

Kanhai Lal vs Brij Nandan on 21 January, 1952

Equivalent citations: AIR1952ALL509, AIR 1952 ALLAHABAD 509

Author: Raghubar Dayal

Bench: Raghubar Dayal

ORDER

Raghubar Dayal, J.

1. This is a revision against the judgment of the Small Cause Court Judge, dismissing the plaintiff's suit for the recovery of Rs. 300 paid by him to the defendant and for which the defendant had executed a promissory note and a receipt. The suit was dismissed on the finding that the promissory note was improperly stamped and that oral evidence to prove the loan transaction was inadmissible in view of the fact that the promissory note contained all the terms of the contract.

2. The material portion of the promissory note in suit is in these terms :

"I have at this time borrowed Rs. 300 half of which Rs. 150 in cash according to my needs from you, I shall pay this amount of yours with interest at eight annas per cent. per mensem on demand and have, therefore, written these few sentences by way of a stamped promissory note so that they be of use in time of need."

These expressions to my mind are exactly those which were the subject matter of discussion in the case reported in Ram Nath v. Bhagwati Prasad, 1945 ALL. L.J. 483. It was decided in that case that these expressions included all the substantial terms of the contract of loan and that, therefore, no oral evidence to prove the loan transaction was admissible. The learned Judge of the Court of Small Causes has relied on this judgment and I think correctly.

3. It has been urged before me that the learned judges did not fully consider the principles laid down in the Full Bench case, reported in Sheonath Prasad v. Sarjoo Nonia, 1943 ALL. L. J. 189 (F. B.) and that they did not take into consideration that the term of the contract with regard to the function of the promissory note as contemplated by Dar J. at p. 194 was not embodied in the promissory note they held to contain all the terms of the contract. The contention really is that the promissory note should state whether it was being given by the debtor to the creditor as an absolute payment or as a conditional payment or as a collateral security for the loan. It does not appear from the judgment of the other judges constituting that Full Bench that a contract of loan invariably has any such term

and it is such term which is usually omitted from a promissory note and due to which omission their Lordships thought that a promissory note rarely, if ever, contained all the terms of the contract between the parties. It cannot, therefore, be said that the Judges in the 1945 case missed noticing an essential feature of the Full Bench decision in 1943.

4. Even if it be held that the Full Bench in 1943 held that contract of loan has one of its terms to this effect, I am of opinion that the expression in the promissory note in suit to the effect "that, therefore, these few sentences by way of a stamped promissory note had been written so that they be of use in need, ' complies with that requirement, as these expressions indicate the purpose of the writing of the promissory note it being that it was to serve the purpose of a promissory note as a promise of the executant to pay when it be necessary to refer to it.

5. In view of the above I am of opinion that the order of the learned Judge of the Court of Small Causes is correct. I, accordingly, dismiss this revision with costs.