
(2008) 02 RAJ CK 0098
In the Rajasthan High Court

Sampat Lal

APPELLANT

Vs

Onkar

RESPONDENT

Date of Decision : 07-02-2008

Acts Referred:

Evidence Act, 1872 — Section 114

Citation : (2008) 3 RLW 2485

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Govind Mathur, J.—The judgment and decree dated 25.7.2000, passed by Civil Judge (SD), Mawli, accepting a suit for recovery of money, stood reversed by first appellate court vide judgment and decree dated 15.3.2002, hence this revision petition is preferred by the plaintiff.

2. The material facts in brief are that the plaintiff sought a decree for recovery of money in the tune of Rs. 16,117/-, said to be due against the defendant on purchase of cloth. A credit entry was also made in this regard and the defendant put a mark of thumb impression thereon. The dues were not satisfied despite demand and notice.

3. The defendant's case is that he purchased cloth from the plaintiff and in total an amount of Rs. 1 150/- was due but that was paid in barter by giving wheat, mustered seeds and peanuts. The defendant denied the claim made by the plaintiff and also averred that his thumb impression was obtained on the credit note by misrepresentation.

4. On basis of pleadings, following issues were framed by the trial court:

1- vk;k oknh QeZ dk ekfyd gS

&oknh

2- vk;k izfroknh us oknh dh mDr QeZ ls diM+s dk ysu nsu fd;k] fglkc le>dj oknh dh cgh esa 9371@& :- dk ukek fy[k fn;k o ml ij C;kt dh nj nks :i;s izfr ISdM+k izfrekl ls vnk djuk r; fd;k A

&oknh

2,- vk;k okn/kkj bdjkj ij oknh us izfroknh dks /kks[kk nsdj tcju vaxq"B fu"kkuh bdjkj ij djkbZ A

?14-5-99 dks dk;e dh xbZ?

&izfroknh

3- vk;k djhc ukS nl o"kZ iwoZ izfroknh dh cgu xaxk dh "kknh es oknh ls 1600@& :- dk diM+k yk;k ftles ls 500@& :- ckdh jgs o ml isVs tckc nkos dh dye la[k 2 esa vafdrkuqlkj vnk;xh dj ns A

&izfroknh

4- D;k oknh us C;kt nj C;kt tksM+dj ;g jkf"k ckdh fudkyh gS A

&izfroknh

5- D;k oknh euh ySf.Max dk /ka/kk djrk gS o euh ySfMax ,DV dh /kkjk 22&23 ds izko/kkuks dh ikyuk ugh dh gS A

&izfroknh

6- D;k rFkkdfFkr __.k dk fu/kkZj.k __.k fuokj.k U;k;ky; ls dj;k tkuk pkfg, A

&izfroknh

7- vk;k okn cs:u fe;kn gS A

?4-2-98 dks ,.M dh xbZ?

&izfroknh

5. During trial, statements of plaintiff Sampatlal (PW-1) and defendant Onkar (DW-1) were recorded and a document Ex. 1-A was exhibited. As per the statements of Sampatlal, on 12.7.1992, a credit entry for the sum of Rs. 9371/- was made against the defendant and the same was accepted by him by putting his thumb impression. The entry aforesaid was written by Shantilal at the instance of defendant, the defendant failed to satisfy the credit despite repeated demands. In cross examination plaintiff Sampatlal denied that due against defendant was of only Rs. 800/- and Rs. 350/-. He also denied that dues were satisfied in barter by getting peanuts, mustered seeds and wheat.

6. Defendant Onkar, an illiterate farmer, stated on oath that during marriage of his sister he purchased cloth of Rs. 1600/- from the plaintiff and against that he paid a sum of Rs. 800/-, as such a sum of Rs. 800/- only was due. He further stated regarding purchase of cloth of Rs. 700/- for "Mayra" (a ritual to be observed by brother during marriage of sister or in sister's family) and out of

that too a sum of Rs. 350/- was paid. As per defendant Onkar the amount kept due as above was satisfied by giving wheat, mustered seeds and peanuts to the plaintiff. The writing of credit entry was also denied by the defendant, however, while accepting thumb impression he stated that the same was obtained by the plaintiff by saying that no further demand survives after receiving wheat, mustered seeds and peanuts.

7. Learned trial court, on acceptance of thumb impression, drew a presumption of the existence of the fact relating to dues of money and decided all issues in favour of the plaintiff. The suit was decreed accordingly. The first appellate court, after considering and re-appreciating the entire evidence available, decided the issues No. 1, 4, 5 and 6 in favour of the plaintiff but reversed the findings of trial court relating to remaining issues. The first appellate court accordingly set aside the judgment and decree dated 25.7.2000 and dismissed the suit.

8. To challenge the judgment and decree dated 15.3.2002 passed by the first appellate court, at the first instance, the plaintiff preferred a second appeal before this Court, however, the same was converted in the present revision petition, as the suit was relating to recovery of a sum of less than Rs. 25,000/-.

9. The ground to challenge the judgment and decree passed by learned appellate court is that once the defendant accepted his thumb impression on the credit note, then the appellate court should have presumed the existence of the fact relating to money due against the defendant as per the provisions of Section 114 of the Indian Evidence Act, 1872. It is urged that the trial court rightly presumed the due against the defendant, but the appellate court erroneously reversed the judgment on the ground that Shantilal, the person who written the credit note/entry, was not produced in evidence and as such the credit note was not authenticated.

10. Per contra, while defending the judgment impugned, the stand taken by Shri Dilip Kawadia, counsel for the defendant respondent, is that the defendant is an illiterate person and a petty farmer, therefore, the onus to establish that he put his thumb impression below the credit entry after understanding it was upon the plaintiff and he utterly failed to establish that. It is also urged that the judgment passed by the appellate court do not suffer from any jurisdictional error that may warrant interference of this Court in its revisional jurisdiction.

11. The assessment of the argument advanced by counsel for the parties is to be made by considering scope and extent to draw presumption in a case relating to an illiterate person. The fact that defendant Onkar is person illiterate, is not in dispute.

12. Hon"ble Supreme Court in Mst. Kharbuja Kuer Vs. Jangbahadur Rai, while dealing with the rules evolved for protection of pardanashin ladies, held as follows:

(6) The next question is what is the scope and extent of the protection. In

Geresh Chunder Lahoree v. Mst. Bhuggobutty Debia 13 Moo Ind App 419 (PC) the Privy Council held that as regards documents taken from pardahnashin women the court has to ascertain that the party executing them has been a free agent and duly informed of what she was about. The reason for the rule is that the ordinary presumption that a person understands the document to which he has affixed his name does not apply in the case of a pardahnashin woman. In Kali Baksh vs. Ram Gopal 43 Ind App 23 at p. 29 (PC), the Privy Council defined the scope of the burden of a person who seeks to sustain a document to which a pardahnashin lady was a party in the following words:

In the first place, the lady was a pardahnashin lady, and the law throws round her a special cloak of protection. It demands that the burden of proof shall in such a case rest, not with those who attack, but with those who found upon the deed, and the proof must go so far as to show affirmatively and conclusively that the deed was not only executed by, but was explained to, and was really understood by the grantor. In such case it must also, of course, be established that the deed was not signed under duress, but arose from the free and independent will of the grantor.

The view so broadly expressed, though affirmed in essence in subsequent decisions, was modified, to some extent, in regard to the nature of the mode of discharging the said burden. In 52 Ind App 342 at p. 352 : 89 Ind. Cas. 649 (Privy Council) it was stated:

The mere declaration by the settlor, subsequently made, that she had not understood what she was doing, obviously is not in itself conclusive. It must be a question whether, having regard to the proved personality of the settlor, the nature of the settlement, the circumstances under which it was executed, and the whole history of the parties, it is reasonably established that the deed executed was the free and Intelligent act of the settlor or not. If the answer is in the affirmative, those relying on the deed have discharged the onus which rests upon them.

While affirming the principle that the burden is upon the person who seeks to sustain a document executed by a pardahnashin lady that she executed it with a true understanding mind, it has been held that the proof of the fact that it has been explained to her is not the only mode of discharging the said burden, but the fact whether she voluntarily executed the document or not could be ascertained from other evidence and circumstances in the case. The same view was again reiterated by the Judicial Committee, through Sir George Rankin, in Hem Chandra vs. Suradhani Debya, AIR 1940 PC 134. Further citation is unnecessary. The legal position has been very well settled. Shortly it may be stated thus : The burden of proof shall always rest upon the person who seeks to sustain a transaction entered into with a pardahnashin lady to establish that the said document was executed by her after clearly understanding the nature of the transaction. It should be established that it was not only her physical act but also her mental act. The burden can be discharged not only by proving that the

document was explained to her and that she understood it, but also by other evidence, direct and circumstantial."

13. Following the law laid down in the case of Mst. Kharbuja Kuer (supra), the Apex Court in Krishna Mohan Kul @ Nani Charan Kul and Anr. v. Pratima Maity and Ors. 2003(3) DNJ (SC) 841, held as under:

16. At this juncture, a classic proposition of law by the Privy Council needs to be noted. In 89 Ind. Cas. 649 (Privy Council) it was observed as follows:

It is, therefore, manifest that the rule evolved for the protection of pardahnashin ladies not be confused with other doctrines, such as fraud, duress and actual undue influence, which apply to all persons whether they be pardahnashin ladies or not.

17. The logic is equally applicable to an old, Illiterate, ailing persons who is unable to comprehend the nature of the document or the contents thereof. It should be established that there was not mere physical act of the executant involved, but the mental act. Observations of this Court, though in the context of pardahnashin lady in Mst. Kharbuja Kuer Vs. Jangbahadur Rai, are-logically applicable to the case of the old, invalid, infirm (physically and mentally) and illiterate persons.

14. In view of the law laid down in the case of Krishna Mohan Kul (supra) the protections evolved for pardahnashin lady are having application in the case of an illiterate person also. To settle truth and accuracy of a document relating to an illiterate person, the authenticating witness must clarify that the document was read over to the illiterate person and he understood contents of that. It must also be certified that illiterate person marked (thumb impression in present case) the document in presence of the authenticated witness. Whenever an agreement or credit entry or any deed is drawn or executed with an illiterate person, a claim based on such document could not be sustained in the absence of evidence that it was interpreted before and understood by the illiterate person. The onus to prove truth and accuracy of such document highly rest upon the party that relies on the document.

15. In the case in hand, it is true that the defendant accepted his thumb impression, but with a specific stand of obtaining that by misleading him. As per the defendant he satisfied all the dues by giving wheat, mustered seeds and peanuts in barter and, therefore, by representing closure of all credit accounts, his thumb impression was obtained. Once the defendant, an illiterate person alleged obtaining of thumb impression by misrepresentation, it was all the more necessary for the plaintiff petitioner to prove truth and accuracy of the credit entry. Learned appellate court in the instant matter rightly held that no evidence was produced by the plaintiff to authenticate the credit entry dated 12.7.1992. No presumption could have been drawn regarding truth of credit entry merely on basis of acceptance of thumb impression by drawing presumption is per the provisions of Section 114 of the Indian Evidence Act. The order impugned, for

the reasons mentioned above, does not suffer from any error warranting interference of this Court in its revisional jurisdiction. Accordingly, the revision petition is dismissed. No order to costs.