(1933) 03 PAT CK 0013

In the Patna High Court

Tikan Chand Chaudhury APPELLANT

Vs

Sudarsan Trigunait and Others RESPONDENT

Date of Decision : 06-03-1933

Acts Referred:
Negotiable Instruments Act, 1881 (NI) — Section 4

Citation : AIR 1933 Patna 263

Hon'ble Judges : Agarwala, J

Bench : Division Bench

Judgement

Agarwala, J.—This is an appeal from a decision of the Subordinate Judge of Dhanbad, confirming a decision of the Munsif of Dhanbad. The plaintiff sued defendants Nos. 1 to 3 on a hand-note executed by defendant No. 2 for Rs. 600 with interest at 4 per cent. per mensem.

2. The plaintiff alleged that the loan was incurred by the defendant No. 2, as the managing member of a joint Hindu family consisting of himself, his father defendant No. 1 and his brother defendant No. 3. The suit was contested by defendants 1 and 3 only who pleaded that the money was not borrowed for legal necessity and the rate of interest was excessive. The first Court held that defendants 1 and 3 were liable but reduced the interest to 12 per cent. per annum. Defendants 1 and 3 appealed to the District Judge who held that they were not liable on the ground that an undisclosed principal is not liable under the Negotiable Instruments Act.

3. For this proposition the learned Judge cited the decision of the Privy Council in Sadasuk Janki Das v. Kishan Pershad AIR 1918 PC 146 . That decision has been considered by a Division Bench of the Allahabad High Court in Krishnanand Nath Khare Vs. Raja Ram Singh, where it was held that the principle of that case would not apply to a joint Hindu family Their Lordships at p. 395 of the Report held:

The position of the head of a joint family is not the same as that of an ordinary business agent and according to the true view, a joint Hindu family, being a legal person according to Hindu law, lawfully represented by and acting through the managing member or head thereof, is included ordinarily in the term "a person". In other words, a promissory note, according to the definition contained in Section 4, Negotiable Instruments Act, is an instrument in writing containing an unconditional undertaking to pay a certain sum of money signed by the maker and the question in the event of the person in whose favour such document is given or into whose hands it may fall in the case of an alleged joint Hindu family, is whether such a joint Hindu family is in fact the maker or only the member thereof who happens to have signed the document.

4. Decisions of the Bombay, Calcutta and Madras High Courts were cited in support of the view that the Judges of the Allahabad High Court took. That decision was followed by another Division Bench of that Court in Raghunath Singh v. Sri Narain AIR 1923 All 424. The learned Advocate for the respondents, however, has cited a decision of a Single Judge of this Court in Janmejoy Pandey v. Jiban Pandey CR No 532 of 1929. That case, however, is not really in point as it was a case in which the hand-note in question was executed by a mother, purporting to borrow the money for the expenses of the minor of whom she was the guardian; and it was held that in a suit on a hand-note the minor was not liable.

5. The learned Advocate also cited the decision in Ramgopal Ghose Vs. Dhirendra Nath Sen and Others, , in which it was held that in a suit on a hand-note against the maker of a negotiable instrument the other members of the joint family are not liable.

6. A number of cases of various High Courts were cited that took the opposite view; but in the opinion of the learned Judge of the Calcutta High Court (Page, J.), those decisions required reconsideration. I see no reason for not following the two Division Bench decisions of the Allahabad High Court and the Bombay, Calcutta and Madras decisions cited in those cases.

7. The result is that the appeal is allowed with costs and the suit decreed with costs throughout.