

Gopal Chandra Vs. BepIn Behari

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Court : Kolkata

Decided On : Jun-01-1954

Reported in : AIR1955Cal353,58CWN1047

Judge : K.C. Chunder, J.

Acts : [Reserve Bank of India Act, 1934](#) - Section 31; ;Limitation Act, 1908 - Section 14; ;[General Clauses Act, 1897](#) - Section 3 and 3(20); ;[Indian Penal Code \(IPC\), 1860](#) - Section 52

Appeal No. : Civil Rule No. 3446 of 1953

Appellant : Gopal Chandra

Respondent : BepIn Behari

Advocate for Def. : Sarat Chandra Jana and ;Arun Kumar Janah, Adv.

Advocate for Pet/Ap. : Jyotirindra Nath Das, Adv.

Judgement :

ORDER

K.C. Chunder, J.

1. This Rule was issued at the instance of a plaintiff whose suit for money due on a handnote was dismissed by the Small Cause Court Judge of Midnapore.

2. The plaintiff's case was that the defendant executed a handnote in favour of the plaintiff and the handnote contained the words that it was payable to the plaintiff or to his order.

3. The learned Judge has found that the defendant did execute the handnote and that the amount is due. There were two defences, namely, that the suit was barred by limitation and secondly the suit was not maintainable in view of the [Reserve Bank of India Act, 1934](#), Section 60.

4. The learned Judge has found that the suit is not barred by limitation. The learned Judge, on the other hand, has held that the suit is hit by the [Reserve Bank of India Act, 1934](#). There was a prayer for instalments. This question has not been finally decided by the learned Judge.

5. As regards the question of maintainability, the learned Judge is clearly wrong. 'Payable to bearer on demand' means that anybody without an endorsement from the holder of the note can get payment. On the other hand, a handnote being payable to a particular person or to his order means that any person in possession of it cannot get payment. The only person entitled to the payment will be either the person in whose favour it is drawn or the endorsee from him. Therefore there is no question in such a case of being payable to bearer on demand and consequently no question of Section 60 of the Reserve Bank of India Act arises. The learned Judge's decision on the point must be set aside. The suit is maintainable.

6. Mr. Janah has urged the question of limitation. It appears that the promissory note was executed on 5-3-1950. The suit was filed in the Civil Court on 3-3-1953, as an ordinary money suit and not as a Small Cause Court Suit. It appears that this was discovered on 10-6-1953 and the plaint was returned and on the very next date 11-6-1953, the plaint was filed in the Small Cause Court. Mr. Janah's contention is that Section 14, Limitation Act, has no application as this was not in good faith, i.e. with due care and attention as it did not appear that the plaintiff had not been negligent, and he should have found out that there was a Small Cause Court at the place. 'In good faith' has been defined in the General Clauses Act of 1897 in Section 3, Clause 20 and it runs thus:

'The thing shall be deemed to be done in goodfaith where it is done in fact honestly, whetherit is done negligently or not.'

7. There is absolutely no dispute here about the act being an honest one. Negligence does not by itself show want of good faith, where General Clauses Act applies. This definition in the General Clauses Act applies to the Limitation Act, Section 14. It is only in the Indian Penal Code that good faith requires due care and attention. Such requirement is not mentioned in the Indian General Clauses Act.

8. Under the circumstances, the learned Judge was right in holding that the suit was not barred by limitation as the plaintiff is entitled to the period spent in the Civil Court in its ordinary money jurisdiction. The claim of the plaintiff must, therefore, be decreed. The order of the Small Cause Court dismissing the suit is set aside.

9. As the question of instalment has not been finally decided, the suit is sent back to the learned Judge for deciding upon the question of instalment upon evidence.

10. The plaintiff will get his costs upto this stage in both the courts. Further costs will be at the discretion of the trial Judge.