

(1971) 12 MAD CK 0011

In the Madras High Court

Case No : Appeal No. 582 of 1964

A.K.A. CT. V. CT. Alagappa Chettiar and Others

APPELLANT

Vs

A. Venkatachalam Chettiar

RESPONDENT

Date of Decision : 23-12-1971

Acts Referred:

Citation : AIR 1973 Mad 162 : (1972) 85 LW 588

Hon'ble Judges : Palaniswamy, J;Ismail, J

Bench : Division Bench

Judgement

Palaniswamy, J.—The defendants are the appellants. Defendants 1 to 4 are the sons and the 5th defendant is the widow of one Natesan

Chettiar who was carrying on money lending business in Kottaiyur, Ramanathapuram district and in Burma. Sigappi Achi, the late mother of the plaintiff, had deposited her stridhanam funds with Natesan Chettiar for improvement at Thavanai rate of interest. After the death of Natesan

Chettiar and Sigappi Achi, the defendants executed a deposit letter in favor of the plaintiff on 13-4-1928. By a notice dated 10-6-1963, the

plaintiff made a demand for payment of the amount with interest. The defendants repudiated that claim and issued a reply notice stating that the

plaintiff had made a demand for payment of the deposit amount on 19-12-1953 at first orally and subsequently by a document of the same date

and that inasmuch as the suit was filed more than three years after that demand, it was barred by limitation. They also alleged that according to the

agreement, the amount was payable only at Rangoon. The plaintiff instituted his suit on 10th September, 1963, for recovery of Rs. 23,336.93

made up of the deposit and interest. The defendants resisted the suit by putting

forward the aforesaid two contentions. The trial Court rejected both these contentions and decreed the suit. Hence this appeal.

2. Mr. Gopalaswami Iyengar appearing for the defendants repeated before us the aforesaid two contentions and challenged the correctness of the

conclusions of the trial court on both those points. Ex. A-1 dated 13-4-1928 is the deposit letter issued in favor of the plaintiff on behalf of the

defendants by their agent. It is in the printed letterhead of the firm name of the defendants at Wakema, Rangoon. This does not afford any evidence

as to the place of deposit or as to the place at which the amount is to be repaid. The case of the plaintiff as put forward in paragraph 4 of the plaint

is that his mother deposited the amount with the joint family of the defendants at Kottaiyur. This allegation is denied by the defendants in their

written statement in paragraph 4 of which it is stated that the amount was received at Rangoon and that the agreement was that the amount was

payable by the firm at Wakema. Neither the plaintiff nor any of the defendants claims to know personally about the deposit. The plaintiff stated in

his evidence that he learnt from his maternal uncle Narayanan Chettiar that Sigapi Achi deposited her stridhanam money with the defendants' firm

at Kottaiyur. The plaintiff did not examine his said uncle, though he was available to give evidence. Therefore, what the plaintiff claims to have

heard from his uncle cannot be evidence. None of the defendants got into the witness box, to speak about their case that the amount was

deposited at Wakema and that the agreement was that the amount should be repaid only at Wakema. Thus we have only the allegation of the

plaintiff which is controverted by the defendants, there being no evidence in support of either of the contentions. The question as to whether as to

where the amount is to be repaid has got to be considered with regard to the nature of the dealings. It is contended on behalf of the defendants that

inasmuch as the amount was credited in the accounts of the defendants at Wakema, the amount is repayable only at Wakema. This argument was

advanced on the assumption that the defendants are bankers as understood in banking law. It was on that assumption reliance was placed on the

decision of the Supreme Court in *The Delhi Cloth and General Mills Co. Ltd. Vs. Harnam Singh and Others*, , the Supreme Court observed:--

In banking transactions the following rules are now settled: (1) the obligation of

a bank to pay the cheques of a customer rests "primarily" on the branch at which he keeps his account and the bank can rightly refuse to cash a cheque at any other branch: *Rex v. Lovitt*, 1912 AC 212 ; *Bank of Travancore v. Dhrit Ram*, 69 Ind App 1 AIR 1942 PC 6; *New York Life Insurance Co. v. Public Trustee*, 1924 2 Ch 101; (2) a customer must make a demand for payment at the branch where his current account is kept before he has a cause of action against the bank-*Joachimson v. Swiss Bank Corporation*, 1921 3 KB 110, quoted with approval by Lord Reid in *Arab Bank Ltd. v. Barclays Bank*, 1954 AC 495 .

The rule is the same whether the account is a current account or whether it is a case of deposit.

The question is whether the defendants' firm is a firm of bankers as ordinarily understood in English law as construed by the Supreme Court in the aforesaid decision. Though commonly a Nattukottai Chetti is said to be carrying on business as bankers, it is not the business of a banker as understood in English law in the strict sense of the term, to attract the observations of the Supreme Court in the said decision. On facts, all that appears in the instant case is that the defendant's firm issued merely the deposit letter Ex. A-1 and sent periodical vaddi chittais. The evidence of the plaintiff is that no cheque book or pass book was given as regards the deposit. That evidence is not only not challenged in cross-examination but is also not controverted by any witness. The common incidents of issuing cheques and pass books which are normal features of a banking concern are thus totally absent in this case.

3. A similar question arose for consideration before a Bench of this Court in *C.V.R.M. Ramaswami Chettiar and Others Vs. P. Jeevarathunammal*, , Govinda Menon, J., speaking for the court, observed:

It cannot be said that these Nattukottai Chettiers who are carrying on business in money lending are bankers in the strict sense of the terms in order to attract the observations of their Lordships in *The Delhi Cloth and General Mills Co. Ltd. Vs. Harnam Singh and Others*, .

A similar question also arose before another Bench in *N.S.K.R. Karuppan Chettiar and Another Vs. AR. VR. S. Somasundaram Chettiar and Others*, in which, following the decision in *C.V.R.M. Ramaswami Chettiar and Others Vs. P. Jeevarathunammal*, the Bench took the same view

with regard to a deposit by one Nattukottai Chettiar with the firm of another Nattukkottai Chettiar who was conducting money-lending business in

Rangoon. Therefore the principle that the amount should be demanded from the branch at which the relevant accounts are kept is hardly applicable

to the instant case.

4. The case of the plaintiff is that the headquarters of the business of the defendants is Kottaiyur in Ramanathapuram District and that the business

at Burma and other places are only branch concerns of their headquarters. This allegation is not specifically controverted by the defendants in their

written statement. It should therefore be taken that the defendants admit that their business headquarters is only at Kottaiyur. Admittedly the

amount was given in Indian Currency. At the time of the deposit, Burma was a part of India. Therefore, even if it is conceded for the sake of

argument that the amount was given by Sigappi Achi at Rangoon, the plaintiff is not disentitled from asking for return of the deposit in India, having

regard to the fact that the defendants are having their headquarters at Kottaiyur with a branch at Burma. The fact that the amount was utilized by

the defendants' firm at their branch business at Burma is merely an incidental use of the deposit. But that cannot disentitle the plaintiff from asking

for repayment of the amount in India.

5. It is perhaps realizing this position, a specific case of agreement is pleaded in the written statement to the effect that the amount was to be repaid

only at Wakema. On this aspect, there is no evidence. None of the defendants chose to enter the witness box to speak in support of that plea. All

the defendants are permanent residents of Kottaiyur. The reply notice Ex. A-5 was issued by an advocate of Devakottai. That itself states that the

defendants are of Kottaiyur, thereby clearly showing that the defendants are permanent residents of Kottaiyur. After having accepted the deposit in

Indian Currency, it is not now open to the defendants to say that they will pay in foreign currency. A similar view was taken by the Bench in

N.S.K.R. Karuppan Chettiar and Another Vs. AR. VR. S. Somasundaram Chettiar and Others, already adverted to. We therefore hold that the

demand of the plaintiff for return of the deposit in India is a valid demand.

6. The next question is whether the claim was barred by limitation. This contention is sought to be substantiated by the defendants in two ways:

Firstly, it is contended that on 19-12-1953, the plaintiff made an oral demand for payment of the amount at Kottaiyur and on the same day

followed up he demand by a letter addressed to them, asking the amount to be paid to one Arunachalam Chettiar. The contention urged on behalf

of the defendants is that the said demand was a valid demand and that inasmuch as more than three years had elapsed between the date of the

demand and the date of the institution of the suit, the suit was barred by limitation. On 19-12-1953, the plaintiff wrote an endorsement on the

deposit letter Ex. A-2 which endorsement is separately marked as Ex. A-2. The relevant portion of that endorsement reads:

This sum of Rs. 19,209-5-3 together with interest thereon shall be paid to KR. K. K. Arunachalam Chettiar, at present the agent in

Koonchangour A. M. K. K. Firm to whom I shall give power at Rangoon"".

Referring to this endorsement, the plaintiff, on the same day, viz., 19-12-1953, sent to the defendants the letter Ex. B-1 which inter alia stated:

Whereas I have made an endorsement on that signature letter to the effect that this sum of Rupees nineteen thousand two hundred and nine, annas

five and pies three only may be paid together with subsequent interest thereon at Rangoon to Kr. K. S. Arunachalam Chettiar Avargal, at present

agent in A. M. K. Firm at Koonchangour and to whom I shall give power and send that signature letter to Rangoon to the said Arunachalam

Chettiar. I shall receive the amount in that manner"".

In the Official translation of Ex. B-1 which is in Tamil, the expression found is ""Rupees Nineteen thousand two hundred and Nine annas five and

pies three only should be paid together with interest....."". We are of the opinion that this is not strictly correct and that this has not brought out

correctly the intention underlying the letter. In the context what was meant was evidently that the amount may be paid to Arunachalam Chettiar,

because such payment depended upon the plaintiff executing a power of attorney in favor of Arunachalam Chettiar. Before dealing with the

question whether the said letter constitutes an unequivocal demand, the case of the defendants that this letter was proceeded by an oral demand

may be dealt with. On this aspect, there is no evidence. The plaintiff denies that he made any such unequivocal demand orally on that date.

Therefore, what remains is only the letter Ex. B-1 and the question is whether

this constitutes an unequivocal demand. On a reading of Exs. A-2 and B-1 we are unable to find anything to warrant the argument that an unequivocal demand was made. Both the endorsement Ex. A-2 and the letter Ex. B-1 contemplated the execution of a power by the plaintiff in favor of Arunachalam Chettiar. All that can be inferred is that the letter conveys an intention of the plaintiff to execute a power in favor of Arunachalam Chettiar for the purpose of receiving the amount at Rangoon. This can hardly be construed as a demand so that it can be said that limitation for claiming return of the deposit had started from that date.

7. The matter can be looked at from another aspect also. In paragraph 11 of the plaint, the plaintiff refers to a meeting between him and the 1st defendant in about the beginning of 1954 at Kottaiyur when, according to him, it was agreed that the amount should continue to remain as deposit with the defendants as before. This allegation is no doubt denied in paragraph 9 of the written statement. In proof of his allegation, the plaintiff gave evidence. He stated that the 1st defendant represented that the deposit could continue. Though he admitted in cross-examination that he did not obtain a letter to evidence that transaction, we cannot reject his evidence merely on that account. As already pointed out, none of the defendants chose to give evidence to controvert the evidence of the plaintiff. That what the plaintiff said is likely to be true is evident from Ex. A-3 which is a letter written by the defendants' firm to the plaintiff on 18-5-1954. That letter refers to a notice received from the Income Tax Department, Rangoon in connection with the deposit. That letter inter alia says that the plaintiff should correspond with the Income Tax Department before 30-5-1954 and that in case he failed to do so, he will have to pay 50% of the interest as tax and that the defendants would have to pay the tax so assessed and debit the amount to the plaintiff's account. This letter is important in two respects; Firstly, it disproves the case of the defendants that by reason of Ex. B-1 a demand had been made and that they were keeping the amount for being paid over to Arunachalam Chettiar. Secondly, the letter probabilises the case of the plaintiff that the 1st defendant agreed that the deposit may continue. If really the transaction had ceased to be a deposit as now contended on behalf of the defendants, the proper letter which the defendants should have written was to tell the plaintiff that no

more interest was payable to him and that whatever amount was claimed by the Income Tax Department would be paid and consequent debit

would be made against him. But that is not what the defendants stated. Ex. A-3 clearly shows that the defendants proceeded only on the basis that

the deposit continued and that the deposit continued to earn interest. The trial Court was therefore right in holding that the letter Ex. B-1 did not

constitute an unequivocal demand for repayment of the deposit and that limitation did not begin to run from that date. The suit was instituted within

three years from the date of the demand made in June 1963. The conclusion of the trial court that the suit was in time is correct.

8. In the result, the appeal fails and is dismissed with costs.

9. Appeal dismissed.