1928

QADRI JAHAN BEGAM v. FAZAL AHMAD.

own costs has been duly proved and verified. This shows that this appeal at any rate has been wholly adjusted, and there is nothing to show that in its nature such a compromise was unlawful.

Under these circumstances we are of opinion that we must order that the compromise should be recorded and a decree should be passed to the effect that the appeal has been compromised and is hereby dismissed. The parties will bear their own costs of these proceedings.

Appeal dismissed.

Before Mr. Justice Boys and Mr. Justice Ashworth.

1928
March, 2.

BHOGI RAM (PLAINTIFF) *v.* KISHORI LAL (DEFENDANT).*

Act No. XXVI of 1881 (*Negotiable Instruments Act*), *section* 46—*Act No. I of* 1872 (*Indian Evidence Act*), *section* 92, *proviso* (3)—*Promissory note—Suit on note—Defendant entitled to give evidence of collateral agreement delaying payment of note.*

There is nothing in law to debar the maker of a promissory note from pleading as a defence to a suit thereon that as a matter of fact the note was given for a special purpose and was not payable until the happening of a certain specific event which, so far, had not yet happened.

Sheo Prasad, Ram Prasad v. *Gobind Prasad* (1), followed. *Sri Ram* v. *Sobha Ram, Gopal Rai* (2), dissented from.

THE facts of this case are stated at some length in the judgement of BOYS, J.

Sir *Tej Bahadur Sapru*, Babu *Piari Lal Banerji* and Babu *Satish Chandra Das*, for the appellant.

Pandit *Shiam Krishna Dar*, for the respondent.

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* Second Appeal No. 1593 of 1926, from a decree of Shamsul Hasan, Additional Subordinate Judge of Muttra, dated the 4th of September, 1926, reversing a decree of Gopal Chand Sharma, Munsif of Muttra, dated the 21st of December, 1925.

(1) (1927) I. L. R., 49 All., 464. (2) (1922) I. L. R., 44 All., 521.

1928

BHOGI RAM v. KISHORI LAL.

BOYS, J.—This appeal arises out of a decree of the lower appellate court, setting aside the decree of the trial court allowing the plaintiff's claim on a promissory note. The suit of the plaintiff was a simple one on a promissory note. The answer of the defendant, however, disclosed other dealings; and it has been found by both courts that the plaintiff's denials of those dealings were false.

The language used throughout, and particularly in the judgement of the lower appellate court, has not been as clear as it might well have been, and a more detailed statement of the pleadings and the findings is necessary than is usually the case in such suits. The defendant pleaded :—

(*a*) (Further plea No. 2) That he, the defendant, used to hand over "gur", sugar and grain to the plaintiff to be sold on account of the defendant.

(*b*) (Further plea No. 2) That pending the sale and recovery of the price of the goods plaintiff used to advance to the defendant sums of money bearing interest,

(*i*) " on the security of the goods "; and

(*ii*) " for the further satisfaction " of the plaintiff defendant used to execute promissory notes for the sums advanced.

(*c*) (Further plea No. 2) That the money received by the plaintiff from the sale of the goods was to be deducted as received from the debt due by the defendant.

So far, I find this pleading of the defendant to be quite simple and straightforward. In the accounting between them the amounts received by the plaintiff on sale of the goods were to be entered on the credit side to

1928

BHOGI RAM v. KISHORI LAL.

Boys, J.

the defendant, and the amounts advanced to the defendant were to be entered on the debit side against the defendant.

The entry of one such sum on the debit side is illustrated in further pleas Nos. 3 and 4 in the written statement, and is as follows :—

"Rs. 1,001, *Pus Badi* 6, *Sambat* 1979, *ruqqa* one, interest at Re 1 per cent.".

This appears to me to offer no difficulty. It is merely a convenient brief way of entering that on the date in question the defendant received Rs. 1,001, the sum in connection with which he wrote a "*ruqqa*" of that date.

The pleading of the defendant continues (further pleas Nos. 5 and 6) :—

(*d*) That subsequently an account (this is Ex. A) was struck between the parties on *Kuar Badi* 9, Sambat 1980, in which defendant was found to owe on the balance Rs. 963-8.

(*e*) That in arriving at this balance the amount of Rs. 1,525 (which is in dispute in the present suit and which he had received in advance upon the security of the goods and in regard to which he had for the further satisfaction of the plaintiff executed the *ruqqa* in suit) was debited against him.

(*f*) That (further pleas Nos. 7, 8 and 9) subsequent to the settling of the last-mentioned account the plaintiff had carried out further sales for the defendant, but he had not yet furnished any account.

Whether these pleadings of the defendant were established by him was a matter for determination in the suit, but on a careful reading of the whole written statement I find the pleas in their entirety quite straightforward. They amount to : "The promissory notes which

I gave were only for further security, if the security of the goods proved insufficient. In evidence of that I show that the amounts represented by the promissory notes have been debited against me and with a clear reference to the promissory notes in accounts which were declaredly accounts of the *malpeta* (goods in security) transactions " (see the heading to the account set out in further pleas Nos. 3 and 4). I do not think the issues in the trial court were happily framed, but that would not be material at this stage if in truth there has been clear understanding as to what were the points in issue and there has been a finding or findings on those points.

Boys, J.

The trial court believed the whole of the defendant's story as to the " sale of grain " transactions between the parties and the account taken between them and that the plaintiff was concealing his account-books. But the learned Munsif held that the promissory note and the taking of the Rs. 1,525 was an entirely independent transaction. The only reason given by him for so holding is that he thought that the defendant would not be so foolish as to give an additional documentary security where the goods were also security, wholly ignoring that the goods might not be good enough security to make the plaintiff feel at ease in advancing the whole amount, and that it would be the plaintiff who would demand the further security. All he has to say about the plaintiff withholding his account-books is that he is doing so " for reasons best known to himself ".

The lower appellate court, agreeing with the trial court's findings on all the preliminary points and differing from its final finding, held—

(*a*) that the plaintiff's denials of grain transactions were false;

(*b*) that Exhibit A (the account including this matter of Rs. 1,525, to which I have referred)

1928

BHOGI RAM v. KISHORI LAL.

Boys, J.

"shows that *this transaction* was intended by the parties to be included in the accounts";

(*c*) that the balance due to the plaintiff on the last taking of account was Rs. 963-8;

(*d*) that no final account having been taken, no decree for a balance could be passed;

(*e*) that the suit in its present form is not maintainable.

Here again the conclusions might have been more happily expressed, but I think that the conclusions—

(1) that "this transaction" (which can only mean the giving by the plaintiff of Rs. 1,525 to the defendant) "was intended by the parties to be included in the account" (which can only mean the accounts of the grain transactions, for there is no question of any other accounts);

(2) that the last balance of account taken, alleged by the defendant, was proved;

(3) that no final balance of account had been taken; and

(4) that the present claim was not maintainable,

can only be taken as a finding of all points in the defendant's favour that the giving of Rs. 1,525 was part of the grain transactions and the promissory note was only intended to be a further security, if on taking the accounts of the grain transactions a balance was due against the defendant which he failed to pay.

The only question which remains, but which appears never to have been specifically raised by the plaintiff in the courts below, is whether the defendant could, in view of section 92 of the Evidence Act, be allowed to go outside the promissory note. I think he clearly

could, in view of proviso (3) to that section. The defendant was entitled to prove (and did prove, as I interpret the pleadings and the finding of the lower appellate court) a separate oral agreement that a condition precedent to the attaching of any obligation to the contract evidenced by the promissory note was that there should not be any obligation attaching under it unless there was a final balance of account on the grain transactions against the defendant which he failed to pay.

I have no hesitation in accepting the decision in *Sheo Prasad, Ram Prasad* v. *Gobind Prasad* (1), in preference to the decision in *Sri Ram* v. *Sobha Ram, Gopal Rai* (2), which latter, to me unaccountably, failed to consider the third proviso to section 92 of the Evidence Act.

I would dismiss the appeal with costs.

ASHWORTH, J.—I concur. In this case the plaintiff Bhogi Ram, who is appellant in this Court, sued the defendant respondent Kishori Lal for recovery of Rs. 2,000 on the basis of a pro-note, dated the 12th of January, 1923, executed by the defendant in favour of the plaintiff. The defence was in effect that the promissory note had been delivered for a special purpose only, namely, as "a continuing security to meet the running balance from time to time that might be due on an account between the parties as merchant (i.e., the defendant) and as commission agent (the plaintiff), which running account included advances on the goods before realization of the price." In other words, whereas the plaintiff maintained that the note was delivered as security for a particular advance, the defendant maintained that it was delivered as security for the balance of the running account which might be found due when the accounting between the parties came to an end either

(1) (1927) I. L. R., 49 All., 464. (2) (1922) I. L. R., 44 All., 521

1928

BHOGI RAM v. KISHORI LAL.

Ashworth, J.

by discontinuance of mutual business or by either party desiring the account to be settled up.

The trial court found against the defendant on the ground that delivery was absolute for the purpose of securing the particular amount mentioned in the promissory note and advanced that very day and was not a delivery merely for the purpose of securing any balance that might be found on the running account. In appeal the Subordinate Judge held otherwise. He believed the oral evidence of the defendant in preference to that of the plaintiff because the former evidence was supported by the fact that the plaintiff's son had been a party to the entry of this sum in a statement of the running account and also because the plaintiff and his son had in his opinion made some untrue statements which detracted from their credibility generally. Now in this second appeal it is not open to us to go behind a finding of fact in support of which there was some evidence on which a court could reasonably act in coming to a decision. I hold that the evidence mentioned was such evidence. It is, therefore, not open to this Court to consider whether it would have come to the same decision on the evidence. For instance, if it had been open to me to come to a decision on the evidence I should have been struck by the fact that this note was drawn up for the precise amount lent on the particular date and not for a round figure. There could be no probability of a balance of account coming to this particular sum and so the fact that the sum entered in the note was exactly the same as the advance would be an argument in favour of the plaintiff. On the other hand, it appears that the plaintiff's son might reasonably be regarded as the plaintiff's agent acting under the plaintiff's express or general instructions. The incorporation, therefore, by the plaintiff's son of the sum entered in the note in the running account (although it may have

amounted only to an offer to receive payment by incorporation) was a fact that might be invoked in favour of the defendant as supporting his plea. The case is extremely similar to the case, *In re Boys* (1), which case indeed was the basis of the illustration 8 appended to section 21 of the English Bills of Exchange Act, VIII of 1882, a section equivalent to section 46 of the Indian Negotiable Instruments Act. In that case Lord ROMILLY decided against the contention that the promissory note was given to secure the payment of the balance and not to secure the payment of the advance, and made great point of the fact that the amount in the promissory note was the same as the joint amount of two advances made just before the execution of the note. On the other hand, in that case there does not appear to have been any evidence that the amount was ever incorporated in the running account at a subsequent date. Although, therefore, if I had been deciding the case myself, I might have been disposed to decide it on the evidence in the opposite way, yet I am unable to say that, there being a finding of fact of the lower appellate court the other way, there is sufficient reason for interfering with that finding.

The question whether delivery of a promissory note as between the person making that note and the payee can be regarded as conditional or for a special purpose only, within the language of section 46, paragraph 3, of the Negotiable Instruments Act of 1881, depneds upon the construction we place upon the words "as between such parties and any holder of the instrument other than a holder in due course." These words are capable of two constructions. One construction would involve paraphrasing these words as follows:—

"As between either the maker of the note *or* the payee of the note *or* the endorser of the note *or* the endorsee of the

(1) (1870) L. R., 10 Eq., 467.

1928

BHOGI RAM v. KISHORI LAL.

note *and* any holder of the instrument other than a holder in due course."

The other construction would involve paraphrasing them thus :—

Ashworth, J.

"As between the maker and the payee or the endorser and the endorsee or the endorsee and any holder other than a holder in due course or as between any one of such parties and any other."

The ambiguity of the language of section 46 of the Negotiable Instruments Act was noticed when the English Bills of Exchange Act was drafted a year later and was avoided by substituting for the language of section 46 the following :—

"As between immediate parties and as regards a remote party."

It is improbable, especially having regard to the fact that there was one draftsman both of the English and the Indian Acts (namely M. D. Chalmers), that any difference in law was intended. So I would select the second meaning. In favour of selecting the alternative meaning there is only the fact that the American writer, John W. Daniel, in his treatise on the law of Negotiable Instruments published in 1876, has expressed the opinion that "a bill or note cannot be shown to have been delivered to the promisee as an escrow, for the evidence would be repugnant to the Act"; see volume I, page 54. But this view of the matter does not appear to have been adopted in any English decisions. On the contrary, the decisions in England clearly show that, although a promise to pay may be stated in the note to be unconditional and upon demand, the maker of the note may prove that he only delivered it upon terms inconsistent with payment being unconditional and upon demand. This is actually no exception to section 92 of the Evidence Act. That section refers

to documents which operate by reason merely of signature. See section 2 (12) of the Indian Stamp Act II of 1889. A promissory note, because it is a negotiable instrument and thus partakes of the nature of currency, before it can operate must not only be signed but also delivered (see section 46 of the Negotiable Instruments Act). A man may say :—" The promissory note that I signed I do not choose to deliver, but I will deliver it on the condition that the note is only used upon the fulfilment of a certain condition (i.e., something which may or may not occur but not which must occur) or for special purpose (which purpose may, however, involve postponement of its operation)". There is thus a distinction between a note of which delivery is conditional and a note of which delivery is for a special purpose. Mere postponement of operation will not operate as a condition, but it may operate because the special purpose involves postponement. Thus we have a case where delivery was on the condition that the note was not to operate until a man's death, see *Woodbridge* v. *Spooner* (1). This condition was held not to be enforceable as it was mere postponement.

Ashworth, J.

The decision in *Sheo Prasad, Ram Prasad* v. *Gobind Prasad* (2) to the effect that evidence is admissible to prove that delivery of a note is conditional on the note only being used as collateral security for a balance on a running account appears to me correct and the decision in *Sri Ram* v. *Sobha Ram, Gopal Rai* (3), wrong. Section 46 of the Negotiable Instruments Act, being a special provision applicable to negotiable instruments (which require delivery), governs the matter and not section 92, proviso (3), which is a general section applicable to deeds completed by signature. The latter ruling was wrong, I hold, because it failed to invoke section 46 of the Nego-

(1) (1819) 3 B. & Ald., 233. (2) (1927) I. L. R., 49 All., 464.
(3) (1922) I. L. R., 44 All., 521.

1928

BHOGI RAM v. KISHORI LAL.

tiable Instruments Act and not because it failed to invoke section, 92, proviso (3), of the Evidence Act.

There is no question in this case of the money due under the promissory note having been discharged; for there was no evidence that a balance of the account incorporating this liability was ever struck. The only evidence was that the amount was entered in an account from which a balance might at a future date be struck.

BY THE COURT.—The appeal is dismissed with costs.

Appeal dismissed.

REVISIONAL CIVIL.

Before Mr. Justice Dalal.

1928
March, 8.

AJUDHIA PRASAD (PLAINTIFF) *v.* RIKHNATH (DEFENDANT).*

Act No. X of 1923 (*Indian Paper Currency Act*), *section* 25—*Promissory note—Note framed as payable to lender or order not within the prohibition of the Act.*

Held, that a document which consisted of a promissory note and a receipt, and in the latter the promissory note was described as "*indultalab*" meaning "on demand", and in the note the words were that the money would be paid "on demand to him, that is, to the lender, or to whomever he orders it to be paid", was not obnoxious to the provisions of section 25 of the Indian Paper Currency Act, 1923. *Chidambaram Chettiar* v. *Ayyasawmi Thevan* (1) and *Jetha Parkha* v. *Ramchandra Vithoba* (2), referred to.

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

Munshi *Bhagwati Shankar*, for the applicant.

The opposite party was not represented.

*Civil Revision No. 12 of 1928.

(1) (1916) I. L. R., 40 Mad., 585. (2) (1892) I. L. R., 16 Bom., 689.