

(1940) 08 MAD CK 0002
In the Madras High Court

Compalla China Ramamurti

APPELLANT

Vs

Pala Nukayya and Another

RESPONDENT

Date of Decision : 09-08-1940

Acts Referred:

Citation : AIR 1942 Mad 30 : (1941) 54 LW 716

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The petitioner was the plaintiff in a suit for the balance due on a promissory note executed by defendant 1 as principal and by defendant 2 as surety in favour of a bank which transferred the note to the plaintiff. The bank in question carried on chit funds and the liability arose out of the purchase of the pool of a chit by defendant 1. As security for the payment of the balance of his instalments he executed the promissory note with defendant 2 as the surety. The bank stopped business before defendant 1 had completed the payment of the instalments and he admittedly did not pay the instalments which fell due after the closure of the bank, which is now in the hands of a liquidator. Defendant 2, surety for defendant 1, had a claim against the bank for an amount similar to the balance due on the suit promissory note. An attempt was made to adjust the bank's claim under the suit promissory note against defendant 2's claim against the bank. But there was trouble owing to the fact that the defendants were claiming to take into consideration as against the amount due under the promissory notes, bonuses which they expected to get on each instalment but did not get because of the closure of the business. It is found as a fact that there was no adjustment of the conflicting claims and

that defendant 2 refused to take a transfer of the promissory note. The promissory note was, therefore, transferred to the plaintiff who according to the evidence was fully aware of all the facts concerning, these attempts to set off the two claims. Now, the lower Court has rejected the defence of a discharge by adjustment and has rejected the plea that the transfer was unsupported by consideration. The learned District Munsif has however dismissed the suit on the ground that there was a practice of the bank whereby when there were amounts due from the bank to the customers and from the customers to the bank, the bank usually recovered only the balance after adjusting the sum due from it to them. He goes on to say that the plaintiff knew of this practice and must therefore be deemed to have taken the transfer subject to the practice.

2. It seems to me that this decision cannot be supported. The case in *Oulda v. Harrison* (1847) 156 E.R. 566 is authority for the position that the endorsee of an overdue bill does not take it subject to claims arising out of collateral matters such as a set off and that the endorsement of an overdue bill in order to defeat a prospective claim on a set off would not amount to a fraud. It was pointed out, that the only circumstances in which the transferee of an overdue bill would be fixed with liability to allow a set off in respect of a claim due from the transferor, would be circumstances which would justify an inference of an agreement to set off by both parties, of which the transferee had notice. Now, quite clearly in the present case there was no agreement to set off. The parties were quarrelling as to the figures and in consequence of this quarrel, an attempt to set off failed. Though the learned Judge talks of this practice of which the plaintiff had notice as one arising out of the rules of the bank, no such rule is discoverable in the copy exhibited in the case. All that appears to have been established is that it is usual for the bank to give credit for the amounts due by itself when making claims against its customers. But such a vague practice would surely not be a bar to a suit by the bank on its claim, leaving the client to plead a set off, when there is a dispute as to the amounts due from each party. In the absence of any rule binding the parties and of any agreement between the parties, it is difficult to see how the transferee can be held bound to allow a set off of an amount due from his transferor. If there had been a genuine desire on the part of the defendants to get all the rights of the parties adjusted in this suit, it would to

my mind obviously have been desirable to ask that the liquidator of the bank be impleaded. The proper course having regard to the array of parties and the materials available was to give to the plaintiff a decree for the amount claimed in the plaint and subsequent interest at 6 per cent and to refer the defendants to separate proceedings to enforce their claims, if any, against the company. The revision petition is, therefore, allowed with costs and there will be a decree against both the defendants for the amount claimed in the plaint with interest at the contract rate till today and costs and subsequent interest at 6 per cent. per annum.