
(1945) 03 MAD CK 0036
In the Madras High Court

Penumatsa Rangaraju

APPELLANT

Vs

Sait Devichand Bhootaji Firm partner Sait Seshmull Kasturji
and Another

RESPONDENT

Date of Decision : 27-03-1945

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 27
Partnership Act, 1932 — Section 19

Citation : AIR 1945 Mad 439 : (1945) 58 LW 366 : (1945) 2 MLJ 113

Hon'ble Judges : Patanjali Sastri, J

Bench : Division Bench

Judgement

Patanjali Sastri, J.—The short question for determination in this civil revision petition is whether the second defendant, petitioner herein, can

be made liable on a promissory note executed by his partner, the first defendant. The Court below has found that the first defendant was the

managing partner of a rice. mill business carried on in partnership with the second defendant and others under the name of Sri Kusumaharinadha

Rice Mill at Amalapuram in East Godavari District, and that the money was borrowed for the purposes of the business. On these findings it has

passed a decree for the sum claimed with interest and costs against both the defendants personally and also against the assets of the firm.

2. The promissory note runs thus:

Promissory note executed and delivered on 10th December, 1939, corresponding to Sunday, the 30th day of Karthika Bahula of the year

Pramadi, in favour of Sait Devichand Bhutaji Garu, resident of Amalapuram, by Kalidindi Narayanaraju Garu's son Satyanarayanaraju, partner of

Sri Kusumaharinadha Rice Mill and resident of the said village.

On account of my necessity this day, namely, for the purpose of doing paddy business, in the Mill, the amount borrowed in cash from you is Rs.

600-0-0 (Rupees Six hundred). I shall, on demand, pay you or your order in cash in one lump sum, the said sum with interest thereon at Re. 0-15-

0 (fifteen annas) per cent, per mensem from this day till the amount is received, get the payment endorsed on the reverse and take back this note.

As you have now paid in cash the consideration hereunder (i.e.) rupees six hundred, I have received the same. This is the promissory note

executed and delivered with my consent.

(Sd.) Kalidindi Satyariarayanaraju,

10th December, 1939.

It is not disputed that the first defendant is liable under the note and no question accordingly arises u/s 28 of the Negotiable Instruments Act. Nor is

it disputed that the first defendant had power as managing partner to execute promissory notes binding on the firm. And it is recited in the note itself

that the money was borrowed for the purposes of the partnership business. In these circumstances, there can be no question but that under

Sections 19 and 22 of the Indian Partnership Act, 1932, the debt is binding on the firm, but the suit having been based solely on the note, the

question arises as to whether the note has been executed in such a form as to make the petitioner also liable on the note as a partner. Section 27 of

the Negotiable Instruments Act enacts that every person capable of binding himself or of being bound as mentioned in Section 26 may also bind

himself or be bound by a duly authorised agent acting in his name. This involves the consequence that, so far as the making, drawing, acceptance,

indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque are concerned, these acts must, in order to bind the firm, be

done by a partner in the name of the firm, and it is not sufficient that they are done in any other manner expressing or implying an intention to bind

the firm, which, u/s 22 of the Partnership Act, would otherwise be sufficient to bind the firm, for the latter section must yield to the special

provisions of the Negotiable Instruments Act.

3. It is not, however, necessary that the note should be signed by the partner in the name of the firm but the name of the firm as the party liable on

the note must be sufficiently disclosed (see Indur Pattabhirami Reddi Vs.

Kamisetty Balliah,). Neither the recital in the note that the borrowing was for the purposes of the rice mill business nor the description of the executant in the preamble as a partner of the firm, can, for the reasons indicated above, be regarded as sufficient to disclose that the firm is the party liable on the note (of. Katta Venkatannagari Sreenivasayya Vs. Kutagulla Mudda Nagappa by guardian Mr. C.P. Venugopal (Pleader) and Others,).

4. It has no doubt been held by a Full Bench of this Court in Sivagurunatha Pillai Vs. Padmavathi Ammal and Another, that where the maker of a promissory note added to his description in the preamble of the note the statement that he was "the agent under power of attorney" of another, he must be taken to have indicated that he executed the instrument in his capacity as agent and that the principal and not the executant was liable on the note, although he signed the note without adding words indicating the capacity in which he signed. This decision, however, proceeded on the use of the words "agent under power of attorney of etc." as a form commonly employed in promissory notes drawn in vernacular to indicate that the maker executes the note only in his capacity as agent so as to exclude his personal responsibility. It was observed:

The words are almost invariably regarded as limiting and qualifying the liability and not merely as describing or identifying the executant.

But the description of the executant in the preamble as a partner of a named firm is perfectly consistent with his executing the note as the party liable on the note and cannot be taken, on a fair interpretation of the instrument, as disclosing the name of the firm as the party liable thereon. It follows that the petitioner cannot be held liable on the promissory note in question.

5. The civil revision petition is allowed and the suit is dismissed with costs throughout so far as the petitioner is concerned.