(1914) 08 BOM CK 0025

Bombay High Court

Case No: Civil Application No. 107 of 1914

Sakharam Mansaram		APPELLANT
	Vs	
Gulabchand Tarachand		RESPONDENT

Date of Decision: Aug. 21, 1914

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 9

Citation: AIR 1914 Bom 136 : (1914) 16 BOMLR 743

Hon'ble Judges: Hayward, J; Beaman, J

Bench: Division Bench

Judgement

Hayward, J.
The plaintiff sued as an endorsee of a. Hundi drawn by the 1st defendant in favour of one Magan. The 1st defendant pleaded that no consideration for the Hundi had been received from Magan, and an issue was raised whether there had been consideration as between defendant 1, and Magan. The learned Judge of the Small Causes Court, Poona, did not decide whether there had been consideration as between the plaintiff and Magan but dismissed the suit on the issue mentioned holding that there had been no consideration as between the 1st defendant and Magan.

2. The plaintiff has now Bought to have the decision set aside in extraordinary jurisdiction on the ground that Ins suit as endorsee from Magan was not necessarily barred by the fact that there had been no consideration as between defendant 1 the drawer, and Magan, the payee. It appears to us that the plaintiff"s position has been misapprehended and that his contention must be allowed. He must as endorsee be presumed until the contrary is proved to have been a holder in due course, that is to say, a holder for consideration from Magan within the meaning of Section 9 by reason of Section 118 (g) of the Negotiable Instruments Act. He would, therefore, (unless the contrary should be proved) be unaffected by the failure of consideration as between defendant 1, the drawer, and Magan, the payee, under the provisions of Section 43 of the Negotiable Instruments

Act, which provides that:ï¿½" A negotiable instrument made, drawn, accepted, indorsed, or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto." There is, therefore, this material issue remaining for decision, namely, whether the plaintiff was a holder in due course from Magan for consideration, that is to say, whether he had accepted the Hundi from Magan for consideration. The decree of the learned Judge of the Small Causes Court, Poona, must, therefore, be set aside and the case remanded for a fresh decision in the light of the above remarks, after determining the issue :ï¿½

3. Whether the plaintiff was a holder in due course for consideration from Magan within the meaning of Sections 9 and 43 or the Negotiable Instruments Act having regard to the provisions of Section 118 (g) of the Act.

4. Costs to abide the result.