, however, did not succeed on merits in that case. In the present case, however, the assignors, who were impleaded as defendants, did not challenge the assignment on any of the grounds including the want of consideration on which any other contract could be impeached.

10. It may be stated that the transfer of the actionable claim can be effected only by an instrument in writing signed by the transferor or his duly authorised agent. It becomes complete and effectual on its execution. On the execution of the instrument all the rights and remedies of the transferor vest in the transferee and the transferee thereupon gets a right to sue in his own name even without obtaining the transferor's consent to such suit and without making him a party thereto for the recovery of the amount due under the claim. The essential ingredient of the transfer of an actionable claim is execution of an instrument" in writing signed by the transferor or his duly authorised agent. The moment a

document transferring the actionable claim is executed all the rights and remedies of the transferor stand transferred to and vest in the transferee. The transferee thereafter may institute proceedings for recovery of the dues in his own name and he need not obtain the consent of his transferor for doing so or make him a party to such a suit or proceeding. If, however, the debtor is not informed of the transfer of the actionable claim and makes payment of any amount due under the claim the payment would be valid as against such transfer. It, therefore, necessarily implies that if despite receipt of express notice of the transfer of the actionable claim the debtor makes payment to the transferor the same would not be valid as against such transfer.

In the present case a notice dated 21st January, 1955 (Ex. 10) was given by the plaintiff to the appellant informing it that by an instrument in writing the defendants Nos. 2 and 3 had assigned to the plaintiff the bonds dated 5th February, 1952 and 27th March, 1952 respectively executed by the defendant No. 1 in favour of defendants Nos. 2 and 3 and the debt due thereunder with interest and requiring the defendant No. 1 to pay the amounts due under those bonds within a week from the date of the receipt of the notice in default whereof a legal action was to commence. The defendant No. 1 did not comply with that notice. Consequently the plaintiff filed the suit on the basis of the said assignment and also impleaded his assignors as defendants Nos. 2 and 3 in the suit. The defendants Nos. 2 and 3 did not repudiate or in any way challenge the said assignments. The deeds of assignment were filed in the case. The transfer of the actionable claim having been made in accordance with the requirements of Section 130 of the Transfer of Property Act the right of defendants Nos. 2 and 3 vested in the plaintiff who became entitled to recover the sums due under the two bonds in suit from defendant No. 1. We, therefore, affirm the finding of the trial Court that the plaintiff was a bona fide assignee of " the bonds in suit for consideration and that even if the assignments were not for consideration that would not have made any difference and the plaintiff was entitled to maintain the suit and recover the debts due under the two bonds in question.

11. No other point was urged or pressed.

12. In the result, the appeal fails and is accordingly dismissed with costs.