
(1944) 09 BOM CK 0015
In the Bombay High Court
Case No : First Appeal No. 120 of 1941

The Belgaum Bank LD.

APPELLANT

Vs

Bando Raghunath

RESPONDENT

Date of Decision : 01-09-1944

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 98(g)

Citation : AIR 1945 Bom 359 : (1945) 47 BOMLR 336

Hon'ble Judges : Lokur, J;Divatia, J

Bench : Division Bench

Judgement

Lokur, J.—After remand the lower Court has taken further evidence and recorded findings to the effect that the requirements of Clauses (c) and (g) of Section 98 of the Negotiable Instruments Act, 1881, have been proved and that therefore no notice of dishonour was necessary. On these findings the plaintiff is entitled to a decree against defendant No, 2 also. But it is contended in this Court on his behalf that the lower Court has erred in holding the requirements of those two clauses proved.

2. Clause (g) of Section 98 provides that no notice of dishonour is necessary when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument. It is urged for defendant No. 2 that the endorsement made by him at the foot of the; promissory note, exhibit 38, on August 3, 1939, does not amount to an unconditional promise to pay. To determine this it is necessary to briefly recapitulate the circumstances which led to the making of the endorsement. Defendant No. 1 was carrying on a motor business under the name of Shri Laxmi Auto and Electric Co. and the business was managed by her husband. The plaintiff bank was advancing money to her on a cash credit for which defendant No. 2 had stood surety to the extent of Rs. 15,000. On August 12, 1936, the accounts were settled, a part of the money was paid and for the remaining Rs. 7,000 defendant No. 1 passed a promissory note to defendant No. 2, and defendant No. 2 endorsed it in favour of the plaintiff

bank and handed it over to the bank. Subsequently defendant No. 1 assigned her right, title and interest in the motor business to a new company called Shri Laxmi Auto and Electric Co. Ltd., which took over her liability to the plaintiff bank, and paid Rs. 500 on February 19, 1938. Thereafter the plaintiff bank gave a notice to both the defendants demanding payment of the remaining amount due under the promissory note on March 25, 1938, and the new company paid Rs. 400 on May 26, 1938, and Rs. 565-2-9" on October 19, 1938. The balance due under the promissory note had still remained unpaid and the promissory note would have become time barred on August 12, 1939. Hence the plaintiff gave another notice to both the defendants on May 29, 1939, demanding the dues under the promissory note. It was then that defendant No. 2 made the following endorsement below the promissory note on August 3, 1939 :

Rs. 565-2-9 were paid on October 19, 1938, towards the satisfaction of the interest of the said promissory note. For that, endorsement is made to-day.

2. It is admitted by defendant No. 2 in his deposition that his object in making this endorsement was to keep the promissory note alive and it was obviously made because of the notice given to him by the plaintiff on May 29, 1939. The endorsement was made only nine days before the promissory note was to get time barred. The question now is whether an unconditional promise to pay can be spelt out of this endorsement. Had this endorsement not been made by defendant No. 2, it is obvious that the plaintiff would have been driven to file a suit to recover the dues under the promissory note, and in order to avoid that contingency defendant No. 2 thought it necessary¹ to make the endorsement and keep his liability under the promissory note alive. "The promise to pay" contemplated by Clause (g) of Section 98 need not be express. The expression used in that clause is "unconditional promise to pay". The expression "promise to pay" is also to be found in Section 76(c) of the Act, and in *Punjab Co-operative Bank v. Parma Nand* I.L.R (1935) Lah. 287 it was held that the word "promise" in that section might be either an express or an implied promise and that a letter written by the defendant "confirming" the loan made to him on a promissory note, payable on demand, amounted to "a promise to pay" within the meaning of Clause (c) of the section, and rendered presentation of the promissory note for payment unnecessary. In coming to that conclusion reliance was placed on two other cases of the same High Court where it was held that an unconditional acknowledgment implied a promise to pay and that a suit could be based upon such an acknowledgment. Young C. J. observed (p. 290):

The word "promise" has a well-known legal signification. It is elementary that a promise may either be express or implied. The use of the word "promise" without any qualification obviously must import the ordinary meaning of the word "promise" in law. It is clear, therefore, that the word "promise" may be either an express or an implied promise.

The principle laid down in this case was followed by the same High Court in *Punjab Co-operative Bank, Lahore v. Md. Yusaf* I.L.R [1939] Lah . 125 where it

was observed (p. 230) :

A promise need not be expressed so long as it is clearly deducible from the language employed by the parties or their conduct.

3. In the present case it is obvious that defendant No. 2 had undertaken the liability to pay off the debt incurred by defendant No. 1. He had originally stood surety for her, and when accounts were settled, he took a promissory note for the amount due from her and endorsed it in favour of the plaintiff, thereby undertaking the responsibility to pay the amount. Subsequently when the promissory note was about to be time barred, he impliedly renewed his undertaking by making an endorsement for the purpose of keeping it alive. It is argued on behalf of defendant No. 2 that a mere acknowledgment, although it may be intended to keep the debt in time, cannot be construed as a fresh promise to pay and the plaintiff cannot get the benefit of Clause (g); of Section 98 unless the endorser has made a fresh promise to pay and not merely acknowledged the existing liability, but as held in *Bai Shanta Vs. Trikam Lal Vrijavallabhdas Shah*, if a person unequivocally acknowledges that a debt is due from him, he should be taken impliedly to promise to pay it. He may couple his acknowledgment with some expression which shows that he was not promising to pay ; but if there is no such qualification, the acknowledgment of the debt involves an implied promise to pay. As Clause (g) does not require an express promise to pay, the acknowledgment contained in the endorsement made by defendant No. 2 below the promissory note is, by implication, a clear promise to pay. As no condition was attached to such an implied promise, it must be deemed to be an unconditional promise as required by that clause.

4. The rest of the judgment is not material to this report.