APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Shah.

TARACHAND KEWALRAM, AND OTHERS (HEIRS OF ORIGINAL PLAINTIFF), APPELLANTS *v.* SIKRI BROTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.* 1952 *Sept.* 18

Negotiable Instruments Act (Act XXVI of 1881), ss. 20, 9, 43, 32—Rights of a holder of an inchoate Hundi-Holder, whether agent of the maker to receive payment—Whether it is open to maker of the Hundi to show that he received no consideration—Whether holder entitled to compensation under s. 32 of the Act.

Upon *H* representing to the plaintiff that a loan of Rs. 5,000 was required by the defendants, the plaintiff gave a bearer cheque to *H* which was cashed by *H* but no payment was made by *H* to the defendants. *H* gave to the plaintiff a Hundi signed in blank by the defendants. The plaintiff filled in the blanks in the Hundi made it payable to himself and discounted it with a Bank. When the Bank presented the Hundi to the defendants it was dishonoured. The Bank then recovered the sum of Rs. 5,000 from the plaintiff who filed a suit against the defendants to recover the sum.

Held, (*i*) that under s. 20 of the Negotiable Instruments Act, 1881, a holder of an inchoate instrument has the right to complete it and a holder in due course of an inchoate instrument has the same right against the maker of it as if the maker himself had written out the whole instrument,

(*ii*) that even assuming that the plaintiff paid consideration for the inchoate Hundi, he did not become a holder in due course as contemplated by s. 9 of the Act inasmuch as the inchoate Hundi was not a negotiable instrument,

(*iii*) that the plaintiff was not a holder in due course under s. 9 of the Act also because it could not be said in the case of an inchoate instrument that the possessor of it had not sufficient cause to believe that any defect existed in the title of the person from whom he derived his title;

(*iv*) that even assuming that the plaintiff was a holder in due course it was open to the defendants under s. 43 of the Act to show that they had received no consideration as the parties stood in immediate proximity;

(*v*) that the payment made by the plaintiff to *H* was not made to *H* as the agent of the defendants, nor at the request of the defendants; and therefore, there was no consideration in law in favour of the defendants for the Hundi,

(*vi*) that under s. 20 of the Act the holder of an inchoate instrument has no authority to constitute himself the agent of the maker of the instrument for receiving consideration in respect of the instrument;

* First Appeal No. 211 of 1952.

1952

TARACHAND KEWALRAM v. SIKRI BROS.

(*vii*) that the plaintiff was not entitled under s. 32 of the Act to recover the amount from the defendants as compensation for the loss he had sustained inasmuch as the dishonour of the Hundi by the defendants on presentation by the Bank did not cause any loss to the plaintiff but the loss was caused to the plaintiff when he paid the amount to *H*.

FIRST APPEAL from the decision of J. C. Bhatt, Judge, Bombay City Civil Court.

On February 4, 1949, one Hariram, a finance broker represented to the plaintiff that a loan of Rs. 5,000 was required by the defendants. The plaintiff gave a bearer cheque for that amount to Hariram who cashed the cheque the following day. On February 11, 1949, Hariram gave to the plaintiff a blank Hundi for Rs. 5,000 signed by the defendants. The Hundi was to mature on May 17, 1949. The plaintiff filled in the blanks in the Hundi by making himself the payee of the Hundi. On February 15, 1949, the plaintiff discounted the Hundi with the Central Bank of India. The Bank presented the Hundi for acceptance to the defendants who dishonoured it by non-acceptance. On March 4, 1949, the Bank called upon the plaintiff to pay the sum of Rs. 5,000 and the plaintiff paid the amount to the Bank. On May 7, 1949, the plaintiff called upon the defendants to pay the amount of the Hundi and on their failure to comply, filed a suit on July 23, 1949, in the Bombay City Civil Court to recover the amount.

The defendants contended that they had received no consideration from the plaintiff. Hariram had brought to them a cheque for Rs. 10,000 on February 11, 1949, which was signed by one H. K. Gwalani an alleged financier. Hariram represened to the defendants that as the financier was leaving Bombay, he required Hundis in respect of the cheque. The defendants gave Hariram two blank Hundis for Rs. 5,000 each for the express purpose of being handed over to the financier after filling in the name of the said financier. The cheque for Rs. 10,000 was ultimately dishonoured. It was found that there was no such financier as Gwalani. The defendants filed a criminal complaint against Hariram on February 24, 1949, and Hariram was convicted. The claim made by the plaintiff was on one of the Hundis obtained by Hariram fraudulently from the defendants. The plaintiff was not a holder in due course and even as payee the plaintiff's claim ought to fail for want of consideration. The plaintiff had taken the instrument with full knowledge that it was incomplete and could not be or claim as a holder in due course.

The trial Judge held that the defendants had not authorized Hariram to obtain a loan on the Hundi, that the defendants had received no consideration for the said Hundi, and that the plaintiff was not entitled to make any claim on the said Hundi against the defendants. As a result the suit was dismissed.

The plaintiff appealed to the High Court.

B. H. Lulla, with *N. B. Lulla*, for the appellant.

M. R. Parpia with *B. G. Thakor* and *Messrs. Thakordas & Madgavkar*, for the respondents.

CHAGLA C. J. A very interesting question under the Negotiable Instruments Act arises in this appeal, and the facts giving rise to this appeal may be shortly stated. One Hariram, who is a finance broker, approached the plaintiff on February 4, 1949, representing to him that a loan of Rs. 5,000 was required by the defendants, and the plaintiff's case was that on that representation he gave a bearer cheque for that amount to Hariram. This cheque was cashed by Hariram on the following day, i.e., February 5, 1949. On February 11, 1949, Hariram gave to the plaintiff a Hundi drawn by the defendants which was an incomplete document, in that the necessary parts of the document were not filled in by the defendants themselves, and this Hundi was brought by Hariram and given to the plaintiff in consideration of the loan of Rs. 5,000 which the plaintiff had advanced on February 4, 1949. The plaintiff filled in the blanks in this Hundi and made this incomplete document into a negotiable instrument, the makers of which were the defendants and the payee of which was the plaintiff. This Hundi was discounted with the Central Bank and when the Central Bank presented the Hundi to the defendants for acceptance, the defendants dishonoured it. Thereupon the Central Bank recoverd from the plaintiff the sum of Rs. 5,000 which the Bank had paid to the plaintiff for discounting the Hundi. The plaintiff, therefore, filed the suit against the defendants to recover this sum of Rs. 5,000. The case of the defendants was that no consideration had been received by them from the plaintiff, that Hariram had brought a cheque for Rs. 10,000 to them on February 11, 1949, the cheque being signed by one H. K. Gvalani who Hariram represented was a financier. The cheque was sent to the Bank, and on that very afternoon, viz., February 11, Hariram represented to the defendants that as this financier was leaving Bombay he required Hundis in respect of this cheque. Thereupon the

1952

TARACHAND KEWALRAM v. SIKRI BROS.

Chagla C. J.

defendants gave to Hariram two blank Hundis for Rs. 5,000 each. This cheque for Rs. 5,000 was ultimately dishonoured. It was found that there was no such financier as Gvalani in existence, that the cheque which was given by Hariram was his own cheque, and that there were no moneys in the Bank to meet that cheque. The defendants filed a complaint against Hariram on February 24, 1949, and on that complaint Hariram was convicted.

Now the question that arises is, what are the rights of the plaintiff under s. 20 of the Negotiable Instruments Act. That section deals with inchoate stamped instruments and the scheme of that section is that when a person signs and delivers to another person an inchoate document which is properly stamped in accordance with the law relating to negotiable instruments, then by doing so he gives a prima facie authority to the holder to complete the document, the authority being restricted to filling the amount not exceeding that which would be covered by the stamp upon the document. When the document is completed and becomes a negotiable instrument, then the maker of the document is liable to any holder in due course for the amount which has been filled in the document. The proviso to s. 20 lays down that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder. It will be noticed that the right given to complete the document is given to the holder and the holder contemplated in this section is not the holder as defined in the Act itself because it is clear that that definition cannot apply to this expression in s. 20, but "holder" is used in this section in the literal sense of that word, viz., the person who actually holds the document. The section further contemplates that if the holder having completed the document negotiates it, then the person who by reason of such negotiation becomes a holder in due course has a right to proceed against the maker and recover the amount mentioned in the document. Therefore, the section provides for two rights in respect of two different persons. One is the right given to the holder of the document, the person who is in possession of the document, the document being an inchoate document, and that right is the right to complete it. The other right conferred is upon the holder in due course and that right is that even though the holder in due course might come in possession of a negotiable instrument which was not wholly

completed by the maker, he has the same right against the maker as if he had himself written out the whole of the document, if the document has been completed by a person who has come into possession of it as contemplated by s. 20. Therefore, a person who permits an incomplete document to go out into the world by giving and delivering it to any person, takes the risk of having to discharge the liability, which may be provided under the document by the amount being filled in, to the person who *bona fide* and for consideration comes into possession of that document. That seems to be the scheme of s. 20.

Now it is clear that in this case the plaintiff was the holder of the negotiable instrument. He came in possession of the incomplete document and he completed it as he had the right to do by virtue of the prima facie authority conferred upon him by maker. The interesting question that arises is whether by reason of the fact that he himself filled in the document by making himself the payee made him a holder in due course, assuming for the sake of this argument that the plaintiff had given consideration for the document. It is possible to take the view, and there is considerable force in that contention, that under s. 20 it is impossible for the holder himself ever to become a holder in due course, and for this purpose attention may be drawn to the definition of "holder in due course" under the Act in s. 9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer or the payee or endorsee thereof, if payable to order before the amount mentioned in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. Therefore, it is only a person who comes into possession of a negotiable instrument having paid consideration for it and being a *bona fide* transferee that can be a holder in due course within the meaning of s. 9. Section 9 seems to imply and contemplate that there must be a negotiation or a transfer to the holder in due course by someone who had the authority to transfer or negotiate the negotiable instrument. The transfer and the negotiation must be of a negotiable instrument, not the transfer of an inchoate document which is not a negotiable instrument at all under the Act. Therefore, as far as the plaintiff is concerned, there was never at any stage a negotiation or transfer in his favour of a negotiable instrument

1952

TARACHAND KEWALRAM v. SIKRI BROS.

Chagla C. J.

which would entitle him to consider himself as a holder in due course. He paid consideration for an inchoate document. What he got on the 11th was an inchoate document, he having given consideration on February 4. When he filed in the document and thereby became the payee, he merely exercised the right and authority given to him under s. 20, but there was no negotiation or transfer in his favour of a negotiable instrument and no question arose of his having given consideration for a negotiable instrument. If that be the true position, then it is clear that in this case the plaintiff was not a holder in due course.

There is another aspect of the matter which might also be considered. It is not every person who pays consideration for a negotiable instrument that becomes a holder in due course. The proviso makes it clear that he must come in possession without having sufficient cause to believe that any defect exists in the title of the person from whom he derives his title. Now, can it ever be said of a person who accepts an inchoate document, pays consideration for it, fills it up and becomes the payee, that he had not sufficient cause to believe that a defect existed in the title of the person from whom he derived his title? It is one thing to say that a person accepts by negotiation a completed negotiable instrument, and pays consideration for it. It is entirely a different thing to say that a person accepts an inchoate document which on the face of it raised some inquiry and then fills it up and makes it a negotiable instrument and makes himself the payee thereof. Therefore, it may also be said from this point of view that in the case of an inchoate document it would be difficult to hold that the possessor of it was a *bona fide* transferee or possessor of the negotiable instrument. But assuming that the plaintiff is a holder in due course of this document, even so under s. 43 it is open to the defendants to contend that they received no consideration in respect of this document because the position of the parties of this document is that the defendants firm is the maker of the Hundi and the plaintiff is the payee and the two parties are in immediate proximity. Section 43 provides that a negotiable instrument made, drawn, accepted, endorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. The parties to the transaction which is embodied in the negotiable instrument are the defendants and the plaintiff. The plaintiff's position can be no higher than if the

defendants had themselves completed the document and given it to the plaintiff as the payee. If that had been done, there can be no doubt that it would have been open to the defendants to challenge that transaction as wanting in consideration. In this case, although the defendants have not completed the negotiable instrument and have not themselves nominated the plaintiff as the payee, by reason of s. 20 the plaintiff was entitled to do so and once he did so the position that arose was identical with the position that would have arisen if the defendants themselves had written out the whole of the document. Therefore, there can be no doubt that it is open to the defendants to challenge the consideration on the negotiable instrument.

If it is open to the defendants to challenge the consideration, it is clear that in this case the defendants received no consideration in law at all. The plaintiff paid Rs. 5,000 to Hariram. It is not the plaintiff's case that he paid anything at all to the defendant, and in order to succeed it must be established that the payment to Hariram by the plaintiff was payment to the defendants, and the plaintiff can only succeed if it is shown that Hariram was the agent of the defendants for receiving this loan of Rs. 5,000 which he received on February 4, 1949. The learned Judge has found, and we accept that finding, that Hariram was not constituted the agent of the defendants for receiving this sum. If he was not the agent, then the plaintiff gave the sum of Rs. 5,000 to a stranger and that payment cannot be considered as a consideration given to the defendants. Mr. Lulla says that in law consideration need not be given to the defendants themselves; it could be given to any other party at the request of the defendants. There Mr. Lulla is perfectly right, but his difficulty is that it must be established on the evidence that the payment to Hariram was at the request or at the instance of the defendants. It would be perfectly open to the defendants to tell the plaintiff, "Don't pay us Rs. 5,000; pay to X, Y or Z." If that request was made, the payment by the plaintiff to X, Y or Z would be as much consideration in favour of the defendants as if the payment had been made to the defendants themselves. But there is not a title of evidence on the record to suggest that the defendants ever requested the plaintiff to make the payment to Hariram or that the plaintiff made this payment to Hariram at the request or at the instance of the defendants Therefore, it is clear in this case that there was no consideration whatever which in law can be considered as a considera-

1952

TARACHAND KEWALRAM v. SIKRI BROS.

Chagla C. J.

tion for the negotiable instrument, in favour of the defendants. If there was no consideration, then it is clear that the defendants are entitled to succeed and to avoid the contract which is embodied in the negotiable instrument in question. A question was also raised in the Court below that the inchoate document was obtained by Hariram by fraud and it was open to the defendants to contend against the plaintiff that as the document was obtained by fraud the plaintiff derived no title under that document, and for that purpose reliance was placed on s. 58 of the Act. In our opinion it is unnecessary to go into this question because it is possible to dispose of this appeal on the question of want of consideration as far as the defendants are concerned.

Mr. Lulla has argued that under s. 20 the person to whom an inchoate document is delivered is not only an agent of the person signing it for the purpose of completing it, but is also his agent for receiving consideration on behalf of the person signing the document. In our opinion that contention is entirely untenable. Section 20 must be strictly construed. It imposes a serious liability upon a person who allows an incomplete document bearing his signature to go out into the world. But there is no reason why, heavy as the liability upon that person is, we should increase that liability by importing into s. 20 words which do not find a place there. The only authority, and that also is a prima facie authority, conferred upon the holder of an inchoate document under s. 20 is to complete the document and nothing more. Certain other rights, as we have already said, may accrue to persons in whose favour a completed document is negotiated, but as far as the holder is concerned, his right and his authority is limited to completing the document. It is, in our opinion, wholly untenable to suggest that although the section does not state so we must impliedly hold that such a person, the holder of an inchoate document, has also authority given to him by law to constitute himself as the agent of the maker of the document for receiving the consideration in respect of that document.

Therefore, as far as this suit is based upon the Hundi and to the extent that the plaintiff is the payee and is suing the maker of the Hundi, the suit must fail as it has been established on the evidence that the defendants, the makers of the document, received no consideration in respect of this Hundi.

The other contention urged by Mr. Lulla is that even assuming he does not succeed on that count, he is entitled to succeed by reason of the proviso to s. 32, and the argument is advanced by Mr. Lulla as follows: He says that he endorsed this Hundi in favour of the Central Bank and thereby the Central Bank became the holder in due course. The Central Bank presented the Hundi to the defendants, and the defendants dishonoured it. Therefore, the Central Bank went against the plaintiff which they were entitled to do, the plaintiff refunded the sum of Rs. 5,000 to the Central Bank, and thereby the plaintiff suffered loss which he is entitled to recover from the defendants. In the first place, the Court below has held that the Central Bank were merely agents of the plaintiff for collection of the Hundi. But even assuming that they were holders in due course, the only damages or compensation to which the plaintiff is entitled under the second part of s. 32 is the compensation which results from any loss or damage sustained by the plaintiff and caused by the defendants' default. Therefore, it is the default of the defendants in failing to honour the Hundi which the Central Bank presented to them which must have caused loss or damage to the plaintiff in order to entitle him to recover compensation for that loss or damage from the defendants. Now, it is difficult to see what loss or damage has been caused to the plaintiff by the default of the defendants. The plaintiff negotiated the Hundi with the Central Bank, he received the amount mentioned in the Hundi, and because the defendants did not honour the Hundi he refunded that very amount. Therefore, as far as the transaction between the plaintiff and the Central Bank was concerned, there was no loss whatever caused to the plaintiff. The real loss—and there is no getting away from it—in respect of which the suit is filed is the loss caused by the plaintiff having paid the sum of Rs. 5,000 on February 4, 1949, and which he has lost because it was given to Hariram. Therefore, the suit is in respect of the amount of Rs. 5,000 paid by the plaintiff on the February 4, 1949, and that is the very sum which according to the plaintiff constitutes the consideration for the negotiable instrument. Therefore, if the plaintiff is to succeed at all against the defendants, it can only be by establishing that the defendants are liable to him for the refund of Rs. 5,000 which he paid to Hariram. If he fails to establish that the plaintiff must fail, in whichever way his case is presented to the Court. If Mr. Lulla's contention

1952

TARACHAND KEWALRAM v. SIKRI BROS.

Chagla C. J.

was correct it would lead to this rather extraordinary position that although the defendants would be entitled to take the defence of want of consideration against the plaintiff being the payee of the Hundi, they would lose the right of taking that defence if the plaintiff negotiates the Hundi and gets it back after it has been dishonoured as against the person in whose favour it was negotiated.

Our attention was drawn to s. 53 of the Act which provides that a holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course. It is unnecessary to consider the very interesting question that arises whether in this very case if the plaintiff became a holder by having the promissory note re-endorsed in his favour by the Central Bank, he could have the same right that the Central Bank had as a holder in the due course, and whether that fact would deprive the defendants of their rights under s. 43 of the Act. As far as the facts of this case are concerned, it is clear that the plaintiff does not derive any right on this Hundi from the Central Bank because the Hundi was never re-endorsed in favour of the plaintiff, and the right of the plaintiff on the Hundi is not as an endorsee from the Central Bank, but as the payee of the negotiable instrument, and, therefore, the only right which he has on this Hundi and which right he can litigate in this suit is his right as a payee and not a right as an endorsee or any other right. Therefore, it is unnecessary to consider what the position would be under s. 53 if there had been an endorsement in favour of the plaintiff by the Central Bank.

The result, therefore, is that the appeal fails and must be dismissed with costs.

Appeal dismissed.

K. B. S.