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Ganpat Rai Hira Lal and Another v. Aggarwal Chamber of Commerce Ltd.

Chandrasekhara Aiyar J.

the appeals are not competent is, in our opinion, erroneous.

The result is that Appeal No. 152 of 1951 is dismissed with costs throughout, while Appeals Nos. 167 and 167A of 1951 are allowed with costs throughout.

Appeal No. 125 dismissed.

Appeals Nos. 167 and 167A allowed.

Agents for the appellants in Appeals Nos. 167 and 167A : *Mohan Behari Lal.*

Agent for the appellant in Appeal No. 152 : *Kundan Lal Mehta.*

Agent for respondents in Appeals Nos. 167 and 167A : *Naunit Lal.*

Agent for respondent in Appeal No. 152: *Mohan Behari Lal.*

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March 12.

HIRALAL AND OTHERS

v.

BADKULAL AND OTHERS.

[MEHR CHAND MAHAJAN and BHAGWATI JJ.]

Acknowledgment—Whether gives fresh cause of action—Practice—Party in possession of documentary evidence—Duty to produce.

Where the defendants who had dealings with the plaintiffs for several years signed the following entry in the plaintiffs' account book underneath the earlier entries:

"After adjusting the accounts Rs. 34,000 found correct payable".

Held, that this amounted to an unqualified acknowledgment of liability to pay and implied a promise to pay and could be made the basis of the suit and gave rise to a fresh cause of action.

Maniram v. *Seth Rup Chand* (33 I.A. 165), *Fateh Chand* v. *Ganga Singh* (I.L.R. 10 Lah. 745) and *Kahan Chand Dularam* v. *Dayalal Amritlal* (I.L.R. 10 Lah. 748) relied on. *Ghulam Murtuza* v. *Fasihunnissa* (I.L.R. 57 All. 434) overruled.

It is not a sound practice for those desiring to rely upon a certain state of facts to withhold from the court written evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the mere doctrine of onus of proof.

Murugesam Pillai v. *Manickavasaka Pandara* (44 I.A. 99) referred to.

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Hiralal and Others v. Badkulal and Others.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 168 of 1952.

Appeal from a Judgment and Decree dated 23rd July, 1951, of the Court of the Judicial Commissioner, Vindhya Pradesh, in Civil First Appeal No. 26 of 1951 arising out of the Judgment and Decree dated 14th March, 1951, of the Court of the District Judge, Umaria, in Case No. 32 of 1951.

N. S. Bindra (*S. L. Chhibber*, with him) for the appellants.

S. P. Sinha (*K. B. Asthana*, with him) for the respondents.

1953. March 12. The Judgment of the Court was delivered by

MAHAJAN J.—The suit out of which this appeal arises was instituted by the plaintiff-respondents in the court of the district judge of Umaria, for recovery of Rs. 34,000 principal, and Rs. 2,626 interest, due on foot of mutual dealings. The suit was dismissed by the district judge but was decreed on appeal by the Judicial Commissioner of Vindhya Pradesh. A certificate for leave to appeal to this Court was granted as the case fulfilled all the conditions and requirements in force relating to appeals to the Supreme Court.

The defendants did not admit the claim and it was pleaded that no accounts were explained to them when the signatures of Bhaiyalal and Hiralal were obtained in the plaintiffs' ledger on 3rd September, 1949, acknowledging the suit amount as due from them. It was further pleaded that no suit could be based merely on an acknowledgment of the debt. In paragraph 4 of the written statement it was alleged that the plaintiff No. 2 Dipchand having threatened to bring a suit against defendants 1 and 2 whose financial position was bad and having represented that plaintiff No. 1 Badkulal would be angry and abuse plaintiff No. 2, and having assured on oath by placing his hand on a deity in a temple that no suit shall be

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brought, and that amount of interest would be reduced, asked defendants 1 and 2 to sign the khata, who signed the same without going through the accounts, on the faith of these statements made by Dipchand and that the defendants were not bound by these signatures. In paragraph 9 of the written statement it was alleged that in fact Rs. 15,000 or 16,000 as principal sum were due to plaintiffs from defendants but the suit had been filed for a much larger sum than due. Issue 1 framed by the district judge was in these terms :

"Did the defendants Hiralal and Bhaiyalal sign on Bhadon Sudi 11 Samvat 2006 in the capacity of manager and head of the family, on the khata of the plaintiffs after understanding the debit and credit accounts and accepting Rs. 34,000 as the correct balance due to the plaintiffs."

It would have been more correct had a separate issue been framed on the two points compositely mentioned in this issue. Be that as it may, the form in which the issue was framed is not material for the decision of the appeal. Issue 7 was in these terms :

"Did the plaintiff Dipchand obtain the signature of defendants 1 and 2, in their bahi under the threat of instituting a suit and giving the assurance of the suit being not filed and leaving the interest which is incorrect and very much exaggerated, by saying that Badkulal shall be very angry with him...".

The frame of the issue shows that the learned judge at this stage made no effort to ascertain or apprehend the nature of the plea taken in the written statement. He seems to have acted more as an automaton than as a judge in the discharge of his responsible duties. Before framing an issue like this it was his duty to examine the parties and to find out the precise nature of the plea involved within these facts; in other words, whether the defendants wished to plead in defence fraud, coercion, undue influence or a mistake of fact entitling them to reopen the accounts. Mr. Bindra for the appellants was unable to tell us

what real plea was involved in the facts stated under this issue.

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The manner in which the learned judge dealt with this issue lends support to our view that he did not at all apprehend what he had to decide. It was held that the defendants did not sign the entry after understanding, settling, and adjusting of the accounts, but that plaintiff Dipchand obtained their signatures without explaining the accounts to them.

The fact that the entry was signed by both the defendants who represented their family was not denied. Hiralal, defendant, in the witness box admitted that the defendants deal in gold, silver and kirana and maintain regular books of account. It was also admitted that two or three muneems are in their employ for maintaining regular books of the business dealings. Hiralal was questioned "How much money was due from the defendants-firm to the plaintiffs-firm?". The answer was evasive, *viz.*, "He could not say how much was due". When questioned about his accounts, he replied that he had not filed them as he was ill. He further deposed that he had looked into his accounts and Rs. 10,000 to Rs. 15,000 as principal and interest were due but he could not say what was the correct amount. When asked whether on the date of signing the acknowledgment he looked into the books to see what amount was due from him, his answer was in the negative. He further said that even after receiving notice he did not look into his own accounts to check as to what the correct balance was. A leading question was put to him whether on Bhadon Sudi 11 Samvat 2006 there was an entry of Rs. 34,000 in the defendants' khata as being the balance due from them to the plaintiffs. The answer was again evasive. He said "I could not say whether there was any such entry in his books." In these circumstances there was no justification for throwing out the plaintiffs' suit on the ground that the accounts were not explained to the defendants by the plaintiffs. The defendants had written the accounts in their own books from which the true balance could

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be ascertained. An inference from the statement of Hiralal can easily be raised that the balance entry of Rs. 34,000 also existed in his own books. Mr. Bindra tried to get out of this situation by urging that it was no part of the defendants' duty to produce the books unless they were called upon to do so and the onus rested on the plaintiffs to prove their case. This argument has to be negatived in view of the observations of their Lordships of the Privy Council in *Murugesam Pillai* v. *Manickavasaka Pandara*(1), which appositely apply here. This is what their Lordships observed:

"A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing, accordingly, to furnish to the courts the best material for its decision. With regard to third parties this may be right enough—they have no responsibility for the conduct of the suit; but with regard to the parties to the suit it is, in their Lordships' opinion, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the court the written evidence in their possession which would throw light upon the proposition."

This rule was again reiterated in *Rameshwar Singh* v. *Rajit Lal Pathak*(2).

On the evidence of the parties it is clear that both parties are businessmen and each party has been maintaining accounts of their mutual dealings, and they met on 3rd September and in the plaintiffs' book the defendants signed an entry on page 58 of the ledger which runs thus:—

"Rs. 34,000 balance due to be received up to Bhadon Sudi 11 Samvat 2006 made by check and understanding of accounts with Hiralalji's books."

This acknowledgment was made below a number of entries made in this khata on the credit and debit side and the mutual dealings had continued since

(1) (1917) 44 I.A. 99.
(2) A.I.R. 1929 P.C. 95.

several years. The acknowledgment is signed by Hiralal and Bhaiyalal, with the following endorsement:

"After adjusting the accounts Rs. 34,000 found correct payable."

In these circumstances we are not able to understand the view of the district judge that it was not proved that the accounts were explained to the defendants by Dipchand. It was unnecessary to do so because the defendants themselves were keeping accounts and they would not have signed the balance for Rs. 34,000 with the endorsement above cited, without reference to their own books or in the manner suggested in the written statement. Plaintiff Dipchand in the witness box supported the plaintiffs' case as laid in the plaint. He deposed that "This accounting was done by my muneem Puranlal and Ram Prasad, muneem of Hiralal............Muneems explained and Hiralal signed after understanding it." In cross-examination he said that muneems were checking the accounts and when both the muneems said that so much was the balance, Hiralal then signed and that Hiralal and Bhaiyalal themselves did not check any account. The learned district judge and Mr. Bindra criticized the evidence of this witness and it was urged that he had made false and highly improbable statements with regard to the manner and circumstances in which the entry was signed. The discrepancies in the statement relate to matters of no consequence. In our opinion, his evidence along with the entry was sufficient to hold the plaintiffs' case proved when the best evidence of their own books to disprove the plaintiffs' case had been withheld by the defendants. No satisfactory explanation had been given for the non-production of the defendants' books, and the evidence given by Hiralal does not do much credit to him.

Mr. Bindra contended that it should have been held that Bhaiyalal did not sign at the same time when the entry was written but he signed later on. On this point Hiralal deposed that when he signed Bhaiyalal

was not present, that he signed afterwards, that Kulai muneem came with the bahi saying that Badkulal and Dipchand had quarrelled among themselves that there should also be the signature of Bhaiyalal, that Bhaiyalal questioned him as to why the witness had signed, that he replied that Dipchand had told him after pointing his hand towards God that he would take no action so long as he lived, so he did not check, nor any one explained him the accounts, that on this he asked Bhaiyalal to sign and on his asking he signed. It was for Bhaiyalal to explain his signature by going into the witness box but he did not give evidence in the case and there is no explanation why he did not do so. Mr. Bindra's contention therefore that it should be held that Bhaiyalal was not present when the acknowledgment was signed cannot be sustained.

The defendants tried to support their case by the statements of Kulai Prasad, muneem, and the other two muneems Ram Prasad and Puranlal. So far as Kulai Prasad is concerned, he was in the plaintiffs' service and was dismissed by Badkulal, plaintiff, on 31st March, 1950. Much reliance cannot be placed on the statement of a dismissed and disgruntled employee. He stated that Hiralal was not made to understand any accounts and Dipchand assured him on oath that he would raise no trouble during his life and asked Hiralal to sign and that Bhaiyalal signed on a different date. This evidence is of a partisan character and no reliance can be placed on it.

Ram Prasad stated that he did not check the accounts of the plaintiffs from Bhadon Samvat 2006 and that Hiralal did not sign in his presence. In cross-examination he admitted that there were mutual dealings between the parties and that Hiralal might have signed after accounting was done. He pretended ignorance of what happened on Bhadon Samvat 2006.

As regards Puranlal, he stated that after looking into the accounts and after mutual talk, Exhibit P-1

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was written on Dip Chand's asking, that accounts might have been told by Dipchand on the basis of the statement which he had with him, that no accounts were explained. He further stated that Hiralal said to Dipchand "Please see me", on which Dipchand replied after raising his hand towards the temple "I shall not do anything unfair in my lifetime." In cross-examination he admitted that the words "signed Bhurey Naik Raghunandan Prasad Bakalam Hira Lal", and the words "after adjusting the accounts Rs. 34,000 found correctly payable signed Hiralal" were written by Hiralal himself. It was further elicited in cross-examination that the witness had forged a receipt and for forging that receipt he was sentenced to one year's imprisonment in a criminal case started by Badkulal, plaintiff. This evidence therefore is not of much consequence in this case.

In these circumstances we are satisfied that the district judge not only approached the decision of the case from an erroneous point of view but he also incorrectly appreciated the material on the record. The learned Judicial Commissioner was therefore perfectly justified in reversing his decision and in holding that on 3rd September, 1949, there was an adjustment of accounts actually done by the muneems and accepted by the principals and the story of coercion and misrepresentation was false.

Mr. Bindra next urged that the plaintiff's suit should have been dismissed because it could not be maintained merely on the basis of an acknowledgment of liability, that such an acknowledgment could only save limitation but could not furnish a cause of action on which a suit could be maintained. The Judicial Commissioner took the view that an unqualified acknowledgment like the one in the suit, and the statement of the account under which the entry had been made, were sufficient to furnish a cause of action to the plaintiffs for maintaining the present suit. We are satisfied that no exception can be taken to this conclusion. It was held by the Privy Council in

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Maniram v. *Seth Rupchand*(1), that an unconditional acknowledgment implies a promise to pay because that is the natural inference if nothing is said to the contrary. It is what every honest man would mean to do. In *Fateh Chand* v. *Ganga Singh*(2) the same view was taken. It was held that a suit on the basis of a balance was competent. In *Kahanchand Dularam* v. *Dayaram Amritlal*(3) the same view was expressed and it was observed that the three expressions "balance due", "account adjusted" and "balance struck" must mean that the parties had been through the account. The defendant there accepted the statement of account contained in the plaintiff's account book, and made it his own by signing it and it thus amounted to an "accounts stated between them" in the language of article 64 of the Limitation Act. The same happened in the present case. The acknowledgment which forms the basis of the suit was made in the ledger of the plaintiffs in which earlier mutual accounts had been entered and truly speaking, the suit was not based merely on this acknowledgment but was based on the mutual dealings and the accounts stated between them and was thus clearly maintainable.

Mr. Bindra drew our attention to a decision of the Allahabad High Court in *Ghulam Murtuza* v. *Fasihunnissa*(4), wherein it was held that even if an acknowledgment implies a promise to pay it cannot be made the basis of suit and treated as giving rise to a fresh cause of action. We have examined the decision and we are satisfied that it does not lay down good law.

For the reasons stated above this appeal has no merits and we accordingly dismiss it with costs.

Appeal dismissed.

Agent for the appellants : *Govind Saran Singh.*

Agent for the respondents : *A. D. Mathur.*

(1) (1906) 33 I.A. 165.
(2) (1929) I.L.R. 10 Lah. 748.
(3) (1929) I.L.R. 10 Lah. 745.
(4) (1935) I.L.R. 57 All. 434.