
(1957) 02 KL CK 0002
In the High Court Of Kerala
Case No : A.S. No. 433 of 1953 (M)

Chandukutty Nambiar

APPELLANT

Vs

Raman Nair and Others

RESPONDENT

Date of Decision : 01-02-1957

Acts Referred:

Contract Act, 1872 — Section 128

Citation : AIR 1959 Ker 176

Hon'ble Judges : Sankaran, J;M.S. Menon, J

Bench : Division Bench

Advocate : K. Kuttikrishna Menon and V. Balakrishna Eradi, for the Appellant; P. Bhaskara Menon, (for No. 7), V.P. Gopalan Nambiar and P.C. Balakrishna Menon, (for Nos. 9 and 11), for the Respondent

Final Decision : Allowed

Judgement

M.S. Menon, J.—The 8th plaintiff in O. S. No. 41 of 1950 of the Court of the Subordinate judge of Tellichery is the appellant before us. He is the receiver appointed in respect of the assets of the Kamalalayam Bank in O. S. No. 189 of 1952 of the Court of the District Munsiff, Payyoli.

2. The Kamalafayam Bank is a partnership concern. A Hindu joint family is one of the partners. Ayya Pattar who instituted the suit from which this appeal arises was the Kartha and Manager of that family consisting of himself and his brothers.

3. The Kamalalayam Bank was doing business at various places. One of its Branches was at Quilandy and the 1st defendant was the agent of that Branch. He desired to start a bank of his own and the assets of the Quilandy Branch of the Kamalalayam Bank were transferred to him for a sum of Rs. 40,000/-.

4. Ext. A3 dated 30-4-1948 is the agreement executed by the 1st defendant in that behalf. It refers to Ext. A1, a letter of his dated 16-4-1948, and Ext. A2, his statement dated 26-4-1948. In the statement, Ext. A2, he said :

"Melparainja prakrram branchile badhyetikal yettedukkunnathil bankilckke varaiyundathaya sankhya bankilninnavasiyappadunthasamayam adachutharunnathum avaka sankhyakku bankilekke mathipetta jamyam bodhyappedutti tharunnathummanu."

5. Ext. A7 is the promissory note executed by the 1st defendant in favour of the Kamalalayam Bank on the 11th May 1948 and Ext. A8 is the deed of guarantee executed by defendants 2 to 5 (members of the 1st defendant's tarwad) on 7-6-1948. The only question involved in this appeal is: Does Exh A8 the deed of guarantee, cover the liability evidenced by Exts. A3 and A7? According to defendants 2 to 5, Ext. A8 will cover only such liability as is traceable to cash advances to the 1st defendant and no other. This contention is stated as follows in paragraph 5 of their written statement dated 22-8-1950:

"Neither was the guarantee deed intended by its wording or intendment or purpose to cover any liabilities that did not arise on account of cash passing from the creditor (the Bank) to the debtor (the first defendant)",

6. Notices demanding payment (Ext. A9 dated 6-9-1948 and Ext. A12 dated 1-2-1950) were sent to defendants 2 to 5 but there was no reply to those notices. Almost every contention that could possibly be urged was set out in the written statement, for example:

"These defendants state that the guarantee offered by these defendants was not one by the free consent of the defendants".

None of these contentions except the one mentioned above was pressed before us,

7. The learned Subordinate Judge agreed with the said contention and dismissed the suit with costs as far as defendants 2 to 5 are concerned. He said :

"It will be noted that in paras 1 and 3 of Exhibit A8 what defendants 2 to 5 have undertaken is that they will be liable for the moneys (Sankhyakal) which were paid by the Bank to the 1st defendant. The word "Sankhyakal" meaning moneys cannot be taken to include any assets of the Bank apart from cash which might be made over to the 1st defendant."

invoked (sic) Gundla Venkamma Vs. Rao Sahib Kotla Sanyasayya, wherein it was held :

"In construing a guarantee, the principle to be remembered is that a guarantee will only extend to a liability precisely answering the description contained in the guarantee"

and concluded as follows-

"The liability which is now sought to be enforced against defendants 2 to 5 is not one which is precisely covered by Exhibit AS since that document covers only cash advances which the Bank might have made to the 1st defendant. In this

view it seems to me that defendants 2 to 5 cannot be made liable. I therefore hold that defendants 2 to 5 are not liable."

8. There is no doubt that a guarantee "will only extend to a liability precisely answering the description contained in the guarantee". As stated by Lord Westbury in *Smith v. Wood*, (1929) 98 LJ Ch. 59,

"It must always be recollected in what manner a surety is bound. You bind him to the letter of his engagement. Beyond the proper interpretation of that engagement you have no hold upon him. He receives no benefit and no consideration. He is bound therefore merely according to the proper meaning and effect of the written engagement that he has entered into."

The principle involved is simple. The principle is that "the surety like any other contracting party, cannot be held bound to something for which he has not contracted". AIR 1935 21 (Privy Council) .

9. In *Corpus Juris Secundum*, (Vol 38 page 1177) the rules of construction applicable are summarised as follows :

"In ascertaining the meaning of the language of a contract of guaranty the same rules of construction control as apply in the case of other contracts. In accordance with such rules the important question is, if possible, to determine and give effect to the intention of the parties as ascertained by a fair and reasonable interpretation of the terms used and the language employed in the contract of guaranty as read, when necessary, in the light of the attendant circumstances and the purposes for which the guaranty was made. Where there is no ambiguity in the language of the contract, the instrument itself must be consulted in ascertaining the intention; but if the language is ambiguous the situation of the parties and the circumstances surrounding the transaction may be looked at to ascertain the intention of the parties."

10. The only question therefore is, as already stated: what exactly is the liability covered by the deed of guarantee (Ext. A8)? The passage in Ext. A8 undertaking the liability (paragraph 1) reads as follows:

"Koilandi nagarattil Rajeswari bankyenna perodukoodi renda numbrakariyude makan Mangutil Chathukutty Nair nadattivarunna panayamidappadu sthanathilekku vendi meppadi Chathukutty Nairukku Payyoli Kamalalayam bankilninu kodukkunnur sankhyakalukku pratipalamayi T. Chathukutty Nair matta mayo verey vallavarum koodiyo oppittatho, adhikarappaduttiyatho, aniwadhikkappattatno, discount chaithatho aya pronothugal, undikal, billugal muthalaya laksbyangal prakaramo, sattu jamyattilo, Kanakkuprakaramo, vakkalo, vereyvalla prakarattilo ningalkkutharuvanudhakkunna 40.000 ka (Nalpathinayiram Uruppika) varaiyulla sankhyaikkku gnyangal bankilekku ithinal jamyamayi (guarantee) Yettirukkunnu Yennal bankilninnum meppadi Chathukutty Nairukkumalprakaram Kotukkunna muthal sankhya 40,000 (Nalpathinayiram uruppika) Varaiyulla Yethu sankhyaikkum palisa Chilavakalkumkoodi gnyangal

ithinal Jamyamayi yettirukkunnu."

We are not prepared to say that the words "meppadi Chathukutty Nairukku (first defendant) Payyoli Kamalalayam bankilninnu kotukunna sankhyaikalukku."

denote only cash advances made to him and not amounts made good in other ways than by the payment of cash. This will also be clear from paragraph 3.

"Bankilninnum meppadi Chathukutty Nailukku ippol koduththillathum melal Kotukkavunnathu maya sankhyaikalkku mel nischayangal anusarichu gnyangal meppadi Chathukutty Naireypoethanne avaka sankhyaikal tharuvan orupole padhye thappattavarum avaka sankhyaikal bankile ishtanusaranam gnyangalute pakkalninnu prattiyekamayo Koottayo, vyavaharattilo matro vasoolakkan bankilekku athikaram ullathumakkunnu."

It is agreed that no advance in cash had been made to the 1st defendant on or before the execution of Ext. A8 and in view of this the words "Bankilninnu meppadi Chathukutty Nairku ippol Kotuthithullathum" will be totally meaningless if the interpretation sought by defendants 2 to 5 is accepted as the correct interpretation of the deed of guarantee. As a matter of fact there was no cash payment at any time either before the execution of Ext. A8 or subsequent thereto.

11. On reading through the document as a whole and in the light of the background in which it was executed, we entertain no doubt that the guarantee was intended to cover all advances made to the 1st defendant up to Rs. 40,000/- whether they were made in cash or as has been done in this case, by a transfer of the assets of the Quilandy Branch of the Kamalalayam Bank.

12. It follows that this appeal has to be allowed and it is hereby allowed with costs, both here and in the court below.