
(1872) 03 CAL CK 0006

Calcutta High Court

Case No: Special Appeal, No. 793 of 187

Hari Mohan Bysak

APPELLANT

Vs

Krishna Mohan Bysak
and Another

RESPONDENT

Date of Decision: March 5, 1872

Judgement

@JUDGMENTTAG-ORDER

The drawers of a hundi in favor of the plaintiff at Dacca (where all the parties to the hundi lived) were held not liable on proof that they were the gomastas of the acceptor, that they had no interest in the hundi, and that, according to custom in Dacca where the hundi was drawn and accepted, agents under such circumstances are not liable, although the agency does not appear on the hundi. They were also bold discharged from liability, notice of dishonor not having been served on them till ten months after the due date of the hundi.

In this case a hundi for Rs. 1,000, dated the 19th April 1869, was drawn in favor of the plaintiffs by Hari Mohan Bysak and Ramcharan Pal, and accepted by Sham Sundar Bysak payable sixty days after date, i.e., on the 18th June. Some months after the hundi fell due the acceptor paid the drawees in two instalments, Rs. 400, and afterwards became insolvent. The drawees alleged that ten months after the bill became due, they gave notice to the drawers, and to the acceptor that, unless the balance, Rs. 600, was paid within two days, an action would be instituted against them for the amount. The plaintiffs brought the present action against the acceptor (defendant No. 1) and the drawers (defendants No. 2) for the amount.

The defence of the drawers was that they drew the hundi as agents of the acceptor, and therefore, according to a mercantile usage prevalent in Dacca, were not liable; the usage being for agents to draw hundis on their principals without disclosing the fact in the hundi, and that on proof of such agency, the drawer was not liable; that they were neither partners nor commission agents of the acceptor, but his servants on salaries of Rs. 6 and

8 per month respectively; that the payees, having given time to the acceptor, could not now make them, the drawees, liable, and that no notice of dishonor was served on them. The acceptor did not enter appearance.

The hundi was in the usual form, and it did not appear on the face of it whether the drawers signed as servants or gomastas of the acceptor, but

But there is also, we think, another point on which the defendants (appellants) are entitled to succeed in this appeal. It is quite clear that the plaintiffs (the drawees) considered the defendant Sham Sundar Bysak as their only debtor they received part payment of the hundi from, him and gave him time in which to pay the remainder, and under ordinary circumstances this alone would excuse the drawers from liability, because they were entitled to receive notice at the very first of Sham Sundar's failure to pay the money; and if they did not receive that notice, they would, according to the ordinary rule of law, not be bound to make arrangements for the [payment of the hundi; and as to the notice itself the law is that notice shall be sent to the drawer of the bill at the time dishonor takes place. In this case the bill fell due on the 5th of (sic) (18th June 1869), whereas no notice of its having been dishonored, was sent to the defendants, drawers of the bill, till ten months after, or in Jaishta (May) of the following year. On the whole we think that the plaintiffs sever considered the defendants (drawers of the hundi) as their debtors, and that they knew, as every body else must have known, all the parties living to the same town of Dacca, that these two men were ordinary servants of Sham Sunder Bysak, and only drew this hundi in the common discharge of their duties as gomastas, and there cannot be the slightest doubt that the plaintiffs looked to Sham Sundar and to Sham Sunder alone, as the person from whom they were entitled to recover their money.

Under these circumstances, we think that the decree of the Judge as against the appellants, defendants 2 and 3 is wrong, and must be reversed. This appeal, is therefore decreed with costs payable by the plaintiffs, respondents, The decree of the Judge against the defendant No. 1, Sham Sundar Bysak, will stand.