



A.S.No.16 of 2022,

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on : 28..03..2025

Judgement Pronounced on : 08..04..2025

CORAM

THE HONOURABLE MR.JUSTICE N.SATTHISH KUMAR

Appeal Suit No.16 of 2022

and

C.M.P.No.585 of 2022

.....

K.V.Murugesan

.... Appellant / Defendant

S.S.Maniyan

.... Respondent / Plaintiff

Appeal filed under Section 96 of the Code of Civil Procedure 1908, praying to set aside the judgement and decree dated 05.04.2021 made in O.S.No.85 of 2019 on the file of the learned Principal District Judge, Namakkal, Namakkal District.

For Appellant : Mr.B.Jawahar

For Respondent : Mr.T.L.Thirumalaisamy



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JUDGEMENT

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The sole defendant before the trial court who suffered a money decree is the appellant. The sole respondent is the plaintiff before the trial court.

2. The suit in O.S.No.585 of 2019 was filed by the respondent/plaintiff for recovery of a sum of Rs.13,23,333/- from the defendant with subsequent interest on principal sum of Rs.10,00,000/- at the rate of 1% per Rs.100/- and for the costs of the suit.

3.The case of the plaintiff in brief is as follows:

(a) The defendant entered an agreement of sale with him 14.08.2011 for the sale of the suit scheduled mentioned property for a total sale consideration of Rs.15,00,000/- and received a sum of Rs.8,00,000/- as advance on the date of agreement itself.

(b) The balance sale consideration payable was Rs.7,00,000/-. As agreed between them, the plaintiff had to pay the balance sale consideration within a period of three years and to have the sale concluded.

(c) The plaintiff was always ready and willing to perform his part of the contract. The defendant was, however, requesting further time. Accordingly, time was extended for another two years orally since the



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defendant had not got the original title deeds released from his other party.

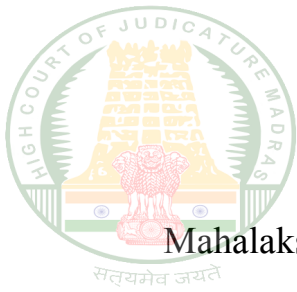
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(d) As the defendant did not hand over the original documents pertaining to the suit property, in the presence of the mediator, it was decided that the plaintiff had to get his money back, and the defendant agreed to return the advance money received under the agreement of sale with a nominal interest of Rs. 2,00,000/-. Accordingly, the defendant issued a cheque dated 08.05.2016 for Rs.10,00,000/- drawn on HDFC Bank, Rasipuram branch, promising to pay the cheque amount within two months and to get back the cheque. Believing the words of the defendant, the plaintiff did not present the cheque for collection.

(e) However, after the issuance of the above cheque, the defendant neither paid any amount towards interest on the advance money nor did he return the advance money. Despite repeated demands made by the plaintiff, no amount was paid by the defendant. Hence, the suit.

4. The case of the defendant in brief is as follows:

The defendant opposed the suit, *inter alia*, contending that he had not executed any agreement of sale on 14.08.2011. He has borrowed money only Mahalakshmi Finance at Tiruchengode and handed over a cheque and signed blank papers. The plaintiff was one of the Directors of the said



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Mahalakshmi Finance. After the suit was filed, when he approached the

plaintiff and enquired of the cheque, the plaintiff informed him that he could do whatever he wanted. Original records have not been filed along with the suit.

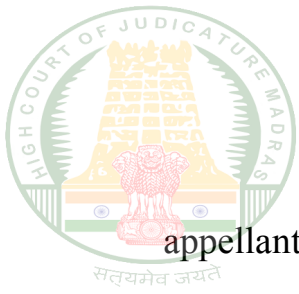
5. Based on the above pleadings of the parties, the following issues were framed by the trial court for trial:

(1) Whether the respondent/plaintiff is entitled for recovery of money being the suit amount a sum of Rs.13,23,333/- with subsequent interest for the principal as prayed for?

(2) To what other relief the respondent/plaintiff is entitled?

6.1 During the trial, on the side of the respondent/plaintiff, he examined himself as P.W.1 and in support of his case, he examined one Ganapathi as P.W.2 and marked Ex.A.1, cheque said to be issued by the defendant in favour of the plaintiff for Rs.10,00,000/- representing the return of advance money received under an agreement of sale. On the side of the appellant/defendant, no oral and documentary evidence was adduced.

6.2 Upon considering the oral and documentary evidence available on record, the learned Judge has concluded that the respondent/plaintiff had proved the fact that the agreement of sale entered by him with the



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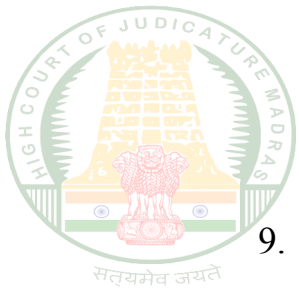
appellant/defendant for the purchase of an immovable property could not get

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completed owing to the failure of the appellant/defendant in getting back the original title deed from his other party and as such, upon persuasion by the mediators, the appellant/defendant had agreed to return the advance money and in due discharge of the same, he had issued a cheque (Ex.A.1) and as as such drawn a presumption under Section 139 of the NI Act and held that the appellant/defendant has miserably failed to rebut the presumption and proved to the contrary. Therefore, the learned Judge decreed the suit as prayed for. It is this decree and judgement, now under challenge in this appeal suit.

7. The main grounds that have been taken in the appeal are that (1) the original sale agreement has not been filed; 2) the suit is barred by limitation; (3) Ex.A.1-Cheque will not extend the limitation since it will not be treated as endorsement of the sale agreement; and (4) the trial court erred in shifting the burden on the appellant/defendant. According to the appellant, Ex.A.1 was given to Mahalakshmi Finance wherein the respondent/plaintiff was one of the Directors.

8. This court has heard Mr.B.Jawahar, learned counsel for the appellant/defendant and Mr.T.L.Thirumalaisamy, learned counsel for the respondent/plaintiff.



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9. The learned counsel for the appellant/defendant would strenuously submit that Ex.A.1 will not extend the limitation since there was no promise in writing to extend the period of limitation.

10. The learned counsel for the appellant/defendant would further submit that when the cheque was not presented for encashment, as per Section 64 of the NI Act, suit itself is not maintainable.

11. In support of his above submission, the learned counsel for the appellant/defendant would place reliance heavily upon the judgment in the case of **N.Jayamurugan v. M/s.Saravana Global Holdings Limited**, 2024 (6) MLJ 199 : 2024 (6) CTC 455.

12. Per contra, the learned counsel for the respondent/plaintiff would contend that the respondent/plaintiff has clearly spoken of the fact that there existed an agreement for sale in 2011 between himself and the defendant. The evidence of P.W.2 supported the claim of the respondent/plaintiff. In his written statement, the appellant/defendant has not seriously disputed to the agreement's existence. Except an evasive denial, no specific denial had been made in this regard. Even in his evidence, the appellant/defendant, as D.W. 1, only feigned ignorance. Further, according to him, the fact of issuance of the cheque towards advance money for the sale of an immovable property under



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the agreement of sale has been clearly spoken to by P.W.1 and the same was supported by P.W.2. This evidence of P.W.2 was not even disputed.

13. The repondent/plaintiff would further contend that Ex.A.1 cheque would certainly fall within the ambit of Section 25(3) of the Contract Act and therefore, under Section 64 of the NI Act, the presentment is not mandatory, and no damage whatsoever was proved by the defendant. Moreover, no such plea was ever raised before the trial court and for the first time, during the course of argument, such a plea was taken which cannot be entertained at the appellate stage. In support of his above contentions, he relied upon the judgements in the cases of (i) **C.M.Sivaram v. V.S.Jayaram Mudaliar**, 79 LW (5) 69: AIR 1966 Mad 297; (ii) **Benares Bank Limited v. Horumusji Pestonji and others** [ILR LII 696] : AIR 1930 ALL 648; (iii) **K.Rajagopal v. R.Suman** (C.R.P.No.1054 of 2021 dated 01.06.2021]; and (iv) **Manik Ratan Guin and another v. Prokash Chandra Chattopadhyay and another**, AIR 1955 Cal 338 : 1954 SCC OnLine Cal 128.

14. In the light of the above rival contentions, the points that arise for consideration in this appeal suit are:

- 1) Whether cheque (Ex.A.1) was issued for a time barred debt?



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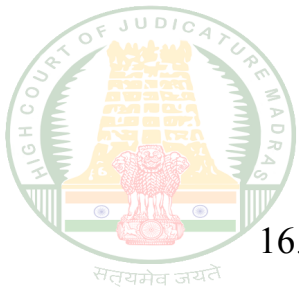


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- 2) Would the mere handing over of the cheque (Ex.A1) amount to giving a promise to pay a time-barred debt?
- 3) Whether the suit is not maintainable in view of the non-presentment of the cheque (Ex.A1)?

Point Nos.1 and 2:

15. The respondent/plaintiff has pleaded that on 14.08.2011, there was an agreement entered by the appellant/defendant with him for the sale of an immovable property for a total sale consideration of Rs.15,00,000/-; on the same day, under the agreement itself, the appellant/defendant was paid an advance of Rs.8,00,000/-; and they both agreed that the sale should be finished in three years and that the remaining amount should be paid by then. However, it is the further case of the respondent/plaintiff that time was extended for another two years as the original title deed was not handed over by the appellant/defendant and despite sufficient time given, the appellant/defendant could not get back his original title deeds from his party, and therefore, there had been a mediation in which the appellant/defendant had agreed to return the advance money with interest, and accordingly, he had issued the cheque (Ex.A1) on 08.05.2016.



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16. In the written statement, the appellant/defendant except for an evasive denial that there was no such agreement was entered by him with the respondent/plaintiff, no specific denial with regard to the specific allegations made in the plaint.

17. Be that as it may, even such denial was made specifically, disputing the stand of the respondent/plaintiff, the respondent/plaintiff who examined himself as P.W.1 has categorically stated about the execution of the agreement by the appellant/defendant and time extended between them mutually to have the sale completed and also the circumstances which resulted in issuing Ex.A.1-Cheque. P.W.2 has spoken about the agreement of sale that existed between the respondent/plaintiff and the respondent/defendant and also the advance amount paid by the respondent/plaintiff to the appellant/defendant under the agreement. Ex.A.1 came to be issued later by the appellant/defendant in order to discharge the return of advance money as agreed by the appellant/defendant. The evidence of P.W.2 was not disputed in its entirety. The evidence of P.W.2 with regard to handing over of the cheque (Ex.A.1) towards the return of part sale consideration was not even disputed in the cross-examination of P.W.2. As already discussed above, the entire chief examination of P.W.2 was not specifically disputed. Therefore, when a fact



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stated in the chief-examination is not disputed in the cross examination, it is

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18. Furthermore, even in his cross-examination, the appellant/defendant (D.W.1) had only feigned ignorance of the case of the respondent/plaintiff. In fact, the appellant/defendant has pleaded ignorance to the question, Could he know that the respondent/plaintiff pleaded in the plaint about the agreement of sale in the plaint?" He has simply stated that he was not aware of it. In the light of the above facts facts coupled with the non-denial of the evidence of P.W.2, it has to be held that there was an agreement between the parties.

19. It is relevant to note that P.W.1 has specifically stated in his evidence that at the time of handing over of the cheque towards the return of advance money and also interest thereon, the original agreement was handed back to the appellant/defendant. When the appellant/defendant was confronted with the photocopy of the agreement, he very conveniently denied the same.

20. Be that as it may, the issuance of the cheque has not been disputed. It is the specific case of the appellant/defendant that a cheque was issued to Mahalakshmi Finance, where the appellant/defendant was one of the Directors. Therefore, mere non-filing of the original sale aappellant/defendantgreement will not make any difference since the witnesses have clearly spoken about the



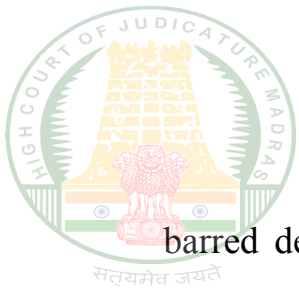
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agreement that was entered by the appellant/defendant appellant/defendant

with the respondent/plaintiff. The issuance of the cheque to Mahalakshmi Finance has also not been disputed by the appellant/defendant. However, the said factum has not been established. In the absence of any material to substantiate the plea that the cheque was issued only to Mahalakshmi Finance, it has to be held that the cheque was issued to the respondent/plaintiff. Further, D.W.1 in his evidence admitted that there was no enmity between the respondent/plaintiff and himself. When such was the position and when there was no reason as to why the respondent/plaintiff had to file a false suit against the respondent/plaintiff.

21. In view of the foregoing, now, it remains to be decided, whether issuing the cheque (Ex.A.1) constitutes a promise to return the part sale consideration (advance money)?

22. According to the learned counsel for the appellant/defendant, the cheque was only an indemnity, and it cannot be construed as a promise made in writing to attract the provision of Section 25(3) of the Indian Contract Act, Act,1972. Once issuance of the cheque was not disputed and it has been established that the cheque was issued by the appellant/defendant, this court is of the view that even in the absence of any express writing with regard to time-



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barred debt, it has to be presumed that the very handing over of the cheque

WEB G itself in respect of the debt owed by the appellant/defendant.

23. It is relevant to note that in the case of K.K. Rm. Muthayee Achi (Died) and another v. A.K. Rm. S. Rm. Subbiah Chettiar and another [AIR 1951 Mad 903] wherein this court while dealing with Section 25(3) of the Indian Contract Act, has held as follows:-

“In *Ganpathi Moodelly v. Munisami Moodely* (33 Mad 159), a Bench of this Court, consisting of Benson Offg. C.J. and Sankaran Nair J., has held that a promise to pay under S. 25 of the Indian Contract Act will be enforced if the real consideration is shown to be a barred debt, though no reference is made in the document to such debt, and no knowledge of the debtor that the debt is barred proved before the promise is made. There are also decisions of the Calcutta and Bombay High Courts to the same effect, and it is unnecessary to refer to them as we are, bound by the two Bench decisions of this Court referred to above, which have taken a contrary view from that of Miller J. in *Ramasami v. Kuppusami* (20 MLJ 656) . We must, therefore, hold that the fact that the defendant was not conscious when she executed Ex. P. 1 that Rs.4000 out of the consideration thereunder represented a debt



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which was time-barred, and did not promise to pay that debt knowing it to be a time-barred debt, will not make any difference to her liability.”

24. In the case of **K.Rajagopal v. R.Suman** (C.R.P.No.1054 of 2021 dated 01.06.2021) a learned single Judge of this court

“The reason of the learned Subordinate Judge, Omalur, that the plaintiff cannot institute a suit without presenting the cheque before the proper Zone, is clearly wrong. A cheque is a Negotiable Instrument. A holder of a cheque gets cause of action to sue upon the cheque once the cheque is issued and the fact whether the cheque is presented for payment to the Bank or not, does not really matter. A cheque should ordinarily be presented for payment to the Bank within three months of its execution ; but a suit based on a cheque can be filed within three years of its execution. Therefore, I do not think that the learned Trial Judge was right in returning the plaint on the ground that the suit cannot be maintained without representing the cheque before the proper Zone.”

25. It is further relevant to note that definition contained in Section 2(d) of the Indian Contract Act, 1872, comprehensively provides that When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from



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doing something, such act or abstinence or promise is called consideration for the promise .

26. Section 9 of the Indian Contract Act, 1872, contemplates that, promise may be express or implied. When the issuance of the cheque has been clearly established by evidence, it has to be inferred that there was a meeting of mind between the parties which resulted in issuing the cheque towards debt owed by the appellant/defendant.

27. A Division Bench of this Court in para 35 to 38 of the its judgement in the case of **N.Jayamurugan v. M/s.Saravana Global Holdings Limited**, (2024) 6 MLJ 1999 : 2024 (6) CTC 455 has held as follows:-

“35. For ascertaining whether the nature of the aforesaid documents marked as Exs.C.6 to C.8 are of a "promise to pay", it would be necessary to examine the definition of the word promise under Section 2(b) of the Indian Contract Act, which reads as follows:

"(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise;"

36. Section 9 of the Indian Contract Act provides that if the proposal of acceptance is made in words, the



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promise is said to be express but under other circumstances it remains an implied promise. Section 9 reads as follows:

"9. Promises, express and implied.-

In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied."

37. Thus implied promise is not unknown under the Indian Contract Act.

38. Therefore, the word 'promise' defined in Sections 2(b) besides 9 of the Indian Contract Act are kept in mind, an admission could be 'express' or 'implied', 'promise' covered by Section 25(3) of the Indian Contract Act need not be 'express'. If the legislature had intended that such promise should be an 'express promise' only, it would have indicated so but the word 'express' is not found in Section 25(3) of the Indian Contract Act. So it would not be proper to read so and restrict the scope of Section 25(3) of the Indian Contract Act to express 'promise' only."

28. A combined reading of Sections 25(3), 2 (b), 2(d) and Section 9 of the Indian Contract Act, 1872 enunciates that a promise need not be express



but it can be implied. Hence, on the facts established in the given case, this

court holds that the cheque (Ex.A1) was issued for the time-barred debt and it is legally enforceable under the law. This point is answered accordingly against the appellant/defendant and in favour of the respondent/plaintiff.

Point No.2:

29. On behalf of the appellant/defendant it was contended during the course of arguments before this court that presentment of cheque is necessary in view of the provision under Section 64 of the NI Act, 1881. Though this contention was raised for the first time in this appeal, and it was never raised during the trial or in the appeal memorandum, this court is inclined to address the said issue as well.

30. Section 64 of the Negotiable Instruments Act, 1881, reads as follows:

64. Presentment for payment.— (1) Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Where authorized by agreement or usage, a presentment through the post office by means of a



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registered letter is sufficient.

Exception.- Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

(2) Notwithstanding anything contained in section 6, where an electronic image of a truncated cheque is presented for payment, the drawee bank is entitled to demand any further information regarding the truncated cheque from the bank holding the truncated cheque in case of any reasonable suspicion about the genuineness of the apparent tenor of instrument, and if the suspicion is that of any fraud, forgery, tampering or destruction of the instrument, it is entitled to further demand the presentment of the truncated cheque itself for verification:

Provided that the truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made accordingly.”

31. On a plain reading of Section 64 it appears that it is mandatory for presenting the cheque. The above provision lays down a general rule that negotiable instruments should be presented for payment failing which the “other parties” are not liable thereon to such holder. The expression “other



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parties” reflects the common law principle that the maker/drawer of the

instrument is not discharged for want of presentment.

32. In the case of **Ramchurn Mullick v. Lutchmeechund Radakissen and Gobind Doss, (1811-72) 4 IR 198**, it has been held as follows:-

“If this had been a decision on a regular Bill of Exchange, payable on or after sight, it would have been a strong authority for the Plaintiff in error. It is not, however, the case of a Bill of Exchange, but of a banker's cheque, which is a peculiar sort of instrument, in many respects resembling a Bill of Exchange, but in some entirely different. A cheque does not require acceptance; in the ordinary course it is never accepted; it is not intended for circulation, it is given for immediate payment; it is not entitled to days of grace; and though it is, strictly speaking, an order upon a debtor by a creditor to pay to a third person the whole or part of a debt, yet, in the ordinary understanding of persons, it is not so considered. It is more like an appropriation of what is treated as ready money in the hands of the banker, and in giving the order to appropriate to a creditor, the person giving the cheque must be considered as the person



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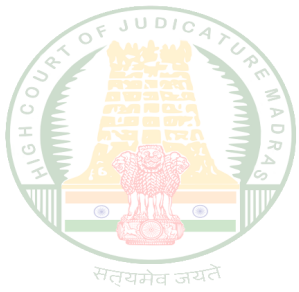


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primarily liable to pay, who orders his debt to be paid at a particular place, and as being much in the same position as the maker of a promissory note, or the acceptor of a Bill of Exchange, payable at a particular place and not elsewhere, who has no right to insist on immediate presentment at that place. There is a very good note on this subject in the case of Serle y. Norton (2 Moo. and Eob. 404), as to the difference between cheques and Bills of Exchange. We do not think that the case of a cheque is similar to that of regular Bills of Exchange, inland or foreign, drawn payable at or after date, and are satisfied with the view taken by this authority in the Court below.

33. In the case of **Robinson v Hawksford** (1846) 115 ER 1195, it has been held as follows:

“Where a loss has occurred by the cheque not being presented, it is necessary to inquire if there was any unreasonable delay: and the loss itself would be some evidence of that fact. Under ordinary circumstances, the only rule is that, if things have continued the same, and no damage has arisen from delay of presentment, the



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drawer continues liable.”

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34. In the case of **Kanhayalal v. Ramkumar**, AIR 1956 Raj 129, the Rajasthan High Court has held that “*the rule of presentment for payment by the holder for fixing liability for non-payment on the drawer is subject to well recognised exceptions enumerated in section 76 of the NI Act, 1881 and one such exception is as respects the drawer where the drawer could not suffer damage from the want of such presentment.*”

35. In the case of Harish **Chander v Ganga Singh**, AIR 1974 P & H 156, the Punjab and Haryana High Court has opined that the expression “other parties” would not obviously include the drawer/maker. It was held as under:

“I am, therefore, of the considered view that the expression ‘other parties thereto’ must be interpreted to exclude from its ambit the ‘maker’ of the cheque as well. Otherwise it does not appeal to reason that the drawer of a cheque, who has been held out to be the principal debtor under section 37 of the Act would be absolved of his liability under the cheque in case of non-presentment for payment and the drawee would continue to be saddled with the liability thereunder, even if either at the time of issue of the cheque or thereafter the drawer never



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placed at the disposal of the drawee any money to enable the latter to honour the cheque, as and when presented. For the foregoing reasons, I hold that the drawer (the defendant-respondents) despite non-presentment of the cheques in question is liable thereon.”

36. Section 72 of the Negotiable Instruments Act, 1881 reads as follows:

“72. Presentment of cheque to charge drawer.—

Subject to the provisions of section 84 a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.”

37. Section 84 of the NI Act, 1881 reads as follows:

“84. When cheque not duly presented and drawer damaged thereby.- (1)Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers



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actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a large amount than he would have been if such cheque had been paid.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.

Illustrations

(a) A draws a cheque for Rs. 1,000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

(b) A draws a cheque at Ambala on a bank in Calcutta. The bank fails before the



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cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.”

38. In ascertaining what is “**reasonable time**” under Section 84(1) it is necessary to read this provision in conjunction with proviso (a) to Section 138 of the Negotiable Instruments Act, 1881. As per this provision, the cheque has to be presented within the period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.

39. The period of validity of a cheque was further reduced to 3 months vide RBI notification dated 04.11.2011 with effect from 01.04.2012. This period is now construed as a “reasonable time” prescribed in Section 84(1) as pointed out by the Division Bench of the Kerala High Court in ***Subanamma Ninan v George Veeran***, 2020 SCC Online Ker 4151, wherein it was observed:

“It is therefore imperative that the reasonable period stipulated in Sections 84(1) and (2) of the NI Act shall be read harmoniously with the time prescribed in proviso (a) to Section 138. If so read, what determines the time of commencement of period of presentation is the date of the cheque



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and not the date of delivery of the cheque.”

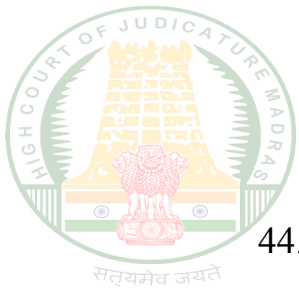
The two illustrations appended to Section 84 would indicate the nature of the damage contemplated by this section relates to the failure of the drawee Bank.

40. In the first illustration, the drawer has funds to meet the cheque then, it ought to have been presented but is not presented. As a result of the delay, the cheque is not presented and in the intervening period the bank fails. The drawer stands discharged and the payee/holder can now claim only against the Bank and not the drawer.

41. In the second illustration, the Bank fails before the cheque ought to be presented. In such case, the general principle applies and the drawer having suffer no damage is liable on the cheque as contemplated by Section 76(d).

42. Further, it is also relevant to note that Section 75-A excuses presentment for a supervening circumstance beyond the control of the holder. Section 76 deals with circumstances where presentment is not necessary. Thus, if the drawer/maker can show that he had occasioned damage by non-presentment, he would stand excused from payment. This provision embodies the exception contained in the common law.

43. Section 76(d) has been explained by Mudholkar, J (as he then was) in ***Haji Sheikh Hasanoo v. S. Natesa Mudliar and Co., AIR 1959 Bom 267.***



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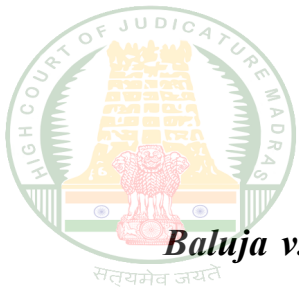
44. Damage being a sine qua non for attracting the exception under Section 76(d) it is necessary that the same must be pleaded and proved by the drawer that (a) he had sufficient credit to his account when the cheque ought to have been presented and (b) that a consequence of a failure to present it within reasonable time, the drawer has occasioned damage.

45. The Orrisa High Court in the case of **Abdul Majid v. Ganesh Das Kalooram Ltd., AIR 1954 Ori 124**, in the following words:

“In our view, it was for the defendants to have proved that they had sufficient credit at the time and on the examination of the evidence on record we are definitely of the opinion that the defendants have failed to prove each of the above ingredients.”

46. A single judge of the Delhi High Court in the case of **Four Bhai (P) Ltd. v. Walaiti Ram, ILR (1973) 2 Del 891** has held that Section 76(d) is not attracted to a cheque because the instrument contains an unconditional order directing the drawee to pay the amount specified therein and the transaction comprised in it is in the nature of an agreement to obtain the payment from the drawee.

47. However, it is pertinent to note here that, a contra view was taken by another learned single judge of the Delhi High Court in the case of **Sumitra**



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Baluja v. Bharat Chemical Industries, (1983) 53 Comp Cas 561, wherein it

was held:

“Section 64, on which the defendants have placed much reliance, is more general in terms and does not specifically deal with cases of drawers of cheques as has been done by the aforesaid provisions. This section, therefore, cannot defeat the specific provisions contained in those sections. As observed by the Rajasthan High Court in the case of Kanhayalal v. Ramkumar, AIR 1956 Raj 129, the rule of presentment for payment by the holder for fixing liability for non-payment on the drawer is subject to well recognised exceptions enumerated in s. 76 and one such exception is as respects the drawer where the drawer could not suffer damage from the want of such presentment.”

48. In the case of **G.M Sivaram v Jayaram Mudaliar**, AIR 1966 Mad 297, a Division Bench of this Court has held as follows:

“It is settled law that when a maker refuses to pay the money or puts forward certain defenses it is not necessary to present the bill for payment, and the maker would be deemed to have waived his right to require that the note should be shown to him. It must be held that the defendant must be deemed to have waived his right to



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take advantage of any default in presentment for payment. Due presentment is insisted upon solely for the benefit of the maker who is prepared to honour his obligation. But this requirement can obviously have no application to a party who repudiates his obligation. Waiver, may not only be express but may also be implied and any conduct of the maker leading to the inference that the note if presented would not be honoured would dispense with the necessity of presentment.

49. The above judgements would thus clarify it that where the drawer had refused payment by taking certain defences, it was not open to him to take shelter under the rule of presentment to avoid payment. A combined reading of Sections 64 and 76(d) coupled with Section 37 of the NI Act would make it obvious that the maker of the cheque is liable as principal debtor as long as damage has not been established by him, or for want of presentment, he cannot avoid his liability.

50. From the above discussions, this court is of the view that maker of the cheque continues to be liable unless and until it is shown that he has occasioned damage by want of presentment in which case he is excused from payment.

51. In the instant case, as there is no pleading in the written statement,



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with regard to any damages on account of non-presentment, it is not open to the

appellant/defendant to avoid his liability by taking shelter under Section 64 of NI Act, particularly at the appellate stage. This point is answered accordingly.

52. For the foregoing discussions, this court does not find any merit in the appeal suit and the same must fail.

In the result, the appeal suit is dismissed. The judgment and decree dated 05.04.2021 made in O.S.No.85 of 2019 on the file of the learned Principal District Judge, Namakkal, Namakkal District are confirmed. No costs. Consequently, connected CMP is closed.

Index : yes / no
Neutral Citation : yes / no
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To

1. The Principal District Judge, Namakkal, Namakkal District.



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N.SATHISH KUMAR.J.,

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