

PETITIONER:
INDIAN BANK

Vs.

RESPONDENT:
K. NATARAJA PILLAI AND ANR.

DATE OF JUDGMENT 22/10/1992

BENCH:
[KULDIP SINGH AND N.M. KASLIWAL, JJ.]

ACT:

Constitution of India 1950-Article 136-Appeal-Execution of promissory note, equitable mortgage etc. for loans for bank-Proof-Statutory presumption u/s. 118-Negotiable Instruments Act, 1881-Liability of defendants to pay the amount claimed by bank.

Negotiable Instruments Act, 1881-Section 118-Promissory note-Consideration-Presumption of-Proof of execution of pronote, equitable mortgage etc. for bank loans-Liability of defendant to pay the amount claimed by bank.

HEADNOTE:

The appellant-Bank filed a suit for the recovery of an amount of Rs.1,21,006.98 due under an equitable mortgage and pronote against the defendant No. 1, his wife and his son, the defendant Nos. 2 and 3 respectively.

Accordingly to the Bank, the defendant Nos. 1 to 3 executed a promissory note for Rs. 1,00,000 on 26.8.1971 in favour of the Bank and two hypothecation deeds in respect of 'A' schedule properties. They also executed an equitable mortgage on 28.8.1971 for 'B' schedule properties.

The consideration for the transaction also included an amount of Rs. 71,000 granted by the Bank in favour of 37 persons by way of short term loans. The defendant No.1 has executed a guarantee agreement on 14.6.1971 in favour of the Bank in respect of the short term loan in favour of 37 persons.

The defendant No.1 denied the execution of guarantee agreement as well as the promissory note. He also denied the furnishing of any guarantee with regard to the repayment of loans amounting to Rs.71,000 to 37 persons. He contended that the agent of the bank in order to ward off his own prosecution and arrest for having advanced large amounts as loans to landless persons in an irregular manner, obtained the signatures of the defendant on a printed promissory note without the details having been filled up; and that the documents were got executed by exercise of fraud, undue influence, coercion and misrepresentation.

The defendant Nos. 2 and 3 in their separate written statements took the same stand as taken by the defendant No.1.

The defendant No. 3 also filed a separate additional written statement taking the ground that as he was born on 12.11.1953, he being minor on the date of the alleged execution of the promissory note, the same was void as against him.

The trial Court decreed the suit in favour of the Bank

and against the defendant Nos.1 and 2. The suit against defendant No.3 was dismissed as he was found to be a minor on 26.8.1971, i.e, on the date of the execution of the promissory note.

The defendant Nos. 1 and 2 filed an appeal in the High Court.

The High Court though upheld the finding of the trial court, that the promissory note was executed with the full knowledge that it was a promissory note for Rs. 1,00,000, but the same was void for want of consideration to the extent of the loan advanced to 37 borrowers. It further held that the loans amounting to Rs. 71,000 to 37 persons were advanced from 17.12.1970 to 4.5.1971 and as such there was no consideration for executing the guarantee agreement nor for executing the promissory note. It also held that the promissory note could be taken to have been supported by consideration only to the extent of Rs. 21,616.25 which represented the amount due against defendant Nos.1 and 2 on account of their personal borrowings from the Bank.

The High Court allowed the appeal in part and passed a decree in favour of the Bank for an amount of Rs. 21,616.25 only with interest at the rate of 10-1/2 percent per annum from the date of the plaint till the date of the decree of the trial court and at the rate of 6 per cent per annum from the date of the decree till the date of the recovery of the amount.

Against the judgment and decree of the High Court, the Bank moved this Court, in the present appeal by special leave.

Allowed the appeal filed by the Bank, this Court, HELD : 1.01. All the three defendants had taken loans from the bank and those were outstanding against them at the time of execution of the pronote.[115-B]

1.02. The defendants has executed the pronote and also created equitable mortgage in favour of the Bank and the pronote itself contained an endorsement of "for value received".[117-F]

1.03. Section 118 of the Negotiable Instruments Act, 1881 provides for a statutory presumption of consideration of every negotiable instrument, which includes a promissory note.[115-B]

1.04. The pronote, Exhibit A.1. dated 26.8.1971 was executed with full consideration. The defendants knowingly and with full knowledge had executed the pronote Exhibit A.1. In the facts and circumstances of the case, there was no necessity of going into the question of novation of contract as contemplated under Section 62 of the Indian Contract Act. [117-E].

1.05 The High Court was wrong in arriving at the conclusion that Exhibit A.1 failed for want of consideration to the extent of Rs.74,190.56 and also for the amount advanced to the third defendant, the liability in respect of which came to Rs. 4,193.19. [117-D]

1.06 The High Court has taken a wrong approach of the entire case and has ignored the important relevant document which prove beyond any manner of doubt that the promissory note, Exhibit A.1, the basis of the suit was executed with consideration and the defendant Nos. 1 and 2 were liable to pay the entire amount claimed by the Bank. [114-H, 115-A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2945 of 1981.

From the Judgment and Order dated 25.11.1980 of the Madras High Court in Appeal No.699 of 1976.

S.K. Sastri and S. Srinivasan for the Appellant.

A.T.M. Sampath and Ms. Pushpa Rajan for the Respondents.

The Judgment of the Court was delivered by

KASLIWAL, J. This appeal by grant of special leave is directed against the judgment of Madras High Court dated 25.11.1980.

The appellant - Indian Bank (in short 'the Bank') filed a suit for the recovery of an amount of Rs.1,21,006.98 due under a equitable mortgage and pronote against three defendants namely, K. Nataraja Pillai (defendant No.1), his wife N. Pappathi Ammal (defendant No.2) and his son N. Narayanan (defendant No.3). According to the Bank, the defendant Nos.1 to 3 executed a promissory note for Rs. 1,00,000 on 26.8.1971 in favour of the Bank. They also executed two hypothecation deeds in respect of 'A' schedule properties and executed an equitable mortgage on 28.8.1971 for 'B' schedule properties. The consideration for the aforesaid transaction also included an amount of Rs. 71,000 granted by the Bank in favour of 37 persons by way of short term loans. The defendant No.1 had executed a guarantee agreement on 14.6.1971 in favour of the Bank in respect of the aforesaid short term loan in favour of 37 persons. The Bank has thus based its claim in the plaint on the promissory note and guarantee agreement for Rs.1,00,000 as principal and Rs. 21,006.98 as interest.

The first defendant filed a written statement denying the execution of guarantee agreement as well as the promissory note. He pleaded inter alia that the defendant has not furnished any guarantee on 14.6.1971 with regard to the repayment of loans amounting to Rs. 71,000 to 37 persons. The defendants has not executed any promissory note in favour of the Bank for a lakh of rupees nor has executed any equitable mortgage nor deposited any documents of title towards any loan of Rs.1,00,000. The defendant No.1 also pleaded that the agent to the Bank Shri Krishnamurthy Iyer in order to ward of his own prosecution and arrest for having advanced large amounts as loans to landless persons, in an irregular manner obtained the signature of the defendants on a printed promissory note without the details having been filled up. The documents were got executed by exercise of fraud, undue influence, coercion and misrepresentation. The defendant Nos. 2 and 3 filed a separate written statement and took the same stand as taken by the defendant No.1. The third defendant subsequently filed a separate additional written statement taking the ground that he was born on 12.11.1953 and as such being minor on the date of the alleged execution of the promissory note, the same was void as against. The trial court by judgement dated 29.4.1975 decreed the suit in favour of the Bank and against the defendant Nos. 1 and 2 only and dismissed the suit against defendant No.3 as he was found to be minor on 26.8.1971.

The defendant Nos. 1 and 2 filed an appeal in the High Court. The High Court though; upheld the finding of the trial court that the promissory note Exhibit A.1 dated 26.8.1971 was executed with the full knowledge that it was a promissory note to Rs.1,00,000, but the same was void for want consideration to the extent of the loan advanced to 37 borrowers. The High Court held that the loans amounting to Rs. 71,000 to 37 persons were advanced from 17.12.1970 to 4.5.1971 and as such there was no consideration for executing the guarantee agreement dated 14.6.1971 nor for

executing the promissory note on 26.8.1971. The High Court further held that the promissory note Exhibit A.1 can be taken to have been supported by consideration only to the extent of Rs. 21,616.25 which represented the amount due against defendant Nos. 1 and 2 on account of their personal borrowings from the Bank. The High Court also held that the trial court itself has found it established that the defendant No.3 was a minor on 26.8.1971 and the Bank having not filed any appeal, no decree would have been passed against defendant Nos. 1 and 2 for an amount of Rs.4,193.19, the amount advanced to the third defendant. The High Court as a result of the above findings allowed the appeal in part and passed a decree in favour of the Bank for an amount of Rs.21,616.25 only with interest at the rate of 10-1/2 per cent per annum from the date of the plaint till the date of the decree of the trial court and at the rate of 6 per cent per annum from the date of the decree till the date of the recovery of the amount. Aggrieved against the judgment and decree of the High Court the Bank has come in appeal before this Court.

We have heard learned counsel for both the parties and having thoroughly perused the record. So far as the execution of the promissory note Exhibit A.1 and the execution of guarantee agreement Exhibit A.8 is concerned, both the trial court as well as the High court have found in favour of the Bank and the same being a finding of fact is not under challenge. The only question which calls for consideration before us is whether the view taken by the High Court that the promissory note was void for want of consideration to the extent of loans of Rs.71,000 advanced to 37 persons is correct or not. The High Court has taken the view that so far as the guarantee agreement Exhibit A.8 is concerned, the same was executed on 14.6.1971 long after the loans amounting to Rs. 71,000 advance from 17.12.1970 to 4.5.1971. None of the 37 borrowers were granted any loan on or after the execution of Exhibit A.8 by the first defendant. The High Court took the view that where the surety bond comes into existence after the original borrowing by the principal debtor, the creditor must prove, if he wants to proceed against the surety that he did something or refrained from doing something in order to be a valid consideration of the contract of surety or guarantee. The High Court in the facts and circumstances of the case observed that neither the amounts advanced to 37 persons has become due for payment on the date of execution of Exhibit A.8 on 14.6.1971 nor the Bank had come forward with the case that the 37 persons were threatened with suits for recovery of the amounts borrowed by them nor the first defendant intervened and stood as a guarantee so as to prevent impending legal proceedings as against 37 borrowers. Thus, the Bank cannot be taken to have refrained from doing anything in respect of the said loan of Rs. 71,000 to form the same as consideration for the guarantee agreement. The High Court in this regard placed reliance on *Nanak Ram v. Mehin Lal*, I.L.R. 1 Allahabad 487, *Muthukaruppa Mudali v. Kathappudayan* 27 M.L.J. 249 and on *Bank of India v. Matha Gounder*, 1980 T.N.L.J. 117.

The High Court then examined the question of the liability of the defendant Nos. 1 and 2 on the basis of the pronote Exhibit A.1 in respect of the sum of Rs.71,000 borrowed by 37 persons on the principle of novation of contract as contained under Section 62 of the Indian Contract Act. The High Court observed that section 62 contemplates a new contract superseding or rescinding or altering the original contract. The new contract should

extinguish the earlier contract and the liability under the earlier contract should come to an end otherwise the novation will fall for want of consideration. The High Court held that in this case there was subsisting debt between the Bank and the 37 debtors and as such the liability arising out of the debt could only be transferred to the first defendant, a third party to the original agreement only by a tripartite contract which will amount to novation. In this case, it has neither been alleged nor proved that all the 37 borrowers from the Bank were parties to the arrangement under which the first defendant is said to have taken over their liability. Even after the execution of the promissory note Exhibit A.1 the existing debt due by the 37 borrowers to the Bank was not extinguished and the Bank was entitled to claim the amount from the 37 borrowers in spite of the pronote having been executed by the defendants.

The High Court in our view has taken a wrong approach of the entire case and has ignored the important relevant documents which prove beyond any manner of doubt that the promissory note Exhibit A.1, the basis of the suit was executed with consideration and the defendant Nos. 1 and 2 were liable to pay the entire amount claimed by the Bank. Exhibit A.1 dated 26.8.1971 is the promissory note executed by the defendants in favour of the Bank for a sum of Rs. one lakh which itself recites that it was executed for value received. Section 118 of the Negotiable Instruments Act, 1881 provides for a statutory presumption of consideration of every negotiable instrument which includes a promissory note. It has been established on record that all the three defendant had taken loans from the Bank and those were outstanding against them at the time of execution of the pronote. The Bank had come forward with the case in the plaint that the first defendant had obtained a medium term loan of Rs.10,000 on 11.9.1970 for the purpose of installing a pump set and an engine and digging a well and for which an equitable mortgage in respect of 7.86 acres of land was made in favour of the Bank. The defendant No.1 further secured a short term loan of Rs.2,000 on 18.12.1970 on the security of the crops raised in his lands. The second defendant who was wife of the first defendant had obtained a short term loan of Rs. 2000 on 26.3.1970. The third defendant who was the son of the first defendant had also obtained a short term production loan of Rs. 2,000 on 25.5.1971 and a further sum of Rs. 2,000 on 15.12.1971. The defendant No. 1 has also executed a guarantee agreement on 14.6.1971 in respect of short term production loan granted to 37 persons amounting to Rs.71,000. The total of the above outstandings came to Rs.93,239.03. The defendants sought a sanction of loan for Rs.1,00,000 and the head office of the Bank sanctioned the said loan to the defendants on 18.8.1971 in order to cover up the earlier loans. A sum of Rs.6,760.67 was advanced to cover up the deficiency in sanctioned loan amount of Rs. 1,00,000. On 26.8.1971 the defendants executed the promissory note for the sanctioned loan amount of Rs.1,00,000 and to repay the amount with interest as mentioned in the pronote. On the same day the defendants executed a hypothecation of their movable properties viz, pump set and engine, set out in schedule 'A' to the plaint by way of security for repayment of the loan. They also executed another hypothecation bond in respect of the crop on the same day. On the same day, the defendants agreed to execute an equitable mortgage deed in respect of 27.02 acres of land set out in schedule 'B' of the plaint towards the loan of Rs.1,00,000 and deposited the title deeds relating to the properties with the branch of the Bank at Madurai on

28.8.1971. The defendants has come forward with a plea that they did not execute the aforesaid documents Exhibit A.1 and A.8 and Shri Krishnamurthy Iyer, agent of the Bank had perpetrated a fraud and that the transaction was vitiated on the ground of fraud, undue influence, coercion and misrepresentation. Both the trial court as well as the High Court found it established as a fact that the aforesaid documents were executed by the defendants knowing fully well the details of the transaction regarding the liability of Rs. 1,00,000. The present suit is based on the promissory note Exhibit A.1 and the equitable mortgage deeds Exhibits A.4 and A.37. Thus, so far as the question of any consideration of the guarantee agreement Exhibit A.8 is concerned, the same is of no consequence in view of the subsequent execution of the promissory note Exhibit A.1. The law enunciated in the ruling referred to above in order to hold that the guarantee agreement Exhibit A.8 dated 14.6.171 was without consideration as the loan to 37 persons has been advanced much earlier to the execution of Exhibit A.8, will not render the promissory note to be without consideration. Now, so far as the consideration of the promissory note Exhibit A.1 is concerned, the defendants has applied for sanctioning a loan of Rs.1,00,000 from the Bank. The head office of the Indian Bank at Madras vide Exhibit A.127 issued a sanction order to the Indian Bank Sivaganga Branch granting a medium term loan of Rs. 1,00,000 to the first defendant on 18.8.1971. The loan was sanctioned on the condition of obtaining joint and several demand promissory notes and an equitable mortgage deed in respect of 27.02 acres of land and hypothecation bond of 2 electric pump sets from the defendants. It further stated that the liability of a sum of Rs. 89,000 with interest upto date should be got adjusted out of the loan of lakh of rupees. The agent of the Indian Bank Sivaganga Branch sent a communication to the first defendant on 21.8.1971 informing him of the sanction of the loan. Exhibit A.36 was the office copy of the letter whereby the first defendant had been informed of the sanction of the medium term loan of Rs. 1,00,000 subject to the execution promissory note and other documents as directed by the head office. Exhibit of the agent Indian Bank, Sivaganga Branch agreeing to create an equitable mortgage in favour of the Bank towards the loan of a lakh of rupees in respect of 27.02 acres of land. Exhibit A.38 is the registered letter sent by the first defendant to the custodian of the Indian Bank, head office, Madras intimating that the balance amount that will be paid to him after adjustment of all his liabilities, as disclosed by him under the letter marked Exhibit A.37 may not be sufficient for him to carry on his agricultural operations and as such requesting to sanction a medium short term loan of not less than Rs.20,000 and also requested to direct the agent Indian Bank, Sivaganga Branch to return the promissory notes and other connected documents to enable him to collect the amounts from the concerned parties. Apart from the aforesaid documents, Exhibits A.39 is the office copy of the letter sent by the agent Indian Bank, Sivaganga Branch to the first defendant asking him to take delivery of the promissory notes relating to 37 persons after passing a receipt for the same on 13.9.1971. It may be further noted that out of the amount of Rs. 6,760.97 credited in the account of defendants, a sum of Rs.6,200 was withdrawn by the first defendant on 7.10.1971 through Exhibit A.52, a cheque drawn in favour of self. This proved beyond any manner of doubt that the defendants has accepted the sanctioning of loan of Rs.1,00,000 on the terms and conditions laid down by the

head office of the Bank and as such sanctioning of loan clearly contained the adjustment of the liability of the 37 persons. Exhibit A.126 is a true copy of the loan amount of the defendants as per ledger folio 4/168 of the Indian Bank, Sivaganga Branch, which view a liability of Rs. 1,21,006.98. The trial court had relied on all the aforesaid documents and had recorded a finding that the suit promissory note was fully supported by consideration and the equitable mortgage deed created by the defendants were also true and valid documents. The High Court, in our view was wrong in arriving at the conclusion that Exhibit A.1 failed for want of consideration to the extent of Rs.74,190.56 and also for the amount advanced to the third defendant, the liability in respect of which came to Rs.4,193.19.

We agree with the finding of the trial court that the pronote Exhibit A.1 dated 26.8.1971 was executed with full consideration. The defendants knowingly and with full knowledge had executed the pronote Exhibit A.1. In the facts and circumstances of the case, there was no necessity of going into the question of novation of contract as contemplated under Section 62 of the Indian Contract Act. The defendants has executed the pronote and also created equitable mortgage in favour of the Bank and the pronote itself contained an endorsement of "for value received". As already mentioned above, there is also a statutory presumption of consideration in respect of the promissory note under Section 118 of the Negotiable Instruments Act, 1881. In these circumstance, we allow this appeal, set aside the judgment and decree passed by the High Court and restore the judgment and decree of the trial court with cost. Appeal allowed.