

Privy Council Appeal No. 1 of 1934

Pannaji Devichand shop - - - - - *Appellants*

v.

Kapurji Magniram shop - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 11th FEBRUARY, 1936

Present at the Hearing :

LORD THANKERTON.

SIR SHADI LAL.

SIR GEORGE RANKIN.

[*Delivered by* SIR GEORGE RANKIN.]

The defendants appeal from a decree dated the 14th September, 1931, of the High Court of Bombay affirming a decree dated the 31st January, 1929, passed by the Joint First Class Subordinate Judge at Dharwar whereby the defendants were held liable to pay to the plaintiffs a sum of Rs.28,500 with certain interest and costs. This sum of Rs.28,500 represents with accruing interest, a sum of Rs.19,242-6-0 which itself is made up of an original sum of Rs.19,146-15-3 and interest thereon.

In addition to the plaintiffs and the defendants, two firms have to be referred to, namely a firm called Devaji Narasingji, and another which may be referred to as "the composite firm", it being a partnership, or pool, or joint account in which the plaintiffs and Devaji Narasingji were jointly interested in 1918-1919 but which did not continue after 1919.

By 19th November, 1918, the defendants had become indebted to Devaji Narasingji in the sum of Rs.19,242-6-0. In December of that year 50 bales of yarn were delivered to the plaintiffs by the defendants. A controversy, which it is not necessary to resolve, has arisen upon this transaction, the question being whether as between plaintiffs and defendants on the one hand, and as between the plaintiffs and Devaji Narasingji, the other persons in the composite firm, on the other hand, the transaction was entered into by the plaintiffs on their own account or on account of the composite firm.

On the 18th December, 1918, a verbal agreement was entered into between the defendants and one Punamchand, a manager of the firm Devaji Narasingji. This agreement purported to be a tripartite one and is described as an arrangement of *havalas*, the purport being that the sum of Rs.19,242-6-0 payable by the defendants to Devaji Narasingji should be treated as paid, and that the amount of Rs.28,017-8-0 due to the defendants in respect of the 50 bales already mentioned should be correspondingly reduced, an arrangement which would appear to involve that the plaintiffs should satisfy the claim of Devaji Narasingji against the defendants.

In September, 1919, Devaji Narasingji brought suit No. 176 of 1919 against the defendants in the Court of the Subordinate Judge, claiming various monies including the sum of Rs.19,242-6-0. The Subordinate Judge on the 12th November, 1920, found in favour of Devaji Narasingji's claim, but on the 1st December, 1922, the High Court of Bombay reversed this decision and dismissed the suit; holding that, Devaji Narasingji being a partner with the present plaintiffs in the purchase of the 50 bales, the arrangement of *havalas* was good and binding, and discharged the debt due from the present defendants to Devaji Narasingji. Before this decision had been given by the High Court the present plaintiffs on the 26th August, 1921, brought suit No. 419 of 1921 against the present defendants for divers sums of money claimed to be due. In that suit the plaintiffs gave the defendants credit for a sum of Rs.28,017-8-0 being the price of the 50 bales of yarn before mentioned. In the result, after the Subordinate Judge had on the 14th April, 1925, dismissed the plaintiffs' suit on the ground that the transactions sued upon were transactions of the composite firm and that, therefore, the plaintiffs could not sue without Devaji Narasingji, the High Court on the 7th August, 1928, reversed that decision; and, after allowing the credit already mentioned, gave judgment for a sum of Rs.2,488-0-6 with certain interest and costs. Between the decision of the Subordinate Judge and the decision of the High Court, namely on the 8th February, 1927, the plaintiffs as both courts in India have found, paid to Devaji Narasingji a sum of Rs. 28,500 as representing the sum of Rs.19,242-6-0 before mentioned with accrued interest thereon. On the 19th February, 1927, a few days thereafter, the plaintiffs instituted the present suit which has succeeded in both courts in India.

In view of the fact that so long ago as December, 1922, it was finally established as between Devaji Narasingji and the defendants that the defendants did not owe to Devaji Narasingji the sum in question, and in view of the lapse of time between 1918 and 1927, Sir Thomas Strangman for the plaintiffs-respondents was in no good position to maintain that the payment of the 8th February, 1927, was a payment

made by the plaintiffs to discharge a debt exigible from the defendants by Devaji Narasingji. The composite firm had ceased business in 1919 but it was in evidence that the accounts of its transactions had not been adjusted. Even so, however, the plaintiffs' payment if made under the *havala* of 18th December, 1918, is very late. Moreover, in suit No. 419 of 1921 the plaintiffs had given to the defendants credit for the whole of the price of the 50 bales, namely, Rs.28,017-8-0 contrary to their present claim. The plaintiffs accordingly were in grave difficulty in re-agitating the matter in the present suit having regard to section 11 of the Civil Procedure Code and Order II, rule 2 of the First Schedule thereto.

In these circumstances, Sir Thomas Strangman put his case before their Lordships as one entirely based upon a contract alleged to arise out of an offer or proposal made by the defendants on the 26th March, 1925, during the hearing of suit No. 419 of 1921 before the learned Subordinate Judge. The first witness called in that suit on behalf of the defendants was one Dhuraji who was defendant No. 4 and the manager of the defendants' firm or shop "Pannaji Devichand."

Their Lordships have in the paper book an extract only from his evidence. In the course of cross-examination he is recorded as saying :—

25. The dispute between us and Plaintiff is in respect of Rs.28,000. If Kapurji Magniram takes into account the "*Havala*" (transfer) of "Devaji Narshingaji", I shall have to pay that (?) amount of Rs.19,242-0-0 to Plaintiff.

* * *
Re-examination.
* * *

33. If Rs.28,000 the amount in dispute be left out and if Rs.19,242 in respect of *Havala* of Devaji Narshingji be paid I shall have to pay Rs.19,242 to Plaintiff. 127 bales were given subsequently.

This is a translation of part of a certified copy of his deposition in Kanarese. It is contended on behalf of the plaintiffs that these statements were an invitation to the plaintiffs to pay the sum of Rs.19,242-6-0 to Devaji Narasingji upon the promise that if this were done the defendants would refund to them. It is said that, when on the 8th February, 1927, nearly two years after the witness had given evidence, the plaintiffs in fact made the payment to Devaji Narasingji, this was an acceptance of the proposal made on behalf of the defendants and amounted, therefore, to a contract.

Their Lordships are of opinion that this case cannot succeed. In the document before them Dhuraji is represented as saying that if the plaintiffs take into account the *havala* "I shall have to pay that amount of Rs.19,242 to plaintiff." In re-examination the statement is in effect the same "I shall have to pay Rs.19,242 to plaintiff." The more correct interpretation of this English expression would

be to regard it as a statement made by the witness of the consequences in law of the plaintiffs making the payment, that is, as a statement that he would be liable in a certain event to make a payment to the plaintiffs. Even if the English employed in the translation were capable of being interpreted as a promise to make repayment in a certain event, there is no context or other material to satisfy their Lordships that this was the true meaning of the witness. Still less can their Lordships proceed upon the basis of any assumption as to the meaning of what the witness said in Kanarese. The defendants were not in that suit under any necessity to make a bargain with the plaintiffs in order to have credit for the sum of Rs.28,017-8-0 : the plaintiffs had given this credit of their own accord and were, at the time when Dhuraji was giving evidence, unwilling to recognise the *havala* as binding upon them. The plaintiffs fail, therefore, to make out the contract which they put forward.

Their Lordships will humbly advise His Majesty that the appeal should be allowed, that the decrees of both courts in India be reversed with costs, and that the suit be dismissed. The plaintiffs must pay to the defendants the costs of this appeal to His Majesty.

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In the Privy Council.

PANNAJI DEVICHAND SHOP

2.

KAPURJI MAGNIRAM SHOP.

DELIVERED BY SIR GEORGE RANKIN.

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