

Legislature, which yet has seen fit to empower the Court to refuse protection in suitable cases ; and I can scarcely imagine a more suitable case than this. As to *In the matter of Meghraj Gangabuz*⁽¹⁾, that being the decision of a single Judge, is not binding on this Bench, and there the only point decided was as to the grant of protection pending the inquiry into the insolvent's conduct prior to the Court's decision on his application for discharge. It is true that certain general observations are to be found in the judgment, but they must, I think, be read as limited by the facts then before the Court, and the case cannot, in my opinion, be properly cited as an authority for any hard and fast rule.

For these reasons I agree that the protection order granted in this case should be set aside.

Attorneys for the appellant : Messrs. *Little & Co.*

Attorneys for the respondent : Messrs. *Payne & Co.*

Order set aside.

G. G. N.

ORIGINAL CIVIL.

Before Mr. Justice Macleod.

SEWARAM GOKALDAS, PLAINTIFF *v.* BAJRANGDAT HARDWAR
POTDAR, DEFENDANT.²

1915.

Septem-
ber 20.

Suit on a Hundi—Hundi passed up-country and not made payable in Bombay—Consideration of the hundi being the balance of account between the Bombay merchant and the up-country merchant—Account settled up-country—Jurisdiction of the High Court—Letters Patent, cl. 12—Leave of the Court to sue—Cause of action.

⁽¹⁾ (1910) 35 Bom. 47.

² O. C. J. Suit No. 875 of 1915.

1915.

SEWARAM
GOKALDAS
v.
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HARDWAR.

The plaintiffs carrying on business in Bombay had dealings with the defendant residing and carrying on business at Bassum in Akola. The account between the parties was made up and settled at Bassum, as a result of which the defendant passed at Bassum two *hundies* drawn on his own firm for Rs. 900 and Rs. 1,000, respectively in favour of the plaintiffs. On the failure of the defendant to meet the said *hundies* at the due dates, the plaintiffs brought a suit in the High Court at Bombay to recover the amount due on the same. The defendant pleaded that the Court had no jurisdiction to entertain the suit, as the moneys were not payable in Bombay. The plaintiffs contended that as the consideration of the *hundies* was the balance of the account due by the defendant to the plaintiffs in respect of the transactions effected in Bombay, the moneys were virtually payable in Bombay, and the material part of the cause of action arose in Bombay.

Held, that the cause of action being founded upon the *hundies*, and the *hundies*, not being made payable in Bombay, the Court had no jurisdiction to entertain the suit.

Per MACLEOD J. :—In giving leave under cl. 12 of the Letters Patent in suits on promissory notes, or *hundies*, I have always given leave when the money was payable in Bombay ; and, in my opinion, if there are transactions in Bombay, which result in a credit in favour of the Bombay merchant against an up-country merchant, and if the Bombay merchant goes to settle his account up-country and accepts a promissory note or *hundi* in satisfaction of his account, then if he wants to sue on that note in Bombay he must take the precaution to see that the note is made payable in Bombay.

THE facts of the case are sufficiently set out in the judgment of the learned Judge.

Strangman, for the plaintiff.

Desai, for the defendant.

MACLEOD, J. :—The plaintiffs, carrying on business in Bombay, had dealings with the defendant, who is said to carry on business at Bassum in Akola under the style of Chatandas Shankardas. The plaintiffs say that the account was settled in 1912 between the parties. The defendant, after paying a certain amount in cash, passed two *hundies* for Rs. 900 and Rs. 1,000, respectively, drawn on his own firm by the defendant payable in Bombay 181 and 361 days after sight, respectively.

As those *hundies* were not met when they fell due, the plaintiffs brought this suit for the recovery of the amount.

Paragraph 5 of the plaint states that the defendant resides at Bassum; that the *hundies* were passed at Bassum but the consideration of the *hundies* was the balance of the account due by the defendant to the plaintiffs in respect of transactions effected in Bombay and the moneys were payable to the plaintiffs in Bombay and a material part of the cause of action arose in Bombay.

Leave was obtained under cl. 12 of the Letters Patent to file the suit in Bombay.

The question has now arisen whether any part of the cause of action has arisen within the local limits. It must be admitted, on an inspection of the *hundies*, that the statement in the plaint that the *hundies* were payable in Bombay is incorrect. But it is contended that the consideration for the *hundies* was the balance of account due by the defendant to the plaintiffs in respect of transactions effected in Bombay. The question is whether that was a part of the cause of action. The point apparently does not seem to have arisen before; but if the whole cause of action consists of those facts which it is necessary for the plaintiffs to prove in order to succeed in getting a decree, then it was not necessary to prove the transactions out of which the present claim arose, as the claim on those transactions was satisfied by the passing of the *hundies*, and under the Negotiable Instruments Act the consideration for the *hundies* must be presumed, so the plaintiffs are entitled to a decree merely on production of the *hundies* unless the defendant can show that there was no consideration. In giving leave under cl. 12 of the Letters Patent in suits on promissory notes, or *hundies*, I have always given leave when

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the money was payable in Bombay, and refused leave when the money was payable out of Bombay; and, in my opinion, if there are transactions in Bombay, which result in a credit in favour of the Bombay merchant against an up-country merchant, and if the Bombay merchant goes to settle his account up-country and accepts a promissory note or *hundi* in satisfaction of his account, then if he wants to sue on that note in Bombay he must take the precaution to see that the note is made payable in Bombay.

Unfortunately, the plaintiffs, when they applied for leave, made a mis-statement in the plaint upon which I relied in granting the leave. If I had been aware that the facts stated in the plaint were incorrect, I should have refused the leave.

Therefore, I must hold now that the Court has no jurisdiction.

The plaint should be returned to the plaintiffs for presentation in the proper Court.

The plaintiffs to pay the defendant's costs.

Solicitors for the plaintiffs: Messrs. *Tyabji Dayabhai & Co.*

Solicitors for the defendant: Messrs. *Maneklal & Co.*

Plaint returned.

G. G. N.
