
(1941) 07 BOM CK 0007
In the Bombay High Court
Case No : 0.C.J. Suit No. 1234 of 1940

The Canara Industrial and Banking Syndicate Co. Ltd.	APPELLANT
Vs	
Narayan Venkatesh Shenoy	RESPONDENT

Date of Decision : 17-07-1941

Acts Referred:

Letters Patent Act, 1865 — Clause 12

Citation : (1941) 43 BOMLR 916

Hon'ble Judges : Kania, J

Bench : Single Bench

Judgement

Kania, J.—Plaintiffs have filed this suit to recover from the defendants Rs. 4,625 and interest. Between December 14, 1938, and February 16, 1939, defendant No. 1 drew on defendant No. 2 five bills of exchange, in all for Rs. 4,600, in favour of the plaintiffs. The said bills were endorsed over by the plaintiffs in favour of Nudengadi Bank of Calicut for collection and when presented to defendant No. 2 were accepted by him. On the due date, however, he dishonoured the same by non-payment. Thereafter there were certain discussions about the payment which are found in the letters exchanged between the parties. As a result of that correspondence defendant No. 1 drew eight bills of exchange on defendant No. 2 in favour of the plaintiffs. Three of them when presented to defendant No. 2 were accepted by him. He honoured one only by payment but dishonoured the other two. The remaining five bills were dishonoured by non-acceptance. These eight bills were for Rs. 4,875. Defendant No. 2 had honoured by acceptance one bill for Rs. 250 and the suit is filed for the remaining Rs. 4,625.

2. The suit was filed as a summary suit. Defendant No. 1 did not enter an appearance and has not taken any steps to defend, Defendant No. 2 obtained leave to defend. His written statement raises several contentions which are embodied in the issues raised for him. I shall deal with them in the order in which they are found in the issues.

3. The first contention, found in issues Nos. 1 and 2, is that this Court has no jurisdiction to try the suit. It was contended on behalf of defendant No. 2 that because he had accepted the bills at Calicut no part of the cause of action arose in Bombay and the leave obtained under Clause 12 of the Letters Patent was irregular. It is contended that his liability arose only on acceptance, and therefore, the whole contract in respect of his liability arose at Calicut. In my opinion this argument is unsound. The acceptance of a bill of exchange is made by an acceptor putting his signature on the bill. By reason of the signature the law raises certain implied obligations. In an ordinary case, if a party enters into a contract he has got to set out the terms of the obligations of the parties. The liability of an acceptor is governed by the Negotiable Instruments Act. In order to give rise to that liability the plaintiffs must prove that a negotiable instrument drawn on the drawee in favour of the payee was presented to the drawee and accepted by him as indicated by his signature on the bill. Each one of these steps has to be established by the plaintiffs. They have, therefore, to establish that the bills of exchange sued upon were drawn by the drawer on defendant No. 2, who is named as the drawee, in favour of the plaintiffs, who are the payees. This is necessary because only a drawee can accept a bill of exchange. Therefore the fact that the bills of exchange were drawn on defendant No. 2 is a material fact which has to be proved by the plaintiffs to establish their claim. As that fact took place in Bombay, with leave under Clause 12 of the Letters Patent this Court has jurisdiction.

4. It is contended on behalf of defendant No. 2 that it is on acceptance only that his liability arose. This contention overlooks the fact that the starting point for the liability is the drawing of the bills of exchange on him and the concluding point is when he accepts the liability by putting his signature on the bills as acceptor. The acceptance is, therefore, the culminating point fixing the liability on him and not the starting point as contended by defendant No. 2.

5. It was argued that this should be treated as a proposal to make him liable which was conveyed to him at Calicut and accepted by him at Calicut and therefore the whole of the contract of his liability arose at Calicut. In my opinion this argument overlooks the fact that this is not a simple contract governed by the Indian Contract Act, but the rights of the parties are governed by the Negotiable Instruments Act. The form of this proposal, the exact words thereof and the fact that it was drawn on defendant No. 2 are all essential things to be proved. The contents of the proposal are necessary to be proved and as that document was made in Bombay, I am unable to hold that no part of the cause of action arose in Bombay. No direct authority in respect of the jurisdiction of the Court as regards an acceptor has been cited before me. *Sewaram Gokaldas v. Bajrandat Hardwar* ` 18 Bom. L.R. 57 s.c. which was relied upon by defendant No. 2, does not help him. There the disputes were between the drawer and the payee. The question was whether the Court had jurisdiction when it was admitted that the hundi was drawn, delivered and was payable outside Bombay. On the other hand the decision in *Roghoonath Misser v. Gobindnarain* (1895) ILR

22 Cal. 451, shows that any step which the plaintiff has to prove in order to establish his title to sue on a negotiable instrument is a material fact, and if any such event took place within the" jurisdiction of the Court, with leave granted under Clause 12 of the Letters Patent, the Court would have jurisdiction to try the suit. Issue No. 1 is, therefore, answered in the affirmative and No. 2 in the negative.

6. Defendant No. 2 next contended that as he had given eight bills of exchange, whether they were accepted and honoured or not, defendant No. 2's liability under the original five bills came to an end. Section 62 of the Indian Contract Act was relied upon in this connection. The question whether the liability under the original five bills was extinguished is a question of fact. In this case the only evidence about the arrangement under which the eight bills were subsequently drawn is found in the correspondence (exhibit B). In that correspondence the plaintiffs expressly stated that on acceptance and payment of the latter eight bills defendant No. 2's liability would come to an end. On reading the whole correspondence I am unable to find anything to justify a conclusion that the plaintiffs had agreed to extinguish the liability of defendant No. 2 arising by reason of the acceptance of the five bills immediately on defendant No. 1 drawing the subsequent eight bills on defendant No. 2, or when defendant No. 1 agreed to draw those bills. Vague statements or inferences cannot be relied upon to extinguish a right which had accrued under a negotiable instrument, and there is nothing in the whole correspondence to support defendant No. 2's argument. The words actually used in the letters do not show that the plaintiffs had agreed to give up their claim under the acceptance endorsed on the old bills, until they were paid the amounts of the bills. The burden of proof on this question is on defendant No. 2 as he alleges that the obligation under the acceptance signed by him had been extinguished. In my opinion he has entirely failed to discharge that burden. The fact that those bills remained with the plaintiffs, with the acceptance of defendant No. 2 unobliterated, further supports the plaintiffs' contention that the liability was never intended to be or in fact extinguished. The third issue is therefore" answered in the negative.

7. Issues Nos. 4 and 5 are not necessary to be decided. The contention urged is that under the new arrangement defendant No. 1 was to draw bills of exchange for Rs. 4,600 and not for Rs. 4,875. Although the plaintiffs' suit is to recover the difference between Rs. 4,875 and Rs. 250 (i.e. the amount of the bill honoured and paid) the learned counsel for the plaintiffs has intimated to the Court that in this suit he claims only the amount of the original bills, viz., Rs. 4,600, less Rs. 250, with interest from the respective due dates. He does not claim the sum of Rs. 4,625 as formulated in the plaint. It is, therefore, not necessary to decide issues Nos. 4 and 5. Under the Negotiable Instruments Act the plaintiffs are entitled to recover the amount of the bills with interest at six per cent, from their respective due dates.

8. Out of the eight new bills drawn by defendant No. 1 on defendant No. 2 one

has been honoured and paid and two were accepted but not paid. Having regard to the decree which is being passed on the old bills in this suit, defendant No. 2 does not any more remain liable on his acceptance of the two bills of Rs. 750 and Rs. 250 accepted on August 22, 1939, and dated: August 18, 1939, although the bills are at present with the plaintiffs. Defendant No, 2's liability on all those bills is deemed to be unenforceable now.

9. On the footing of this judgment the parties are agreed that there will be a decree for the plaintiffs against the defendants (in invitum against defendant No. 1) for Rs. 4,350 with interest on Rs. 3,750 at six per cent, per annum from March 1, 1939, up to April 15, 1939, and on Rs, 4,350 from April 15, 1939, till judgment. Defendant No. 1 will pay Rs. 200 for costs of the suit. Defendant No. 2 should pay to the plaintiffs Rs, 800 as costs of the suit and Rs. 135 as costs of the summons for judgment. Interest on judgment against both the defendants at six per cent.