

**Raja Bejoy Singh Dudhuria Vs. Kumudi Kanta Talukdar and ors.**

**LegalCrystal Citation :** [legalcrystal.com/877766](http://legalcrystal.com/877766)

**Court :** Kolkata

**Decided On :** Dec-06-1918

**Reported in :** AIR1919Cal414,49Ind.Cas.794

**Judge :** Richardson and ;Syed Shamsul Huda, JJ.

**Appellant :** Raja Bejoy Singh Dudhuria

**Respondent :** Kumudi Kanta Talukdar and ors.

**Judgement :**

Richardson, J.

1. The defendants in the suit out of which this second appeal arises are three brothers, Rebati Kanta Talukdar, Kumndi Kanta Talukdar and Abani Kanta Talukdar.

2. It appears that defendant No. 1 had dealings with the plaintiff. In the year 1321 there was an adjustment of accounts and defendant No. 1 executed a hatchita acknowledging his indebtedness to the plaintiff in the sum of Rs. 3,062-1. In the following year, 1322, the defendant No. 1 who was a Treasurer in the Mymen-singh Collectorate, was arrested on a charge of embezzlement and was placed in custody in jail pending his trial, In that state of things, defendants Nos. 2 and 13 went to the plaintiff for the purpose of procuring money with which to obtain the release of defendant No. 1, on bail, and to make arrangements for his defence. What occurred according to the defendants Nos. 2 and 3 themselves is thus described in the judgment of the Subordinate Judge in the trial Court. ' Understanding from him ' (the officer of the plaintiff's firm) ' that the desired loan would not be had if some ornaments were not pledged, they (defendants Nos. 2 and 3) went with some ornaments to the plaintiff's firm the next morning (21st November 1915) but then the plaintiff's officer told them that unless they made mobalaghundi including the debt of defendant No. 1, no loan could be given them even on pledge of ornaments. Defendants Nos. 2 and 3 depose that they declined to take any loan on the said condition and came away, that they then in company of a Muktear, Babu Akhoy Kumur Ghosh, tried during the whole day to raise loan from other persons, but being unsuccessful, came back to the plaintiff's firm after evening and having no other alternative they had to give in and took a loan of Rs. 1,200 after making mobalaghundi as it was desired of them. '

3. On these allegations the defence set up by defendants Nos. 2 and 3 is this, that the acknowledgment of their liability in respect of the amount for which the defendant No. 1 had admitted his indebtedness, was obtained from them by undue influence.

4. In the trial Court that defence was rejected and a decree was made in favour of the

plaintiff.

5. In the lower Appellate Court, however the Additional District Judge, while he refers to the question of undue influence as a question which arose in the case, has come to no finding upon it. His view seems to have been that the acknowledgment of liability by defendants Nos. 2 and 3 in respect of the sum of Rs. 8,062 was invalid by reason that there was no consideration for it. This view cannot, in my opinion, be supported. The case of Nagendra Chandra Dey v. Amar Chandra Kundu 7 C.W.N. 725, which is referred to, is clearly distinguishable. There the acknowledgment stood by itself. There was no question of its being part of a loan transaction.

6. It is found that the three defendants originally formed a joint Hindu family with the defendant No. 1 as Karta. It is further found that they partitioned some of their property but that the partition was not complete and did not extend to their immoveable property. It is contended for the plaintiff that the acknowledgment of the defendants Nos. 2 and 3 is an admission that they were jointly interested with their brother in the transactions between the latter and the plaintiff. Apart, however, from that question, the case for the plaintiff is simply that the acknowledgment of liability by the defendants Nos. 2 and 3 is a part of the consideration which they gave for the money which they borrowed from him. No answer is attempted to the case so made except the defence of undue influence.

7. As I have said, the question whether there was or was not undue influence has not been determined by the lower Appellate Court, It is, therefore, open to up, under Section 113 of the Code of Civil Procedure, to determine this issue of fact ourselves. Having heard the learned Vakils on both sides, I am of opinion that the allegations made by the defendants themselves disclose no undue influence in the proper sense of the words.

8. It has been pointed out by their Lordships of the Privy Council that urgent need of money on the part the borrower does not of itself place the lender in a position to 'dominate his will' within the meaning of Section 16 of the Contract Act *Sundar Koer v. Rai Sham Krishen* 34 C. 150 : 4 A.L.J. 109 : 6 C.L.J. 106 : 9 Bom.L.R. 304 : 11 C.W.N. 249 : 17 M.L.J. 43 : 2 M.L.T. 75 : 34 I.A. 9 (P.C.).

9. It is said that the consideration was inadequate and the learned Vakit for the defendants has referred as to Explanation (2.) of Section 25 of the Contract Act. The explanation says: 'An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate, but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.'

10. That provision carries us no further in the circumstances. The defendants Nos. 2 and 3 obtained the loan of a substantial sum of money (Rs. 1,200). That was good and valuable consideration for the promise or promises which they made. The terras may have been hard. That depends on the further question whether or not they were, apart from their acknowledgment, jointly liable for the debt incurred by their brother. If they are to be believed and that question is answered in the negative, they were at any rate at arm's length with the plaintiff. According to their own story, they tried to borrow (he money on easier terms elsewhere, but were unsuccessful. Granted that their position was difficult and that the consideration was inadequate these circumstances, whether taken singly or in combination, are not by themselves

sufficient to show that their consent was not freely given or to establish the defence that their consent was caused by undue influence

11. In my opinion this appeal should be allowed. I would accordingly set aside the judgment and decree of the lower Appellate Court and restore the judgment and decree of the first Court.

12. The plaintiff is entitled to his costs of this Court and of the lower Appellate Court.

Shamsol Huda, J.

13. I agree.

**LegalCrystal - Indian Law Search Engine - [www.legalcrystal.com](http://www.legalcrystal.com)**