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Status of Incomplete Negotiable Instruments

INTRODUCTION

Under Indian law, a negotiable instrument means a transferable instrument. In business transactions, frequently a negotiable instrument is used to make payment of money. A negotiable instrument has several characteristics. But, the most important feature is it does not merely give possession of the instrument, but a right to property. The possessor of the instrument is the holder and owner thereof. The complete right of ownership passes by a mere delivery where the instrument is payable to the bearer. The payment of money under a negotiable instrument must always be unconditional. Bills of exchange, *hundis*,¹ promissory notes and cheques are the most common examples of a negotiable instrument.

In commercial transactions, frequently, bills of exchange or promissory notes are issued which are blank or incomplete, the object being to enable the holder of such instrument either to insert his name as the drawee or to pass it on to another person to insert his name thereon. A blank or incomplete negotiable instrument, in the present context, refers to those instruments wherein the amount, name of the drawee and/or date of issue are left blank or incomplete. This newsletter discusses the rights and liabilities of a drawer and drawee when such an incomplete negotiable instrument is issued.

¹ From ancient days there have been negotiable instruments in use in India akin to bills of exchange or cheques. These instruments are known as *hundis*. *Hundi* is an unconditional written order made by a person on another for the payment of money to a person named therein.

1. The legal definition

Section 20 of the Negotiable Instruments Act, 1881 (“**the Act**”) deals with an inchoate or incomplete negotiable instrument and defines it as one which is stamped,² blank or incomplete, and is signed and delivered to another person. It would be useful here to examine some jurisprudential precedents.

In *S. Gopal v D. Balachandran*,³ the Petitioner was accused under Section 138⁴ of the Act before the trial court for issuing blank cheques with his signature to the Respondent, who filled the particulars of the cheque and misused it. Therefore, the Petitioner asked the Court to send the disputed cheques to a forensic laboratory to determine the age of the ink of the signature of the Petitioner and the difference in ink of the signature from that of the other particulars filled in later. The trial court rejected such a plea on the ground that there was no necessity to send the disputed cheque for an expert’s opinion as the Petitioner categorically admitted the signature. On appeal, one of the three questions before the High Court of Madras was whether the scope of Section 20 of the Act applies to a blank cheque signed by the drawer. The Court held that Section 20 of the Act would apply to only a stamped instrument such as bills of exchange and not to cheques. Therefore, cheques were excluded from the purview of the definition of incomplete negotiable instruments.

² “Stamped” means the levying of a stamp duty in accordance with the Stamp Act, 1899. The Stamp Act helps ascertain the amount of stamp duty with which an instrument is chargeable in India.

³ 2008 (1) CTC 491 at para 2, 3 and 6.

⁴ This section deals with dishonour of cheque for insufficient funds in the account. Bouncing of a cheque is an offense.

Incomplete negotiable instrument at the time of issue is to be treated, when completed, as though it had never been defective and would become retrospectively enforceable.⁵

In *H.S. Srinivasa v Girijamma*,⁶ the Petitioner questioned the court order passed by the trial judge. The Respondent executed an agreement to let out a building for construction purposes to the Petitioner on a monthly rent of INR 7,001 and received an advance amount of INR 51,000 as rent, in cash from the Petitioner. The Respondent had borrowed a sum of INR 100,000 each on two separate occasions from the Petitioner and had signed and delivered two promissory notes to the Petitioner. In both promissory notes the name of the promisor and promisee was left blank, however, the amount borrowed i.e., INR 100,000 was mentioned in words. The Respondent affixed the appropriate stamps on the two promissory notes. In one promissory note the interest rate was blank whereas it was filled in the second one. Since the Respondent was not handing over the possession of the building to allow the Petitioner to commence construction as specified in the agreement, the Petitioner filed a case for possession of the building. During the course of the case the Petitioner moved an application for completion of the two promissory notes per Section 20 of the Act. The trial court however, declined to complete the incomplete instruments on the ground that it was not permissible for the Petitioner to fill in the blanks of the blank promissory notes as it was barred by Section 93⁷ of the Evidence Act. In appeal, the High Court of Karnataka held that where a promissory note is signed, delivered to another person, is properly stamped but is left blank, in such a situation, the person to whom the promissory note is delivered will have a *prima facie* authority to complete the document by filling in the blanks.

Stamping of an incomplete negotiable instrument is necessary to make such instrument once filled up, enforceable.⁸

2. Status of drawer and drawee of incomplete negotiable instrument

2.1 Rights of “Holder” and “Holder in due course”

When the question of enforcement of a blank or incomplete negotiable instrument arises, it is vital to ascertain the status of the person issuing such instrument and that of the person seeking to enforce the instrument i.e. whether an individual is a “holder”⁹ or a “holder in due course”.¹⁰ In other words, the “holder” in good faith and for value called the “holder in due course” gets the instrument free from all defects of any previous “holder”. The “holder” can sue upon the negotiable instrument in his own name. All prior parties are liable to him. A “holder in due course” can also recover the full amount on the instrument. Certain defenses do not affect the “holder in due course”, which might be available against previous “holder”, for example, fraud to which he is not a party.

Therefore, a “holder in due course” is entitled to recover the amount mentioned in the negotiable instrument from the drawer. Where the instrument does not mention the sum, he is entitled to recover anything in excess of the amount intended to be paid by the drawer. On the other hand, a “holder” is not entitled to recover anything in excess of the amount mentioned in the negotiable instrument while if the instrument is silent about the amount, he is entitled to recover only the amount *intended* to be paid by the drawer.

Thus, Section 20 of the Act provides for two rights in respect of two different persons. One is the right given to the “holder” of an incomplete negotiable instrument i.e. the person who is in possession of the document and that right is the right to complete the instrument. If the “holder” of an incomplete negotiable instrument, after having completed the instrument negotiates it, then the person who by reason of such negotiation becomes a

⁵ S.P. Sen Gupta, *Negotiable Instruments Act, 1881* (Third Edition, Kamal Law House, 2007) at page 246.

⁶ 2006 (4) KarLJ 10 at para. 1, 3, 4, 10.

⁷ Exclusion of evidence to explain or amend ambiguous document.

⁸ *Jakka Gopal Reddy v Neelakantam Venkata Krishna* 2007 (5) ALD 427.

⁹ According to Section 8 of the Act, “holder” of a promissory note or bill of exchange means any person entitled in his own name to the possession thereof and to receive the amount due thereon from the parties thereto.

¹⁰ According to Section 9 of the Act, “holder in due course” means any person who for a consideration became the possessor of a promissory note or bill of exchange payable to the bearer.

“holder in due course”, has a right to proceed against the drawer of such instrument and recover the amount mentioned in the instrument.¹¹

2.2 Beneficiary of a negotiable instrument and consideration

A promissory note, bill of exchange is (a) payable to order, and (b) can also be payable to bearer. Where the instrument is payable to bearer, the “property” in it passes from one person to another by delivery. It may also be payable to two or more payees jointly, or it may be made payable in the alternative to one or two or some of several payees.

Further, consideration in the case of a negotiable instrument is presumed. Every instrument, when it has been accepted, negotiated or transferred, is considered to be accepted, negotiated or transferred for a consideration.

Any person who signs and delivers an incomplete instrument with the intent to be filled by another person binds himself as the drawer, maker, acceptor or endorser by virtue of his signature. The drawer is liable to pay the holder when the blanks are complete.

Section 20 of the Act imposes a liability upon a drawer who issues an incomplete negotiable instrument to the holder, and therefore, it is construed strictly. This means that in case a person signs his name on a stamped piece of paper and entrusts it to another to fill it up as a promissory note for a certain sum and the instrument is completed for a larger amount, he will be estopped from denying the validity for the full amount of the note. However, the liability of such person who signs and delivers the incomplete negotiable instrument arises only when the blanks are completed. Till then, the instrument is not a valid negotiable instrument and no action is maintainable on it.¹²

3. Delivery and time limit for completion of a blank negotiable instrument

It is imperative that the drawer of an incomplete negotiable instrument delivers such instrument to another person, thereby allowing the person to whom such incomplete instruments is delivered to complete the said instrument and receive payment of money. In case there is lack of delivery on the part of the drawer, the person with whom such incomplete negotiable instrument may vest, by means of theft or otherwise, cannot fill up the blanks and receive payment of money. For instance, “A” gives a blank negotiable instrument to “B” authorizing him to fill in his own name as drawer but “B” returns the said blank instrument unaltered to “A”. Thereafter, “C” steals the same instrument from “A”, and fills his own name as drawee. Here, “C” will not be entitled to recover the amount mentioned in the instrument from “A” because “A” never delivered the said instrument to “C”.

“Delivery” does not mean mere handing over. Instead it refers to the act by which an incomplete negotiable instrument is placed within the actual possession of another person with the authority to complete it. Therefore, where the drawer hands over an incomplete negotiable instrument to another person, simply for safe custody, it is not a “delivery” within the meaning of Section 20 of the Act. For instance, “X” gives an incomplete negotiable instrument to “Y” for safe custody and “Y” fills his name in the drawee’s column thereby completing the instrument and thereafter seeks payment of money from “X” as mentioned in the instrument. Here, “X” has the right to refuse payment of money to “Y” on the ground of lack of “delivery” by him to “Y” of such instrument coupled with an authority to complete it.

The time limit within which the filling up of an incomplete negotiable instrument is to be exercised is not explicitly mentioned in the Act. Thus, in case the date in a negotiable instrument is blank, any “holder” has the right to insert the true date within a reasonable time. This principle applies to an incomplete instrument wherein the drawee’s name or the amount is left blank. Reasonable time is a question of fact, and will depend on the circumstances of each case. In *M.P. RM. Iruhandi*

¹¹ *Tarachand Kavalram v Sikri Brothers* AIR 1953 Bom 290 at para. 2.

¹² *Sesbaral Bajna v V.C. Subramanian* AIR 1983 Mad 368.

Mudaliar v Syed Ibrahim,¹³ a revision petition was directed against an order of the district court declining to return two promissory notes which were the subject matter of the suit before him for filling up the name of the payee. The promissory notes were executed and duly stamped but did not bear the name of the payee. A space was left in blank for filling up the name and the Petitioner was authorized by the drawer to fill in his name at any time he chooses to do so, but due to a mistake, the Petitioner omitted to fill in his name in the promissory notes before instituting the suit thereon. Later on the Petitioner realizing that the payee's name had not been filled up applied to the High Court of Madras to return the two promissory notes to him to enable him to fill in the blanks and re-present the same in the Court. The High Court of Madras passed an order stating that the Petitioner should be allowed to fill in the name in the promissory notes. Thus, the Petitioner in the present case was allowed to fill up blanks in an incomplete promissory note even after it was filed in Court.

CONCLUSION

Ideally when a negotiable instrument is issued it should be complete in totality as it reduces the risk involved in passing on an incomplete instrument. For instance, the potential risk could be filling up an amount, higher than what the drawer intended to be paying to the drawee. Where an incomplete instrument is issued, certain rights and liabilities are thrust upon the drawer and holder of such instrument by law. A holder's right will be to complete the instrument so as to make it a valid enforceable document and seek payment of money as specified. The drawer's right would be to refuse payment of money in case there are certain infirmities in the instrument. On the other hand, a holder would be liable to duly fill up the blanks in an incomplete instrument so as to receive payment of money mentioned therein, whereas the drawer would be liable to pay whatever amount is mentioned in the instrument, provided the amount entered by the holder does not exceed the stamp duty levied upon such negotiable instrument.

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¹³ (1962) 1 MLJ 306 at para 1 and 2.

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