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MORRIS HEDSTROM LIMITED

v.

P. BABU RAM

B

[SUPREME COURT, 1973 (Mishra J.), 8th August]

Appellate Jurisdiction

Cheque—consideration —whether adequacy of consideration can be made subject of enquiry.

C

If the Court is satisfied that a cheque is supported by valuable consideration, the adequacy of such consideration is irrelevant and cannot be made the subject of enquiry (*Adib El Sinnaui v. Yacomb Fahai Abu El Hula El Faraqi* [1936] 1 All E.R. 683 applied).

Appeal against the decision of the Magistrate's Court.

J. R. Reddy for the appellant.

D

M. S. Sahu Khan for the respondent.

MISHRA J. [8th August 1973]—

The Appellant company's claim was in respect of two cheques, one for $325.70 and the other for $400.80 drawn by the respondent in their favour which were returned by the Bank upon presentation because the respondent had stopped payment on them.

E

By his statement of defence the defendant admitted that he had drawn the cheques in question but alleged that certain repairs done to the respondent's vehicle by the appellant's garage, had not been carried out properly. He also pleaded Bills of Exchange Ordinance. At the trial he made no reference to this Ordinance and also abandoned a counter-claim for $800.00 for negligence in carrying out repairs to his vehicle.

F

At the commencement of the hearing the respondent admitted liability in respect of $400.00 owing under one of the cheques and the trial was therefore confined to the claim under the cheque for $325.70.

The appellant's case was that on 25th April, 1972 a cash sale docket for $325.70 (Ex. B) was presented to the respondent in respect of repairs done to his vehicle and the appellant, on the same date, made out a cheque for that sum on which payment was later refused by the Bank of Australia and New Zealand.

G

The respondent raised two main defences at the trial, not specifically raised in his statement of defence:—

(1) That the cheque was not in payment of the appellant's bill but merely as a security for the release of the vehicle.

(2) That the amount of $325.70 shown in the appellant's docket was in excess of what the respondent in fact owed to the appellants for repairs to his vehicle.

H

It is important to note that the appellant's claim was in respect of the cheque and not for money owing in respect of a repair account. To prove that valuable consideration had been given for the cheque the plaintiff, however, adduced evidence of work done on the respondent's vehicle and produced cash sale docket (Ex. B) and the respondent's cheque (Ex. A).

In his judgement the learned trial Magistrate said:—

A " The defendant on oath said that he gave the cheque (Ex. A) for security to obtain the release of his truck."

He, however, made no finding on this release. On the issue of ' overcharge ' the learned trial Magistrate said:—

" There was consideration for the cheque, but undoubtedly, it was not the true consideration. I beliveve the Defendant did complain as to the alleged

B overcharging, as he said he did.

The plaintiff's company is entitled to recover from defendant the labour charges in respect of work done by Shankaran and by Bal Ram and, in addition the cost of materials."

He calculated the labour charges at $203.88 and the cost of materials at $40.13 and gave judgement in favour of the plaintiff for $244.01 in respect of the claim

C under the cheque drawn for the sum of $325.70.

The appellant appeals against this decision on the ground, among others, that the learned trial Magistrate failed to take into account the provisions of section 27 of the Bills of Exchange Ordinance.

It appears from the learned trial Magistrate's judgement that he took the view that in an action on a cheque a plaintiff is entitled not to the full amount shown on

D the cheque but only the " true consideration " given for it. He held that there was consideration for the cheque but the true consideration amounted not to $325.70, the amount for which the cheque was given, but only to $244.01 which represented the cost of repairs. In this view he was, with respect, clearly wrong. If the Court is satisfied, as it was in this case, that the cheque was supported by valuable consideration the adequacy of such consideration is irrelevant and cannot be made a subject of enquiry (*Adib El Sinnaui v. Yacomb Fahai Abu El Hula El Faraqi*) [1936] 1 All E.R. 638).

E As for the issue of whether or not the cheque was given as a security the respondent, in his evidence, merely said:—

" They told me to give them a cheque and they would release the truck. It was for security so that I could release my truck. $285.17 was too much for the work done."

This contention was not even put to the witnesses for the appellant and the

F learned trial Magistrate, quite correctly in my view, declined to make a specific finding that the cheque was given by way of security. The cheque was exactly for the amount shown on the docket and was presented by the appellant for payment in the normal course of business. There is no suggestion in the evidence that the appellant accepted the cheque merely by way of security with an undertaking to go into accounts afterwards.

G The appellant could, however, have pleaded duress or coercion in respect of the appellant's refusal to release the truck. If he had succeeded the cheque would have been invalid. But this the appellant did not do and indeed, on the evidence, could hardly have done.

If there was any genuine complaint about defective repairs or excessive charges the respondent's remedy lay elsewhere, not in an allegation of inadequate consideration in an action on a cheque.

H The appeal is, therefore, allowed and the judgement of the Court below set aside. In its place is substituted a judgement for $726.50. This represents the full amount shown on the two cheques and claimed under the particulars of claim.

The appellant to have costs of this appeal as well as of the action in the Court below. In default of agreement, costs are to be taxed.

Appeal allowed.