REVISIONAL CIVIL

Before Mr. Justice E. M. Nanavutty

ABDUL HALIM (DEFENDANT-APPLICANT) *v.* ABUL QASIM (PLAINTIFF-OPPOSITE-PARTY)*

1936
March, 10

Negotiable Instruments Act (XXVI of 1881), *sections* 9, 120 *and* 118(g)—*Cheque drawn without consideration—Right of* bona fide *endorsee to sue for money not effected—Suit by endorsee for money due on a cheque sold—Drawer pleading fraud—Fraud proved—Sale, if genuine—Consideration paid —Clause (g) of section* 118, *Negotiable Instruments Act, whether applicable—Onus to prove that endorsee is a holder in due course, whether lies on him—Provincial Small Causes Courts Act (IX of* 1887), *section* 25—*Revision—Payment of consideration for sale of cheque—Finding of fact, whether binding on a Court of revision.*

The fact that no consideration has actually passed between the drawer of a cheque and the payee at the time of the drawing of the cheque, does not affect the right of a *bona fide* endorsee of the cheque to sue for recovery of his money as a holder in due course.

Where in a suit by an endorsee for recovery of dues on a cheque sold for a certain sum of money, the drawer of the cheque pleads fraud, collusion and malafides but does not prove these allegations, and the endorsee on the contrary establishes actual payment of consideration and genuineness of the sale transaction, *held,* that the drawer cannot rely upon clause (g) of section 118, Negotiable Instruments Act, and cannot urge that the burden of proving that the holder of the cheque is a holder in due course lies upon the plaintiff.

The finding of trial Court that the price of a cheque sold has been paid is a finding of fact based on admissible evidence on the record and is binding on a Court of revision.

Mr. *Rauf Ahmad,* for the applicant.

Messrs. *M. Wasim* and *Iqbal Ali,* for the opposite party.

NANAVUTTY, J.:—This is an application for revision under section 25 of the Small Cause Courts Act filed by defendant No. 1, Hakim Abdul Halim against the

*Section 25 Application No. 23 of 1935, against the decree of Pandit Girja Shankar Misra, Second Additional Judge, Small Cause Court, Lucknow, dated the 9th of February, 1935.

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judgment of the learned Judge of the Small Cause Court at Lucknow decreeing the plaintiff's suit with costs.

The facts out of which this application for revision arises are briefly as follows:

The defendant No. 1 Hakim Abdul Halim, who is the applicant before me had a partition suit pending in the Court of the Additional Subordinate Judge of Lucknow against his brothers Hakim Abdul Hamid and others. During the pendency of that partition suit, one Musammat Wazir Jahan, sister-in-law of Hakim Abdul Moid suggested to Hakim Abdul Halim that he would be well advised to secure the help of Khwaja Mohammad Asghar defendant No. 2 as a witness in his case, as this man had important documents in his possession, which would be of help to Hakim Abdul Halim for fighting out his partition suit against his brothers. Thereupon Hakim Abdul Halim took Khwaja Mohammad Asghar to his pleader Babu Sri Ram and there Khwaja Mohammad Asghar showed two letters to Babu Srn Ram, Advocate, who considered those letters of great evidentiary value to Hakim Abdul Halim in the partition suit. After showing those two letters to Hakim Abdul Halim and Babu Sri Ram, Advocate, Khwaja Mohammad Asghar took those letters back and he said that he could procure other equally important documents on behalf of Hakim Abdul Halim provided he was given the wherewithal to go about and secure those documents. Ultimately after much haggling it was agreed between Hakim Abdul Halim and Khwaja Mohammad Asghar that the latter should go and secure those documents and give evidence in Court on behalf of Hakim Abdul Halim and he would then be paid Rs.200 for his labours. Khwaja Mohammad Asghar wanted the money in cash, but Hakim Abdul Halim did not agree to this and said that unless he saw the documents, he would not part with money. Ultimately Hakim Abdul Halim was induced to give a post-dated cheque in favour of Khwaja Mohammad Asghar for Rs.200 on the Allahabad Bank, Ltd., at Lucknow. The cheque is dated the 30th of

September, 1934. After having secured this cheque it would appear that Khwaja Mohammad Asghar defendant No. 2 resiled from his agreement and did not give the documents required by Hakim Abdul Halim nor did he give evidence on behalf of Hakim Abdul Halim in the partition suit. Hakim Abdul Halim thereupon telephoned to the Aminabad Branch of the Allahabad Bank to stop payment of the cheque. In the meantime Khwaja Mohammad Asghar had sold this cheque to the plaintiff Abul Qasim for Rs.190. The latter tried to cash it, but the Bank refused payment of the cheque on the ground that the alteration in the date of the cheque did not bear the full signature of Hakim Abdul Halim. Abul Qasim thereupon filed his plaint on the 11th of October, 1934, against Hakim Abdul Halim and Khwaja Mohammad Asghar claiming recovery of Rs.200. The defendant No. 2 Khwaja Mohammad Asghar did not contest the suit, and the case proceeded against him *ex parte*. The learned Judge of the Court below decreed the plaintiff's claim for Rs.200 with costs against both the defendants. The defendant No. 1 Hakim Abdul Halim has now come up in revision. He impleaded defendant No. 2 Khwaja Mohammad Asghar in this revision, but he ultimately discharged him and his name was struck off.

I have heard the learned counsel of both parties at some length and examined the evidence on the record. The learned trial Judge has found as a fact that the cheque was issued by Hakim Abdul Halim in order to induce the second defendant Khwaja Mohammad Asghar to procure evidence for Hakim Abdul Halim in the partition suit pending before the Additional Subordinate Judge of Lucknow, and that in fact no consideration passed from Khwaja Mohammad Asghar to Hakim Abdul Halim. This is a finding of fact which is binding upon me sitting as a Court of revision. It is also supported by the evidence of Hakim Abdul Halim and is not rebutted by any evidence adduced on behalf of the plaintiff Abul Qasim.

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The learned counsel for the applicant has argued that the lower Court should have held that the transaction between the applicant and the opposite-party was void and the plaintiff was not entitled to any relief against the applicant. I regret I cannot accept this contention. The fact that no consideration actually passed between Khwaja Mohammad Asghar and Hakim Abdul Halim when this cheque for Rs. 200 was drawn by Hakim Abdul Halim will not affect the right of the plaintiff to sue for recovery of his money as a holder in due course of this cheque. Section 120 of the Negotiable Instruments Act clearly lays down that "No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer, shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn." In the present case Hakim Abdul Halim pleaded that the sale of the cheque by Khwaja Mohammad Asghar defendant No. 2 in favour of the plaintiff Abul Qasim was fraudulent and collusive and in bad faith, but he adduced no evidence in support of that allegation. On the contrary the plaintiff examined himself and one Zawar Husain and satisfied the learned Judge of the Court below that the plaintiff had actually paid consideration to Khwaja Mohammad Asghar for the sale of the cheque in his favour, and that this sale transaction was a genuine one and not bogus. Whatever dishonesty defendant No. 2 Khwaja Mohammad Asghar may have practised upon Hakim Abdul Halim defendant No. 1, the same cannot be imputed to the plaintiff Abul Qasim. The defence of fraud set up by the applicant in the trial Court has failed completely and there is not an iota of evidence on the record to lead one to believe that the plaintiff Abul Qasim is a mere creature of Khwaja Mohammad Asghar defendant No. 2. The learned counsel for the applicant therefore cannot rely upon clause (*g*) of section 118 of the Negotiable Instruments Act, and cannot argue that because fraud was said to have been

practised upon Hakim Abdul Halim by Khwaja Mohammad Asghar, the burden of proving that the holder of the cheque was a holder in due course lay upon the plaintiff Abul Qasim. It seems to me that the applicant in his dealing with Khwaja Mohammad Asghar tried to overreach the latter, but he merely succeeded in making himself the victim of his own foolish act in drawing a cheque in favour of Khwaja Mohammad Asghar. There is nothing on the record to show that the plaintiff was not a *bona fide* endorsee of the cheque in question. No bad faith and no guilty knowledge of the defect in the title of Khwaja Mohammad Asghar have been brought home to the plaintiff. The finding of the learned trial Judge that the plaintiff paid Rs.190 to Khwaja Mohammad Asghar as the price of the cheque in question is a finding of fact based upon admissible evidence on the record and is binding on me sitting as a Court of revision. It is true that by the order of the lower Court the applicant has been mulcted in a sum of Rs.200 when he received no benefit either from the plaintiff Abul Qasim or from Khwaja Mohammad Asghar, but the fault lay entirely with the applicant himself in foolishly drawing up a post-dated cheque and in foolishly handing it over to the drawee in the vain hope that the drawee would not sell the cheque and would not be able to recover the amount entered in the cheque. There is another world for the expiation of guilt but the wages of folly are payable here below.

In my opinion the judgment of the learned trial Judge is perfectly legal and sound and there is no force in this application for revision which is accordingly dismissed with costs.

Application dismissed.