

(1915) 12 PRI CK 0003

In the Privy Council

Case No : Privy Council Appeal No. 42 of 1915

Bank of Bengal

APPELLANT

Vs

Ramanathan Chetty and others

RESPONDENT

Date of Decision : 16-12-1915

Acts Referred:

Citation : (1915) AIR(PC) 121

Hon'ble Judges : Ameer Ali, John Edge, Lord Wrenbury, Viscount Haldane, JJ.

Advocate : White, Bramall, Arnould and Son., Sanders, Newbolt, Coltman, E. Richards, for the Appearing Parties.

Judgement

Mr. Ameer Ali, J.

This is an appeal from the Chief Court of Lower Burma, and the sole question for determination is whether the agent in Rangoon of the original defendant to the action, Lutchmanan Chetty, since deceased, now represented by the respondents had authority to enter into the transaction with the plaintiff bank on the basis of which it seeks to enforce the present claim against the principal.

Lutchmanan Chetty was a native of Madras and ordinarily resided there. He belonged to the well-known Chetty money-lending caste, and had a large and apparently lucrative money-lending business in Rangoon, which he carried on by agents, under name and style of "Ana Roona Laina." or shortly "A.R.L. Chetty." Previous to 1904 he had two partners, but after the death of one and the retirement of the other in that year, he was the sole owner of the business.

By a power of attorney dated the 24th of October 1904, he appointed one Ramaswamy Chetty, described in the document as "at present of Rangoon," as his attorney under "the style or firm of Ana Roona Laina or A. R. L. Ramaswamy Chetty." On the 15th of May 1905 Ramaswamy, by the power reserved to him in his appointment, substituted in his place one Chockalingam Chetty "as the attorney and agent" of the defendant. And since his appointment Chockalingam admittedly has managed the entire money-lending business of the defendant's

firm in Rangoon.

The transaction which forms the basis of the present claim was entered into in May 1908. It appears that about this time one Hassum (or Hashim) Ebrahim, with whom Chockalingam had previous dealings and who was evidently a constituent of the firm, applied to him for financial assistance. He acceded to the request, and the arrangement that was come to between them was in substance this, that Chockalingam should pledge the firm's credit with the plaintiff Bank to enable Ebrahim to have a cash credit account opened in his name and obtain from the bank advances not exceeding in the aggregate Rs. 50,000, and that to secure the due repayment of this amount with interest thereon he should execute a promissory note in favour of the defendant's firm which Chockalingam on his side should endorse over to the bank.

It is to be observed in this connection that under the provisions of The Presidency Banks Act (XI of 1876, S. 37, cl. (e)), the bank is precluded from opening cash credits on the security of any negotiable instrument of :-

"any individual or partnership firm ... which does not carry on it the several responsibilities of at least two persons or firms unconnected with each other in general partnership."

It was in view of this provision of the law and the practice of the Bank in conformity therewith, that the promissory note for Rs. 50,000, bearing the usual Bank rate of interest, was executed on the 23rd May 1908, by Ebrahim in favour of "A. R. L. Chockalingam Chetty," the name under which the defendant's firm admittedly carried on business in Rangoon. This note was endorsed over by Chockalingam to the Bank. Thus both Ebrahim and the Chetty firm became severally liable on the note, one as the drawer, the other as the endorser, for advances to Ebrahim on his cash credit account.

At the same time and on the same date Chockalingam gave to the plaintiff Bank a letter of guarantee on behalf of his firm. It stated the nature of the transaction and the character of the obligation undertaken by the Chetty firm in these terms :-

"In consideration of the Bank of Bengal having agreed at our request to grant to Hassum Ebrahim (who is hereinafter referred to as the Borrower) accommodation by way of Cash Credit to such an amount from time to time as the Bank in its discretion shall think proper upon condition that such Cash Credit shall to the extent of Rs. 50,000 and interest be secured by the Promissory Note hereinafter mentioned we the undersigned A. R. L. Chockalingam Chetty (Guarantor) have delivered to the Bank of Bengal a Promissory Note dated 23rd May 1908 for Rs. 50,000 and interest payable on demand made by the said Borrower in favour of us and endorsed by us to the said Bank or order (the said Promissory note being intended as a guarantee to the extent of Rs. 50,000 and interest of the balance from time to time due to the said Bank from the said Borrower on account of the said Cash Credit) on the understanding that the Bank

shall be at liberty to take steps to enforce payment of the said Promissory Note at any time after notice in writing demanding payment thereof posted to us at our usual or last known address and default being made in payment for three days after the posting of such notice."

Ebrahim appears to have drawn considerable sums of money on the cash credit account thus opened. He was adjudicated an insolvent shortly after, and his assets vested in the Official Assignee. He himself is said to have absconded.

The plaintiff bank thereupon called upon the defendant to pay the amount due from Ebrahim, and on his failure to do so, brought the present action in the Chief Court of Lower Burma in its original civil jurisdiction. The defence to the action in the main is the denial of authority on the part of Chockalingam to enter into the transaction so as to bind the defendant's firm.

The case was at first heard *ex parte*, owing to the default of the defendant to enter appearance, but the *ex parte* decree was set aside, and the suit came on for trial as a contentious cause on the 17th January 1912, before Ormond, J., who framed the issues and took part of the evidence. It was heard subsequently by Robinson, J. The defendant besides putting in the power-of-attorney and the instrument substituting Chockalingam in place of Ramaswamy, adduced no evidence; and Robinson, J., held in substance that although there was no express authority to the agent to enter into a transaction of this nature the defendant subsequently ratified and confirmed the act, and was therefore clearly liable. He accordingly decreed the plaintiff's claim. The appellate Court did not agree with this view. The learned Judges further considered that if guaranteeing the loans of others was to be regarded as "a necessary incident of the business, it would not be so much a money-lending business as an insurance business."

They accordingly dismissed the suit.

In their Lordships' opinion this judgment cannot be supported. The learned Judges seem to have missed the real point at issue. They do not appear to have correctly apprehended the character and extent of the powers entrusted to the agent or the nature of the business which he conducted and managed on behalf of the defendant in Rangoon.

Their Lordships desire to refer shortly to the principal provisions of the power directly bearing on the question raised in the case. After setting out that he was formerly carrying on the business of "bankers and money-lenders in Rangoon" in co-partnership with two other persons, and that owing to the death of one partner and the retirement of the other, he was then solely carrying on the same business" under the style of A. R. L. Chetty, and that he was desirous of appointing Ramaswamy Chetty as his attorney for the general management of his said business, the defendant (Lutchmanan Chetty) proceeds to state the duties with which he charges the agent and the powers he entrusts him with :-

"To transact, conduct, and manage all and every or any of the affairs, concerns,

matters, and things in which I, the said A. R. L. Latchmanan Chetty, now am or hereafter may be in any wise interested and concerned, and for that purpose to use or sign my name to all and every or any documents or document writings or writing whatsoever. To borrow money from any bank or Banks, firm or firms, person or persons, either with or without pledge of securities for moneys advanced to various persons."

The authority to borrow is given in explicit and the broadest terms, "either with or without pledge of the securities" lodged with the agent by constituents for moneys advanced to them.

The power then goes on to declare :-

"To make draw, sign, accept, endorse, negotiate, and transfer all and every or any Bills of Exchange, Promissory Notes, Hundies, Cheques, Drafts, Bills of Lading and all and every other negotiable securities whatsoever to which my signature or endorsement may be required or which my said attorney may in his absolute discretion think fit, to make, draw, sign, accept, endorse, negotiate and transfer in my name and on my behalf."

It is to be borne in mind that the defendant's business was a general money-lending business, in the course of which he financed both Chetties and non-Chetties. The agent had express authority to borrow. For what purpose? To lend to others. It was an essential incident of the business; and the authority to borrow implied an authority to pledge the credit of the firm for the purpose of obtaining or securing advances from others to constituents. It was a matter of convenience that, instead of receiving the money directly himself and lending it to the borrower, he authorized the lender, in this case the bank, on the pledge of the firm's credit, to advance the money to the borrower.

Applying to the power in the present case the canon of construction laid down in *Bryant, Powis and Bryant, Ltd. v. La Banque du Peuple* (1893) A.C. 170 - 1 R. 336 = 2 L.J.P.C. 68-41 W.R. 600-68 L.T. 546, viz.-

"that where an act purporting to be done under a power-of-attorney is challenged as being in excess of the authority conferred by the power it is necessary to show that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument, either in express terms or by necessary implication."

their Lordships consider that the authority to enter into transactions of the nature in dispute is to be found in the document itself by necessary implication from the nature of the business, with the general management of which the agent was entrusted. Without such authority it would hardly have been possible to carry on the business of a money-lender and financier.

It is clear from the facts proved in the case that for three years it was accepted, and business was transacted on the basis, that the agent was invested with full authority in that behalf. For between May 1905 and May 1908 Chockalingam

entered into twenty-three identical transactions without, so far as appears on the record, any question being raised that they were in excess of his authority. Besides, there is evidence that among these Chetty money-lending firms it is the practice for the agent to pledge the credit of the principal in this manner.

It was urged on behalf of the defendant that it was not shown he had received any benefit from the transaction in question. Their Lordships think that if authority is established the mere fact that the principal did not receive any benefit does not rid him of his liability. But it is to be observed that the case of the plaintiff Bank was that the defendant's books of accounts would show receipt of commission on the transaction. It called upon the defendant to produce those books, which he failed to do; nor was Chockalingam called to support his allegation in respect of the non-receipt of commission.

Their Lordships are of opinion that the decree of the Chief Court should be set aside, and that of Robinson, J., should be restored. The respondents must pay the costs of this appeal and of the appeal in the Chief Court.

And their Lordships will humbly advise His Majesty accordingly.