

Sukhram Vs. Baldeodas Manilal

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Court : Madhya Pradesh

Decided On : Jan-25-1957

Reported in : AIR1957MP138

Judge : Dixit and ;Samvatsar, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100 to 101 - Order 6, Rule 2 - Order 20, Rule 4 - Order 41, Rule 1; [Contract Act, 1872](#) - Sections 30

Appeal No. : First Appeal No. 23 of 1954

Appellant : Sukhram

Respondent : Baldeodas Manilal

Advocate for Def. : S.D. Sanghai, Adv.

Advocate for Pet/Ap. : K.B. Saxena, Adv.

Disposition : Appeal dismissed

Judgement :

Samvatsar, J.

1. This appeal is filed by the defendant against the decree passed by the District Judge, Ujjain.

2. The plaintiff firm Messrs. Baldeodas Manilal and Co., filed a suit against the defendant for recovering a sum of Rs. 13,923-15-6 in the Court of District Judge, Ujjain. The plaintiff alleged in the plaint that on 22-2-1946 the defendant borrowed from the plaintiff-firm a sum of Rs. 11,000-0-0 and promised to repay it with interest at 0-7-9 per cent per month ; that the defendant failed to pay this sum even after demand notice and the plaintiff had therefore to file the suit to recover it with interest.

3. The defendant contested the claim. In his written-statement he contended :

(i) that the plaintiff-firm Baldeodas Manilal and Co., was dissolved before the suit was filed and that Baldeodas, the ex-partner of the firm who alone, had brought the suit, was not competent to file it ;

(ii) that the defendant firm Bulakhiram Bhagwandas was also a dissolved firm and that the defendant Sukhram was not liable for the claim against it ;

(iii) that the defendant had not borrowed Rs. 11,000-0-0 or any other sum from the plaintiff firm on 22-2-1946 as loan as alleged in the plaint; that the defendant had entered into Naza-rana and Gali transactions and Waida (forward) contracts with the plaintiff in which the defendant suffered losses and became liable to the plaintiff-firm for a sum of Rs. 11,195-5-0 ; that, this money was payable on 22-2-1946 on which date the defendant paid Rs. 195-5--0 in cash and carried over the balance in the Khata showing it as loan borrowed ; that the Nazrana and Gali transactions were wagering transactions and as the balance due on account of these transactions formed the consideration of the debit entry of Rs. 11,000, it was void and the claim on its basis was not capable of being enforced in a Court of law.

4. On these pleadings, the trial Court framed five issues and decided all of them in plaintiff's favour. The result was that the trial Court decreed the claim of the plaintiff-firm in full with costs against the defendant on 15-1-1954. It is against this decree that the present appeal is filed by the defendant.

5. Before, proceeding further, it may be mentioned that the findings given by the trial Court on Issues 2, 4 and 5 have not been challenged by Mr. K.B. Saxena, learned counsel for the appellant during the course of his arguments before us. He raised only two contentions which are covered by Issues 1 and 3 which are as follows:

1. Whether after the dissolution of the firm Baldeodas Manilal and Co., the suit could be instituted on its behalf and whether Baldeodas s/o Manilal can file this suit as its owner? 3. Whether the sum of Rs. 11,000-0-0 was due on Nazrana and Gali transactions which being of wagering nature, were void and whether the plaintiff is not entitled to recover it ?

6. Mr. K.B. Saxena, learned counsel for the appellant did not dispute that the firm Baldeodas Manilal and Co., was dissolved before the suit was instituted and that Baldeodas, the person who filed the suit was one of the partners of that firm. It was not and could not be disputed that as a partner of the dissolved firm, Baldeodas was entitled to file the suit in the firm name as has been done in the present case. Mr. Saxena half-heartedly argued that in the plaint Baldeodas had described himself as owner of the firm which in fact he was not and therefore the suit as filed by Baldeodas was not competent. I do not see much force in this contention.

According to Baldeodas, when the firm Baldeodas Manilal and Co., was dissolved, the partners executed a deed of dissolution under the terms of which all the assets and liabilities of the firm were assigned to Baldeodas s/o Manilal, and he was expressly authorized 'to recover the money due to the dissolved firm.

7. The deed of dissolution is produced in this case at Ex. P-I and is proved by the plaintiff Baldeodas by examining two of the ex-partners, P. W. 1 Manibhai and P. W. 3 Kanjibhai. Under the terms of this document all the assets of the firm are assigned to Baldeodas and the responsibility for discharging the liabilities of the firm is also transferred to him. Baldeodas is further allowed to carry on business in future in the name of the dissolved firm, i. e., Baldeodas Manilal and Co. In view of the; terms of this document it is futile to argue that Baldeodas had no right to institute the suit in the name of the dissolved firm Baldeodas Manilal and Co.

8. Mr. K.B. Saxena learned counsel for the appellant, raised a somewhat different contention. He submitted that there were two firms carrying on business in Ujjain in the name of Baldeodas Manilal and Co., one of which was located at Phoota Darwaja and the other was carrying on business in Daulatganj. According to the learned counsel, the sum of Rs. 11,000-0-0 was debited in the books of Baldeodas Manilal and Co., of Phoota Darwaja whereas the present suit was filed by Baldeodas as owner of the firm Baldeodas Manilal and Co., of Daulatganj. The suit brought by the plaintiff-firm was not maintainable as the plaintiff had no locus standi to file it.

9. We are unable to consider this argument of the learned counsel for the simple reason that the defendant has not raised this contention in the written-statement and the plaintiff had no occasion to meet this aspect of the matter. It is settled law that decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found by the Court: *Trojan and Co. v. Nagappy Chettiar*, AIR 1953 SC 235 (A). The defendant has not raised any plea on the point he seeks to raise in this appeal and the point therefore does not arise for consideration. In my opinion issue No. 1 has been properly decided by the learned District Judge and there is no reason to interfere with his decision on that point.

10. The next point to be considered is whether the sum of Rs. 11,000-0-0 was a cash loan given by the plaintiff-firm Baldeodas Manilal and Co., to the defendant. - The plaintiff's claim in this behalf is based on an entry in the Rokad of the shop copy of which is produced in this case at Ex. P-3. It is mentioned in this entry that the sum of Rs. 11,000-0-0 was received by the defendant by way of loan in cash and was to carry interest at the rate of 0-7-9 per cent per month. The entry is signed by the defendant's Munim Babulal and this fact is not disputed by the defendant.

11. The defendant has denied receipt of cash loan and has contended that the sum of Rs. 11,000-0-0 mentioned in the entry represented the balance due from him to the plaintiff on account of Gali and Nazrana transactions which matured on Maha Sudi Poonam. If that was really the case there was no reason to mention in

the entry Ex. P-3 that the money was being received as a cash loan and further stipulate that interest would be payable on it. The defendant's Munim Babulal who has signed this entry, has offered no explanation for the stipulation to pay interest. He was specifically asked in cross-examination to explain why it was mentioned in Ex. P-3 that Rs. 11,000 were advanced in cash and why the provision was made for payment of interest.

He failed to give any satisfactory explanation and avoided a straight answer to the question put, on the pretext that he signed whatever was placed before him by the plaintiff. Babulal has gone further and has stated that before signing the entry Ex. P-3. he had not consulted the defendant Sukhram and had signed the entry of his own accord and his own responsibility. The defendant Sukhram has not supported the stand taken by his Munim and the trial Court has naturally refused to believe this ease, The Rokad entry showing that Rs. 11,000 were advanced la cash and by way of loan therefore remains unexplained.

12. The defendant had admittedly suffered heavy losses in the forward transactions for Maha Sudi Poonam Samvat 2002 and had to pay to several persons ever Rs. 60,000 on 23-2-1946. The plaintiff himself admittedly had to receive Rs. 11,195-5-0 from the defendant in these Waida transactions. To keep up appearances and to maintain his prestige, it was necessary for the defendant to disburse the Balan in cash in the hall of the association and for this, he naturally wanted cash money.

13. There is also the direct evidence on this point led by the plaintiff. He has examined P. W. Natwarlal, who was the Munim of the shop and was the person who had given the loan to the defendant. Natwarlal has stated that the defendant approached him before the Balan time and asked him for a temporary loan of Rs. 11,000 which was given, Natwarlal has further stated that the defendant wanted this money for paying the Balan in cash. Natwarlal has been believed by the trial Court and I do not find anything in the testimony of this witness to take a contrary view.

14. The defendant's own account-books also lend support to the plaintiff's case. The defendant has admitted in his evidence that the amounts paid and received in

Balan are not entered in the Rokad Bahi and only loan transactions are recorded therein. He has admitted that Rs. 11,000 have been credited in plaintiff's favour in the Rokad Bahi but has not been able to explain why this was done in case it was not a loan transaction and the practice in his shop was to enter only loan transactions in the Rokad.

15. On behalf of the defendant-appellant reliance is placed on the statement of D. W. Laddhabhai, the plaintiff's ex-partner who has obviously come to support the defendant's case. In examination-in-chief he denied that any cash loan was advanced from the plaintiff-firm to the defendant on 22-2-1946. In cross-examination this Witness has stated that the account books Of the plaintiff-firm were kept in regular course of business and were maintained according to Mahajani system. In reply to a Court question the witness admitted that according to Mahajani system of accounting, the sum of Rs. 11,000 if it was not paid in cash, should not have been debited in the Rokad Bahi and the transaction should have been recorded in the Nakal Bahi.

The statement of Laddhabhai that Rs. 11,000 were not paid in cash to the defendant thus seeing to be in conflict with the usual mode of accounting followed in the shop. Laddhabhai was an ex-partner of plaintiff Baldeodas and litigation is going on between the witness and the plaintiff Baldeodas. The learned District Judge who had an opportunity of noting the demeanour of the witness has not chosen to place reliance on the evidence of Laddhabhai and I do not think that he has gone wrong in this respect. The trial Court has considered all the material on record and has found that the sum of Rs. 11.000 was given to the defendant in cash by the plaintiff. I do not think there are sufficient grounds to interfere with this finding.

16. Mr. K.B. Saxena, learned counsel for the appellant pressed us to hold that the entries in the plaintiff's Rokad were manipulated in order to conceal the real nature of the transactions. He submitted that Nazrana and Gali transactions were wagering transactions which were void in law and as the plaintiff was aware that money due on these transactions was not recoverable through a Court of law, the plaintiff gave it the appearance of a cash loan by manipulating the accounts. In

other words, the learned counsel submitted that the Rokad entry Ex. P-3 was a camouflage and what was described as a loan was really the balance due on wagering contracts.

17. The question to be considered is, whether Gali and Nazrana transactions which are alleged to have been made by the defendant with the plaintiff-firm, are proved to be wagering transactions at all.

18. Gali and Nawana transactions are by themselves not necessarily wagering transactions. They are similar to the Teji-Mandi contracts which are carried on in the Bombay market and the real nature of which is discussed by Kincaid J., in *Manunhai Premanund v. Keshavji Ramdas*, AIR 1922 Bom 66 (B) and by the Lahore High Court in *Pirithi Singh v. Matu Ram*, AIR 1932 Lah 356 (O).

In *Manubhai Premanund v. Keshavji Ram-das*. (B) these transactions are explained by Kincaid J., as follows :

'There are three common forms of speculations in Bombay. They are known respectively as Teji-Mandi, Teji and Mandi. The word Teji means brightness, the word Mandi means dullness. Thus Teji is used to signify a rise in the market price of goods or stock, and Mandi to signify a fall. In the Teji-Mandi transactions, which have been very carefully examined by Beaman J., in *Jessiram Jugannath v. Tulsidas Damodar*, 16 Ind Cas 576 (Bom) (D), one party buys what is known as a double option. For this he pays a certain premium say Rs. 20 per Rs. 100. On the settling day the buyer has the right to declare himself either a seller or a buyer.

If the market falls he will declare himself a seller. If it rises he will declare himself a buyer, e. g., if it be supposed that by the contract price a bar of silver or a bale of goods is worth Rs. 100, A buys the double option for Rs. 20. If the goods rise to Rs. 100, he will declare himself a buyer and will lose Rs. 10. If the goods fall to Rs. 90 he will declare himself a seller and will lose Rs. 10. But if the goods rise to 150 or fall to Rs. 50, he will declare himself a buyer and a seller respectively and in each case will make Rs. 30 profits.

In other words, to use Beaman J.'s phrase the party buying the double option (the Teji-Mandi) is backing the fluctuations of the market against its stability. Conversely, the party who sells the double option backs the stability of the market against its fluctuations.

The Teji transaction is quite a different one. In it the buyer of the Teji (Lagadanaro or ap-plier) pays the seller (Khanaro or eater) a premium or Teji over and above the contract price of the bar of silver or bale of goods. If the market rises the buyer of the Teji who is also a buyer of the silver or the goods can ask the seller of the Teji to give him the goods or their value at the market rate on settling day whatever it, be. If the market falls, the buyer of the Teji merely loses his premium, e.g., A buys Rs. 100 worth of bar-silver from B and also buys Teji by the payment of Rs. 20 premium.

If the market rises to Rs. 150, A will make a profit of Rs. 50 minus his Rs. 20. If the market falls to Rs. 50, A will lose his Rs. 20 premium or Teji only. A thus insures himself against a big fall, B is not insured against a big rise. The third kind of transaction is a Mandi. It is the exact converse of the Teji. The buyer of the Mandi or premium is a seller Of the goods and the Mandi is the premium which he pays against a possible rise, e. g.. A sells Rs. 100 worth of bar-silver to B and buys Mandi by the payment of Rs 20 premium. If the market falls to Rs. 50, A will make a profit of Rs. 50 minus his premium. If the market rises to Rs. 150, A will lose his Rs. 20 premium or Mandi only.'

Towards the end of his judgment, Kincaid J., held that :

'The Teji and Waida transactions are on exactly the same footing and that unless it can be positively proved that the parties agreed neither to ask for nor to give delivery, the transactions are not wagering contracts.'

A similar view has been taken with respect to these transactions by a Division Bench consisting of Shah, Actg. C. J and Crump J., in *Maulal Dharamsi v. Allibhai Chagla*, AIR 1922 Bom 408 (E). In that case also the question raised was whether the Teji-Mandi contracts should be held as being wagers on account of their apparent nature and the characteristic alone without any other proof of intention of

the contracting parties. The learned Acting Chief Justice answered the question in the negative. He held that :

'The mere fact that the contract is a Teji contract or a Mandi contract or a Teji-Mandi contract with double option makes no difference to this point. The party who pleads that contract is void, as it is in the nature of a wager has to prove that fact.'

In *Pirithi Singh v. Matu Ram*, (C), the appellant had filed a suit for recovering certain amount due on transactions relating to purchase and sale of gold. The defendant admitted the dealings with the plaintiff but denied having entered into certain Nazrana transactions. The trial Court upheld the defendants' plea and dismissed the plaintiff's suit. In appeal the finding of the trial Court was reversed and it was held that the Nazrana transactions were proved. It was then contended for the defendants that these transactions were wagering transactions and money due on their footing was not recoverable. The learned Judges of the Lahore High Court repelled this contention. They observed :

'It would appear that what happens in a contract of this nature is that one party pays a premium to the other party thus acquiring an option to buy or to sell, as he decides; a certain quantity of gold at a certain rate on a certain date. Either on or some date prior to that date the purchaser decides whether he will buy or sell. According to his decision communicated to his broker the broker enters into a contract with some third person in order to meet the situation. On the due date the parties can either take or give delivery of the stipulated quantity of gold or settle on the differences.'

The evidence on record indicates that the transactions in the present case were similar in nature. The defendant Sukhram has stated from the witness-box that in a Nazrana transaction the person who applies Nazrana has a double option. If the rate rises above the stipulated figure, the person who applies the Nazrana, becomes a purchaser. On the contrary, if the rate falls below, he becomes a seller. On the Nazrana falling due, the Nazrana contract becomes a regular contract for forward delivery and is liable to be registered at the instance of either party in the Cotton Contract Registration Office. It is also registered in the association.

To the same effect is the statement of Ramswarup D. W. 1. According to the statement of this witness, Wajda transactions are carried on in Ujjain which are called 'Satta'. For carrying on these transactions, the Sauda Forward Delivery Association is established and the transactions are carried on under its aegis. The contracts are registered with the association and are recorded in- the Dhadwai Bahi supplied to each merchant : that these contracts are enforceable' through Courts.

In reply to further question, the witness has said that Gali and Nazrana transactions become genuine contracts on falling due and are thereafter-recorded in the association.

D. W. 2 Ladhahbai has also made a similar statement. He has stated that on the Nazrana becoming due, the transaction becomes a regular contract and delivery of goods can be given or taken in respect thereof.

From the evidence on record these transactions appear similar to those described in the Bombay case of Manubhai Premanand v. Keshavji Ramdas (B) as Teji Manndi contracts and those described in the Lahore case of Pirthi Singh v. Matu Ram (C) as Nazrana transactions.

There is not much of difference in Gali and Nazrana. Whereas in Nazrana transactions there is a double option, in Gali transactions the option is one-sided.

19. From the evidence on record as also from a perusal of the authorities referred above, it is plain that the Nazrana or Gali transactions are by themselves not necessarily wagering transactions. Whether in the present case the transactions were wagering, has therefore to be determined in the light of the evidence which is produced by the parties.

20. The test to determine whether particular transactions are wagering contracts, is laid down by the Privy Council in Sukdevdoss Ramprasad v. Govinddoss Chathurbhujadoss and Co 55 Ind App 32: (AIR 1928 PC 30) (F). At page 36 (of Ind App): (at p. 32 of AIR), their Lordships observed :

'This being so, it was contended on behalf of the respondents that the contract in question was a wagering contract. There can be no doubt that these various contracts were in character highly speculative; but, as was pointed out by the trial Judge and by the Judges on appeal that it is insufficient in itself to render them void as wagering contracts. The authorities cited show that to produce that result there must be proof that the contracts were entered into upon the terms that performance of the contracts should not be demanded, but that differences only should become payable'.

It is in the light of this test that the evidence on record in this case should be examined to ascertain whether the transactions between the parties were wagering transactions.

21. The plea that the transactions between the parties were wagering contracts has been raised by the defendant in Para 10 of the written statement. After alleging that the transactions were Gali, Nazrana and Waida transactions, the defendant has stated that there was no intention from the beginning of giving or taking delivery in these transactions but the idea was to settle the transactions by payment of difference; that in these transactions the delivery was never given or taken and that the transactions were always squared up by payment of difference only. The transactions were therefore wagering contracts and were void.

22. The defendant has not produced his account-books relating to these transactions and it is not clear what were the precise contracts for Maha Sudi Poonam Samvat 2002 Waida and what was their extent.

23. The plaintiff-firm had at the relevant time several partners. The defendant has not disclosed in his evidence when the transactions between the parties commenced and what were the terms agreed at the commencement of these dealings. The plaintiff Baldeodas has stepped into the witness-box and has examined two of the ex-partners as witnesses on his side. No questions have been put to these witnesses to suggest that at the commencement of the dealings between the parties, it was agreed that in none of these forward transactions the delivery would be demanded by either side and only difference would be paid or received.

Even the defendant has examined one of the ex-partners of the plaintiff-firm, D, W. 2 Laddhabhai, but no questions have been put to him to prove that the Nazrana, Gali and Waida transactions were commenced on any express or implied understanding that delivery was not to be given or received and only differences would be paid on these transactions. There is thus no evidence to prove that the transactions were commenced on terms that delivery would neither be given nor taken in respect thereof and only differences would be paid.

24. Mr. K.B. Saxena frankly conceded that there was no direct evidence to prove that the transactions were commenced or were carried on, on terms that delivery would not be given or received. He however relied upon the course of conduct between the parties and submitted that as in the past delivery was neither given nor received but differences only were paid, it should be presumed that the transactions were wagering in nature. In my opinion the mere fact that in the past delivery was not given nor taken in respect of the transactions entered into between the parties cannot alone be sufficient to presume that the transactions were wagering contracts.

As already observed by me, there is not an iota of evidence to show what was the nature and extent of these transactions and how in the past they were squared up. The mere allegation that transactions were squared up in the past by payment of differences is not sufficient to raise the presumption that the contracts were wagering contracts.

25. Reliance is placed by Mr. Saxena on the decision of the Allahabad High Court in *Shantilal v. Madanlal*. AIR 1954 All 789 (G). That was a case where it was proved that there were between the parties as many as 385 contracts and in none of these delivery was ever demanded. On adjustment of the transactions of sale and purchase, the promisees were found liable to deliver 13,400 maunds of grain on the due date. Considering the bulk of the transactions, the number of the contracts and the other circumstances present in the case, the learned Judges of the Allahabad High Court came to the conclusion that the transactions were wagering contracts.

26. In the present case, as I have already observed, there is no evidence to prove what was the extent of the transactions between the parties, how many contracts were outstanding and how many were adjusted by Tatapati The defendant on whom lay the burden of proving his plea of wager has not produced the necessary material. The Allahabad case which was decided on its own facts has therefore no bearing. It has not been proved by the defendant that the transactions on the basis of which the sum of Rs. 11,000 was found due from him were wagering contracts. It has thus not been proved that the plaintiff wanted to camouflage and conceal the real nature of the transaction and manipulated the debit entry of Rs. 11,000 with an ulterior motive.

27. On the view I have taken that the transactions are not proved to be wagering contracts, the plaintiff would be entitled to a decree even if it is held that the sum of Rs. 11,000 was not paid in cash on 22-2-1946 but was the balance of the Nazrana and Gali transactions which was carried over to the personal account with the consent of the parties. On this finding the Khata entry Ex. P/3 cannot be held to be without consideration.

28. The result is that there is no force in this appeal and it is hereby dismissed with costs.

Dixit, J.

29. I agree.

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