

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Lala Lakmi Chand v. Sayid Haider Shah and another, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered 17th June 1899.*

Present at the hearing :

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

This suit is for the purpose of enforcing a bond dated 4th June 1885, by the terms of which the Defendants became bound to repay to the Plaintiff the sum of Rs. 10,000 with compound interest at 18 per cent. The mode of borrowing is described as follows :—

“ From Lala Lakmi Chand son of Kalyan Mal, Uswal by caste, resident Sahu and treasurer of Dera Ismail Khan, through Lala Bhikhari Das, resident of kasba Khurja, as per detail below :—

“ Left in deposit with the lender, so that we	Rs.	a.	p.
“ may take it from time to time under			
“ receipts when needed for beating			
“ indigo	-	2,000	0 0
“ Received in cash now	-	8,000	0 0”

The Rs. 2,000 was never paid to the Defendants. They admit the receipt of Rs. 2,500 of which nearly all was paid the day afterwards in the presence of the Registrar. Two questions arise under these circumstances : first, whether the Defendants received anything more than Rs. 2,500 ; and secondly, whether that sum has been repaid by them ? The Subordinate Judge

found for the Plaintiff on both points, and decreed payment of Rs. 8,000 and interest. The High Court on appeal found for the Defendants on both points, and dismissed the suit. The Plaintiff appeals from that decree.

The parties to the suit are personally unknown to one another. The Plaintiff's home is at Dera Ismail Khan and that of the Defendants at Meerut. Bhikhari Das who is named in the bond as the channel of payment to the Defendants was a gomashtha of the firm of Sunt Lal, bankers who carry on their business at Khurja near Meerut, and who were employed by the Plaintiff to negotiate loans for his investment. Their head gomashtha or manager was one Bijraj who did business with the Defendants and who plays a principal part in this history. The Defendants are brothers who carry on the business of indigo growers. At the date of the bond it appears from the Registrar's endorsement that Haider Shah was 22 years old, and Sher Ali Khan 20.

In his plaint, which was filed in August 1890, the Plaintiff rests his case entirely upon the bond and the Defendants' acknowledgment therein that the Rs. 8,000 was received in cash. He also states that written demands on the Defendants for payment had been made by him and not complied with. Sher Ali put in a written statement denying all knowledge of the Plaintiff, and alleging that nothing was received on the bond beyond Rs. 2,500, which were borrowed of Bijraj and repaid to him. He says that the name of the Plaintiff was put into the bond fictitiously. Haider did not put in any written statement, but he was examined in the course of the trial. He admitted giving the bond to the Plaintiff. He added,—

“At the time of the bond being drawn up it had been agreed upon that the whole of the amount of the bond would be paid at the time of registration, and at the time of registration I said ‘Pay the whole amount.’ I demanded

“ the whole of the amount of the bond from Bijraj, who said  
 “ ‘ Give this sum of Rs. 2,447 to Sher Ali Khan, and I shall  
 “ ‘ give you the balance whenever you shall require it.’ I  
 “ said ‘ Give the whole amount,’ and thereupon Bijraj said to  
 “ me, ‘ Admit the receipt of the amount you are taking.’  
 “ Accordingly I admitted the receipt of Rs. 2,447 at the time  
 “ of registration, and neither I nor Sher Ali Khan has received  
 “ the balance up to this day.”

In cross-examination he states that he made several demands on Bijraj for the balance but was put off with excuses.

Sher Ali also was examined, but without throwing any additional light on the question how much was advanced. In fact he suggests that he and his brother had separate interests in the advance, and that he was interested in the Rs. 2,500 and no further. The story told by Haider is corroborated by Bhikhari and by one Amir Husain a Sub-Inspector of Police; both having been present at the Registration.

It is quite clear that the statement in the bond is fictitious. No attempt is made to show that the balance of Rs. 5,500 was paid in cash as there stated, or that anything was left in deposit with Sunt Lal. The Plaintiff therefore is bound to prove in some other way the advance which he alleges.

The most important witness for this purpose would be Bijraj; but he had died before the trial, in prison, where he lay under sentence for forgery. The Plaintiff does not give any evidence himself, nor does he produce any account. Dharam Chand who is either partner or agent of the Plaintiff was called by the Defendants. He does not speak to any specific sum of money advanced by the Plaintiff. He proves a letter written to the Plaintiff, partly by Bhikhari under Bijraj's direction, partly by Bijraj himself, which gives notice of the bond and adds some instructions, which are difficult to understand, as to adjustments of the account between the Plaintiff and Sunt Lal. His evidence amounts

to nothing for the purpose of proving payment of the balance secured by the bond.

Bhikhari puts in two accounts from the books of Sunt Lal. One is between Sunt Lal and the Plaintiff; the other between Sunt Lal and Haider. The first purports to show that the balance was paid in cash at the shop to Haider. The second purports to show that the value reached Haider's hands by the discharge of Rs. 5,100 due from Haider to Sunt Lal, partly on a bond executed in May 1884 and partly on a rukka of no assigned date. These entries were made by Bhikhari from dictation by Bijraj. There is no proof of the rukka. The bond is admitted by Haider who couples his admission with the assertion that he paid it out of his personal income some time prior to the bond in suit. There is no other evidence of it. Bhikhari adds:—"The Rs. 5,100 of Haider Shah which are entered in the account book were not received. They were not received in the shop in my presence. I do not know if there was any bond or rukka of Haider Shah."

That is substantially the whole evidence given by the Plaintiff to show payment of the balance. There is nothing to show that the Defendants were aware of the entries in either account, or that they assented to such a mode of receiving the Rs. 5,500. There was certainly no payment in cash as stated in Sunt Lal's accounts; and the sum stated to be due on the bond of 1884 is on the face of the accounts excessive. It seems more probable that Bijraj juggled with the transactions than that the Defendants received value for the balance. Every part of this case is involved in obscurity for want of direct evidence and by reason of fictitious statements in the documents. But their Lordships have no hesitation in agreeing with the High Court that

the Plaintiff, having to prove his advance, has not given any substantial proof of it.

With regard to the Rs. 2,500 received by the Defendants, the case is a different one. There it is for them to discharge themselves. They endeavour to do this by showing that in March 1889 a bond for Rs. 4,000 was executed by Sher Ali to Bijraj, and by suggesting that it was given in discharge of the bond of 1885. The Rs. 4,000 were paid soon afterwards to Bijraj. The Subordinate Judge held that it was a separate transaction between Bijraj and Sher Ali. The High Court accepted the version given by the Defendants.

The bond is in ordinary form for Rs. 4,000 and interest. But it commences with a recital as follows :—

“ Whereas Rs. 4,000 of the Queen’s coin, half of which is  
 “ Rs. 2,000 of the aforesaid coin, out of the principal and  
 “ interest of the item of Rs. 2,500 which were borrowed by  
 “ me exclusively from Lala Bijraj, son of Lala Chain Sukh  
 “ Das, caste Uswal, present resident of kasba Khurja, along  
 “ with the bond amounting to Rs. 10,000 executed by me and  
 “ Sayid Haider Shah my brother in favour of Lala Lakmi  
 “ Chand son of Kalian Mal, caste Uswal, resident and Sahu  
 “ (banker) of Dehra Ismail Khan, dated 4th and registered  
 “ on 5th June 1885, are due from me to the aforesaid Lala  
 “ Bijraj.”

That recital is the only evidence on the point. It speaks of an exclusive borrowing by Sher Ali alone from Bijraj, along with the joint borrowing by himself and his brother from the Plaintiff. It does not intimate that the two borrowings are identical, or give any reason why the name of the lender should be changed, or why the sole liability of Sher Ali should be taken in discharge of the joint liability of the two. Its terms lend no support whatever to the Defendants’ theory. Moreover, the Defendants did not require the return of the bond of 1885 which they knew was given in favour of Lakmi Chand and not in favour of Bijraj; and the only reason given by Sher Ali is that it was mentioned in his bond

and that Bijraj told him the Plaintiff was also a gomashita in Sunt Lal's firm. The learned Judges think that a clever knave like Bijraj would be able to persuade a young man like Sher Ali into anything. It may be that Bijraj played some trick on Sher Ali, but there is absolutely no evidence to connect the Plaintiff with it, and the Defendants, who had for some years been in business, knew perfectly well that the holder of their bond was described as Lakmi Chand, treasurer of Dehra Ismail Khan, and was not Bijraj or any member of the firm of Sunt Lal. Their Lordships cannot come to any conclusion except that the Defendants have not proved re-payment of the Rs. 2,500.

The right course will be that both decrees below should be discharged, and that a decree should be made in favour of the Plaintiff for Rs. 2,500 interest and costs, but *quoad ultra* dismissing his suit with costs. The costs in the Courts below should be apportioned as is usual when a portion only of the Plaintiff's claim is granted. Their Lordships will humbly advise Her Majesty in accordance with this opinion. As regards this Appeal, the victory is divided, and each side must bear its own costs.

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