

1922

EMPEROR
v.
DURGA
PRASAD.

namely, Sahai and Madho, in whose case a re-trial has been directed by the learned Sessions Judge.

Reference accepted.

APPELLATE CIVIL.

Before Mr. Justice Rives and Mr. Justice Gobul Prasad.

PACHKAURI LAL AND ANOTHER (DEPENDANTS) v. MUL CHAND
AND ANOTHER (PLAINTIFFS)*

1922
March, 31.

*Act No. XXVI of 1881 (Negotiable Instruments Act), sections 64 and 76—
Hundi drawn by drawer on himself—Presentation for payment not necessary.*

The fact that the drawer and the drawee of a *hundi* are the same person will not make the *hundi* a promissory note; but in such case no presentation on due date is necessary, as from the nature of the case the drawer cannot suffer damage from the want of such presentation.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi *Gulzari Lal* and Dr. *Surendra Nath Sen*, for the appellants.

Dr. *S. M. Sulaiman*, for the respondents.

RYVES and GOKUL PRASAD, JJ.:—This appeal arises out of a *hundi* drawn by Bihari Lal Balmakund on the firm of Bihari Lal Balmakund in favour of Mul Chand, the plaintiffs agreeing to pay him Rs. 2,000 within ninety days from the 30th of April, 1918, with interest at 12 per cent. per annum. The plaintiffs gave the defendants credit for certain items and sued for Rs. 1,906, the balance with interest.

The main defence of the contesting defendants was the denial of the execution of the *hundi*. Alternatively, it was claimed that execution by one member of the firm would not bind the other members, as the money was not required for or used in the business of the firm.

The trial court decreed the suit. On appeal a further point was taken, namely, that as the *hundi* had not been presented, the provisions of section 64 of the Negotiable Instruments Act

* Second Appeal No. 1069 of 1920, from a decree of L. S. White, District Judge of Cawnpore, dated the 1st of July, 1920, confirming a decree of Muhammad Husain, Additional Subordinate Judge of Cawnpore, dated the 21st of November, 1919.

barred the suit. The other pleas raised in the trial court were reiterated. On this new point the court below held that this particular *hundi* was really a promissory note and, therefore, did not fall within section 64 of the Negotiable Instruments Act. In this view we are unable to agree; but it seems to us that the provisions of section 76, clause (d), render presentation unnecessary in this case. According to that section no presentation for payment is necessary "as against the drawer, if the drawer could not suffer damage from the want of such presentation". In this case the drawer and the drawee were the same, and, therefore, both of them knew when the *hundi* was executed that it was payable ninety days thereafter, and on the expiration of the ninety days, both of them knew that it had not been paid. Thus, no question of damage can arise and the cases cited are, therefore, not applicable.

There remains another point, however, which has not been decided, and that is whether, when Bihari Lal executed this *hundi*, he was acting for the firm, and whether the money was required for the business of the firm. On this point there is no clear finding by the District Judge. We, therefore, refer an issue to the learned District Judge, namely, did Bihari Lal borrow this Rs. 2,000 for the business of the firm Bihari Lal Balmakund? No further evidence will be taken. On return of the finding the usual ten days will be allowed for objections.

Issue remitted.

Before Mr. Justice Walsh and Mr. Justice Ryves.

BRIJ LAL AND OTHERS (DECREE-HOLDERS) v. DAMODAR DAS (OBJECTOR)*
Act No. IX of 1908 (Indian Limitation Act), schedule I, article 183—Civil
Procedure Code (1908), section 144—Application for restitution—Limitation.

1922
April, 3.

Held that an application under section 144 of the Code of Civil Procedure to recover mesne profits which became payable to the applicant in consequence of a decree of the High Court having been reversed by the Privy Council, though not a proceeding in execution, yet, being an application to enforce a decree of His Majesty in Council, was governed as to limitation by article 183 of the first schedule to the Indian Limitation Act, 1908. *Madhusudan Das v. Birj Lal (1)* referred to. *Jiva Ram v. Nand Ram (2)* followed.

*First Appeal No. 84 of 1921, from a decree of Prao Nath Ghose, Subordinate Judge of Bareilly, dated the 16th of November, 1920.

(1) (1921) 61, Indian Cases, 806. (2) (1922) Supra, p. 407.