
(1908) 04 BOM CK 0010

In the Bombay High Court

Case No : O.C.J. Summary Suit No's. 60 and 90 of 1908

The Bank of Bombay

APPELLANT

Vs

Raghunathji Tarachand

RESPONDENT

Date of Decision : 13-04-1908

Acts Referred:

Citation : (1908) 10 BOMLR 668

Hon'ble Judges : Heaton, J

Bench : Single Bench

Judgement

Heaton, J.—These are two suits by the Bank of Bombay on two promissory notes or hundis made on the 13th November 1907 and payable in 60 or 63 days. The defendants are: (1) the firm of Raghunathji Tarachand, in the name of which the notes are made and by whom they were dishonoured ; (2) the heirs of the person by name Hirabhai Ghelabhai to whom or to whose order the notes were payable, who endorsed them to the Bank of Bombay and obtained money on them from the Bank. The latter defendants do not appear. The first defendant obtained leave to defend and pleaded in substance that though the notes were signed by Narotamdas the son of Gordhan, yet that he had no authority to sign with the name of the firm, and did not sign them for the firm ; that the notes were signed by Narotam only when entreated by Hirabhai; that he received no consideration and did not know he was incurring any liability; that they were obtained by fraud and that the Bank through their agent had notice of the fraud.

2. It appeared on the evidence that there is a firm of the name of Raghunathji Tarachand which belongs to a Hindu family of which Narotamdas is an adult member and that he signed the two notes with the name of the firm. The issues framed were as set out below.

1. Whether the 1st defendant firm ever signed the promissory note annexed to the plaint.

2. Whether the 1st defendant firm is not a joint family firm carrying on business

in Bombay.

3. Whether Narotamdas Gordhandas was at the time he signed the promissory note manager of the said joint family firm.

4. Whether even if manager the joint family firm is liable under the said promissory note.

5. Whether the transaction contained in the said promissory note is within the scope and purposes for which the joint family firm is carried on.

6. Whether the said promissory note was not obtained from Narotamdas Gordhandas without consideration and whether the signature of Narotamdas Gordhandas was not obtained to the said promissory note upon the false representation of one Hirabhai Ghelabhai that he would not incur responsibility in respect thereof.

7. Whether one Fatechand Raval was not the agent of the plaintiff Bank in the transactions between the Bank and Hirabhai Ghelabhai.

8. Whether the said Fatechand Raval was not aware before the plaintiff Bank took the endorsement of the note to themselves that the said note had been obtained without consideration and upon false representation.

9. Whether it was necessary to file suit 90 of 1908 in respect of the claim therein made.

10. Whether that claim should not have been included in Suit 60 of 1908.

11. General issue.

12. Whether the suit lies against defendant, there being no allegation that the firm consists of two or more persons.

3. In the end Mr. Binning, for the defendant No. 1, admitted that the defences implied in issues 7 and 8 were not made out and that the Bank was not fixed with notice of anything which could affect their right to recover. I will take the issues one by one.

4. Issue 1. It is proved by the evidence for the defendant and not denied on behalf of the plaintiff, that Raghunathji Tarachand is the firm name of a piece goods business carried on at a shop in the Mulji Jetha Bazaar; that this business was originally established by a person of the name of Raghunathjee Tarachand that when he died he left one son only, Gordhandas who continued the business; that when Gordhandas died, he left a son Narotamdas alias Chhotalal, and a posthumous son was also born to him; and that there are no other male members of the family. It follows that there is no one except these two sons who has any proprietary interest in the business. It is said that the widow of Gordhandas has, but that is a mistake ; she has a right to be maintained, and she may have a great deal of influence, but legally she has not a proprietary interest. . Other facts which are proved and not disputed are these. Narotamdas

came of age two and a half years ago. The posthumous son, Kesholal is still a child. The business is to a considerable extent, possibly mainly, managed by a munim named Mulchand. But Narotamdas has for some time past been attending the shop. He and Mulchand and a neighbouring shopkeeper Ramji Kuvarji who was called as a witness on behalf of the defence, try to minimise the part taken by Narotamdas in business affairs, but the facts stated are clearly apparent and there are these admissions : for years past Narotamdas has habitually sat in the shop, he has sometimes signed indents, he has signed for the firm when Mulchand told him to do so; he inspected the firm's books and knows the profits and losses; Mulchand is admittedly a paid servant and not a sharer or proprietor. Primarily, therefore, Narotamdas, as the eldest male member of the family and as the only member of the family and only proprietor who takes an active part in the business, has authority to sign for the firm and to use the firm's name. Indeed the facts stated show that no one else can use the firm's name now that Narotamdas is of age, except with his consent. It is not denied that Narotam signed the promissory notes in suit with the signature Raghunathji Tarachand, the signature of the firm. That being so, then as Narotam was empowered to sign for the firm, and as his own personal signature is altogether different, I hold that the notes were signed by the firm.

5. Issue 2. It is not denied that the firm is a joint family firm carrying on business in Bombay, and the evidence to prove it is ample and convincing : therefore, I find on this issue that the firm is a joint family firm.

6. Issue 3. I find that Narotamdas was manager of the joint family firm at the date of the notes. This follows from the effect of the evidence recited in considering the first issue. Narotamdas is the manager because he is the sole adult proprietor, that is the person in whom power vests, and because he takes an active part in the management. He may not take the most active part and may leave a great deal to Mulchand, but that does not alter the fact that Narotamdas is legally the manager.

7. The fourth issue is that which is most contested and that in regard to which the only real difficulty arises. It is urged for the defence, and in my opinion rightly urged, that the notes were signed in the course of a private clandestine transaction, which was not for the benefit of, and had no connection whatever with, the business of the firm, and was a fraud on the firm in so far as it pledged or purported to pledge that firm's credit. The facts disclosed by the evidence are these. But first seeing that [there is a clandestine fraud in the case, I will premise that it has not the remotest connection with the Bank of Bombay, who throughout transacted the business in their ordinary way. Nothing transpired, until after they had paid the notes, to bring to their notice the faintest hint of suspicion. The facts are these. Narotamdas is a very young man. Hirabhai who actually obtained the money on the notes from the bank was an older man. He had had a very good reputation as a pearl merchant and had dealt largely with the Bank in hundis. But as after-events showed, he was deeply involved and in

urgent need of money. The names on which he usually obtained money from the Bank had ceased to be of service to him ; he had to find fresh names. He persuaded Narotamdas to sign the notes for his own benefit. There had been previous dealings between them amounting in all to four or five thousand rupees, dealings which had no connection with the firm of Ragnathji Tarachand but were the private dealings of Narotamdas. This is demonstrated by the evidence of Narotamdas which on this point was simple and straightforward and which I believe : by the fact that there are no entries relating to the previous dealings or to the hundis in the books of the firm of Ragnathji Tarachand : and by the fact that in Hirabhai's books the previous dealings appear against the name of Narotamdas and not against that of the firm, and that there are no entries connecting the hundis either with the firm or with Narotamdas. There is no indication that Narotamdas received anything for signing the hundis or that there was any consideration other than a promise by Hirabhai. On this point I do not wholly believe Narotamdas; there is certainly something which he will not disclose, but I can see no reason to suppose that he benefited by the notes. Fatechand Rewalchand, the broker who proposed the business to the Bank, and who was in the habit of doing business for Hirabhai, tells an absurd and impossible story about the hundis which briefly stated is that he told Hirabhai he must find a new name, that the latter suggested Ragnathji Tarachand and that after making some enquiries Fatechand took two hundi forms to Narotamdas, whom he had never previously seen or known and obtained his signature to them. It is perfectly clear that Fatechand has not disclosed the true origin of the notes. Nor has Anandrao Jagannath, the hundi collector for the Bank, given at all a convincing account of what happened when, after Hirabhai was known to have committed suicide and feared to have died insolvent, he went to enquire about the maker of the promissory notes. The combination of the facts proved, with the reluctance of those who know the truth to disclose it, convinces me that the making of the hundis was a clandestine transaction, in fraud of the firm of Ragnathji Tarachand : and that the making of the notes was neither in the course of the business of, nor in the interest of nor in any way connected with, the affairs of the firm. Mr. Binning contends that on those findings of fact it must be held that the firm is not liable on the promissory notes.

8. Were it a case of ordinary partnership the decision would follow what is said at page 199 of Lindley on the Law of Partnership, 7th Ed. It is said : "So, if one partner acts in fraud of his co-partners, still they will be bound, if he has not exceeded his apparent authority, and if the person dealing with him had no notice of the fraud. Thus, in *Bond v. Gibson*, where one partner ordered goods on the credit of the firm, and immediately pawned them for his own benefit, the firm was held liable for the price of the goods. So, if one member of an ordinary trading partnership draws accepts or indorses a bill in the name of the firm, but for some private purpose of his own, and in fraud of his co-partners, they will be liable upon the bill at the suit of any holder for value without notice of the fraud."

9. The general reason is thus stated by Willes J. in *Hogg v. Skene* (1865) 18

C.B.N.S. 432. "The reason why, in the case of a partnership, a party is bound by an acceptance which is not his own but that of his co-partner is a reason founded on the law of estoppel in pais. Having consented to the exercise by another of an apparent authority to accept bills so as to bind him (even though such authority has been fraudulently exercised) as against a person who has taken the bill bona fide and without notice of the fraud the acceptor is estopped from denying the acceptance."

10. There are also some pertinent general observations, bearing on a case of this kind in the case of *Yorkshire Banking Co. v. Beatson* (1879) 4 C.P.P. 204 where it is clearly brought out that the source of the liability is that the credit of the firm is used and relied on.

11. The firm in this case is not a partnership. The business is a part of the property of a joint Hindu family, and the law to apply is the law properly applicable to joint Hindu family property. That law is not the English law of partnership bodily transferred from its own domain. As Melvill J. pointed out in the case of *Samalbai v. Someshwar* ILR (1889) 5 Bom. 44. "This is not the case of an ordinary partnership arising out of contract. It is the case of joint ownership in a trading business created through the operation of Hindu law between the members of an undivided Hindu family. The rights and liabilities arising out of such a relation cannot be determined by exclusive reference to the Indian Contract Act, but must be considered also with reference to the general rules of Hindu law, which regulate the transaction of united families. "But the law applicable to the commercial transactions of a firm certainly need not be the law applicable to the alienation of Immovable property. The law to be applied must vary with the nature of the property; for property of a peculiar nature has incidents and characteristics of its own. The essential basis of modern commerce is credit and when a Hindu trading firm engages in business in this city, it does so subject to the business principles of the city. As Pontifex J. said in *Johurra Bibee v. Sreegopal* ILR (1876) 1 Cal. 474 "persons carrying on a family business in the profits of which all the members of the family would participate must have authority to pledge the joint family property and credit for the ordinary purposes of the business. And therefore the debts honestly incurred in carrying on such business must override the rights of all members in the joint family in property acquired with funds from the joint business. " That of course does not describe the case here in one particular, viz., that here there was a fraud on the firm. But once the principle is admitted that the firm as a whole is liable for debts honestly incurred in the business of the firm, it is an admission of the principle that the credit of the firm not merely of an individual is pledged. And if that be admitted it follows by reason of commercial necessity that where the credit is pledged by a negotiable instrument, good on its face and transferred in due course, the liability of the firm, whose signature is made by a person with authority to make that signature, is perfect, whether the transaction was or was not in the course of the firm's business. Therefore I find on the fourth issue that the joint family firm is liable. That substantially disposes of the case.

12. Issue 5. The transaction was not within the scope and purpose for which the firm was carried on. That is these particular transactions were not. The firm might have made hundis for the purpose of their business, but these hundis were not for that purpose.

13. Issue 6. This issue is now admittedly immaterial but I find on the evidence that it is not proved that the note was without consideration, and was obtained by false representations. Undoubtedly the consideration was very inadequate, nothing more than a mere promise, and Narotamdas was misled by the specious misrepresentations of Ghelabhai; but I do not believe on the evidence, that he was misled to the extent of believing that he would incur no responsibility.

14. Issues 7 and 8 are found for the plaintiff as already stated.

15. Issues 9 and 10, I find in favour of the plaintiff. It is true that before Suit 60 was filed the second note had fallen due and had been dishonoured; but before that event happened, instructions had been given to file the suit on the note which had previously fallen due and been dishonoured. In matters of this kind promptness is of real importance, and it is not reasonable to deprive the plaintiff of certain costs because he did not stay his hand in the matter of the first suit in order that the second might be amalgamated with it before any suit was filed.

16. Issue 11. This needs no remark.

17. Issue 12. This is purely technical. It is said that the suit will not lie under Rule 365 because more than one partner is not alleged or disclosed by the plaint, and will not lie under Rule 375 because it is not a suit against one person. It seems to me that both propositions may safely be allowed without disturbing the plaintiffs' rights. These two rules do not exhaust the possible cases. This case is one of a simplicity which does not require to be provided for by a special rule. It is a suit on a promissory note against the maker of the note

18. There will be a decree as prayed for against all the defendants with all costs.

19. Decree to be against the firm of Raghunathji Tarachand and against defendant of the second party as the representatives of Hirabhai Ghelabhai to the extent of the funds of Hirabhai Ghelabhai which have come to their hands.