Tarsem Singh and others
v.
Shrimati Jagindro and others

Bhandari, C. J.

erroneous impression that the learned Subordinate Judge had decreed the plaintiff's claim on the ground only that the order of cancellation was passed without hearing the plaintiff. I am of the opinion that the decree which was prepared in his office did not give effect to his intention even if it purports to have been signed by him. . Let the decree be modified accordingly.

Nothing herein contained should be construed to be an expression of opinion on the somewhat difficut question as to whether the plaintiff did or did not own any land in Pakistan in lieu of which she claimed an allotment under the provisions of the Administration of Evacuee Property Act. The question of title was not decided by the District Judge.

For these reasons I would accept the petition, set aside the order of Mr. Sharma and direct that the decree be amended so as to bring it into conformity with the decision of Mr. Kapur. There will be no orders as to costs.

APPELLATE CIVIL

Before Chopra and Gosain, JJ.

F. NANAK CHAND RAMKISHAN DAS OF HODEL

AND OTHERS,—*Plaintiffs-Appellants*

versus

LAL CHAND AND OTHERS,—*Defendants-Respondents*

Civil Regular Second Appeal No. 196 of 1950, with Cross-Objections.

1958

Jan., 8th

Negotiable Instruments Act (XXVI of 1887)—Sections 30, 91, 92, 93 and 106—Bills of Exchange payable after sight, on a fixed date and at sight—Whether require to be presented for acceptance—Bill dishonoured on presentment—Notice of dishonour—Whether necessary to be given to the

drawer—Section 30—Whether complete code in itself—"as hereinafter provided"—Meaning of—Section 106—Notice given after 28 days—Whether reasonable—Object of notice—Indian Contract Act (IX of 1872)—Section 176—Rights of pawnee under—Sale by pawnee without notice to the pawner—Effect of—Liability of pawnee for damages.

Held, per Gosain, J.—

(1) that a bil of exchange payable after sight is required by law to be presented for acceptance and if it is dishonoured on being presented, the provisions of sections 91 and 93 are attracted and a notice of dishonour becomes essential;

(2) that a bill of exchange payable on a fixed date is not required by law to be presented for acceptance, but may at the option of the holder be presented for acceptance at any time earlier than the date fixed for its payment. If it is presented for acceptance and it is dishonoured a notice of dishonour becomes essential;

(3) that a bill of exchange payable at sight is not required by law to be presented for acceptance only but when presented for payment it must be deemed to have been presented both for acceptance and payment. On its being dishonoured the provisions of sections 91 to 93 of the Act would become applicable and a notice of dishonour under the said provisions will become essential;

(4) that section 30 of the Act is not a complete Code in itself in regard to bills of exchange of every type. It only deals with the liability of the drawer and the words "as hereinafter provided" in the said section must be interpreted to mean "as provided by sections 91, 92 and 93 of the Act";

(5) that the notice belated by 28 days cannot be deemed to be reasonable within the meaning of section 106 of the Act;

(6) that under section 176 of the Contract Act, a pawnee may keep the goods as security for the debt due to him from the pawner, and although he has got the right to sell after notice to the pawner he is not bound to sell at any particular time. The power of sale conferred on the

pawnee is expressly for his benefit and he can exercise his discretion in favour of sale or otherwise. The mere fact that the pawnee gives notice that he would sell the goods cannot possibly be a compelling factor for sale to be effected. If, however, the goods are sold by the pawnee without notice as provided by section 176, Contract Act, they will be deemed to have been converted and an action for conversion of the same would lie against the pawnee, but damages would be assessed by taking into consideration the market rates of the goods in question as on the date of conversion, which ordinarily would be the date on which the goods were wrongfully sold.

Held, per Chopra, J.—

(1) that in the case of a bill of exchange payable at sight and a cheque, it is a part of the engagement of the drawer that he will be liable only if the instrument is duly presented and in case of dishonour, he is promptly informed that payment has been refused. The object of giving notice is to inform the drawer that the engagement on the bill or cheque has been broken by the principal debtor and that he will now be liable for paymtnt. The drawer is not to be indefinitely kept in the dark as to whether the drawee has honoured the instrument or not;.

(2) that the words "as hereinafter provided" in section 30 do not limit the operation of the section to cases which fall under section 93 and make it subject to the provisions of that section. The clause only means "in the way or manner" as laid down by the subsequent provisions in the Act. Section 93 enumerates the persons by and to whom notice is to be given. The section is not meant to be an exhaustive Code of cases in which notice is necessary. The section provides for notice only in cases of dishonour by "non-acceptance" or "non-payment" as defined by sections 91 and 92 respectively. There may be some overlapping between the provisions of section 93 and and those of section 30, yet they pertain to two independent provisions and one does not exclude the operation of the other. Section 30 is to be read as subject to the provisions which relate to the mode or manner in which the notice has to be given.

Second Appeal from the decree of the Court of Shri Maharaj Kishore, District Judge, Hissar at Gurgaon,

dated the 23rd day of November, 1949, affirming that of Shri Prem Nath Thukral, Sub-Judge, 1st Class, Gurgaon, dated the 18th May, 1949, dismissing the plaintiffs' suit and leaving the parties to bear their own costs. The Lower Appellate Court allowed costs to the defendants-respondents in his Court.

D. N. AGGARWAL, GOMTI PERSHAD and GANGA PERSHAD for Appellants.

F. C. MITAL and R. SACHAR, for Respondent.

JUDGMENT

K. L. Gosain, J.

K. L. GOSAIN, J.—This second appeal is directed against the appellate decree of Shri Maharaj Kishore, District Judge, Hissar, confirming the decree of Shri P. N. Thukral, Sub-Judge, 1st Class, Gurgaon, by which the suit of the plaintiffs-appellants was dismissed on 18th May, 1949.

Lal Chand and his sons Prabhu Dayal and Chuni Lal constituted a joint Hindu family and carried on their business under the name and style of Messrs Lal Chand-Prabhu Dayal at Hodel, Tehsil Palwal. On 30th August, 1943, Prabhu Dayal acting as *karta* and manager of the family gave a *hundi* to the plaintiff-firm Nanak Chand-Ram Kishan of Hodel for a sum of Rs. 5,894-4-0 drawn on Messrs Manohar Lal-Ram Parshad of Hailey Mandi, Pataudi, and obtained from the plaintiffs a sum of Rs. 5,879-4-0, i.e., the amount covered by the *hundi* less commission at the rate of 4 per cent. As collateral security for the amount of the *hundi* the defendants also handed over to the plaintiffs one railway receipt under which 154 bags of *matra* and 50 bags of *arhar* had been booked. The *hundi* bore an endorsement on the back of it that the amount covered by the *hundi* may be paid on receipt of the railway receipt. The said *hundi* was presented to Messrs

F. Nanak Chand-Ramkishan Das of Hodel and others
v.
Lal Chand and others

K. L. Gosain, J.

Manohar Lal-Ram Parshad through the Central Bank of India for acceptance and payment, but on 2nd September, 1943, the said firm dishonoured it. The plaintiffs received information regarding this fact on 8th September, 1943 and obtained delivery of the goods covered by the railway receipt on 12th September, 1943. On 1st October, 1943, the plaintiffs sent a registered notice to the defendants informing them that the *hundi* had been dishonoured and that they had obtained delivery of the goods covered by the railway receipt and asking the defendants to pay the amount at once failing which the goods would be sold on the market rate and suit for deficiency would be filed against the defendants. The defendants replied to the said notice on 3rd October, 1943, disclaiming any interest in the goods and taking the plea that there had been an out and out sale of the goods covered by the railway receipt and that the defendants were no longer liable for any amount. The plaintiffs took a pretty long time in making sale of the goods. Matra was sold on different dates from 14th February, 1945, to 13th April, 1945, and *arhar* was sold on 30th October, 1946 and 1st November, 1946. After giving credit of the amounts recovered by the sale of the goods there remained an amount of Rs. 2,963-4-3 still due to the plaintiffs. On 19th August, 1948, the plaintiffs brought the present suit for the recovery of Rs. 3,756. In para 7 of the plaint they stated that the principal amount due to them was Rs. 2,963-4-3 and that the interest on the same calculated at 6 per cent per annum came to Rs. 729-11-9. The plaintiffs gave the total of the amounts as Rs. 3,756 although by calculation it comes to Rs. 3, 693 only. The plaint was based on the facts given above.

The defendants contested the suit and pleaded that the plaintiffs had in fact purchased the goods

F. Nanak Chand-Ramkishan Das of Hodel and others
v.
Lal Chand and others

K. L. Gosain, J

mentioned in the railway receipt from the defendants and out of the price of the goods they had paid Rs. 5,427-7-6 while the balance of Rs. 451-12-6 was agreed to be paid within one week but was never paid. The defendants denied to have received any valid notice of dishonour of the *hundi* and contended that the sale of goods made by the plaintiffs was against law and was not binding on the defendants. The defendants claimed an equitable set off for the aforesaid amount of Rs. 451-12-6 but did not pay any court-fee on the said amount.

On the above pleadings the trial Court framed as many as thirteen issues. It was found by the trial Court that the *hundi* had been drawn after receipt of the full consideration mentioned in the *hundi,* that the transaction was not an out and out sale, that the goods were sold at the rate and in the manner alleged by the plaintiffs, that the railway receipt had been given to the plaintiffs by way of collateral security for the *hundi,* that the *hundi* had been dishonoured by Messrs Manohar Lal-Ram Parshad, that it was necessary for the plaintiffs to have given a notice of dishonour of the *hundi* to the defendants, that the notice, Exhibit P. 2, did not satisfy the requirements of law and that the plaintiffs had consequently no *locus standi* to file the suit. The defendants were not held entitled to any equitable set off and the plaintiffs' suit was dismissed mainly on two grounds, namely that the plaintiffs had not given any proper notice to the defendants of the *hundi* having been dishonoured by the drawees and that the sale made by the plaintiffs was much belated and was not binding on the defendants. The plaintiffs went up in appeal to the District Judge, Hissar, which was also dismissed practically on the same grounds. They have now come up to this Court in second appeal

F. Nanak Chand-Ramkishan Das of Hodel and others
v.
Lal Chand and others

K. L. Gosain, J.

and the points urged before us on their behalf are as follows—

(1) that no notice of dishonour in respect of the *hundi* was necessary in this case;

(2) that an oral notice was given sometime in the middle of September, 1943, after the delivery of the goods had been taken;

(3) that the written notice dated the 1st of October, complied with the requirements of law;

(4) that the plaintiffs were not bound to make the sale immediately after giving notice for the said purpose;

(5) that the sale made in this case was perfectly binding on the defendants; and

(6) that in any case the defendants had not proved that they suffered any damages on acount of the belated sale.

In support of the first point Mr. D. N. Aggarwal, learned counsel for the appellants, raised two alternative arguments—

(a) that sections 91, 92 and 93 of the Negotiable Instruments Act, which dealt with the notice of dishonour did not in terms apply to the present case and applied only to cases of *hundis* after sight as opposed to *hundis* at sight; and

(b) that the defendants could not suffer damage for want of notice and the notice of dishonour was, therefore, not necessary in view of clause (c) of section 98.

F. Nanak Chand-Ramkishan Das of Hodel and others
v.
Lal Chand and others

K. L. Gosain, J.

According to section 91 a bill of exchange is said to be dishonoured by non-acceptance when the drawee makes default in acceptance upon being duly required to accept the bill. Mr. Aggarwal drew our attention to section 21 of the same Act and contended that the language of this section clearly showed that presentment for acceptance was necessary only in *hundis* payable after sight and not in *hundis* payable at sight and that the provisions of section 91 were, therefore, not attracted to the case. He further contended that the provisions of section 92 would be applicable only to those cases in which the bill of exchange had been accepted but had been dishonoured by the *acceptor* of the bill when the same was presented to the acceptor of the bill for payment. According to him section 93 which provided for the notice of dishonour would be applicable only if section 91 or 92 was applicable and if none of the said two sections applied, the provisions of section 93 would not be applicable. He drew our attention to a case *Firm Khuda Bakhsh-Nur Ilahi* v. *Yasin and another* (1). In para 3 of the judgment of the learned Judicial Commissioner it is observed as under—

> "The counsel for the plaintiffs argued that there was no necessity of sending a notice of dishonour in the case of a *hundi* which was payable at sight. He pointed out that sections 91, 92 and 93, Negotiable Instruments Act, when read together clearly show that they deal with documents in which acceptance is necessary, and such documents are obviously those which are payable after sight as stated above. Only one ruling has been quoted by the

(1)) A.I.R. 1937 Peshawar 103.

F. Nanak Chand-Ramkishan Das of Hodel and others
v.
Lal Chand and others

K. L. Gosain, J.

learned counsel for the defendants in support of the proposition that notice of dishonour is necessary even in the case of a *hundi* payable on presentation. It is *Bahadur Chand-Prabh Dial* v. *Gulab Rai-Nanak Chand and others* (1). We have perused the judgment. It was assumed in that case that a notice was necessary and the result of omission to issue a notice was discussed. The ruling is, therefore, of no help in deciding the point whether the notice is necessary or not. We have read the relevant section of the Negotiable Instruments Act, and have come to the conclusion that there is no provision in the Act, making the notice of dishonour compulsory where a *hundi* payable at sight has been dishonoured."

This ruling no doubt supports the contentions of Mr. Aggarwal.

Mr. F. C. Mital, learned counsel for the defendants-respondents, relied on the provisions of section 30 of the Negotiable Instruments Act and also on the rulings *Bahadur Chand-Prabh Dial* v. *Gulab Rai-Nanak Chand and others* (1), *Ram Singh* v. *Gulab Rai-Mehr Chand* (2), *Mohammad Rafi* v. *Qazi Mazhar Hussain* (3), *A. L. S. K. Kadappa Chetti* v. *R. S. S. T. Thirupathi Chetti* (4), *K. T. V. R. T. Veerappa Chetti* v. *Vellayan Ambalam and others* (5), and *Ram Ravji Jambhekar* v. *Pralhaddas Subkarn* (6), and contended that the Peshawar case referred to above did not

(1) A.I.R. 1929 Lah. 577.
(2) I.L.R. 1 Lah. 262.
(3) A.I.R. 1936 Lah. 796.
(4) A.I.R. 1925 Mad. 444.
(5) 52 I.C. 370.
(6) I.L.R. 20 Bom. 133.

F. Nanak Chand-Ramkishan Das of Hodel and others
v.
Lal Chand and others

K. L. Gosain, J.

lay down the law correctly, and that notice of dishonour was necessary in every bill of exchange whether it was payable at sight or after sight.

A perusal of the various rulings mentioned above shows that the point as now raised before us has not been directly dealt with in any of them. *Bahadur Chand-Prabh Dial* v.*Gulab Rai Nanak Chand and others* (1), was a case of a bill of exchange payable at sight and a Division Bench of the Lahore High Court, consisting of Sir Shadi Lal C. J. and Agha Haidar J., held that the drawer was not liable because a proper notice of dishonour had not been given to him. The case was mainly decided on the basis of section 30 of the Negotiable Instruments Act, and in the judgment there is no reference at all to the provisions of sections 91, 92 and 93 of the Act. It may be that the learned Judges deciding that case either assumed that the *hundis* payable at sight and those payable after sight stood on the same footing so far as the necessity of notice of dishonour was concerned, or were of the opinion that section 30 of the Act provided for a notice in respect of every type of bill of exchange and that the provisions of section 30 were in no way controlled by the provisions of sections 91 to 93 of the Act. The fact remains that there is no discussion at all in the ruling with regard to any distinction between the two types of bills of exchange, namely, those payable at sight and those payable after sight. *Ram Singh* v. *Gulab Rai-Mehr Chand* (2), was a case of a *hundi* payable not at sight but after 63 days, and the *hundi* had actually been presented for acceptance and had been dishonoured. *Mohammad Rafi* v. *Qazi Mazhar Hussain* (3), was a case of a cheque which had been dishonoured on being

(1) A.I.R. 1929 Lah. 577.
(2) I.L.R. 1 Lah. 262.
(3) A.I.R. 1939 Lah. 796.

F. Nanak Chand-Ramkishan Das of Hodel and others v. Lal Chand and others

K. L. Gosain, J.

presented for payment. These two cases, therefore, clearly fall within the ambit of section 93 of the Act and as such are not helpful for decision of the present case. *A. L. S. K. Kadappa Chetti* v. *R. S. S. T. Thirupathi Chetti* (1), appears to be a case of a *hundi* payable at sight, but the *hundi* had never been presented, either for acceptance or for payment, to the drawee. This case was heard by a Division Bench, consisting of Venkatasubba Rao and Srinivasa Aiyangar, JJ. Both the learned Judges wrote separate judgments. It was found in that case as a matter of fact that the *hundis* had never been presented for acceptance or payment and the suit was dismissed on this short ground. Some observations were no doubt made on the applicability of sections 91 and 92 of the Act to a bill of exchange payable at sight, but they are merely in the nature of *obiter dicta.* The contentions now raised before us by learned counsel for the parties were not actually before the learned Judges deciding that case, and this ruling cannot, therefore, be of much use in deciding the present case. *K. T. V. R. T. Varappa Chetty* v. *Vellayan Ambalam and others* (2), was a case of a bill of exchange payable at sight and it appears from the judgment that the bill of exchange in that case had been presented for acceptance and had been dishonoured. The Division Bench of the Madras High Court deciding that case held that a bill of exchange payable at sight or on demand may in the option of the holder, be presented for acceptance and if it is not accepted by the drawee it will be said to have been dishonoured and the case would then be covered by sections 91 and 93 of the Act. The learned Judges deciding this case have observed in very clear

(1) A.I.R. 1925 Mad. 444.
(2) 52 I.C. 370.

F. Nanak Chand-Ramkishan Das of Hodel and others
v.
Lal Chand and others

K. L. Gosain, J.

terms that there is nothing in law which precludes a bill payable on demand being presented for acceptance, although that may not be necessary and that if presentment is made and the bill is dishonoured, a notice of dishonour must be given to the drawee in order to make him liable. *Ram Ravji Jambhekar* v. *Pralhaddas Subkarn* (1), was a case of a bill of exchange payable on a fixed date. At page 141 of the report, however, there are useful observations of Farran, C. J., on bills of various types and they are as under: —

> "In the case of bills drawn otherwise than payable after sight, there is no definition or explanation of the meaning of the italicised words 'upon being duly required to accept the bill', and it is argued that, in the case of such bills, there is no dishonour within the meaning of the Act, except dishonour by non-payment, and thus the drawer incurs no liability until the Bill is presented for payment, and payment is refused. The English law does not require presentment for acceptance of a bill payable after a fixed date to be made by the holder before such fixed date arrives (*see* section 39(3) of the English Act, which is declaratory of the American law (Chalmers, page 120) and *White head* v. *Walker* (2), nor does the Indian Act (section 62). But under the English law it was not only allowable but was strongly advisable to do so; and we think that the Negotiable Instruments Act, has made no alteration in that respect. Presentment for

(1) I.L.R. 20 Bom. 133.
(2) 9 M. and W. 506.

F. Nanak Chand-Ramkishan Das of Hodel and others
v.
Lal Chand and others

K. L. Gosain, J.

acceptance must always and in every case precede presentment for payment, and it appears to us that the drawer of a bill contracts that whenever the bill is duly presented, it will, subject to the provisions of section 63, be accepted. The several sections in Chapter V, relating to presentment, for payment, appear to us to presuppose that the bill has not been already dishonoured by non-acceptance. When it is dishonoured by non-acceptance, as well as when it is dishonoured by non-payment, the provisions of Chapter VIII come into play. It is true that there is no such explicit declaration of the law upon this subject contained in the Indian, as in section 43(2) of the English, Act. But the whole scope and tenor of Chapter VIII of the Indian Act appear to contemplate the same result as is there declared to follow from non-acceptance. We are, therefore, of opinion that the dishonour of a bill by non-acceptance constitutes now, as it has always done, part of the cause of action in a suit against the drawer."

The view taken in *K. T. V. R. T. Varappa Chetty* v. *Vellayam Ambalam and others* (1), is supported by paragraph 328 of Volume 3 of the latest edition of Halsbury's Laws of England where the learned author, after mentioning the various bills, the presentment for acceptance of which is required by law, further says:—

"In every case, however, the prudent course for the holder to pursue is to present the bill for acceptance, for thereby he

(1) 52 I.C. 370.

F. Nanak Chand-Ramkishan Das of Hodel and others v. Lal Chand and others

K. L. Gosain, J.

> obtains, in the case of acceptance being obtained, the security of the acceptor's signature, or, in the case of acceptance being refused, the immediate liability of all previous parties to the bill and relief from the necessity of presentment for payment."

In Chalmers' book on Bills of Exchange, Eleventh Edition, there is a mention of the compulsory and optional presentation of the various types of bills of exchange, and a perusal of the same clearly shows that certain types of bills of exchange, e.g., those payable after sight must be presented for acceptance, while the other types of bills of exchange, e.g., those payable at sight or on a fixed date may in the option of the holder be presented for acceptance. This is also clearly provided in paragraph 515 of Volume II of Daniel's book on Negotiable Instruments. Mr. D. N. Aggarwal relied on the provisions of sections 61, 62 and 63 of the Act and contended that presentment for acceptance was necessary only in the case of bills of exchange payable after sight. I entirely agree with him in this respect. The other bills may, however, be presented for acceptance at the option of the holder, and, as has been pointed out in the various English authorities, it is always prudent to present the same for the aforesaid purposes because the *acceptor* may in all such cases become liable after he signs the bill in token of acceptance. If the bill is presented by the holder, whether under the requirements of law or in his option, and the drawee refuses to accept the bill. it will certainly amount to dishonouring of the bill as laid down in section 91 of the Act and the provisions of section 92 will, therefore, be immediately attracted. Mr. Mital contends that section 30 of the Act must be taken to be a complete Code in itself so far as the liability of the

F. Nanak Chand-Ramkishan Das of Hodel and others v. Lal Chand and others

K. L. Gosain, J.

drawer is concerned and that the said liability can never arise unless due notice of dishonour has been given to, or received by, the drawer. Mr. Aggarwal, in reply, contends that this section clearly lays down that the notice of dishonour is to be given to, or received by, the drawer "as hereinafter provided" and that the words "as hereinafter provided" clearly mean as "provided by sections 91, 92 and 93 of the Act". The words "as hereinafter provided" can either be interpreted to mean "as provided by sections 91, 92 and 93 of the Act, or to mean "in the manner in which such notices should be given, i.e., in the manner provided by section 94 of the Act". I am, however, of the opinion that the first interpretation is more acceptable because it will be consistent with the other provisions of the Act. Sections 28, 29, 30, 31, 32, 35 and 36 have been enacted expressly for providing the liabilities of the various parties to a bill of exchange, and section 93 has been enacted to provide that if the instrument had been dishonoured, a notice should be given to all other parties who are sought to be made liable, etc., etc. The extent of liability has been provided by the legislature in the former sections and the necessity of notice being given has been provided in section 93 of the Act. If notice of dishonour was necessary in every case where any type of bill of exchange had been dishonoured, it was not necessary at all to enact sections 91 to 93. Section 30 itself had provided for a notice of dishonour and it would have been quite enough for the aforesaid purpose. After a good deal of consideration of the various aspects of the case I have come to the following conclusions—

(1) that a bill of exchange payable after sight is required by law to be presented for acceptance and if it is dishonoured

on being presented, the provisions of sections 91 and 93 are attracted and a notice of dishonour becomes essential;

(2) that a bill of exchange payable on a fixed date is not required by law to be presented for acceptance, but may at the option of the holder be presented for acceptance at any time earlier than the date fixed for its payment. If it is presented for acceptance and it is dishonoured a notice of dishonour becomes essential;

(3) that a bill of exchange payable at sight is not required by law to be presented for acceptance only but when presented for payment it must be deemed to have been presented both for acceptance and payment. On its being dishonoured the provisions of sections 91 to 93 of the Act would become applicable and a notice of dishonour under the said provisions will become essential; and

(4) that section 30 of the Act is not a complete Code in itself in regard to bills of exchange of every type. It only deals with the liability of the drawer and the words "as hereinafter provided" in the said section must be interpreted to mean "as provided by sections 91, 92 and 93 of the Act."

Mr. D. N. Aggarwal contended that an oral notice of dishonour of the *hundi* had been given by his clients sometime in the middle of September, after delivery of the goods had been taken by them. I am unable to agree with him in this respect. An oral notice has not been relied upon anywhere

F. Nanak Chand-Ramkishan Das of Hodel and others
v.
Lal Chand and others

K. L. Gosain, J.

in the plaint. In paragraph 5 of the plaint the plaintiffs expressly relied upon a written notice sent on 1st October, 1943, and this averment clearly negatives the plea of any previous oral notice. There is no evidence of oral notice except the bald statement of the plaintiffs, and I am wholly unable to accept the said statement.

The written notice of dishonour was given for the first time on 1st October, 1943. Section 106 of the Act provides—

> "If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour;
>
> If the said parties carry on business or live in the same place, such a notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour."

In this case the parties carry on the business at the same place and the notice should, therefore, have been given by the next post or the day next after the day of dishonour of the *hundi*. The *hundi* was dishonoured on 2nd September, 1943, and a notice given on 1st October, 1943, is, therefore, obviously much beyond the reasonable time. No explanation has been furnished by the plaintiffs for this unreasonable delay in the notice and I am of the view that the notice, belated as it is by 28 days, cannot be deemed to be reasonable within the meaning of section 106 of the

F. Nanak Chand-Ramkishan Das of Hodel and others
v.
Lal Chand and others

K. L. Gosain, J.

Act. Mr. D. N. Aggarwal drew our attention to section 98(c) of the Act and argued that the case fell within the Exception provided by the aforesaid section inasmuch as the drawer could not in this case suffer any damage on account of want of notice. No such plea was taken in the trial Court and the parties got no opportunity whatsoever of producing any evidence on the point. If the plaintiffs wanted to rely on the Exception, they should have done so expressly, and cannot now be allowed to take the opposite party by surprise. If the Exception had been pleaded, it would certainly have been a question of fact and the parties would have been able to produce such evidence as they would have thought necessary.

As a result of the above discussion I find that a notice of dishonour was necessary in this case as the *hundi* had been presented for acceptance and had been dishonoured. I further find that the said notice having not been given by the plaintiffs in reasonable time after the *hundi* had been dishonoured, the drawer is not liable and the suit against him must, therefore, be dismissed.

The only other point that was argued before us relates to the validity or otherwise of sales of *matra* and *arhar*.

I have already pointed out that the delivery of the same was taken on 12th September, 1943, but the sale of *matra* was effected in 1945 and that of *arhar* in 1946. The learned trial Judge has found that the notice of sale having been given on 1st October, 1943, the plaintiffs should have effected the sale within a reasonable time and that the sales effected in 1945 and 1946 cannot be binding on the defendants. Mr. Aggarwal contends that the pawnee is not required by law to effect the sale of the pledged goods. He may bring a suit for

F. Nanak Chand-Ramkishan Das of Hodel and others
v.
Lal Chand and others

K. L. Gosain, J.

the recovery of his money and treat such goods as security, or he may in his option sell the goods after serving a notice on the pawner of the goods and may in that case sue for the balance of the amount. The power of sale has been given to the pawnee for his benefit, and the law does not require that he should exercise the said power in a particular time. Rulings *Cooverji Umersey* v. *Mawji Vaghji and another* (1), and *Kesarimal Trading under the name of Nattajee Kesarimal of Cocanda* v. *Gundabathula Suryanarayanamurty and another* (2), (Madras High Court) clearly support the contentions of Mr. Aggarwal. I am of the view that a pawnee may keep the goods as security for the debt due to him from the pawner, and although he has got the right to sell after notice to the pawner he is not bound to sell at any particular time. The power of sale conferred on the pawnee is expressly for his benefit and he can exercise his discretion in favour of sale or otherwise. The mere fact that the pawnee gave a notice in this case that he would sell the goods cannot possibly be a compelling factor for sale to be effected.

It was then argued that if the pawee wanted to sell the goods in 1945 and 1946, he should have given a fresh notice of sale as required by section 176 of the Indian Contract Act and that the notice given in 1943 should not have been taken to be enough for this purpose. There appears to be some force in this contention, but it is no use pursuing the matter any further in the present case. The defendants have not been able to prove the loss they have suffered on account of want of notice. If the goods are sold by the pawnee without a notice as provided by section 176, Contract Act,

(1) A.I.R. 1937 Bom. 26.
(2) 114 I.C. 820.

F. Nanak Chand-Ramkishan Das of Hodel and others
v.
Lal Chand and others

K. L. Gosain, J.

they will be deemed to have been converted and an action for conversion of the same would lie against the pawnee, but damages would be assessed by taking into consideration the market rates of the goods in question as on the date of conversion, which ordinarily would be the date on which the goods were wrongfully sold. There is in the present case no evidence of market rates of 1945 or 1946 of *matra and arhar* as at Hodel, District Gurgaon. It is, on the other hand, admitted by Mr. Mital that the rates prevailing in 1945 and 1946, were not helpful to his clients in the matter of assessment of damages.

In my judgment the plaintiffs' suit has been rightly dismissed by the two Courts below and I would therefore, dismiss this appeal. In the circumstances of the case I would leave the parties to bear their own costs throughout. The cross-objections also are dismissed.

Chopra, J.

CHOPRA, J.—I agree with my learned brother that notice of dishonour to the drawer in this case was necessary, and since the same was not given within a reasonable time the drawer was absolved of his liability on the *hundi* and the suit was rightly dismissed. My reasons for coming to this conclusion are slightly different. The basis of the suit was a *hundi* payable at sight. The *hundi* is said to have been presented to the drawee for payment and dishonoured.

A bill of exchange payable at sight may be, though not necessarily required by law, presented by the holder to the drawee for acceptance. Where it is so presented, the holder must, if so required by the drawee, allow the drawee forty-eight hours (exclusive of public holidays) to consider whether he will accept it (section 63 of the Negotiable Instruments Act, hereinafter referred to as the Act).

F. Nanak Chand-Ramkishan Das of Hodel and others
v.
Lal Chand and others

Chopra, J.

Two consequences may then follow and they are: If the drawee upon being required to accept the bill of exchange makes default in acceptance the bill shall be regarded as dishonoured by non-acceptance as contemplated by section 91 of the Act; (2) where the bill of exchange on being so presented is accepted, the drawee may be, simultaneously or at any subsequent time, required to pay the same. If the drawee then makes default in payment, the bill of exchange shall be regarded as dishonoured by non-payment as laid down by section 92. In either of these cases, section 93 will be applicable and the holder must give notice that the instrument has been so dishonoured to all other parties whom he seeks to make liable thereon.

There may, however, be a case, and the present is one of that type, where the holder of a bill of exchange payable at sight does not elect to present the instrument for acceptance, but merely presents the same for payment to the drawee. If the drawee in such a case makes default in payment, section 93 would not come into play, for the reason that under section 92 a bill of exchange is regarded as dishonoured by non-payment only when default in payment is made by its acceptor. The question then arises whether there is anything else in the Act which requires notice to be given also in the case of a bill of exchange payable at sight, when drawee of the bill makes default in payment on being duly required to pay the same. The position would surely be very much anomalous if there be no such provision, because in the case of a cheque, payment of which is refused by the drawee, the cheque is said to be dishonoured by non-payment under section 92 and notice is required to be given under section 93. There appears to be no reason why a distinction should be made between a bill of exchange payable at sight

F. Nanak Chand-Ramkishan Das of Hodel and others
v.
Lal Chand and others

Chopra, J.

and a cheque so far as the requirement of notice is concerned. In either case, it is a part of the engagement of the drawer that he will be liable only if the instrument is duly presented and in case of dishonour, he is promptly informed that payment has been refused. The object of giving notice is to inform the drawer that the engagement on the bill or cheque has been broken by the principal debtor and that he will now be liable for payment. The drawer is not to be indefinitely kept in the dark as to whether the drawee has honoured the instrument or not.

In my view, a case like this where the drawer is sought to be made liable falls under the general provisions with respect to notice contained in section 30. The section says—

> "30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided."

Liability of indorser is laid down by section 35, which reads—

> "35. In the absence of contract to the contrary whoever indorses and delivers a negotiable instrument before maturity, without in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received

F. Nanak Chand-Ramkishan Das of Hodel and others
v.
Lal Chand and others

Chopra, J.

by, such indorser as hereinafter provided. Every indorser after dishonour is liable as upon an instrument payable on demand."

The sections relate to the liability of drawer or indorser in case of dishonour of the bill of exchange by the drawee or acceptor thereof. 'Dishonour' in both these sections is used in its general and commercial sense; it is not confined to the limited definition contained in sections 91 and 92 of the Act. The bill of exchange shall be deemed to be dishonoured for the purposes of sections 30 and 35 when the drawee of the bill makes default in payment upon being duly required to pay the same. The liability is made subject to a notice of dishonour having been given to the drawer or the indorser. The sections further require that the notice shall be given "as hereinafter provided". On behalf of the appellant it is submitted that the clause "as hereinafter provided" restricts the operation of section 30 merely to cases which fall within the ambit of section 93. The argument is that section 93 contains a complete code as to the cases in which notice is necessary, meaning thereby that section 30 is to be read as subject to the provisions of section 93 and that no notice would be necessary where the case is not covered by these provisions. With this contention I cannot make myself agree.

The illustrative clause "as hereinafter provided" in section 30 modifies the sense of the preceding verb 'given' or 'received'. In my opinion, the clause does not limit the operation of the section to cases which fall under section 93 and make it subject to the provisions of that section. The clause only means "in the way or manner" as laid down by the subsequent provisions in the Act.

F. Nanak Chand-Ramkishan Das of Hodel and others
v.
Lal Chand and others

Chopra, J.

Section 93 enumerates the persons by and to whom notice is to be given. The section is not meant to be an exhaustive code of cases in which notice is necessary. The section provides for notice only in cases of dishonour by "non-acceptance" or "non-payment" as defined by sections 91 and 92 respectively. According to section 92, a bill of exchange is said to be 'dishonoured by non-payment' when the acceptor makes default in payment of the same. According to section 7, the drawee of a bill of exchange is regarded as the "acceptor" after he has signed his assent upon the bill and delivered the same to the holder. There may be some overlapping between the provisions of section 93 and those of section 30, yet they pertain to two independent provisions and one does not exclude the operation of the other. Section 94 lays down the mode in which notice is to be given: the notice may be given to a duly authorised agent of the person to whom it is required to be given; the notice may be oral or written; it may not be in any particular form, but it must inform the party to whom it is given either in express terms or by reasonable intendment that the instrument has been dishonoured and that he will be held liable thereon. The section further enjoins that the notice must be given within a reasonable time of the dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended. Section 98 enumerates cases where no notice of dishonour would be necessary. The rules requiring notice to be given admit of no departure except in the cases enumerated in this section. The present is not a case falling under any of the exceptions. Section 106 states the time which shall be regarded as reasonable for giving notice of dishonour. Where the holder and the party to whom notice

F. Nanak Chand-Ramkishan Das of Hodel and others
v.
Lal Chand and others

Chopra. J.

of dishonour is given carry on business or live (as the case may be) in different places, such notice is regarded as having been given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour. Section 30 is to be read as subject to these provisions which relate to the mode or manner in which the notice has to be given.

I would, therefore, dismiss this appeal and leave the parties to bear their own costs throughout. The cross-objections also are dismissed.

B.R.T.

REVISIONAL CIVIL

Before Mehar Singh, J.

SUNDER LAL JAIN,—*Defendant-Petitioner*

versus

SHRIMATI LAJWANTI DEVI,—*Plaintiff-Respondent*

Civil Revision No. 48-D of 1957.

1958

Jan., 13th

Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Section 13(5)—Statute fixing exact date for deposit—Courts, whether can extend time—General Clauses Act (X of 1897)—Section 10--Effect of—Date fixed by a statute for deposit—Courts closed on the date—Deposit made on the first day of the opening of the Court—Such deposit, whether valid—Party appearing in Court on the statutory date with the amount of deposit—Deposit not made on that date for no fault of the party—Such date whether can be considered the date of deposit.

Held, that when a statute fixes exact date for deposit, the Courts have no power to exend time for making the deposit against the terms of the Statute.

Held, that under section 10 of General Clauses Act, a party has a right to make the deposit on the first day of the opening of the Court, if on the date fixed by a Statute for