

Kochuthressia Vs. Devadas

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Court : Kerala

Decided On : Mar-19-1987

Reported in : AIR1988Ker282

Judge : M.P. Menon, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 4 and 5; [Stamp Act, 1899](#) - Sections 2(22)

Appeal No. : C.R.P. No. 654 of 1984

Appellant : Kochuthressia

Respondent : Devadas

Advocate for Def. : K. Ravivarma Thampan and; S.P. Kurup, Adv.

Advocate for Pet/Ap. : K.N. Narayan Pillai, Adv.

Judgement :

ORDER

M.P. Menon, J.

1. The question before the Court below was whether the document dt. 1-4-1980 was a promissory note, admissible in evidence as a properly stamped instrument; and it took the view that the document was just an agreement, and not a

promissory note. It is that view which is now being questioned in this revision.

2. . The document was executed by the respondents in favour of the plaintiff, and its contents disclosed the following : --

(i) the defenants had received Rs. 20,000/-from the plaintiff in cash, as a loan;

(ii) the defendants would regularly pay interest on the principal amount, every month, at 12%;

(iii) the principal amount would itself be repaid on receipt of a month's notice;

and (iv) if payment was not made as above,the liability could be enforced against thedefendants' properties.

The recitals in the documents were also to the effect that the parties were construing the document as a promissory note.

3. One of the contentions of the defendants was that the document had not specified that the amount was payable 'to the order' of the plaintiff, and that payability 'to the order' was one of the essential elements of a promissory note, under Section 4 of the Negotiable Instruments Act. The Section reads :--

"Promissory note'. -- A "promissory note' is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations

A signs instruments in the followingterms-

(a) 'I promise to pay B or order Rs. 500.'

(b) 'I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value' received.'

(c) 'Mr. B, I O U Rs. 1,000.'

(d) 'I promise to pay B Rs. 500 and all other sums which shall be due to him.'

(e) 'I promise to pay B Rs. 500, first deducting thereout any money which he may owe me'

(f) 'I promise to pay B Rs. 500 seven days : after my marriage with C.'

(g) 'I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum.'

(h) 'I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next.'

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h), are not promissory notes.'

What the section requires is that the instrument should contain an undertaking to pay a certain sum of money to :--

(i) a certain (or specified) person; or (ii) the order of such a person; or (iii) to the Bearer of the instrument.

The word 'or' in the last part of the Section, denoting the person to whom payments to be made, is evidently used in a disjunctive sense; and if there is any doubt in the matter, Illustration (b) should remove it. This is the view taken in *Hameed Haji v. Appukutty*, 1968 Ker LT 869 : (AIR 1969 Ker 189), though another part of the reasoning therein, based on Explanation (i) to Section 13 of the Negotiable Instruments Act, did not meet with the approval of a Full Bench in *Santsingh v. Madandas*, AIR 1976 Madh Pra 144. Section 13 probably indicates when a promissory note could be held to be negotiable, and the Explanation also is apparently more concerned with negotiability under the Act, than with the definition of 'promissory note'.

4. The Court below was therefore right in placing reliance on *Hameed Haji*, 1968 Ker LT 869: (AIR 1969 Ker 189) and holding that the absence of the expression 'to the order' was not by itself sufficient to hold that the document in question was not

a promissory note.

5. It; was however of the view that the document did not contain 'an unconditional undertaking to pay' as required by Section 4, because, in its opinion, repayment of the amount advanced was to be made only after a month's notice, which was a 'condition precedent', and different from a case where the undertaking was to pay after a month. It is complained that the above approach of the court below overlooks two important aspects,

6. The first is that under second paragraph of Section 5 of the Negotiable Instruments Act, a promise to pay is not conditional within the meaning of Section 4 :

'by reason of the time for the payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of happening may be uncertain.'

Can it be said that the issue of a notice for a month is not a 'specified event' which is not certain to happen, having due regard to the ordinary expectation of mankind? The document in Illustration (f) of Section 4 is not treated as a promissory note, because the payment there is to be effected after a contemplated marriage which may or may not take place; but if the promise to pay is after one month of the death of a specified person, the event will have to be treated as something which is certain to happen. It does not appear that the aforesaid provision in Section 5 of the Act was brought to the notice of the court below, when it was considering the question regarding 'unconditional undertaking'.

7. The second is that due attention has not been paid to the definition of 'promissory note' in the Indian [Stamp Act, 1899](#). When the question before the court was about the admissibility in evidence of the document in question as a promissory note, properly stamped under the Stamp Act, the definition in Section 2(22) of Central Act 2/1899 was also relevant. The sub-section defines promissory note as follows : --

'(22) Promissory note.-- 'Promissory note' means a promissory note as defined by the [Negotiable Instruments Act, 1881](#) (26 of 1881): It also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen;'

And a cursory examination of the above is sufficient to show that for the purposes of the Stamp Act at least, a note promising payment upon any condition or contingency, certain or not, will amount to a promissory note. The 'unconditional undertaking' in Section 4 of the Negotiable Instruments Act cannot, if the circumstances, completely conclude the question when it arises under the Stamp Act.

8. There are no doubt decisions by various other High Courts also, touching the question. They too may require consideration before a final decision is taken on the facts of the present case. But it seems to me that the court below was bound to examine the scope of at least Section 2(22) of the Stamp Act and Section 5 of the Negotiable Instruments Act, before reaching the conclusion that it did. In this view of the matter, I set aside the order sought to be revised and direct the court below to re-examine the question in accordance with law.

No costs.

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