
(1990) 06 MAD CK 0022
In the Madras High Court
Case No : Appeal Suit No. 65 of 1982

Thiru Arooran Sugars Ltd.	Vs	APPELLANT
State Bank of India and others		RESPONDENT

Date of Decision : 14-06-1990

Acts Referred:

Contract Act, 1872 — Section 65
Specific Relief Act, 1963 — Section 33

Citation : (1990) 06 MAD CK 0022

Hon'ble Judges : Venkataswami, J;K.M. Natarajan, J

Bench : Division Bench

Advocate : G. Subramaniam, for the Appellant; A.R. Ramanathan, for the Respondent

Judgement

K.M. Natarajan, J.—The appeal is preferred by the fourth defendant against the judgment and decree passed by the learned Subordinate

Judge, Pattukottai, in O.S. No. 143 of 1979. The first respondent-plaintiff has preferred the memorandum of cross-objections.

2. The case of the plaintiff/first respondent bank is briefly as follows : The plaintiff has launched a scheme for development of intensive and

extensive agricultural operations in the agricultural sector. Under the scheme, it was proposed to supply agriculturists short-term loans, cash credit

account facilities and other assistance so that they can improve agricultural production. Defendants Nos. 2 and 3 are the sons of the first defendant

" They approached the plaintiff and requested the assistance of the plaintiff in raising sugarcane in their lands during the agricultural season in 1975-

76. They registered themselves as cane-growing ryots with the fourth defendant which is a sugarcane factory which has also recommended

granting such loans to defendants Nos. 1 to 3. The plaintiff agreed to extend the above facilities to defendants Nos. 1 to 3 based on their

application and the recommendation of the fourth defendant up to a maximum limit of Rs. 15,000, Rs. 13,400 and Rs. 14,700. Defendants Nos. 1

to 3 executed pronotes dated February 8, 1975, for Rs. 15,000, Rs. 13,400 and Rs. 14,700 each in favour of other defendants including the

fourth defendant for valid consideration agreeing to pay interest at the rate specified therein. The payees of the said pronotes assigned them in

favour of the plaintiff enabling the plaintiff to realise the said amount and credit the same in the account of the respective parties. Defendants Nos. 1

to 4 have also executed standing crop hypothecation agreements in favour of the plaintiff on February 8, 1975, wherein it is specifically stated that

the crops in the land stand hypothecated to the plaintiff. Further, there is another clause in the agreement under which the other defendants as

guarantors undertook to discharge the loan due to the plaintiff jointly and severally. Besides, the fourth defendant executed a letter of guarantee to

the plaintiff on the same day specifically guaranteeing payment of the loan by defendants Nos. 1 to 3 and to personally pay the balance of the

amount due on defendants Nos. 1 to 3 account in case they committed default. Since the amount was not paid, a suit was laid for recovery of Rs.

20,018.60, Rs. 17,965.60 and Rs. 19,446, altogether for Rs. 57,161.20

3. The first defendant in his written statement denied the transaction with the plaintiff. He also submitted that it is only the fourth defendant who

induced him to sign certain typed and blank papers and utilised the same for their benefit by getting loans from the plaintiff, that he never received

any amount from the plaintiff, that he did not execute or assign any promissory note in favour of the plaintiff and that the plaintiff is not a holder in

due course. Further, the interest claimed is excessive and that he is not liable to pay any amount. Hence he prayed for dismissal of the suit. The

second defendant filed a written statement, wherein he would contend that at the time of the alleged execution of the promissory Note, that is, on

February 8, 1975, he was a minor. His signatures were obtained by his father in blank and filled up papers and also on the alleged pronote

obtained by his father without even disclosing the contents. Hence, it will not be binding on him and it is void ab initio. He denied having entered

into any transaction with the fourth defendant or the plaintiff. Hence, he prayed for dismissal of the suit.

4. The third defendant who has filed a written statement also submitted that he was born in 1957, that is, on September 27, 1957, and that at the time of the execution of the promissory note, he was a minor. His signatures were also obtained on some blank and filled up papers and on the pronote by his father without disclosing the contents of the same. He is not bound by the same, that such transaction is void ab initio and that he is not liable to pay any amount. Further, he is not liable to pay the amount either as guarantor or as surety as he has not entered into any transaction either with the fourth defendant or the plaintiff.

5. The fourth defendant in his written statement, admitting the grant of the suit loan by the plaintiff to the first defendant, submitted that the fourth defendant will be liable only in the event of the plaintiff not being able to realise the amount from the first defendant. The fourth defendant also filed an application under Order SA, Civil Procedure Code, against the first defendant praying for a decree in his favour in respect of the suit claim with subsequent interest and costs and also prayed for dismissal of the suit.

6. The plaintiff in his reply statement denied the allegation in the written statements of defendants Nos. 2 and 3 that their signatures were obtained in blank forms and typed sheets without their knowing the contents. He is also disputing the dates of birth in respect of defendants Nos. 2 and 3 given in their written statements. It was contended that defendants Nos. 1 to 3 along with the fourth defendant are jointly and severally liable to pay the suit claim.

7. On the pleadings, the trial court framed as many as seven issues and an additional-Issue. It is to be noted that after the issues were framed, the first defendant remained ex parte. On the side of the plaintiff, exhibits A-1 to A-50 were marked and P.Ws. 1 and 2 were examined. On the side of the defendants exhibits B-1 and B-2 were marked and defendants Nos. 3 and 2 were examined themselves as D. Ws. 1 and 2. Issue No. 3 and the additional issue were answered in favour of defendants Nos. 2 and 3 and against the plaintiff holding that both the defendants, namely, defendants Nos. 2 and 3, did not complete 18 years of age on the date of the suit transaction and that the suit instrument was void under law.

Issues Nos. 1, 2, 4 and 6 were answered in favour of the plaintiff holding that the promissory notes are supported by consideration, that the

plaintiff is a holder in due course, that the amount claimed is not excessive and that the first defendant as well as the fourth defendant are liable to

pay the suit claim. Under issue No. 5, it was held that the fourth defendant is coextensively, jointly and severally liable to pay the suit claim and that

the first defendant is liable to indemnify the fourth defendant. Consequently, under issue No. 7, the suit was decreed directing defendants Nos. 1

and 4 to pay the plaintiff a sum of Rs. 57,161.20 with interest thereon at 14 per cent. per annum from June 21, 1977, while the suit against

defendants Nos. 2 and 3 was dismissed with costs. The first defendant was directed to indemnify the fourth defendant in respect of the entire

decree amount including the costs of the fourth defendant. Aggrieved by the same, the fourth defendant has filed the appeal. The plaintiff bank has

filed the memorandum of cross-objections to the effect that the decree and judgment of the lower court as far as the dismissal of the suit against

defendants Nos. 2 and 3 are concerned, are contrary to law and against the weight of evidence and probabilities of the case. The plaintiff also

contended that the lower court ought not to have accepted the SSLC register extracts, exhibits B-1 and B-2, as correct proof of age. In a nutshell,

the contention of the plaintiff in the cross-objections is that the lower court ought to have decreed the suit in its entirety with costs as prayed for.

Instead of filing a separate appeal, it has filed cross-objections in the appeal preferred by the fourth defendant.

8. Learned counsel appearing for the appellant, Mr. G. Subramaniam, submitted that the finding of the trial court that defendants Nos. 2 and 3 did

not complete the age of 18 years on the date of the suit transaction is not correct and the court below ought not to have relied on the SSLC

register extracts, which are marked as exhibits B-1 and B-2 as proof of their age. He would submit that the lower court having rightly granted a

decree to indemnify the fourth defendant should have either made defendants Nos. 1 to 3 also liable or should have dismissed the suit against the

fourth defendant and the finding of the court below dismissing the suit against defendants Nos. 2 and 3 is not sustainable as they have falsely

represented their age and defrauded the plaintiff and they having derived the benefit cannot escape from their liability. Defendants Nos. 1 to 3, who

are respondents Nos. 2 to 4, did not appear before this court even though they were served in the appeal.

9. The two questions that arise for determination in the appeal and the cross-objections are :

1. Whether the finding of the lower court that defendants Nos. 2 and 3 did not complete the age of 18 years on the date of suit transactions is correct ?

2. Whether the court below is justified in dismissing the suit against defendants Nos. 2 and 3 and whether they are also liable to pay the suit claim even if it is found that they were minors on the date of the transaction.

10. As regards the first question, it is seen that the third defendant examined himself as D. W. 1 and he deposed that he was born on September

27, 1957, and that exhibit B-1 is the certificate (SSLC) to evidence his correct date of birth recorded therein. The second defendant is his younger

brother. D. W. 1, further deposed that he was a minor on February 8, 1975, and that even if he borrowed any amount under the pronote, it is not

binding on him. The second defendant examined himself as D. W. 2. He deposed that he was born on December 21, 1959, that it has been so

recorded in the records maintained by the Flndlay High School, Mannargudi, and that exhibit B-2 is the certificate issued by the said school

wherein his ,late of birth has been correctly recorded as December 21, 1959 " Since he was a minor on February 8, 1975, he is not liable for the

suit claim. At the ,ime when D. Ws. 1 and 2 were examined, they were aged 22 and 21 Prospectively. No contra evidence was adduced on the

side of the plaintiff or the fourth defendant. Nothing tan ible was elicited in their cross-examination to discredit their testimony. Though it is stated in

the reply statement ed by the plaintiff that in law the burden of proving the alleged minority)n the date of the promissory note is on the party setting

up the plea of minority and ttie plaintiff will let in evidence by way of rebuttal on this question, the plaintiff has not adduced any rebuttal evidence-as

stated therein. No attempt has been made to find out whether the date of birth shown in the extracts is correct or not and nothing has been shown

on the side"of the plaintiff regarding the correct date of birth of defendants Nos. 2 and 3. In the circumstances, the court below rightly accepted the

evidence of D. Ws. 1 and 2 which is corroborated by exhibits B - 1 and B - 2 and

came to the conclusion that defendants Nos. 2 and 3 did not complete 18 years of age on the date of the transaction. The appellant is unable to convince us to hold that the said finding is not based on convincing records and acceptable evidence so as to interfere, with the same by this court. On the other hand, we are of the view that the said finding is based on evidence. We have no hesitation in finding this point against the appellant and in favour of defendants Nos. 2 and 3 by holding that defendants Nos. 2 and 3 had not completed the age of 18 years on the date of the suit transaction and they were minors on the date of the suit transaction.

11. As regards the second question, it is submitted by learned counsel for the appellant that even though defendants Nos. 2 and 3 were minors since they represented to the plaintiff at the time of the suit transaction in various documents filed before this court that they were majors and that having derived the benefit, they are bound to return the benefit derived under the suit transaction in view of section 65 of the Contract Act read with section 33 of the Specific Relief Act. Exhibit-1 is the promissory note executed by the third defendant to defendants Nos. 1, 2 and 4 and assigned in favour of the plaintiff. Exhibit A-2 is the crop/hypothecation-eum-guarantee agreement by defendants Nos. 1 to 3 in favour of the plaintiff. Similarly, exhibit A-3 is the hypothecation agreement by the second defendant in favour of the plaintiff wherein he has given his age as 21 years. Exhibit A-4 is the hypothecation agreement by the third defendant, the other brother; but the age has not been filled up. Exhibit A-5 is the promissory note executed by the second defendant in favour of defendants Nos. 1, 3 and 4 and assigned in favour of the plaintiff. Exhibit A-7 is the loan application submitted by the third defendant to the plaintiff through the fourth defendant wherein he was shown as a major. Exhibit A-6 is the withdrawal slip given by the third defendant to the plaintiff for debit entry of Rs. 50 on February 8, 1975, in the third defendant's account. Similarly, exhibit A-18 is the loan application submitted by the second defendant to the plaintiff through the fourth defendant. That was attested by defendants Nos. 1 and 3 and it was also signed by the Village Administrative Officer. Various vouchers for various amounts of debit entries in the accounts of defendants Nos. 2 and 3 were also marked. Exhibits A-45 and A-416

are copies of the ledger account in the plaintiff's bank relating to defendants Nos. 2 and 3. Exhibit A-29 is the loan application submitted by the father, the first defendant, and it was signed by defendants Nos. 2 and 3 as sureties. It is to be noted that only majors were eligible for registering as members. Defendants Nos. 2 and 3 registered themselves as members Nos. 22617 and 22616 under the fourth defendant. Learned counsel for the appellant drew our attention to these documents and the evidence of D. Ws. 1 and 2 and submitted that defendants Nos. 2 and 3 represented themselves as major, that on the same representation they registered themselves as members "of the fourth-defendant/sugar factory as agriculturists, that the first defendant also stood as guarantor for them and they obtained a loan by executing promissory notes and hypothecation agreements and that they also opened an account in the bank and operated the same. It was submitted that having defrauded the plaintiff and the fourth defendant and having derived the benefit, even though the transaction is void, they are liable to reimburse the benefit derived by them under the said transaction. In this connection, learned counsel for the appellant drew the attention of this court to section 33 of the Specific Relief Act, 1963. Section 33 reads as follows :

Power to require benefit to be restored or compensation to be made when instrument is cancelled or is successfully rescinded as being void or voidable. - (1) On adjudging the cancellation of an instrument, the court may require the party to whom such relief is granted, to restore, so far as may be any benefit which he may have received from the other party and to make any compensation to him which justice may require.

(2) Where a defendant successfully resists any suit on the ground-...

(b) that the agreement sought to be enforced against him in the suit is void by reason of his not having been competent to contract u/s 11 of the

Indian Contract Act, 1872 (9 of 1872), the court may, if the defendant has received any benefit under the agreement from the other party, require

him to restore, so far as may be, such benefit to that party, to the extent to which he or his estate has benefited thereby.

12. Learned counsel also, drew the attention of this court to section 65 of the Contract Act, which reads as follows :-

When an agreement is discovered to be void, or when a contract becomes void,

any person who has received any advantage under such

agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

13. Learned counsel also drew our attention to the following decisions in support of his contentions. In T.R. Appasami Ayyangar Vs.

Narayanaswami Iyer and Others, Division Bench of this court held (headnote) :

Where a minor fraudulently representing himself as major, induces an innocent person to purchase property from him, and then sues for the

recovery of that property on the ground that, owing to his minority, the transaction was void ab initio, his case is covered by section 65, Contract

Act. Hence under that section and u/s 41, Specific Relief Act, as well as under general principles of equity, a decree entitling the minor to the

recovery of that property cannot be passed except on condition that he should refund the purchase money.

14. In Bhattiprolu Hanumantha Rao Vs. Kodrakota Sitharamayya and Others, it was held:

Section 41 cannot be understood as limited in its operation to void instruments only but is applicable both to void and voidable instruments. The

statutory discretion vested in the courts of India by section 41 is of wider amplitude than the corresponding rule of equity administered in England

where there is no such statutory counterpart. That discretion is of course not to be arbitrary but sound and reasonable and guided by well- settled

judicial principles. But once it is found that the requirements of the section are satisfied and there exist circumstances which call for the exer- cise of

the discretion, the court is bound to afford relief without being hampered by reference to the limitations which surround the correspond- ing rule of

equity as, administered elsewhere.

Where a minor has executed deeds of sale during his minority with- out making any misrepresentation as to his age and the purchasers had no

knowledge that the executant was a minor when the sales were made, a decree for setting aside the sale deeds can be made only on condition that

the minor refunds to the purchasers the amount of the consideration received from them.

15. It is to be noted that section 41 of the old Specific Relief Act corresponds to section 33 of the new Specific Relief Act. In Pollock and Mulla

on Indian Contract and Specific Relief Acts, tenth edition, the provisions of the new section are discussed as follows :

The section expands section 41 of the repealed Act. Apart from compensation, the plaintiff may have to restore any benefit received under the

instrument, or the defendant may have to do so where he has successfully defended the suit on the ground that the contract was void. This equally

applies to a minor." Section 33(2)(b) is applicable to the case of a minor. On the question whether section 41 of the old Specific Relief Act would

apply to the case where the plaintiff is a minor or the defendant, there was divergence of opinion and it has now been resolved in *Hanumantha v.*

Sitharamayya, AIR 1939 Mad 106, already quoted and has been subsequently followed in *Vemana Venkama Naidu and Others Vs. Sayed*

Vilijan Chisty and Others, . It is worthwhile to quote the passage in *Bhashyam and Adz'ga* on the Negotiable Instruments Act, 14th edition, page

236, u/s 26 of the Negotiable Instruments Act, which reads as follows :

The question was elaborately considered by the Full Bench of the Lahore High Court (*Khan Gul v. Lakha Singh*, AIR 1928 Lab 609; 9 Lab 701

[FBI. See *Budha Singh v. Lakshmi Chand*, AIR 1929 Lah 880; 11, Lah. 167; 122 ic 466. Cf. *Manakchand v. Madanlal*, [1936] Lab. 943;

Sardar Prasad Das Vs. Binaykrishna Datta, ; *Harimohan Vs. Dulu Miya*, where it was held that a minor who by falsely representing himself to be a

major has induced a person to enter into a contract, is not estopped from pleading his minority to avoid the contract and is not liable either on the

contract or in tort (*Hashim Ilowladar v. Sreenath* [1946] ILR Cal 438. See *Rosz' Reddz' v. Krz'shna Reddz'* [1944] 2 MLJ 187. *Maganlal*

Kishordas Shah v. Ramanlal Hiralal Shah, AIR 1943 Born 362 but there is, however, the equitable liability to restore the benefits received by

him so as to place the parties in the position they occupied before the contract, whether the minor is before the court either as plaintiff or

defendant. It was also held that there is even a broader ground of equity beyond sections 39 and 41 of the Specific Relief Act (now sections 31

and 33, Specific Relief Act, 1963). On the other hand, there is the judgment of a Full Bench of the Allahabad High Court *Ajudhia Prasad and*

Another Vs. Chandan Lal and Another . *Kumar Ganganand Singh and Others Vs. Maharaja Sir Rameshwar Singh Bahadur and Another*, where

the opposite view has been taken relying on the observations of the Judicial Committee in the cases noted above and also on *Leslie Ltd. v. Sheitt*

[1914 I 3 KB 607. *Stocks v. Wilson* [1913] 2 KB 235 which has been approved of and followed by the Judicial Committee" In other High

Courts the opinion seems to favour the view that u/s 41 (now section 33 of the Specific Relief Act, 1963) there is a discretion vested in court to

give relief, the granting of which depends on the circumstances of each particular case, the question depending in some cases on whether the minor

is the plaintiff or the defendant. *Sankaranarayana Aiyar Firm (Insolvent) Vs. Yegnalakshmi Ammal and Others*, ; *Abdus Subhan v. Nusrat Ali*

[1937 I ILR 12 Luck 606; *Vemana Venkama Naidu and Others Vs. Sayed Vilijan Chisty and Others*, or whether the thing to be restored is

merely money or specific property, movable or immovable AIR 1929 156 (Nagpur) -

This right of restitution can arise only if the person entering into the transaction was not aware of the fact of minority and there was some

representation by the minor as to his age, with a view to deceive him. *Harimohan Vs. Dulu Miya*, .

16. This is a case where minor defendants Nos. 2 and 3 misrepresented their age at the time of the transaction and there is absolutely nothing to

show that the plaintiff or the fourth defendant was aware that defendants Nos. 2 and 3 were minors at the time of the suit transaction. It is not in

dispute that they derived benefit under the suit transaction. Thus, considering the facts and circumstances of the case, we are of the view that in

view of the provisions of section 33 of the Specific Relief Act read with section 65 of the Contract Act, defendants Nos. 2 and 3 are bound to

restore the benefit derived by them under the suit transaction and in that view, they are also jointly liable along with the first defendant for the suit

claim. This point is accordingly answered in favour of the appellant.

17. In the result, the appeal and the memorandum of cross-objections are allowed, the decree and judgment of the lower court in so far as they

relate to the dismissal of the suit against defendants Nos. 2 and 3 are hereby set aside and instead, the suit is decreed directing defendants Nos. 1

to 4 to pay the plaintiff the sum of Rs. 57,161.20 with interest thereon at 14 per cent. per annum from June 21, 1977, till the date of realisation

with costs. Further, there will be a decree directing the first defendant to indemnify the fourth defendant the entire decree amount with interest and costs, including the cost of the fourth defendant incurred by him as per order passed in I. A. No. 8 of 1979. The parties are directed to bear their respective costs in the appeal and the memorandum of cross-objections.