

We are not satisfied that there was any valid reason for dismissing the entire suit of the respondent. His learned counsel tells us that he confined his claim to two-fifths share only when he appealed to the lower appellate court. Out of this two-fifths share, the claim to one-fifth share fails as against Tamiz-un-nissa. There will, therefore, be a decree as against the other respondents for one-fifth share only.

The result is that we allow the appeal in part and dismiss the plaintiff respondent's suit as against Tamiz-un-nissa in respect of one-fifth share in the entire property of Riyaz Husain. We dismiss the claim as regards a similar share on the ground that it has been withdrawn by the plaintiff. We decree the plaintiff's suit with respect to the remaining one-fifth share against the defendants other than Musammam Tamiz-un-nissa and Muhammad Husain. The appellant will have her costs in all courts.

*Appeal allowed.*

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## REVISIONAL CIVIL.

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*Before Mr. Justice Lindsay and Mr. Justice Kendall.*

RAM SARUP (DEFENDANT) *v.* HARDEO PRASAD (PLAINTIFF).\*

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July, 5.

*Act No. XXVI of 1881 (Negotiable Instruments Act), sections 9 and 59—Suit by endorsee against drawer of a cheque—“Holder in due course”.*

A cheque is payable on demand and the amount becomes payable when the cheque is presented for payment to the drawee.

Where the plaintiff, on the 28th of September, took a cheque which had been drawn on the 5th of June, in good faith, for consideration, without notice of its having been dishonoured, and without having any reason to believe that there was

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any defect in the title of his transferor and it was found that the transferor was not a holder for value, the endorsement to him being fictitious, it was *held*, that the plaintiff was not a "holder in due course" and therefore his claim against the drawer must fail.

THIS was an application in revision against a decree of a Court of Small Causes decreeing a suit by an endorsee of a cheque against the drawer. The application was referred by DALAL, J., to a Bench of two Judges on the question, chiefly, whether the plaintiff was a "holder in due course" within the meaning of the Negotiable Instruments Act, 1881. The facts of the case sufficiently appear from the judgement of the Court.

Munshi *Panna Lal*, for the applicant.

Munshi *Ambika Prasad*, for the opposite party.

LINDSAY and KENDALL, JJ. :—This application for revision under section 25 of the Provincial Small Cause Courts Act has been referred for decision to a Bench and the question to be determined is the liability of the defendant applicant Ram Sarup in respect of a cheque drawn by him on the Allahabad Bank, Limited, on the 5th of June, 1926, and made payable to "Ram Saran or order." The amount of the cheque was Rs. 500.

On the 10th of June, 1926, the cheque was presented for payment and was dishonoured. It was proved at the trial that the drawer had no funds at credit with the Bank and that he had made no arrangement for an overdraft. Payment was refused by the Bank on the ground that it had not been arranged for.

On the 28th of September, 1926, the cheque was again presented for payment and again dishonoured on two grounds: (1) that payment had not been arranged for by the drawer and (2) that the endorsement of the payee was wanting. It is not clear who presented the cheque on this second occasion. Obviously it was some person other than the payee. There was the evidence

of a clerk of the Bank that it was presented by Hardeo Prasad, the plaintiff in this suit, but the Judge disbelieved it. His finding is that Hardeo Prasad did not take the cheque to the Bank and had no notice of dishonour.

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A third presentation was made on the 6th of October, 1926, on behalf of the Beopar Sahaik Bank to which the cheque had been endorsed the previous day by Hardeo Prasad. This time payment was refused on the ground that it had been stopped by the drawer.

As regards the stopping of payment the court below did not believe the statement of the drawer or of the Bank clerk that the order to stop had been received on the 10th of June, 1926, and this is clearly right, for the refusal of the Bank to pay either on the 10th of June or the 28th of September was not based upon any stop order. And on the 10th of June, at any rate, such an order would have been without meaning, for the drawer had no funds at the Bank and had made no arrangement with the Bank for liquidation of the cheque.

The endorsements on the cheque require some notice. The first purports to bear date the 10th of August, 1926, and is by Ram Saran (the payee) in favour of Babu Ram. The Judge held that this was not a genuine endorsement, for, according to the Bank evidence, there was no endorsement on the cheque when it was presented for payment on the 28th of September.

On this latter date Babu Ram endorsed to Hardeo Prasad the plaintiff, and he in turn endorsed to the Beopar Sahaik Bank on the 5th of October. On the following day this Bank made the third presentment of the cheque and payment, as stated above, was refused on the ground that the drawer had stopped it. The Judge believed that Hardeo Prasad had been deceived by his endorser, Babu Ram, and held that Hardeo Prasad having given value

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and having no notice that the cheque had been dishonoured, was a holder in due course and entitled to recover from the previous parties, including the drawer.

It is argued before us that the plaintiff was not a holder in due course, regard being had to the language of section 9 of the Negotiable Instruments Act, according to which the holder in due course of a cheque means a person who for consideration became the possessor of the cheque (if payable to bearer), or the payee or endorsee of the cheque (if payable to order) before the amount mentioned in it becomes payable, and who had no sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

The lower court finds that Hardeo Prasad had no notice of any defect in the title of his transferor.

But it is argued that the first of the two conditions is not satisfied because Hardeo Prasad did not become the endorsee before the amount specified in the cheque became payable. A cheque, it is said, is payable on demand and the amount in this instance became payable on the 5th of June, the date on which the cheque was drawn, whereas the endorsement was not made to Hardeo Prasad till the 28th of September.

Under the English law (Bills of Exchange Act, 1882, section 29) no person can be a holder in due course unless he became the holder of the bill before it was overdue. And for the purposes of the section a bill payable on demand (which includes a cheque) is deemed to be overdue when it appears on the face of it to have been in circulation for an unreasonable length of time. It is clear, therefore, that according to English law the holder of a stale cheque would not be treated as a holder in due course.

The law in India is not so definite as the law in England, and the expression "overdue" is not to be

found in section 9 of the Negotiable Instruments Act. According to section 9 no one can be a holder in due course unless he takes it "before the amount mentioned in it became payable."

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A cheque is payable on demand : the amount becomes payable when the cheque is presented for payment to the drawee.

In the present case the cheque was presented at the Bank on the 10th of June, 1926, and the amount became payable on that date. Hardeo Prasad did not become the holder till long after that date and he cannot, therefore, be a holder in due course under section 9.

It was not sufficient to find that he took the cheque in good faith, for consideration, without notice of dishonour and without having any reason to believe that there was any defect in the title of his transferor, Babu Ram. On the face of it the cheque was stale and this was, or ought to have been, sufficient notice to Hardeo Prasad that payment was overdue.

The case is governed by section 59 of the Negotiable Instruments Act and all that Hardeo Prasad acquired was the rights in the cheque of Babu Ram.

The finding of the Judge appears to be that Babu Ram was not a holder for value and that the endorsement to him was fictitious.

For these reasons the plaintiff's case against Ram Sarup, the drawer, must fail.

The application for revision must, therefore, be allowed. The claim against Ram Sarup must stand dismissed. No order as to costs in either court, it being admitted that when Ram Sarup drew the cheque he had no funds in the Bank to meet it.

*Application allowed.*