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SooperKanoon Citation : sooperkanoon.com/475425

Court : Allahabad

Decided On : Jul-05-1927

Reported in : AIR1928All68; 108Ind.Cas.144

Appellant : Ram Sarup

Respondent : Hardeo Prasad

Judgement :

Lindsay, J.

1. This application for revision under Section 25, Provincial Small Causes Courts Act, has been referred for decision to a Bench and the question to be determined is the liability of the defendant-appellant Ram Sarup in respect of a cheque drawn by him on the Allahabad Bank Limited on the 5th June 1926, and made payable to 'Ram Saran or order.' The amount of the cheque was Rs. 500.

2. On the 10th June 1926 the cheque was presented for payment and was dishonoured. It was proved at the trial that the drawer had no founds at credit with the Bank and that he had made no arrangement for an overdraft. Payment was refused by the Bank on the ground that it had not been arranged for. On 28th September 1926 the cheque was again presented for payment and again dishonoured on two grounds: (1) that payment had not been arranged for by the drawer and (2) that the endorsement of the payee was wanting. It is not clear who presented the cheque on this second occasion. Obviously it was some person

other than the payee. There was the evidence of a clerk of the Bank that it was presented by Hardeo Prasad, the plaintiff in this suit, but the Judge disbelieved, it. His finding is that Hardeo Prasad did not take the cheque to the Bank and had no notice of dishonour. A third presentation was made on 6th October 1926, on behalf of the Beopar Sahaik Bank to which the cheque had been endorsed the previous day by Hardeo Prasad. This time payment was refused on the ground that it had been stopped by the drawer.

3. As regards the stopping of payment the Court below did not believe the statement of the drawer or of the Bank Clerk, that the order to stop had been received on the 10th June 1926 and this is clearly right, for the refusal of the Bank to pay either on the 10th June or the 28th September was not based upon any stop order. And on the 10th June at any rate such an order would have been without meaning for the drawer had no funds at the Bank and had made no arrangement with the Bank for liquidation of the cheque.

4. The endorsements on the cheque require some notice. The first purports to bear date the 10th August 1926, and is by Ram Saran (the payee) in favour of Babu Ram. The Judge held that this was not a genuine endorsement for, according to the Bank evidence, there was no endorsement on the cheque when it was presented for payment on 28th September.

5. On this latter date Babu Ram endorsed to Hardeo Prasad the plaintiff, and he in turn endorsed to the Beopar Sahaik Bank on 5th October. On the following day this Bank made the third presentment of the cheque and payment, as stated above, was refused on the ground that the drawer had stopped it. The Judge believed that Hardeo Prasad had been deceived by his endorser, Babu Ram, and held that Hardeo Prasad having given value and having no notice that the cheque had been dishonoured, was a holder in due course and entitled to recover from the previous parties, including the drawer. It is argued before us that the plaintiff was not a holder in due course regard being had to the language of Section 9, Negotiable Instruments Act, according to which the holder in due course of a cheque means a person who for consideration became the possessor of the cheque (if payable to bearer) or the payee or indorsee of the cheque (if payable to

order) before the amount mentioned in it becomes payable, and who had no sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. The lower Court finds that Hardeo Prasad had no notice of any defect in the title of his transferred But it is argued that the first of the two conditions is not satisfied because Hardeo Prasad did not become the endorsee before the amount specified in the cheque became payable. A cheque, it is said, is payable on demand and the amount in this instance became payable on 5th of June, the date on which the cheque was drawn, whereas the endorsement was not made to Hardeo Prasad till the 28th September.

6. Under the English law (Bills of Exchange Act, 1882, Section 29) no person can be a holder in due course unless he became the holder of the bill before it was overdue. And for the purposes of the section a bill payable on demand (which includes a cheque) is deemed to be overdue when it appears on the face of it to have been in circulation for an unreasonable length of time. It is clear, therefore, that according to English law the holder of a stale cheque would not be treated as a holder in due course. The law in India is not so definite as the law in England,, and the expression 'overdue' is not to be found in Section 9, Negotiable Instruments Act. According to Section 9 no one can be a holder in due course unless he takes it before the amount mentioned in it became payable A cheque is payable on demand; the amount becomes payable when the cheque is presented for payment to the drawee. In the present case the cheque was presented at the Bank on 10th June 1926, and the amount became payable on that date. Hardeo Prosad did not become the holder till long after that date and he cannot, therefore, be a holder in due course under Section 9. It was not sufficient to find that he took the cheque in good faith, for consideration, without notice of dishonour and without having any reason to believe that there was any defect in the title of his transferrer, Babu Ram, On the face of it the cheque was stale and this was, or ought to have been, sufficient notice to Hardeo Prasad that payment was overdue. The case is governed by Section 59, Negotiable Instruments Act, and all that Hardeo Prasad acquired was the rights in the cheque of Babu Ram. The finding of the Judge appears to be that Babu Ram was not a holder for value and that the endorsement to him was fictitious. For these reasons the plaintiff's case against Ram Sarup, the drawer, must fail. The application for revision must therefore be allowed. The claim

against Ram Sarup must stand dismissed. No order as to costs in either Court, it being admitted that when Ram Sarup drew the cheque he had no funds in the Bank to meet it.