

**(2014) 06 BOM CK 0147**

**In the Bombay High Court**

**Case No :** Appeal No. 666 of 2004 in Summons for Judgment No. 595 of 2001 in Summary Suit No. 223 of 2001

Vijay Baburao Malankar

APPELLANT

Vs

Indian Oil Corporation Ltd.

RESPONDENT

---

**Date of Decision :** 11-06-2014

**Acts Referred:**

Negotiable Instruments Act, 1881 (NI) — Section 11, 12, 13(1), 138, 14

**Citation :** (2014) 06 BOM CK 0147

**Hon'ble Judges :** S.J. Vazifdar, J;A.K. Menon, J

**Bench :** Division Bench

**Advocate :** H.V. Chande, Advocate for the Appellant; Tanmayi Rajdhyaaksha I/b. RMG Law Ass, Advocate for the Respondent

**Final Decision :** Dismissed

---

## **Judgement**

A.K. Menon, J.—The impugned order made the above Summons for Judgment absolute and decreed the suit filed for the recovery of a sum of Rs. 64,02,308/- together with interest at 18% p.a. from the date of the suit till payment or realisation.

2. The suit is based on nineteen dishonoured cheques issued by the Appellant towards the price of lubricants sold and delivered by the Respondent to the Appellant under 14 indents and 33 invoice-cum-delivery-challans.

3. The main question that arises in this appeal is whether a cheque is an instrument within the meaning of that term in Section 80 of the Negotiable Instruments Act entitling the payee to interest at 18% per annum on a dishonoured cheque. The learned Judge rightly considered this question in the affirmative.

Before dealing with the issue, we will consider the defence on merits.

4. In his affidavit in reply to the Summons for Judgment, the Appellant contends

that he was pressurized by the Respondent to buy the lubricants and the Respondent held out threats that it would not supply kerosene and light diesel and would not extend cheque payment facility to the Appellant, if the Appellant did not buy the lubricants. He further contends that the Respondent committed breach of a dealership agreement to supply kerosene and light diesel oil by withholding supply from October, 1998, resulting in heavy losses. He also stated that the business of lubricants failed and the customers who purchased lubricants failed to pay the amounts due to him. He therefore filed complaints u/s 138 of the Negotiable Instruments Act ("the Act") against his customers. The Appellant alleged that the Respondent had agreed that the Appellant could pay the Respondent's dues after recovering amounts due to him from his customers.

5. The learned Judge rightly rejected the totally unsustainable defences on merits. We are entirely in agreement with the finding and the reasons in support of the findings. We have nothing to add to what the learned Judge has said.

6. At the hearing of the Summons for Judgment, an additional defence was taken to the effect that the Respondent is not entitled to charge interest on the amount of dishonoured cheques u/s 80 of the Act. Mr. Chande, the learned counsel for the Appellant submitted that interest is not payable u/s 80 of the Act in respect of dishonoured cheques. His submissions are as follows. Section 80 applies only to those instruments referred to in Section 79 viz. promissory notes and bills of exchange. Section 80 is "controlled" by section 79 and for that reason, section 80 applies only to those instruments to which section 79 applies. As section 79 does not include cheques, section 80 cannot and does not apply to cheques. He therefore contends that the claim for interest at 18% p.a. is not sustainable.

7. A plain reading of the provisions of the Negotiable Instruments Act exposes the fallacy of the submission. Sections 5 and 6 of the Act read as follows:-

5. Bill of exchange - A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

6. Cheque - A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

8. Thus, a cheque is a bill of exchange drawn on a specified banker and payable only on demand whereas a bill of exchange is an instrument in writing drawn on any person directing him to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument. A bill of exchange is an instrument which may be drawn on any person specified whereas a cheque is a bill of exchange drawn only on a specified banker and is payable on demand. Section 5 of the Act specifically terms a bill of exchange to be an instrument. Section 6 defines a cheque to be bill of exchange with the characteristics stipulated therein. It is axiomatic therefore that a cheque is also an instrument.

9. The term "instrument" has been used throughout the Act in relation not only to promissory notes and bills of exchange but also to cheques. Sections 11, 12 and 13(1) and 14 are some of the provisions which illustrate this:-

11. "Inland instrument"-A promissory note, bill of exchange or cheque drawn or made in (India) and made payable in, or drawn upon any person resident in, (India) shall be deemed to be an inland instrument.

12. "Foreign instrument"-Any such instrument not so drawn, made, or made payable shall be deemed to be a foreign instrument.

13. "Negotiable Instrument"-(1) A "negotiable instrument: means a promissory note, bill of exchange or cheque payable either to order or to bearer.

14. Negotiation-When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

10. These provisions demonstrate that the Act uses the term instrument even in relation to cheques. It follows therefore that a cheque is also an instrument.

11. There are provisions which use the term "instrument" only in relation to certain types of instruments including promissory notes and bills of exchange. Such cases are however clear from the context. Section 79 is an example of this. Where the term "instrument" is used without it being expressly or impliedly restricted to any type of instrument it must be read to include cheques. Section 80 does not contain any such limitation or restriction. It follows therefore that cheques fall within the ambit of the term "instrument" in section 80.

12. The contention that Section 80 applies only to instruments referred to in Section 79 viz. promissory notes and bills of exchange is unfounded. We held earlier that a cheque is an instrument. Thus, absent Section 79 there is no doubt that Section 80 would also apply to cheques. Mr. Chande submits however that Section 79 "controls" Section 80 and Section 80 applies only in respect of instruments referred to in Section 79.

13. Sections 79 and 80 read as under:-

79. Interest when rate specified-When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

80. Interest when no rate specified-When no rate of interest is specified in the instrument, interest on the amount due thereon shall, [notwithstanding any agreement relating to interest between any parties to the instrument], be calculated at the rate of [eighteen per centum] per annum, from the date at which the same ought to have been paid by the party charged, until tender or

realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

14. Section 79 refers only to promissory notes and bills of exchange for interest can be stipulated in these instruments. Bills of exchange and promissory notes can make provision for payment of interest by the drawer and the acceptor. A cheque cannot by its very nature have a provision for payment of interest. Moreover, Section 79, to use Mr. Chande's term, "controls" section 80 only to the extent that if the instruments referred to therein provide a rate of interest it is that rate and not the rate stipulated in section 80 that would be applicable. If the Legislature intended excluding cheques from the ambit of section 80, it would have so provided in clear terms. The plain language of section 80 militates against Mr. Chande's submission.

15. Accordingly, section 80 must be read to include within its ambit all negotiable instruments, be it a bill of exchange or promissory note wherein a rate of interest though can be is not specified or a cheque wherein interest cannot be provided. As rightly held by the learned Judge:-

...In my opinion, when Section 80 says "when no rate of interest is specified in the instrument" it takes into its compass the negotiable instruments of both the types i.e. where by their very nature it is possible to specify the rate of interest, but it has not been specified as also those negotiable instruments where it is not possible to specify the rate of interest on the face of the instrument.

16. For the aforesaid reasons, we have no hesitation in holding that a cheque undoubtedly falls within the ambit of section 80. We do not find any merit in the contention that the applicability of section 80 to a cheque gives rise to a triable issue in this matter.

17. In the result, the appeal fails and is dismissed. The order dated 27th October, 2004 in Notice of Motion No. 3174 of 2004 in the above appeal staying execution of the impugned judgment and decree stands vacated. The Respondents are at liberty to withdraw the amount deposited with the Prothonotary & Senior Master along with the accrued interest thereon towards payment under the decree.

There shall however be no order as to costs.