

Chunilal Mayachand Vs. E.E. Millard

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Court : Mumbai

Decided On : Oct-07-1937

Reported in : AIR1938Bom278; (1938)40BOMLR252

Judge : John Beaumont, Kt., C.J. and ;Blackwell, JJ.

Appeal No. : O.C.J. Appeal No. 61 of 1937

Appellant : Chunilal Mayachand

Respondent : E.E. Millard

Disposition : Appeal allowed

Judgement :

John Beaumont, Kt., C.J.

1. This is an appeal from a decision of Mr. Justice Engineer, and the only question is whether leave to sue should be given under Clause 12 of the Letters Patent on the ground that the cause of action or part of the cause of action accrued in Bombay.

2. The suit is a suit on a promissory note payable on demand. The note so far as is material is in these terms :-

On demand I promise to pay to Messrs. Chunilal Khupchand & Co., or order the sum of Rupees one thousand only (Rs. 1000) with interest at the rate of 1 per

cent, per mensem for value received in cash. Money payable either in Poona, Bombay or elsewhere.

It is dated January 28, 1937, and on July 28, 1937, the creditor, by his attorneys, gave notice to the debtor demanding payment to the plaintiff in Bombay at his residence at New Hanuman Lane, or at the attorneys' office, the office of the attorneys also being in Bombay. So that one has a demand for payment in Bombay and the plaintiff's contention is that consequently the cause of action arose wholly or in part in Bombay. There can be no doubt that if the money is payable only in Bombay that does give this Court jurisdiction.

3. The learned Judge refused to give leave under Clause 12 because, relying on a decision of this Court, he considered that the debtor had an option to pay either in Poona, or in Bombay or elsewhere, and therefore it could not be said that the money was payable in Bombay. But in the decision on which the learned Judge relied, viz. *Narottamdas Harjiwandas v. Soonderbai* (1936) O. C.J. Appeal No. 7 of 1936, decided by Beaumont C.J. and Rangnekar J., on September 30, 1936 (Unrep.) the Court was dealing with a contract for sale of goods, and under that contract moneys had to be paid by the purchaser either in Bombay or Bulsar, and the Court held that that gave an option to the purchaser to pay either in Bombay or at Bulsar, and as he had elected to pay in Bulsar it could not be said that the cause of action arose in Bombay. But that case is quite different from the present. Here the cause of action is on a promissory note payable on demand, and the option, I think, lies with the creditor to demand payment at such place as he chooses. Moreover the place of payment specified in the note being Poona, Bombay or elsewhere, the stipulation as to place really amounts to nothing at all, since it provides that the promissory note is payable anywhere. So that we have to deal with a promissory note payable on demand at any place, and I agree with the unreported decision of Mr. Justice Kania (*Jal Jamshed Irani v. Jamshed Khodadad Irani* (1932) O.C.J. Suit No. 226 of 1931, decided by Kania J., on February 10, 1932 (Unrep.) to which we have been referred, that since the creditor has demanded payment in Bombay, that fixes the place of payment, and makes it unnecessary for the promisor to apply to the promisee to fix a place for payment under Section 49 of the Indian Contract Act. In my opinion in this case the moneys

are payable in Bombay, and that being so the cause of action or part of the cause of action arose in Bombay and leave under Clause 12 of the Letters Patent should be granted.

Blackwell, J.

1. I also am of opinion that in the case of a demand promissory note such as that before us in this case the option rests with the creditor and not with the debtor as to the place of payment. Having regard to the terms of the note it was clearly, in my opinion, payable anywhere, and there was an option with the creditor to make a demand upon the debtor to pay him at such place as he chose. The plaintiff made such a demand by his letter of July 28, 1937, and in my opinion the demand being a demand for payment in Bombay the place of payment was fixed once and for all. That being so, I think that the cause of action thereupon arose in Bombay, and this Court has jurisdiction.

2. The learned Judge based his opinion upon an unreported decision of the Appeal Court, *Narottamdas Harjiwandas v. Soonderbai* but I entirely agree with the learned Chief Justice that that was a case of an entirely different character. I think, with respect to the learned Judge, that he was wrong in attempting to apply the facts of that case to the present and was wrong in thinking that notwithstanding the demand made by the creditor the option was still with the debtor according to that judgment. With respect to him I think that judgment has no application to the facts of this case, and I agree that leave should be granted.

John Beaumont, Kt., C.J.

3. Costs of the appeal and the application to be costs in the cause.