

(1969) 03 MAD CK 0043
In the Madras High Court

P.S. Venkatachalapathy Iyer and Sons	APPELLANT
Vs	
Subramaniam Co. and Others	RESPONDENT

Date of Decision : 28-03-1969

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 30, 98, 98(b)
Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (1969) 82 LW 564 : (1970) 1 MLJ 56

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Single Bench

Judgement

T. Ramaprasada Rao, J.—No question of law or error of jurisdiction arises in both the civil revision petitions. No doubt the learned Subordinate Judge, Madurai, has committed certain errors in characterising a payee of a holder in due course which is unknown to law merchant. That apart, I have looked into the records and heard Mr. O. V. Baluswami, learned Counsel for the petitioner, who is the first defendant in the action. Both the revision petitions arise out of suits filed by the first respondent against the petitioner as the first defendant and the second respondent as the second defendant. The parties will hereinafter be described as plaintiffs and defendants. The first defendant had dealings with the second defendant and he was admittedly advancing monies in connection with such business dealings. On 2nd December, 1964, the first defendant gave a post-dated cheque dated 5th January, 1965, in one case and on 7th December, 1964 a similar post-dated cheque dated 12th January, 1965, in the other case. The second defendant, who had to buy on credit yarn from the plaintiffs passed on both the cheques to the respective plaintiffs and sought liquidation in part of the amounts by then due by him to the respective plaintiffs. The plaintiffs in each of the above actions presented the cheque so handed over by the second defendant for encashment. It may at once be noted that both the cheques were bearer cheques. When the cheques were presented by the plaintiffs as holders in due Course, the cheques Were returned with the endorsement "stop payment effected by the drawer." It is not in dispute, that the drawer, namely, the first

defendant, of both the cheques stopped such, payment in both the cases. It is contended that he had to stop such payment because the second defendant was not in a position to supply the towels which he had to manufacture and deliver over to him in return of the advances so received! by the second defendant from the first defendant, But this story was not believed. by the Court below. The first defendant having thus countermanded the cheques, ultimately went into the hands of each of the plaintiffs in the actions as above and. were dishonoured, the plaintiffs, "independently had recourse to Court for realisation of their amounts due on the strength of the dishonoured cheques. The first defendant curiously raised the plea that the plaintiffs were not holders in due course of the negotiable instrument in question and in any event there was no consideration for the endorsement or transfer made by the second defendant in favour of each, of the plaintiffs. On all the questions of fact as above the Court below found against the first defendant.

2. Mr. Baluswami, learned Counsel for the petitioner (first defendant) however, contends that the plaintiffs in each of the cases cannot be deemed to be a holder in due course and no notice of dishonour as prescribed u/s 30 of the Negotiable Instruments Act having been given, the suit is not maintainable. He no doubt fairly invited my attentions to Section 98(b) of the Act, but, however, contends that each section operates respectively in their field and the content and effect of one cannot be telescoped into the other and therefore the plaintiffs in each of the civil revision petitions ought to have been non-suited.

3. I am unable to agree with this contention. Section 30 provides an answer for the question posed. Section 30 says that the liability of a drawer in the case of dishonour of a cheque can only be in a case where the notice of dishonour has been given to the drawer as hereinafter provided. Learned Counsel did not bring to my notice any other provision in the Negotiable Instruments Act, to substantiate this limitation expressly provided for in Section 30. The only place where a provision as contemplated by Section 30 has been made appears to be in Section 98. Section 98 deals with cases where such notice of dishonour is unnecessary and one such case is that if the drawer has countermanded the payment, no such notice of dishonour is necessary in order to charge the drawer. That is the case here. Further this is a case where the negotiable instrument is a bearer cheque. Consideration's which might arise in the case of an account payee cheque or a crossed cheque cannot easily be applied to a case of a bearer cheque. It is practically issued by a drawer to the drawee for the purpose of immediate negotiation; and without any further operation of mechanics attached to it. I am, therefore, unable to agree with the learned Counsel for the petitioner that Section 98(b) ought to be read independently of Section 30. On the other hand, Section 98(b) is an exception to Section 30 and would certainly have to be read together.

4. I have already found that questions of fact have been found against the petitioner and he cannot canvass the correctness of such findings even though

the revision petitions are u/s 25 of the Provincial Small Cause Courts Act. In any event, I have considered such factual details also, and I am satisfied that the countermanding of the cheque in each of these cases by the first defendant is without any justification whatsoever and the plaintiffs in each of the suits as above did not have any notice of such countermanding before they presented the cheques for payment and that the cheques were accepted by them, in part payment of the debts due by the second defendant towards supplies of yarn made by the plaintiffs to the second defendant. In these circumstances, the judgments of the Court below are correct and the civil revision petitions are dismissed with costs in C.R.P. No. 718 of 1967.