

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice
Nárábhái Haridás.

1886.
February 4.

NILKUND A'NANTA'PA' (ORIGINAL DEFENDANT), APPELLANT, v. MENSHI
APURA'YA', (ORIGINAL PLAINTIFF), RESPONDENT.*

Hundi—Presentation for acceptance must be within reasonable time—Question of time of presentation immaterial where drawer has no assets in hands of drawee.

Presentation for acceptance within reasonable time is a condition precedent to a right of action on a bill or *hundi* payable after sight.

Where the drawer had not assets in the hands of the drawee at or subsequent to the date of the *hundi*,

Held, that the question of presentation within reasonable time was immaterial.

THIS was a second appeal from the decision of S. Tagore, District Judge of Sholápur-Bijápur.

Action on a *hundi*. On the 24th September, 1880, a *hundi* payable after nineteen days' sight, was drawn by the defendant in favour of the plaintiff upon one Iskur Venkatráv. On 29th May, 1882, it was presented for payment to the drawee, and was dishonoured by him. The plaintiff brought the present suit against the defendant to recover the amount of the *hundi*. The defendant impeached the genuineness of the *hundi*, denied that it was presented to the drawee for payment, and pleaded want of notice of dishonour.

The Subordinate Judge of Sirsi found that the *hundi* was not presented to the drawee for payment, and that notice of dishonour was not given to the defendant. He, therefore, dismissed the plaintiff's suit as premature.

The plaintiff appealed to the District Judge of Kánara, who reversed the Subordinate Judge's decree with the following remarks :—“ * * *. The evidence satisfies me that the *hundi* was actually presented to the drawee and dishonoured by him, and that a notice of the dishonour had been duly served on the defendant * * * *. The evidence clearly shows that the drawee had no funds of the defendant in his possession to enable him to meet the *hundi*, and the former admits that he would not have accepted the *hundi* even if all the formalities had been duly

* Second Appeal, No. 20 of 1884.

complied with. Under these circumstances it is doubtful if any formal presentment was at all necessary * * * *. I reverse the lower Court's decree, and award plaintiff's claim with costs."

The defendant preferred a second appeal to the High Court.

Shámráv Vithal for the appellant :—A payee is bound to present a *hundi* for acceptance within a reasonable time from the date of the *hundi*. What is a reasonable time is a question of fact. —*Rámchurán Mullick v. Luckmeechund*⁽¹⁾. The delay of eighteen months exonerated the drawer.

Náráyan Ganesh Chandávarkar for the respondent :—The *hundi* was properly presented for acceptance and was dishonoured. The presentation of a *hundi* payable after sight within a reasonable time is material where there is any fear of the drawer being prejudiced by the insolvency of the drawee : see *Mellish v. Rawdon*⁽²⁾. In the present case the drawee had no assets of the drawer since the *hundi* was drawn.

SARGENT, C. J. :—The District Judge has not recorded a finding as to whether the *hundi* had been presented for acceptance within reasonable time. This, by English law—and it has not been suggested that the rule would be otherwise in this country—is a condition precedent to a right of action on the bill or *hundi* payable after sight. It is not, however, necessary to send down an issue for that purpose, as we think that the circumstance of the drawer not having had any assets in the hands of the drawee at or since the date of the *hundi*, makes the question of presentation within reasonable time immaterial. The reason of the rule, which requires a bill or *hundi* payable after sight to be presented for acceptance within reasonable time, is stated by Tindal, C. J., in *Mellish v. Rawdon*⁽²⁾ to be that "the longer the delay the greater the risk the drawer runs of the insolvency of the drawee." When, however, the drawer has had no assets in the hands of the drawee, the reason of the rule ceases to apply. The exception to the general rule is so stated in *Chitty on Bills*, 11th ed., 195. We must, therefore, confirm the decree of the District Judge, with costs.

Decree confirmed.

(1) 9 Moore's P. C. Ca., 46.

(2) 2 Moore and Scott's Rep., 570 ;
S. C. 9 Bing., 416.

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