

1910

--June 7.

Before Sir John Stanloy, Knight, Chief Justice, and Mr. Justice Griffin.

MADHO RAM (DEFENDANT) v. DURGA PRASAD (PLAINTIFF).*

Act No. XXVI of 1881 (*Negotiable Instruments Act*), section 98—Want of notice of dishonour—Whether damage caused by reason of such want of notice—Burden of proof.

In a suit by intermediate endorsers of a *hundi* against earlier endorsers, the court found that the *hundi* had not been presented for payment within a reasonable time and that notice of dishonour was not given. Held that it lay upon the plaintiffs to prove that the defendants could not suffer damage by reason of want of notice of dishonour; not upon the defendants to prove that they had suffered damage. *Moti Lal v. Moti Lal* (1) followed.

THE facts of this case were as follows:—

Ali Sajjad and Kanhaiya Lal drew a *hundi* for Rs. 806 on Lachman Das and Piari Lal in favour of Ismail and Tayab Ali. The *hundi* was drawn on the 10th November, 1903. The *hundi* was endorsed by Ismail and Tayab Ali in favour of Madho Ram and Gopal Das, appellants in the case. Madho Ram and Gopal Das transferred it to Mata Din and Durga Prasad, the plaintiffs respondents. The *hundi* passed through the hands of the following in order:—

1. Mata Din and Durga Prasad.
2. Thakur Prasad and Ganga Prasad.
3. Prabhu Dayal and Sham Lal.
4. Kedar Nath and Babu Lal.
5. Sheo Dat and Banarsi Das.

All these transfers took place between the 10th and 16th of November, 1903. The last holders sent the *hundi* to their agent at Calcutta for recovery of money. The *hundi* was dishonoured, as the business of the drawees had failed. It was presented after three months and some days, and after dishonour returned to the last endorsees Sheo Dat and Banarsi Das. They realized the money from Kedar Nath and Babu Lal, and the latter in their turn from Prabhu Dayal and Sham Lal who brought a suit on the *hundi* against their endorsers and the drawers and the payees.

The Munsif decreed the suit against the drawers, the payees and the first three sets of endorsees. The payees appealed and

* Second Appeal No. 1111 of 1909 from a decree of Muhammad Siraj-ud-din, Judge, Small Cause Court, Calcutta, dated the 11th of August, 1909, reversing a decree of Hamid Ali, Judge, Small Cause Court, Calcutta, dated the 15th of May, 1908.

the suit against them was dismissed as the *hundi* had not been presented within three months and no notice of dishonour had been given to them. Prabhu Dayal and Sham Lal realized the money from Mata Diu and Durga Prasad.

This was a suit by Durga Prasad to recover the money from Madho Ram and Gopal Das and the drawers.

The defence was that the *hundi* was not presented in time and that no notice of dishonour was given. The first court gave effect to these pleas and dismissed the suit. The lower appellate court considered the question how far the respondents had suffered loss by reason of want of notice of dishonour and held that they had failed to prove loss by reason of want of notice and decreed the suit.

The defendants appealed.

Babu *Durga Charan Banerji*, for the appellants, contended that it was for the plaintiffs to prove that the defendants had not suffered any loss through want of notice and not for the defendant to prove that they had suffered loss. He cited *Moti Lal v. Moti Lal* (1), *Amiruddi Bepari v. Bahadoor Khan* (2), section 98 of the Negotiable Instruments Act, *Jambu Ramaswamy Bhagwathar v. Sundararaja Chetti* (3) and *Askaran Baid v. Piyar Bux* (4).

It was for the holder to give notice of dishonour.

Munshi *Damodar Das*, for the respondents, submitted that in the cases referred to by the appellants, the plaintiffs were the holders of the *hundis*. It was not so in this case. The person in possession for the time being was the one to give notice. An endorsee could not know that a *hundi* had been dishonoured. He cited *Subramanian Chetty v. Atagappa Chetty* (5).

STANLEY, C. J., and GRIFFIN, J. :—This appeal arises out of a suit brought by intermediate endorsers of a *hundi* against earlier endorsers and the drawers of the *hundi* to recover the amount paid by them to the holder of the *hundi*. The court of first instance dismissed the plaintiff's claim, finding that the *hundi* was not presented for payment within a reasonable time, and that notice of dishonour was not given. It also held, in accordance

(1) (1883) I. L. R., 6 All., 78. (3) (1902) I. L. R., 20 Mad., 239.

(2) (1903) I. L. R., 30 Calc., 977. (4) (1908) 12 C. W. N., 644.

(5) (1907) I. L. R., 30 Mad., 441.

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with the ruling in *Moti Lal v. Moti Lal* (1), that in a case of the kind the *onus* lies upon the plaintiffs to prove that the defendants could not suffer damage by reason of want of notice, and that being so, the want of notice of dishonour was excused. It pointed out that in this case the plaintiffs did not venture to allege, much less prove, that the defendants could not suffer damage by reason of the want of notice.

Upon appeal all other questions appear to have been abandoned, except the question as to whether the defendants suffered loss by reason of want of notice of dishonour. In other words whether notice of dishonour in this case was excused. Section 98 of the Negotiable Instruments Act provides that no notice of dishonour is necessary when the party charged could not suffer damage for want of notice. If the plaintiff seeks to excuse the want of notice of dishonour, it lies upon him to establish that the party charged could not suffer damage for want of such notice. This was so held in *Moti Lal v. Moti Lal*, which we have quoted above. The learned Judge of the Small Cause Court, however, shifted the *onus* of proof in this case upon the defendants. He says in his judgement—"It was for the defendants to prove the damage" and that "it was necessary to see whether they had proved it." Then he finds that the defendants had failed to prove loss by reason that the notice of dishonour had not been given and the plaintiffs were therefore entitled to their money.

In this view of the law we are unable to concur. It was for the plaintiffs, as we have said, to show that by reason of the want of notice of dishonour the defendants could not suffer damage. The decision of the court of first instance appears to us to be correct upon the findings, and we accordingly allow this appeal, set aside the decree of the lower appellate court and restore the decree of the court of first instance with costs in all courts. The objections are disallowed.

Appeal decreed.