

Before Sir Arthur Strachey, Knight, Chief Justice, and Mr. Justice  
Banerji.

PHUL CHAND AND ANOTHER (PLAINTIFFS) v. GANGA GHULAM  
(DEFENDANT).\*

Act No. XXVI of 1881 (*Negotiable Instruments Act*), sections 64, 66—*Pro-  
missory note not presented for payment at maturity—Effect of non-  
presentation.*

*Held*, that the non-presentation for payment at maturity of a promissory note, the presentation of which is required by section 66 of the *Negotiable Instruments Act, 1881*, has not the effect of relieving from liability the maker of the note. *Farzand Ali v. The Agra Savings Bank* (1), and *Ramakisthnyaya v. Kassim* (2), followed.

THIS was a suit to recover Rs. 2,069-9-6 on a promissory note for Rs. 1,600, dated Sawan badi 5th, 1950 Sambat, corresponding to the 2nd August, 1893, and payable 90 days after date. The principal defences to the suit were, first, that the plaint was not signed and verified as required by law, having been signed and verified, not by the plaintiffs themselves, but by a mukhtar; and, secondly, that the plaintiffs not having presented the note for payment at due date could not recover on it.

The Court of first instance (Subordinate Judge of Cawnpore) found that the plaint was properly signed and verified with the permission of the Court, under section 51 of the Code of Civil Procedure, the plaintiffs being residents of another district, namely, Aligarh; and also that the non-presentation of the note was covered by section 76 of Act No. XXVI of 1881, and gave a decree in favour of the plaintiffs.

The defendant appealed, and the lower appellate Court found both the above issues in favour of the defendant, and, decreeing the appeal, dismissed the plaintiffs' suit.

The plaintiffs appealed to the High Court.

Pandit *Sundar Lal* and *Munshi Gobind Prasad*, for the appellants.

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\*Second Appeal No. 132 of 1897, from a decree of J. E. Gill, Esq., District Judge of Cawnpore, dated the 24th November 1896, reversing a decree of Maulvi Syed Zainul-Abdin, Subordinate Judge of Cawnpore, dated the 15th February 1896.

(1) *Weekly Notes*, 1896, p. 201. (2) (1889) I. L. R., 13 Mad., 172.

Munshi *Gokul Prasad* (for whom Pandit *Tej Bahadur Sapru*), for the respondent.

STRACHEY, C. J.—The learned Judge has reversed the decree of the Court of first instance and has dismissed the suit upon two grounds. The first is that, with reference to the ruling in *Mahabir Prasad v. Shah Wahid Alam* (1), the fact that the plaint was not signed by the plaintiff was fatal to the suit. As to that point no objection was raised in the first Court by the defendant that the plaint was not properly signed, nor was any such objection taken by the defendant in the grounds of appeal to the lower appellate Court. However, the first Court finds that the plaintiffs, who resided at Hathras, were absent from Cawnpore, where the suit was filed, and that the general attorney, Nanhu Mal, who signed and verified the plaint, was duly authorized in that behalf by his power-of-attorney. We take that to mean that the plaintiffs were by reason of absence unable to sign the plaint, and that the plaint was signed by a person duly authorized by them in that behalf. That being so, the provisions of section 51 of the Code of Civil Procedure appear to us to have been complied with. The decree, in our opinion, ought not to have been set aside and the suit dismissed upon the first ground stated by the Judge. One of the questions raised by the defendant's written statement, paragraph 9, is in substance, whether the institution of this suit was authorized by the plaintiffs, or whether the suit was instituted by Nanhu Mal without authority from them. As to this the learned Judge merely says that there is nothing in the evidence of Durga Prasad, munib, to show that the plaintiffs had any knowledge of the promissory note or authorized the suit. If it is necessary for the learned Judge to determine whether the suit was or was not instituted by Nanhu Mal with the authority of the plaintiffs, it will be necessary to consider, not only the evidence of Durga Prasad, but the terms of the general power-of-attorney, upon which Nanhu Mal bases his alleged authority to institute the suit on behalf of the plaintiffs.

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(1) *Weekly Notes*, 1891, p. 152.

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The second ground upon which the learned Judge has dismissed the suit was based on section 66 of the Negotiable Instruments Act, No. XXVI of 1881. The suit was brought upon a promissory note against the maker of the note. Section 66 directs that "a promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity." Here the promissory note, which was made payable ninety days after date, was not presented, the learned Judge finds, at maturity, and he holds that the suit was liable to dismissal on that account. Section 66 does not state what are the consequences of a promissory note such as it describes not being presented for payment at maturity. Section 64 provides that "promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof, respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment the other parties there to are not liable thereon to such holder." It is clear that that section only exempts from liability to the holder in default of presentment parties other than the maker, acceptor or drawee of a promissory note, bill of exchange and cheque, respectively. It does not relieve from liability in the case of such default the maker of a promissory note like the present defendant. Therefore no presentment of the note for payment was necessary to make the defendant liable to a decree in this suit. This view is in accordance with the ruling of this Court in *Farzand Ali v. The Agra Savings Bank* (1), and of the Madras High Court in *Ramakistnayya v. Kassim* (2). We must allow this appeal, set aside the decree of the lower appellate Court, and remand the case to that Court, for disposal under section 562 of the Code of Civil Procedure. The appellant will get the costs of this appeal. Other costs will abide the result.

*Appeal decreed and cause remanded.*

(1) Weekly Notes, 1896, p. 201. (2) (1889) I. L. R., 13 Mad., 172.