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(1941) 12 CAL CK 0001

Calcutta High Court

Case No: None

Ramani Mohan Bhattacharjee		APPELLANT
	Vs	
Surjya Kumar Dhar and Another		RESPONDENT

Date of Decision: Dec. 7, 1941

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 118, 118(a), 43

Citation: AIR 1943 Cal 22

Hon'ble Judges: Pal, J; Mohamad Akram, J

Bench: Full Bench

Judgement

Pal, J.

These two appeals are by the plaintiffs in two suits based on two pronotes. Second Appeal No. 497 of 1939 arises out of Suit No. 93 of 1936, which is based on the pronote for Rs. 2400 executed by defendant 1 on 7th November 1933 in favour of the plaintiff in that suit, Ramani Mohan Bhattacharyya. The other appeal, namely, second Appeal No. 498 of 1939, arises out of suit No. 94 of 1936 based on another pronote for Rs. 2000 executed by the same defendant 1 Surjya Kumar Dhar in favour of the plaintiff in this suit, Ramesh Chandra Bhattacharyya. The plaintiffs'' case as made in the plaint in each of these suits is that defendant 1 Surjya Kumar Dhar borrowed the amount named in the pronotes from the pro forma defendant 2 Lokenath Sarma and executed the pronotes on 7th November 1933 in favour of the plaintiff in each suit. As the defendant did not make any payment in spite of repeated demands the suits were instituted for the realization of the amounts due on these pronotes.

2. Defendant 1 admitted the execution of the pronotes; but his case in each suit is that he did not take any loan on the basis of the two hand-notes in suits from the plaintiffs or from the pro forma defendant. He further stated in his written

statement that defendant 2 no doubt paid to him the sum of Rs. 4400 in several instalments during the period from 25th May 1925 to 1st September 1925; but these payments were pursuant to an agreement to purchase from the defendant his interest in certain mortgage. His case on this point is that one Kali Kishore Pal Choudhury borrowed money from defendant 1 and his brothers and uncles by executing a mortgage bond in their favour for Rs. 25,000; that in this mortgage defendant 1 and his two brothers had one-third share and their uncles Basanta and Labanya had two-third shares; that defendant 2 purchased the two-third share of the uncles of defendant 1 in the mortgage; that thereafter in 1925 there was an agreement between defendant 2 and defendant 1 and his brothers, whereby defendant 2 agreed to purchase their one-third share in the mortgage for Rs. 10,000; that the terms of this agreement were that defendant 2 will gradually pay the entire price by the month of Kartick, 1332 B.S. and that if he fails to complete the purchase by that date, he will forfeit whatever amount he would in the meantime pay towards the price; that pursuant to this agreement defendant 2 paid Rs. 4400 as stated above, but failed to make any further payment within this stipulated period. He, therefore, forfeited this amount under the terms of that agreement. His case then is that thereafter in August 1933, there was some trouble between himself and defendant 2, as a result of which defendant 2 started a criminal case against him on 8th August 1933. During the pendency of this criminal case, defendant 1, in fear of criminal prosecution ultimately was coerced into agreeing to execute the pronotes in question for the above sum of Rs. 4400 and on his executing the pronotes on 7th November 1933, the said criminal case was dropped and he was acquitted on 8th November 1933.

3. At the hearing, the plaintiffs made the case that defendant 1 took a temporary loan of Rs. 4400 from defendant 2 agreeing to repay the same within 15 days in August 1933; that having failed to repay the amount within the promised period, he ultimately executed the pronotes for that loan on 7th November 1933. The Court of first instance decreed both the suits finding that the plaintiffs succeeded in proving the consideration, as alleged by them at the hearing, and that the pronotes were not procured by any coercion or undue influence. On appeal by defendant 1, the Court of appeal below found that the story of loan taken from defendant 2 by defendant 1 in the month of August 1933, was not established; but that the pronotes were not without consideration. The real consideration for these pronotes was the sum of Rs. 4400 paid by defendant 2 to defendant 1, as alleged by the defendant in his written statement. He disbelieved the case of coercion and undue influence and further did not accept the case of forfeiture of that amount made by defendant 1 in his written statement. Regarding the case of forfeiture made by defendant 1 in his written statement the learned Judge observed:

Had the matter come before the Courts in that form, the question of forfeiture should probably have been decided unfavourably to the defendant, Krishna Chandra Rudrapal v. Khan Mamud Bepari (36) 23 AIR. 196 Cal. 51 it was open to

defendant 2 to bring a suit for specific performance. Had the pleadings of the plaintiffs been to that effect, it might well have been contended that forfeiture, if it ever was fact, had been waived by the execution of the hand notes and that is what in effect I find to have happened....

4. In spite of these findings, however, the learned Judge dismissed the plaintiffs'' claim on the ground that as the plaintiffs came to Court with false pleadings on a material point and tried to support that false case by false oral evidence, they should not succeed. In our opinion, in view of the findings arrived at by the learned Judge, he should riot have dismissed the plaintiffs'' suits. The suits were based on pronotes. It was not necessary for the plaintiffs to state anything about the passing of consideration in the plaints. The statements, which they made in their plaints regarding consideration, were not inconsistent with the case that the real consideration was the sum of Rs. 4400 paid in 1925, as alleged by the defence. No doubt, the plaintiffs, at the hearing, made a case which they could not establish. But when in spite of that the learned Judge found consideration for the pronotes, strictly speaking, he should have decreed the plaintiffs'' claims.

5. It cannot be denied that in a claim based on negotiable instruments, the onus of proving want of consideration is on the defendant. Though not necessary, the plaintiffs stated in their plaints that the consideration was cash payments. They did not say when these payments were made by defendant 2 to defendant 1. Defendant 1 in reply to this allegation made in the plaints admitted in his written statement that there was a payment of Rs. 4400 by defendant 2 to defendant 1, some eight years before the date of the pronotes; but that this payment was on another account and that as by the terms of the agreement pursuant to which this payment was made the entire amount was long forfeited, there was no debt due by defendant 1 to defendant 2. He thus tried to explain that this payment of 1925 could not form the consideration for the pronotes of 1933. The onus was certainly on the defendant to prove his case on this point and the only thing which could be said in his favour was that as the plaintiff made a definite case at the hearing that the consideration for the pronotes was a loan taken only a few days before the pronotes, the defendant did not I think it necessary to adduce evidence regarding his case about this payment of 1925. This would only mean that the defendant should be given an opportunity of proving his case on this point and in our opinion the learned Judge instead of dismissing the plaintiffs'' cases should have given the defendant such an opportunity of adducing evidence on this point if he so desired.

6. In view of his own findings, the learned Judge laid too much stress on the defect in pleadings in this case. All rules of Court are nothing but provisions intended to secure the proper administration of justice and it is therefore essential that they should be made to serve and be subordinate to that purpose. In a case based on pronotes it is not for the plaintiff to adduce evidence to establish the passing of consideration. Section 118, Negotiable Instruments Act, raises a presumption that

the pronote was for consideration. If the defendant wants to say that it was without consideration it is for him to allege and prove that. In this particular case, he pleaded want of consideration and proceeded to establish the same. In doing so, he succeeded in demolishing the case of the plaintiffs made at the hearing that there was a loan a few days before the pronotes. If he stopped there, then in the absence of any case that the loan of any other date formed the consideration, the dismissal of the plaintiffs'' eases might have been justified. But when it came out from his own evidence that there was a prior payment and when the explanation offered by him for saying that that payment could not constitute the consideration for these pronotes was not accepted by the Court of appeal below, it is difficult to see why the plaintiffs should not be allowed to take advantage of this case which has been brought out by the evidence on record. In our opinion, after all these findings, there was no justification for dismissing the claims of the plaintiffs.

7. Mr. Bose, appearing for the respondents, contended that Section 118(a), Negotiable Instruments Act, only raises a presumption in favour of the consideration stated in the instrument. In this particular ease, the instrument itself mentions cash payment as the consideration for it and that is also the pleadings of the plaintiffs. He, therefore, contends that Section 118 raised a presumption only in favour of this cash consideration and as soon as the defendant succeeded in demolishing this case of the plaintiffs to the satisfaction of the Court of appeal below, the instrument must be taken to be without consideration within the meaning of Section 43, Negotiable Instruments Act, and as such must be taken as failing to create any obligation of payment on the part of the defendant. We are unable to accept this contention of Mr. Bose. Section 118(a), Negotiable Instruments Act, runs as follows : "Until the contrary is proved, the following presumption shall be made : that every negotiable instrument was made or drawn for consideration...." The section does not limit the presumption only to cases of ''consideration as stated in the negotiable instrument.'' The words ''for consideration'' as used in this clause are quite general and there is no difficulty in applying them in their full literal sense. According to Mr. Bose these words shall have to be read as "for the consideration stated in it." There is hardly any justification for reading into this section words that are not there. So to construe the section will be reading into it words which limit the prima facie operation and make it something different from, and smaller than, what its terms express.

8. Mr. Bose further contended that though the onus of proving want of consideration may be on the defendant, yet when the plaintiffs come with a definite case of consideration, that onus will be sufficiently discharged as soon as the defendant demolishes that definite case and he need not prove the want of any other possible consideration. Perhaps Mr. Bose is correct in this contention. But this proposition has no application to the facts of the present case; first because the statement of consideration contained in the plaints is wide enough to extend to debts due to the payments of 1925, and secondly because the defendant, though he

might have stopped simply by demolishing the plaintiffs'' cases of consideration, did not do so but placed sufficient materials before the Court which enabled it to say that the payments of 1925 constituted the real consideration for these pronotes.

9. In the result we allow these appeals. The finding arrived at by the Court of appeal below that there was no cash transaction in the month of August 1933, as alleged by the plaintiffs at the hearing, which would constitute the consideration of these pronotes shall stand. The finding that defendant 2 made payments amounting to Rs. 4400 to defendant 1 during the year 1925 pursuant to an agreement to purchase the interest of defendant 1 and his brothers in the mortgage of Kali Kishore Pal Choudhury shall also stand. The further finding that the pronotes were not obtained by fraud, coercion, and undue influence shall also stand. The rest of the judgment, and decrees of the Court of appeal below are set aside and the cases are sent back to that Court. It will proceed to hear the case of the defendant that the said amount of Rs. 4400 was forfeited under the terms of the agreement pursuant to which that payment was made. If the Court of appeal below finds that there was no such forfeiture as a matter of fact, or that the question of forfeiture was in dispute between the parties, then it will find that the pronotes were for valuable considerations and will decree the plaintiffs'' claims. If, however, it finds that there was an undisputed forfeiture under the terms of that agreement, then it will find that there was no consideration for the pronotes, and will dismiss the plaintiffs'' suits. Parties should be given opportunities to adduce whatever evidence they desire to give on these points. In the circumstances of these cases, the parties will bear their own costs up to these appeals; further costs will be at the discretion of the Court below. The cross-objections are not pressed and are dismissed without any order as to costs.
Mohamad Akram, J.

10. I agree.