(1956) 10 MP CK 0005

Madhya Pradesh High Court (Gwalior Bench)

Case No: Civil Revision No. 99 of 1956

Radheyshyam		APPELLANT
	Vs	
Kashinath		RESPONDENT

Date of Decision: Oct. 20, 1956

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 118

Citation: (1957) JLJ 47

Hon'ble Judges: Dixit, J

Bench: Single Bench

Advocate: Patankar, for the Appellant; B.D. Gupta, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Dixit, J.

The plaintiff-non-applicant has filed a suit in the Court of Civil Judge First Class for the recovery of Rs. 1020/- from the applicant on the basis of a Promissory note said to have been executed by him in favour of the plaintiff on 23rd September 1954, The defendant, while admitting that the Promissory note was signed by him, has pleaded that there was no consideration in support of the note. After the filing of the written statement, the plaintiff in answer to one of the interrogatories served upon him stated that the amount stated in the promissory note was not actually given to the defendant but that the amount was at the instance of the defendant debited to the account and credited to the account of Nandram Naraindas. The trial Judges framed an issue whether the promissory note was not supported by consideration and placed on the defendant the burden of proving want of consideration. The defendant then applied for placing the burden of proof of this issue on the plaintiff on the ground that according to the plaintiff''s reply the consideration for the promissory note was different from that recited in the

negotiable instrument. The learned trial Judge rejected this prayer of the defendant. Hence this revision petition.

2. I have heard learned counsel for the parties. In my opinion this revision petition must be granted. u/s 118 Negotiable Instruments Act, the court has to presume that every negotiable instrument was made or drawn for consideration. This presumption throws the burden of proving of failure of consideration on the maker of the note. But where the plaintiff himself states facts which militate against the presumption, then the presumption is destroyed and the onus is shifted on to the plaintiff to prove that the promissory note was executed by the defendant for consideration. Here the promissory note recites the payment of Rs. 1000/- in cash to the defendant. It says--

The words clearly involve that an amount of Rs. 1000/-was actually paid to Radheshyam and the promissory note was for the repayment of this amount. The presumption which could have been drawn u/s 118 of Negotiable Instruments Act was that the sum of Rs. 1000/- was paid to Radheshyam. But the plaintiff in the present suit has himself stated that the amount of Rs. 1000/- was not actually paid to Radheshyam, but that at the suggestion of the defendant the amount was debited to his account and credited to the account of Nandram Naraindas. The plaintiff has thus deprived himself of the presumption by stating facts contrary to the plain tenor of the promissory note. In such circumstances it is incumbent on the plaintiff to prove affirmatively that the defendant executed the promissory note in question for Consideration. This view is amply supported by the decisions in G. Venkatareddi Vs. P. Nagireddi, ; Musammat Zohra Jan vs. Musammat Rajan Bibi (28 I.C. 402); Moti Veerappa vs. Gurubasappa (AIR 1956 Mys 30); and AIR 1952 308 (Nagpur) , In all these cases it has been held that u/s 118 of the Negotiable Instruments Act, the initial presumption is that the promissory note was executed for consideration and the onus lies on the executant to prove that no consideration was passed. But where the plaintiff himself sets up a case destroying the presumption by pleading facts contrary to the plain tenor of the promissory note, then it is impossible for the plaintiff to take recourse to the presumption and he must prove the consideration, in G. Venkatareddi Vs. P. Nagireddi, the plaintiffs set up consideration different from the one recited in the negotiable instruments and it was held that the burden of proving want of consideration did not rest with the defendant but proof of consideration shifted on to the plaintiff. Mr. Bhagwandas Gupta learned counsel for the non-applicant relying on AIR 1930 187 (Nagpur) and Premraj vs. Nathmal (AIR 1936 Nag 130) contended that u/s 118 Negotiable Instruments Act the burden or proving failure of consideration is always on the maker of the note and that it is not shifted by the mere fact that consideration or part of it was not paid in cash as stated in the note bat in a different form. Those cases no doubt hold that a mere admission that the consideration was not the one recited in the negotiable instrument doss not shift the burden of proof on to the plaintiff when the defendant denies consideration. With all defence to the learned

judges deciding those cases. I do not find myself in agreement with the view taken by them. These two decisions of Single Judges were not followed in G. Venkatareddi Vs. P. Nagireddi, and are contrary to the decision in AIR 1952 308 (Nagpur) where a Division Bench of the Nagpur High Court has held that the presumption arising u/s 18 of the Negotiable Instruments Act would be destroyed where the plaintiff-states facts contrary to the plain tenor of the promissory note.

3. For these reasons I would accept this revision petition and direct the trial Judge to recast the issue about consideration in the following manner:--

Whether the defendant executed the suit note for an amount credited to the account of Nandram Naraindas in the plaintiff''s account books and debited to his own account in those account books. The burden of proof of this issue shall be on the plaintiff.

4. Costs of this revision petition shall follow the result of the suit in the lower court.