
(2008) 02 AHC CK 0158
In the Allahabad High Court
Case No : Second Appeal No. 79 of 2004

State Bank of India, Branch Dangoli

APPELLANT

Vs

Sher Singh & Anr.

RESPONDENT

Date of Decision : 13-02-2008

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2008) 02 AHC CK 0158

Hon'ble Judges : Rajesh Tandon, J

Final Decision : Allowed

Judgement

1. Heard Sri D.S. Patni counsel for the appellant and Sri R.C. Upadhyay counsel for the respondents.
2. Present second appeal has been preferred against the judgment and decree dated 14.7.2004 passed by the District Judge, Bageshwar allowing the appeal of defendant Sri Sher Singh and setting aside the judgment and decree passed by the trial Court.
3. Briefly stated appellant State Bank of India filed a suit before the Civil Judge (S.D.), Bageshwar for the recovery of Rs.31,660/ from the defendants Sher Singh and Kunwar Singh. According to the plaintiff, defendant Sher Singh obtained a loan of Rs.25,000/ from State Bank of India Branch Dangoli for the development of his business. The defendant executed a promissory note in favour of the plaintiff and also executed deed for hypothecation of property. Defendant Kunwar Singh also stood surety for the plaintiff and he executed necessary documents in favour of the plaintiff. The defendant agreed to pay 12% interest with quarterly rests on the loan amount. The plaintiff actually paid Rs.25,000/ to the defendant Sher Singh. Defendant Sher Singh did not adhere the financial discipline of the Bank and failed to repay the loan amount and interest hence the plaintiff Bank has filed a suit against defendant Sher Singh and Kunwar Singh in the Court of Civil Judge, Bageshwar.

4. Defendant Sher Singh contested the suit and denied that any loan was obtained by him. However, he admitted his signatures over the Bank documents. He has taken a plea that his signatures were fraudulently obtained on the blank documents by the Bank Manager.

5. The trial Court has framed as many as four issues. Plaintiff has examined Sri D.K. Kacker as P.W. 1 who proved Bank Documents Ex. 1 to Ex. 6. Defendant Sher Singh examined himself as D.W.I. He did not file any documentary evidence.

6. On the basis of the evidence on record the trial Court has held that the plaintiff has successfully proved that the defendant has obtained a loan of Rs.25,000/ from the plaintiff on interest @ of 12% per annum with quarterly rests and thus decreed the suit of the plaintiff for the recovery of Rs. 31,660/with interest @ of 12% per annum with quarterly rests vide judgment and decree dated 14.5.2004.

7. Feeling aggrieved the defendant Sher Singh has preferred an appeal before the District Judge, Bageshwar. The lower appellate Court vide judgment and decree dated 14.7.2004 allowed the appeal and set aside the judgment and decree dated 14.5.2004 and dismissed the suit of the plaintiff. Against the impugned judgment and decree passed by the lower appellate Court present second appeal has been preferred by the plaintiff State Bank of India.

8. Second appeal was admitted on the following substantial questions of law:

1. Whether the Appellate Court has erred in law in not drawing the presumption under Sec. 118 of Negotiable Instrument Act in favour of plaintiff/appellant despite the admitted fact that Defendant has failed to disprove his signature upon the Demand Pronote executed by him while seeking the loan.

2. Whether despite the fact that the Defendant has failed to prove that his signature were procured upon a blank paper by the Plaintiff the Appellate Court has acted illegally in not drawing presumption in favour of plaintiff under section 114 of Indian Evidence Act.

3. Whether the Appellate Court committed a manifest error of law in disbelieving in the statement of account, produced by the plaintiff, which is an admissible evidence and is not required to be proved.

9. All the substantial questions of law are interconnected, therefore, they are discussed together for disposal.

10. The trial Court has held that the plaintiff has proved his case beyond doubt by filing documents of the bank and proving them as Ex.1 to Ex. 6. Defendant Sher Singh has admitted his signatures over all the documents, therefore, presumption of Section 114 Evidence Act and Section 118 of Negotiable Instruments Act goes in favour of the plaintiff and the suit of the plaintiff is liable to be decreed.

As against this the lower appellate court has held that the plaintiff Bank has

failed to prove that defendant Sher Singh has applied in writing to the Bank for loan. The Bank has not filed debit vouchers and as such it is not proved that the Bank has actually paid amount to the defendant. The lower appellate court has held that the presumption of section 118 of Negotiable Instruments Act and Section 114 of Evidence Act can be taken in favour of the defendant and as such the suit of the plaintiff was dismissed.

Section 118 of the Negotiable Instruments Act reads as under:

118. Presumptions as to negotiable instruments of consideration:

Until the contrary is proved, the following presumptions shall be made:

(a) Of consideration: that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration.

(b) As to date that every negotiable instrument bearing a date was made or drawn on such date;

(c) As to time of acceptance that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) As to time of transfer that every transfer of a negotiable instrument was made before its maturity;

(e) "As to order of endorsement that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) As to stamp that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) That holder is a holder in due course that the holder of a negotiable instrument is a holder in due course; provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving the holder is a holder in due course lies upon him.

11. The plaintiff Bank has filed original documents which includes Copy of the Account, Promissory Note dated 22.3.1991 (Ex.1), D.P. Note Delivery Letter dated 22.3.1991 (Ex.2), sanctioning letter dated 22.3.1991 (Ex.3) and Agreement for Hypothecation and Guarantee (Ex. 4). Defendant Sher Singh has admitted his signatures on these documents. However, he stated that the Bank Manager has fraudulently obtained his signatures on these documents. Sher Singh is not an illiterate person. It appears that at least he could read or write Hindi very well. The Bank's documents are printed in Hindi and English both scripts. Thus it cannot be presumed that the defendant has made his signatures over those

documents without understanding their effect. Thus presumption under section 118 of the Negotiable Instruments Act goes in favour of the plaintiff. Presumption under section 118 of the Act is although rebuttable presumption but the defendant has failed to rebut that presumption by adducing reliable evidence.

12. The trial Court while deciding issue No. 3 has held as under:

(Vernacular matter omitted... Ed.) 12A. The Apex Court in the case *U. Ponnappa Moothan Sons v. Catholic Syrian Bank Ltd.*, (1991) 1 SCC 113: (AIR 1991 SC 441 Para 15) has held as under:

In *A.L. Underwood Ltd. v. Bank of Liverpool and Martins. Same v. Barclays Bank of Atkin. L.J.* dealing with the protection that can be availed by a banker in such case, observed as under:

"It is sufficient to say that the mere fact that the bank, in their books, enter the value of the cheques on the credit side of the account on the day on which they receive the cheques for collection, does not, without more, constitute the bank a holder for value. To constitute value there must be in such a case a contract between banker and customer, express or implied, that the bank will, before receipt of the proceeds, honour cheques of the customer drawn against the cheques. Such a contract can be established by course of business and may be established by entry in the customer's passbook, communicated to the customer and acted upon by him. Here there is no evidence of any such contract."

(Emphasis supplied)

To the same effect is the ratio laid down in *Baker v. Barclays Bank Ltd.* After applying the dictum of *Atkin. L.J.* in *Underwood* case, it is observed therein that "it was not enough to show merely that the bank had entered the value of the cheques on the credit side of the account on which the bank received the cheques. To constitute value there must be in such a case a contract between banker and customer, express or implied, that the bank will before receipt of the proceeds honour cheques of the customer drawn against the cheques."

16. We find another passage in the above decision at page 581 which reads thus:

"What is suggested is that the bank did not give value, and the question arises which often arises in cases of this sort, namely, whether, when a cheque is given to a bank in these circumstances, the bank takes the cheque giving value for it and then becoming a holder in due course, or whether the bank takes the cheque merely to collect the amount of the cheque for someone else. That is a question of fact. The true relationship has to be inferred from the acts of the parties."

(emphasis supplied)

17. From the above discussion it emerges that the Indian definition imposes a more stringent condition on the holder in due course than the English definition and as the learned authors have noted the definition is based on *Gill* case. Under the Indian law, a holder, to be a holder in due course, must not only have

acquired the bill, note or cheque for valid consideration but should have acquired the cheque without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. This condition requires that he should act in good faith and with reasonable caution. However, mere failure to prove bona fide or absence of negligence on his part would not negative his claim. But in a given case it is left to the court to decide whether the negligence on part of the holder is so gross and extraordinary as to presume that he had sufficient cause to believe that such title was defective. However, when the presumption in his favour as provided under Section 118(g) gets rebutted under the circumstances mentioned therein then the burden of proving that he is a "holder in due course" lies upon him. In a given case, the court, while examining these requirements including valid consideration must also go into the question whether there was a contract express or implied for crediting the proceeds to the account of the bearer before receiving the same. The enquiry regarding the satisfaction of this requirement invariably depends upon the facts and circumstances in each case. The words "without having sufficient cause to believe" have to be understood in this background.

13. In the present case I find that the plaintiff Bank has produced all the documents which are sufficient to prove that defendant Sher Singh has obtained loan for Rs.25,000/ from the Bank and executed necessary documents in favour of the plaintiff Bank. The defendant has failed to adduce any evidence which may rebut the evidence adduced by the plaintiff. All the documents were duly proved by the oral evidence there is nothing in the statement of the plaintiff's to disbelieve his testimony.

14. In view of above, I find that the plaintiff has successfully proved his case that defendant Sher Singh had obtained loan of Rs.25,000/ from the plaintiff Bank on interest @ 12% per annum with quarterly rests and he failed to repay the loan along with interest. Thus the suit of the plaintiff has rightly been decreed by the trial Court.

15. Consequently, the judgment and decree dated 14.7.2004 passed by the lower appellate Court is set aside. Judgment and decree dated 14.5.2004 passed by the Civil Judge (S.D.) Bageshwar is upheld.

16. Accordingly, second appeal is allowed with costs throughout.