

it is not clear, whether it in fact was addressed to Sampuran Singh, or that it was signed by Mohan Lal. But assuming that Mohan Lal had written this letter to Sampuran Singh, it is not at all clear that the reference is to the promissory note in question or to the illegal gratification promised. Instead of writing that he would "do your work", he would have clearly referred to the loan taken by him on the pronote. These words can equally refer to some illegal gratification promised or to some other matter. This letter cannot be treated as an admission on the part of Mohan Lal acknowledging his liability under the pronote.

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Tek Chand, J.

After giving my anxious thought to all the points canvassed before us in this case, I am satisfied that there is no merit in the plaintiff's appeal, which fails and is dismissed with costs. The cross-objections, which relate to costs are allowed.

SHAMSHER BAHADUR, J.—I entirely agree.

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APPELLATE CIVIL.

Before P. C. Pandit, J.

BIR INDER NATH,—Appellant.

versus

UNION OF INDIA,—Respondent.

Regular Second Appeal No. 284 of 1955

Indian Post Office Act (VI of 1898)—Section 47—Amount of money order paid to the right person after the amount had been attached by a court—Whether can be recovered as arrears of land revenue.

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Held, that it cannot be said in the present case that the money order was meant for some body else or the

amount of the money order ought to have been paid to some other person and it had wrongly been paid to the plaintiff. Section 47 of the Indian Post Office Act, 1898, is meant for cases, e.g., where a money order is sent to "A" and there are two persons having the same name "A" and the amount of the money order is paid to that 'A' for whom the money order was not really meant. Then if that 'A' neglects or refuses to refund the amount of the money order, the Post Office authorities can avail of the provisions of this section and recover the amount from him as arrears of land revenue. This money order was in reality meant for the plaintiff. He cannot be described as a wrong person. The Post Office authorities had made the payment to the plaintiff who was entitled to receive it. But if due to some other reasons the plaintiff cannot keep this amount with him or he is bound under law to pay it back to the postal authorities who have paid this amount on his behalf to Nawal Mal, then the postal authorities should bring a regular suit against the plaintiff for the recovery of this amount. They cannot use the provisions or section 47 to recover this amount as arrears of land revenue, because these provisions have no applicability to the facts of the case.

Second Appeal from the decree of the Court of Shri Raj Inder Singh, Senior Sub-Judge, with enhanced appellate powers, Ludhiana, dated the 3rd day of December, 1954; affirming with costs that of Shri Chandra Gupta, Sub-Judge 1st Class, Ludhiana, dated the 30th April, 1954, dismissing the plaintiff's suit with costs

H. L. SARIN, ADVOCATE, for the appellant.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the respondent.

JUDGMENT.

P. C. Pandit, J. P. C. PANDIT, J.—In may or June, 1948, the plaintiff, as the sole proprietor of the firm Basant Trading Company despatched certain goods by rail and sent the railway receipt per V.P. letter for Rs. 331 to Nawal Mal, of Agra. The postal

authorities collected this amount from Nawal Mal, and paid the same to the plaintiff, through a duplicate money order in December, 1948. They later on started proceedings for the recovery of this amount as arrears of land revenue from the plaintiff, who has consequently brought the present suit for a permanent injunction restraining the defendant from recovering this amount from the plaintiff, as arrears of land revenue, since the goods despatched under the V.P. letter had not been returned to him and the amount could not, under the law, be recovered as arrears of land revenue.

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Defendant resisted the suit and pleaded that this amount was paid to the plaintiff through fraud and misrepresentation and therefore, it could be legally recovered as arrears of land revenue. It was further stated that Nawal Mal, on reaching the railway station, found that he had been cheated by the plaintiff as the consignment did not contain the goods contracted for. He filed a civil suit against the plaintiff at Agra and got the amount, which he had paid to the postal authorities attached before judgment and when the suit was decreed, the postal authorities had to pay this amount in Court for payment to Nawal Mal.

The trial Court dismissed the suit holding that the payment to the plaintiff, was made by the postal authorities under a mistake and, therefore, this amount could be recovered from him, that the defendant could recover this amount from the plaintiff, as arrears of land revenue under section 47 of the Indian Post Office Act, 6 of 1898, and that the *ex parte* decree passed against the plaintiff by the civil Court at Agra was binding on him.

The plaintiff went up in appeal and the learned Senior Subordinate Judge dismissed the same

Bir Inder Nath after affirming the findings of the trial Court on
v. all the issues.
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P. C. Pandit, J. The plaintiff has come up to this Court in second appeal.

The question that arises for decision in this case is whether the postal authorities can recover the amount in suit as arrears of land revenue under section 47 of the Indian Post Office Act, 6 of 1898. This section reads thus—

- “If any person, without reasonable excuse, the burden of proving, which shall lie on him, neglects or refuses to refund—
- (a) any amount paid to him in respect of a money order by an officer of the Post Office in excess of what ought to have been paid to him in respect thereof, or
 - (b) the amount of a money order paid by an officer of the Post Office to him instead of to some other person to whom it ought to have been paid, such amount shall be recoverable by an officer of the Post Office authorised by the Post Master General in this behalf from the person so neglecting or refusing, as if it were an arrear of land revenue due from him”.

Section 47 applies to the recovery of money order paid to the wrong person. Admittedly, clause (a) does not apply. The question is whether clause (b) applies to the facts of the present case or not, i.e., was the amount of this money order paid by an officer of the Post Office to the plaintiff instead of some other person to whom it ought to have been paid?

It seems that Nawal Mal, instituted criminal proceedings under section 420, Indian Penal Code,

and a civil suit for the recovery of this amount against the firm Basant Trading Company at Agra. The Criminal Court had attached this amount (paid by Nawal Mal to the Post Office for the V.P. letter) on the 26th June, 1948, and the Civil Court attached this amount before judgment on the 18th September, 1948. This amount was paid to the plaintiff at Ludhiana by a duplicate money order on the 3th/31st December, 1948. An *ex parte* decree was passed against the plaintiff by the Agra Court on the 21st May, 1949, and the postal authorities had to pay this amount in Court on the 27th October, 1949. The learned Senior Subordinate Judge has found that there is no evidence of any fraud or misrepresentation by the plaintiff, as it is not shown if he was aware of the proceedings in the civil Court at Agra, but he has also found that the payment to the plaintiff at Ludhiana in December, was made by mistake.

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The reasoning of the Courts below is that the prohibitory orders served on the Post Master, Agra, by the civil and criminal Courts were not known to the postal authorities at Ludhiana, and, therefore, the payment to the plaintiff in December, 1948, was made under mistake of facts and consequently the amount in this case can be said to have been paid to a wrong person, as the prohibitory order by the Civil Court restrained payment to the plaintiff. I am afraid I cannot agree with the reasoning of the Courts below. It cannot be said that in this case the postal authorities could take recourse to section 47 of the Act, for recovering this amount from the plaintiff.

As I read this section, in the present case, one cannot say that this money order was meant for somebody else or the amount of this money order ought to have been paid to some other person

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and it had wrongly been paid to the plaintiff. In my opinion, this section is meant for cases, e.g., where a money order is sent to 'A' and there are two persons having the same name 'A' and the amount of the money order is paid to that 'A' for whom the money order was not really meant. Then if that 'A' neglects or refuses to refund the amount of the money order, the Post Office authorities can avail of the provisions of this section and recover the amount from him as arrears of land revenue.

In the present case this money order was in reality meant for the plaintiff. He cannot be described as a wrong person. The Post Office authorities had made the payment to the plaintiff, who was entitled to receive it. But if due to some other reasons the plaintiff cannot keep this amount with him or he is bound under law to pay it back to the postal authorities, who have paid this amount on his behalf to Nawal Mal, then the postal authorities should bring a regular suit against the plaintiff for the recovery of this amount. They cannot use the provisions of section 7 to recover this amount as arrears of land revenue, because these provisions have no applicability to the facts of the present case.

Plaintiff's learned counsel also submitted that it has not been proved that the amount had been paid to the plaintiff under mistake of facts, that no prohibitory order had been served on the plaintiff, that there had been no legal attachment of the amount in question by the Agra Courts, that mere attachment did not confer any rights on the attaching creditor in the amount attached and that the *ex parte* decree at Agra was obtained by Nawal Mal, against the firm Basant Trading Company through one Ram Lal, who had nothing to

do with this concern. But, in my opinion, these questions do not arise at the present stage. The plaintiff, if so advised, can raise these questions if and when a regular suit is brought against him for the recovery of this amount.

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Learned counsel for the respondent then submitted that the conduct of the plaintiff was such that this discretionary relief should not be granted in his favour. Firstly, it would not be proper to make any comments on the conduct of the plaintiff till he is properly heard in appropriate proceedings because all that happened at Agra was behind his back and secondly when once I come to the conclusion that the provisions of section 47 of the Indian Post Office Act have no application to the facts of this case and that the postal authorities are not authorised by law to use coercive measures for recovering this amount from the plaintiff, then I do not see any reason why I should not grant the injunction prayed for to the plaintiff.

In view of what I have said above, I accept this appeal, set aside the judgment and decree of the lower appellate Court and decree the suit of the plaintiff. But in the peculiar circumstances of this case, I leave the parties to bear their own costs throughout.

B.R.T.

APPELLATE CIVIL.

Before P. C. Pandit, J.

RONAQ MAL,—Appellant.

versus

KASTURI MAL AND ANOTHER,—Respondents.

Execution second Appeal No. 1607 of 1959.

Code of Civil Procedure (Act V of 1908)—Section 60
(1)(ccc)—Objections under—Whether can be raised by

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