

Madho Ram Vs. Durga Prashad

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SooperKanoon Citation : sooperkanoon.com/471215

Court : Allahabad

Decided On : Jun-07-1910

Reported in : 6Ind.Cas.793

Judge : John Stanley, C.J. and ;Griffin, J.

Appellant : Madho Ram

Respondent : Durga Prashad

Judgement :

1. This appeal arises out of a suit brought by intermediate endorsers of a hundi against earlier endorsers and the drawers of the hundi to recover the amount paid by them to the holder of the hundi. The Court of first instance dismissed the plaintiff's claim finding that the hundi was not presented for payment within a reasonable time and that notice of its dishonour was not given. It also held, in accordance with the ruling in *Moti Lal v. Moti Lal* 6 A. 78, that in a case of the kind the onus lies upon the plaintiffs to prove that the defendants could not suffer damage by reason of want of notice and that being so, the want of notice of dishonour was excused. It pointed out that in this case the plaintiffs did not venture to allege, much less prove, that the defendants could not suffer damage by reason of the want of notice.

2. Upon appeal all other questions appear to have been abandoned except the question as to whether the defendants suffered loss by reason of want of notice of

dishonour. In other words, whether notice of dishonour in this case was excused. Section 98 of the Negotiable Instruments Act provides that no notice of dishonour is necessary when the party charged could not suffer damage for want of notice. If the plaintiff seeks to excuse the want of notice of dishonour in lies upon him to establish that the party charged could not suffer damage for want of such notice. This was so held in Moti Lal v. Moti Lal 6 A. 78, which we have quoted above. The learned Judge of the Small Cause Court, however, shifted the onus of proof in this case upon the defendants. He says in his judgment: 'it was for the defendant to prove the damage' and that 'it was necessary to see whether they had proved it'. Then he finds that the defendants had failed to prove loss by reason that the notice of dishonour had not been given and the plaintiffs were, therefore, entitled to their money. In this view of the law we are unable to concur. It was for the plaintiffs, as we have said, to show that by reason of the want of notice of dishonour the defendants could not suffer damage. The decision of the Court of first instance appears to us to be correct upon the findings, and we accordingly allow this appeal, set aside the decree of the lower appellate Court and restore the decree of the Court of first instance with costs in all Courts including fees in this Court on the higher scale. The objections are disallowed.