

(1980) 01 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : Civil Suit No. 27 of 1973

Parkash Sharma

APPELLANT

Vs

Krishan Lal

RESPONDENT

Date of Decision : 01-01-1980

Acts Referred:

Jammu and Kashmir Stamp Act, 1977 — Article 49, 2(22)
Negotiable Instruments Act, 1881 (NI) — Section 4, 5

Citation : (1980) JKLR 698 : (1979) JKLR 698 : (1980) KashLJ 412 : (1980) SriLJ 4

Hon'ble Judges : I.K.Kotwal, J

Bench : Single Bench

Advocate : K.R.Gupta, Advocates appearing for the Parties

Judgement

(1) In this suit under Order 37 Rule 2 Civil Pr. Code, the plaintiff's case is that the defendant borrowed a sum of Rs. 9.000/ from Messrs Shankar

Finance Company, Samba, hereinafter the Company, and executed a promissory note in its favour on 2541969 undertaking to pay the said sum

with interest at the rate of 18 percent per annum on demand or order. The company later on endorsed the said promissory note in favour of the

plaintiff for consideration entitling him to recover the sum mentioned in it from the defendant. After giving credit to him for the payments made

towards the aforesaid loan, a sum of Rs. 4, 593. 99 was still due from the defendant which he failed to pay inspite of repeated demands. Adding a

sum of Rs, 406/, the plaintiff has asked for a decree in the amount pf Rs. 5, 000/ against the defendant with costs and interest both pendente lite as

well as future at the rate of 18 percent per annum.

(3) The suit has been resisted on the grounds that the promissory note is without

consideration inasmuch as no loan of Rs. 9,000/ was taken by the defendant from the company rather he had received a sum of Rs. 4, 100/ only from it and had foregone the balance, that the defendant had paid a total sum of Rs. 16,000/ to Banarsi Dass Gupta, the sole proprietor of the company towards different groups and final account between him and the defendant was yet to be settled, that the said Banarasi Dass being the sole proprietor of the company by some one else was totally unauthorised, that the plaintiff was not entitled to claim any interest, that the document alleged to be a promissory note, is not a promissory note, as such suit under Order 37 is not maintainable, and that in any case the suit pronote being insufficiently stamped the same was inadmissible in evidence. In the premises, it has been prayed that the suit may be dismissed with costs.

(3) On these findings, the following issues came to be framed on 911974:

1. Whether the suit under Order 37 G. P. C. is not maintainable ? O. P. D.
2. Whether the pronote is insufficiently stamped and if so whether the deficiency cannot be made up ? O. P. D.
3. Whether the pronote was executed for consideration ? O. P. D.
4. Whether the endorsement in respect of negotiation is valid and is for consideration ? O. P. P
5. Whether the plaintiff is entitled to charge any interest, if so at what rate ? O. P. P.
6. Relief. O. P. P.

(4) The parties joined the issued and led evidence on them. The defendant besides himself appearing in the witness box examined Vijay Kumar

Gupta, K. R. Chadha and Banarasi Dass as his witnesses. The plaintiff on the other hand examined Rattan Chand on his behalf and also appeared as his own witness.

(5) I have heard Mr. K. R. Gupta on behalf of the defendant. No one however appeared on behalf of the plaintiff. Issues Nos : 1 & 2

The suit pronote reads as under : ""Main iqrar karta hon ka mablag no haazr roopy nisaf gisky char hazar panch sou roopy hotay ban babt kameti

group No. D)/19 bouly No. 4 naqdi basoli rhar hazar nou sad roopy aur babt bouly Kamati char hazar aksad roopy main M/s Shankar Mnassa

Kamati silsila babat kamati matalik gisko boh hukam danvan andaltal bilah sood day gihar raah ada karta rahon ga lehaza in chand harooph bator

pronote bakhoshi khud likh deta hon kas anad raha

(6) Mr. Gupta appearing for the defendant has raised a twofold contention. His first point is that the document sued upon is not a promissory note

as defined in Sec. 4 of the Negotiable Instruments Act because it does not contain an unconditional undertaking to pay a certain sum. The

document embodies a condition that the amount mentioned in it shall be paid in instalments and the amount of instalments too has been left

unascertained. In no case, therefore, argued the learned counsel, can this document be said to contain an unconditional undertaking to pay a certain

sum of money. His second point is that even if the document is held to be a promissory note, yet the same is admissible in evidence being

insufficiently stamped and no suit can be based on it. Section 4 of the Negotiable Instruments Act read as under:

4 A promissory note' is an instrument in writing (not being a banknote or a currencynote) containing an unconditional undertaking, signed by the

maker, to pay a certain sum of money only to or to the order of, a certain person, or to the bearer of the instrument.

(7) In order that an instrument may fall under the aforesaid definition of a promissory note, it must satisfy the following conditions:

(i) it must be an instrument in writing other than a banknote or a currencynote :

(ii) it must contain unconditional undertaking to pay a sum of money to another person or to his order or to the bearer of the instrument:

(iii) the sum of money to be paid and the person to whom it is to be paid must be certain ; and

(iv) the undertaking to pay money must be signed by the maker of the instruments.

In order to find out whether an instrument contains an unconditional undertaking to pay money Section 4 may have to be read alongwith the

second paragraph of section 5 of the said Act which for the sake of convenience is reproduced as below :

A promise or order to pay is not ""conditional"" within the meaning of this section and Section 4, by a reason of the time for payment of the amount

or any instalment thereof being expressed to be on the lapse of a certain period

after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

(8) It is, therefore, manifest that merely because a promissory note contains a stipulation for payment of money through instalments it cannot cease

to be provided it satisfies all other requirements of a promissory note as given in Section 4, for a covenant to pay a certain sum of money through

instalments does not destroy its character of containing an unconditional undertaking to pay money. The other contention of Mr. Gupta that the suit

promissory note does not contain an undertaking to pay a certain sum is also fallacious. The sum mentioned in a promissory note for which there is

an undertaking to pay is certain, being Rs. 9,000/. Merely because its instalments are not as curtailed it does not mean that it does not contain an

undertaking to pay a certain sum, the promise still remains to pay a certain sum i. e. Rs. 9,000/. The first argument of the learned counsel that the

suit promissory note does not answer the definition given in sec 4 is thus overruled. I now proceed to deal with his second argument.

(9) Article 49 of Schedule I of the Stamp Act under which a promissory note as defined by Sec. 2 (22) is to be stamped reads as under:

49. Promissory Note as defined by section 2 (22)

(a) when payable on demand

(i) when the amount of value does not exceed Rs. 250 Ten paise

(ii) when the amount or value exceeds Rs. 250/ but does not exceed Rs. 1,000/ Fifteen paise

(iii) In any other case Twenty five paise

(b) when payable other the same duty wise than on de as a Bill of mand ... Exchange (No : 13) for the same amount payable other wise than on

demand.

(10) Promissory note under Section 2 (22) of the stamp Act means a promissory note as defined by the Negotiable Instruments Act and includes a

note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or

contingency which may or may not be performed or happen. The definition of a promissory note as given in this section is clearly wider than the

one given in Section 4 of the Negotiable Instruments Act for the purpose of stamp duty Article 49 places promissory notes into two categories viz.

those payable on demand, and those payable otherwise than on demand. In case the suit promissory note is held to be payable on demand then

undoubtedly it will be deemed to have been sufficiently stamped as it bears an impressed stamp of twenty five paise the maximum required for

promissory notes belonging to the first category If on the contrary it is held payable otherwise than on demand, then it is unquestionably

insufficiently stamped as in that case it shall have to bear a stamp required for a bill of Exchange as defined in Article 13. A Bill of Exchange in the

amount of Rs. 9,000/ requires a stamp of Rupees Nine under Article 13. The suit promissory note would be therefore, inadmissible in evidence

and the same would not be received in evidence even on payment of penalty in view of the prohibition to that effect contained in Section 35 of the

Stamp Act. The suit pronote itself speaks of paying the amount in instalments which in turn implies that the whole of it was not immediately payable

on demand but had to be paid within a certain period through instalments. The intention, therefore, was that the entire amount would be payable

within a certain period but surely not immediately after execution of the Promissory note. The use of the word "indultalab" in the promissory note

would not have the effect of changing this intention of the parties and the fact remains that the entire amount of Rs. 9,000/ was not payable on

demand immediately. A promissory note which does not become immediately payable on demand but is payable either after a certain time or

within a certain time cannot be said to be payable on demand under Act, 49. This is further borne out from Sec. 19 of the Negotiable Instruments

Act which says that a promissory note of Bill of Exchange, in which no time for payment is specified, and a cheque, alone are payable on demand.

I am fortified in taking this view by two Bench decisions viz Aiyappankutty Vs. Mathoo Mathai and others, AIR 1655 Tra Co. 65, and Thenappa

Chettiar Vs. Andipappa Chettiar, AIR 1971 Madras 290.

(11) The suit pronote was thus required to be stamped as a Bill of Exchange under CI. (b) of Article 49. The same being insufficiently stamped is

inadmissible in evidence and no suit can lie on its basis. The plaintiff's suit therefore, fails which is dismissed accordingly but in the peculiar

circumstances of the case without any order to as costs.