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Dal Chand Vs. Satish Chandra

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Court : Rajasthan

Decided On : Feb-01-1982

Reported in : AIR1983Raj23

Judge : S.K. Mal Lodha, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Order 6, Rule 16 - Order 8, Rule 7

Appeal No. : Civil Revn. No. 29 of 1977

Appellant : Dal Chand

Respondent : Satish Chandra

Advocate for Def. : R.L. Maheshwari, Adv.

Advocate for Pet/Ap. : D.S. Shishodia, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

S.K. Mal Lodha, J.

1. This is a defendant's revision against the order dated Jan. 15, 1977 of the Civil Judge, Udaipur, by which the learned Civil Judge has ordered for striking out para 3 and para 2 of the additional pleas of the written statement It may be stated that

the learned Civil Judge dismissed theplaintiff-non-petitioner's application under Order VIII, Rule 9, C. P. C. and allowed the application under Order VI, Rule 16. C.P.C. The plaintiff has not challenged the order dismissing his application under Order VIII, Rule 9, C. P. C. The defendant has challenged that part of the order dated Jan. 15, 1977, by which the application of the plaintiff under Order VI, Rule 16, C. P. C. was allowed.

2. The plaintiff-non-petitioner instituted a suit for Rs. 6,000/- against the defendant-petitioner on the basis of a promissory note dated Mar. 13. 1963. The defendant contested the suit denying the execution of the pronote after borrowing Rs. 3,000/-. In para 3 of the written statement, the defendant raised a plea that the plaintiff is 'Be-namidar' and that his (plaintiff's) father Madanlai used to do money lending business in the name of the members of his family. It was also stated in para 3 that as the plaintiff was 'Benamidar' and as he had not taken the money lending licence, he cannot institute the suit.

In para 2 of the additional pleas, it was stated that defendant had several money dealings with the plaintiff's father and that by a registered letter. which was sent to him (plaintiff's father) on Jan. 2, 1974, he asked for the accounts of the past dealings, to which he did not reply. It was also averred in para 2 of the additional pleas that neither any amount by way of principal or interest is due from him nor from any member of his family. On behalf of the plaintiff, an application under Order VI, Rule 16, C. P. C. was filed on Aug. 7, 1976 for striking out para 3 and para 2 of the additional pleas of the written statement. This application was resisted on behalf of the defendant by filing a reply dated Sept. 4, 1976. The learned Civil Judge, by the impugned order, allowed the application under Order VI, Rule 16, C, P. C. filed by the plaintiff and ordered that para 3 and para 2 of the additional pleas of the written statement may be struck out on the ground that incorporation of para 3 and para 2 of the additional pleas of the written statement will prejudice, embarrass and delay the trial of the suit. To quote the learned Civil Judge : (Matter being in Hindi omitted. -- Ed.) The defendant has filed this revision questioning the order dated Jan. 15, 1977of the learned Civil Judge, by which he allowed the plaintiff's application under Order VI. Rule 16, C. P. C. as aforesaid.

3. I have heard Mr. D. S. Shishodia, learned counsel for the petitioner and Mr. Rule L. Maheshwari for the non-petitioner and have carefully perused the plaint and the written statement.

4. The contention of the learned counsel for the petitioner is that the learned Civil Judge has exercised his jurisdiction illegally or at any rate with material irregularity when he ordered for deletion of para 3 and para 2 of the additional pleas of the written statement, for, conditions under Order VI, Rule 16, C. P. C. are not satisfied. He submitted that the sum and substance of the pleas raised in para 3 and para 2 of the additional pleas is that the suit is not maintainable for want of money lending licence and that the defendant is not liable for the suit money for the reasons mentioned therein. Reliance was placed on Raghu Nath v. Radha Kishan, AIR 1929 Lah 634 and Bhagirath v. Gulab Kanwar, AIR 1'956 Raj 174.

5. Mr. Rule L. Maheshwari, learned counsel for the non-petitioner supported the order of the learned Civil Judge allowing the application under Order VI, Rule 16. C. P. C. He referred to the provisions of Sec. 82 of the Negotiable Instruments Act (No. XXVI of 1881) (for short, 'the Act'); Sivagurnatha v. Pad-mavathi, AIR 1941 Mad 417 (FB); Ri-shabkumar Mohanlal v. Motilal Kastur-Chand, AIR 1949 Nag 21 and Hiralal v. Ratan Lal. 1967 Raj LW 383. He also pressed for my consideration, on the basis of the decision reported in Maitra-yee Banerjee v. Prabir Kumar, AIR 1982 SC 17 that no jurisdictional error was committed by the learned Civil Judge in allowing the application under Order VI, Rule 16, C. P. C. and. therefore, it should not be interfered with.

6. Section 82 of the Act deals with discharge from liability on negotiable instruments. It is as under :

'82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon-

(a) to a holder thereof who cancelssuch acceptor's or indorser's name withintent to discharge him, and to all par--ties claiming under such holder;

(b) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving titleunder such holder after notice of such discharge;

(c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.' It was held by the Full Bench of the Madras High Court in Sivagurunath's case (AIR 1941 Mad 417) that the Court cannot look into the surrounding circumstances when deciding whether the maker of a promissory note has executed it as the agent or the representative of another and that it is the instrument alone which has to be looked at.

7. Section 8 of the Act came up for consideration in Rishabkumar's case (AIR 1949 Nag 21), wherein. Hidayat-ullah, J., as he then was, observed as under:--

'In our opinion the true position is-that a stranger to a negotiable instrument -- be he the undisclosed principal of the drawer or the payee -- has, in himself, no position in the eye of law, even though the person named in the instrument be his benamidar. The entire scheme of the Negotiable Instruments Act is to clothe the persons named in the instrument with rights and it is not open to the parties to an instrument (and more: so strangers) to show that a person named therein is not the principal but another not so named''

(Underlining is mine).

8. It was observed in Firm Sadasuk Janki Das v. Sir Kishen Pershad, AIR1918 PC 146 as follows:

'The statement, to which reference has been made, which appears on p. 99 of Messrs. Iyengar and Adiga's book on negotiable instruments, that 'outside evidence is inadmissible on any person as a principal party unless his -- the principal party's -- name is in some way disclosed in the instrument itself,' is not in itself an adequate statement of the law. It is not sufficient that the principal's name should 'in some way'' Be disclosed, it must be disclosed in such a way that on any fair interpretation of the instrument his name is the real name of the person liable upon the bills.

Their Lordships' attention was directed to Sections. 26, 27 and 28 of the Negotiable Instruments Act of 1881, and the termsof these sections were contracted with the corresponding provisions of the English statute. It is unnecessary in this connection to decide whether their effect is identical. It is sufficient to say that these sections contain nothing inconsistent with the principles already enunciated and nothing to support the contention, which is contrary to all established rules, that in an action on a bill of exchange or promissory note against a person whose name properly appears as party to the instrument, it is open either by way of claim or defence to show that the signatory was in reality acting for an undisclosed principal.'

While dealing with Sections 27, 37 and 118 of the Act, Bhandari, J., as he then was, in Hiralal's case (1967 Raj LW 383) observed as under;--

'A negotiable instrument possesses certain characteristics, the primary characteristic being that it is negotiable.'

It is, therefore, clear that in a suit based on negotiable instrument, it is not open to either side to show that they acted benami through others. Benami transactions are not recognised in connection with negotiable instruments.

9. The defendant has denied the execution of the pronote in favour of the plaintiff In para 2 of the plaint, the plaintiff has specifically stated that after borrowing Rs. 3,000/- and agreeing to pay interest at the rate of 1% per mensem, the defendant signed pronote on Mar. 13, 1963 in favour of the plaintiff. The defendant in reply to para 2 of the plaint has contended that para 2 of the plaint is wrong. The relevant part of para 2 is as under:-- (Matter being in Hindi omitted. -- Ed.) The promissory note stands in the nam of the plaintiff. In view of Section 82(c) of the Act the defendent cannot raise the plea, which he has raised in para 2 of the additional pleas of the written statement regarding discharge. In para 3 of the written statement, the defendant has raised a plea of benami transaction which is not recognised under the Act.

10. The expression 'order which may tend to prejudice, embarrass or delay the fair trial' came up for examination in Abdui Rahim v Md. Azimuddin, AIR 1965 Pat 156

in a case relating to in--consistent defences on contradictory facts. While considering the provisions of Order VI. Rule 1C and Order VIII, Rule 7,C. P, C., it was observed by H. Maha-patra, J., with whom A. B. N. Sinha, J. agreed, as under (at p. 158):--

'It is true, inconsistent pleas on different grounds of defence can be pleaded Rule 7 of Order 8, Civil P. C., allows that. As early as in 1878 the case of Berdan v. Greenwood, (1878) 3 Ex. D 251 recognised such privilege in defence. The power has been given to the Court under the Civil P. C, Rule 16 of Order 6 to strike out any matter in a pleading that may tend to embarrass a fair trial of the suit. There is a certain amount of peril for the party who takes absolutely inconsistent pleas grounded on different and contradictory facts, and while leading evidence in support of them he will have to blow hot and cold in the same breath which is bound to shake confidence in the truth of his allegations. For such reasons, inconsistent defences that will depend upon contradictory facts are not generally permitted. If a defendant challenges a plaintiff's title to the suit premises he cannot at the same time plead that his tenancy has not been terminated according to law.' The question whether a pleading is embarrassing is, in each case, a question for the court to decide in view of the facts and circumstances of a particular case. A claim or defence which a party is not entitled to make use of or a pleading which contains irrelevant allegations is embarrassing.

11. Shiv Dayal, J.. as he then was, in S. K. K. Trust v. Kesri Dal Mill, AIR 1976 Madh Pra 54 relying on Davy v. Carretl, (1877) 7 Ch D 473, held that where any allegation cannot offer a defence to the action and which if not struck out would unnecessarily delay the suit, it must be struck out.

12. In view of the inconsistent stand on contradictory facts taken by the defendant that he has not executed the pronote in favour of the plaintiff and that defence of benami transaction cannot be taken in respect of the pronote on the basis of which, the suit has been instituted and following the principles laid down in Abdul Rahim's case (AIR 1965 Pat 156) and S. K. K. Trust's case, I am of opinion that the learned Civil Judge has not committed any jurisdic-tional error when he allowed the plaintiffs' application under Order VI. Rule 16, C.P.C. striking out para

3 and para 2 of the additional pleas of the written statement.

13. Now, I may say a few words about two decisions relied on by the learned counsel for the petitioner.

14. It was held in Raghu Nath's case (AIR 1929 Lah 634) that payment made to the endorsee's agent and received by him in his capacity as an agent is good discharge of the hundies. No foundation whatsoever has been laid down in the written statement by the defendant that there was any endorsement by the plaintiff and that any payment was made by the defendant to the plaintiff's father in his capacity as agent of the plaintiff. It may be recalled that the case of the defendant is that he did not execute the pronote in favour of the plaintiff on the basis of which the suit was instituted against him and that the plaintiff was merely a 'benamidar' The decision in Raghu Nath's case has no relevance.

15. Sections 3 and 78 of the Act were considered in Bhagirath's case (AIR I95fi Raj 174). It was held therein that Sections 8 and 78 or the Scheme of the Act do not preclude anybody except the holder of the promissory note or bill of exchange or cheque from filing a suit based thereon and that what Section 78 really appears to lay down is that a payment, in order to act as a full discharge of the instrument, must be made to the holder as provided in Section 82(c) where its application arises. It was observed as under (at p. 177):--

'We are, therefore, of opinion that Section 78 should not be construed to mean that the right to institute a suit on the basis of an instrument specified in the section vests merely in the holder and no other person whatever. We, therefore, agree, with respect, with the view taken in Brojo Lal Shah v. Budh Nath. (AIR 1928 Cal 148) and similar other cases in so far as it accords with what we have stated above.' It was further observed:--

'At the same time, it has to be remembered that although a beneficiary or a true owner may bring such a suit, it is the holder who can give a discharge to the maker according to Section 78, Negotiable Instruments Act, and consequently the debtor would be entitled to insist that before he can be called upon to pay to the true owner, the latter must secure to him a lawful discharge from the holder.' This

decision is distinguishable on facts.

16. No case for interference with the order dated Jan. 15, 1977 allowing the plaintiff's application under Order VI, Rule 16, C.P.C. is made out.

17. There is no merit in this revision petition and it is, accordingly, dismissed without any order on to costs.

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