(1960) 04 MAD CK 0015

In the Madras High Court

Case No : Appeal No. 305 of 1956

N.S.K.R. Karuppan Chettiar and Another — APPELLANT

Vs

AR. VR. S. Somasundaram Chettiar and Others — RESPONDENT

Date of Decision : 01-04-1960

Acts Referred:

Citation : AIR 1961 Mad 122 : (1961) 31 CompCas 378 : (1960) 73 LW 553 : (1961) 1 MLJ 323

Hon'ble Judges : Jagadisan, J;Balakrishna Ayyar, J

Bench : Division Bench

Advocate : K.S. Ramamurthi and K. Sarvabhauman, for the Appellant; R. Ramamurthi Iyer, R. Venkatarama Iyer and T. Ramalingam, for the Respondent

Final Decision : Dismissed

Judgement

Jagadisan, J.—This is an appeal against the judgment and decree in O. S. No. 6 of 1955, on the file of the Sub Court, Pudukottai, granting a

decree in favour of the plaintiffs for recovery of the sum of Rs. 8,566-6-9 with interest and costs. Defendants 1 and 2 are the appellants.

2. Plaintiffs 1 and 2 are the sons of one Sinnakaruppan Chettiar, and the third plaintiff is the grandson of Sinnakamppan by his son Veer appa.

Veerappa died during the lifetime of Sinnakaruppan. They are members of a Hindu undivided family belonging to the Nagarathar Community, and

residing at Kilasivalpatti, Ramanathapuram Dt. Their family vilasam is AR. VR. S. The six defendants in the suit are partners of a firm styled PL.

RM. ST. carrying on money lending business at Dabein in Burma.

Sinnakaruppan Chettiar drew a hundi for Rs. 5,748-8-0 on the A. VR. RM. firm Rangoon and sent the hundi to the PL. RM. ST. firm Dabein with

instructions to cash the hundi and credit the proceeds to his Kilasivalpatti AR. VR.

S. account. This was in August 1925. The amount so deposited

was to cany interest at Rangoon nadappu rate. The hundi was cashed by the PL. RM. ST. firm and the net proceeds, after deducting cost of stamp

and commission, of Rs. 5,902-6-0 were credited to the plaintiffs'' family account. A deposit letter dated 31-12-1925 (Ex. A. 1). signed by the

agent of the PL. RM. ST. firm was sent to the plain tiffs.

Sinnakaruppan died in or about December 1925. On 30-6-1927 the plaintiffs drew a hundi for Rs. 500 on the PL. Sp. firm, Thongua and sent it

to the PL. RM. ST. firm Dabein with instruction to cash the hundi and credit the proceeds to their account with the firm. The hundi was cashed on

or about 8-8-1927 and the proceeds of Rs. 503-11-0 were credited as per directions of the plaintiffs. This was also a deposit carrying interest at

the Rangoon two months thavanai rate. Vaddi chittais and kanakku nagals (account copies) were sent periodically by the defendants firm to the

plaintiffs (Exs. A. 2 to A. 33).

3. The plaintiffs made a demand for the payment of the two deposit amounts, by issuing a notice through their counsel dated 19-1-1925, (Ex. B.

1). Defendants 2 to 6 sent a reply through their counsel, Ex. A. 34 dated 21-1-1955. They pointed out the difficulties in getting remittances from

Burma and stated that arrangements should be made for receiving the money at Dabein by sending the deposit letter to that place. The 1st

defendant also sent a reply Ex. A. 36, dated 7-2-1955 but by that time the plaintiffs had instituted the suit on 4-2-1955.

4. The suit was laid for recovery of the amounts due under the- two deposits after giving credit to several payments made by the defendants.

Defendants 1 to 5 are permanent residents within the territorial jurisdiction of the Sub Court of Pudukottai. The 6th defendant was not such a

resident and leave to sue him was obtained. The substantial defence to the suit was that the suit was not maintainable in law for the recovery of the

amounts at Pudukottai as the deposits were made with a foreign firm at Burma doing business as bankers.

5. At the trial defendants 3 to 6 submitted to a decree and got the benefits of Madras Act I of 1955. Defendants 1 and 2 contested the suit but

failed. The learned Subordinate Judge passed a decree against them for the full amount as prayed for by the plaintiffs.

6. The only point urged in the appeal on behalf of the appellants (defendants 1 and 2) is that the suit is not maintainable. The learned counsel for the

appellants conceded that the PL. RM. ST. firm at Dabein was a banking firm, that the suit amounts were deposits made at a particular place of

business of the said banking firm, and that having regard to the well settled law governing a banker''s liability to repay his customer all debts,

whether in the shape of current account or deposit for a term or payable on demand only at the particular branch the plaintiffs can obtain payment

only at Dabein and nowhere else. The learned counsel submitted that Ex. B. 1 the suit notice was not a proper demand as the demand was to pay

at Pudukottai and that the plaintiffs had no cause of action to sue as defendants 1 and 2 were always ready and willing to pay at Dabein.

7. Though the relation of banker and customer in respect of a contract of loan or deposit is that of a debtor and creditor, in actions by the

customer against the banker for recovery of the debt the common law doctrine of the debtor being obliged to seek the creditor has no application.

It is a term of such contract that the bank is not liable to pay the customer the amount due until he demands payment from the bank at the branch at

which the account is kept. There is no obligation on a bank'' to pay in one country a debt due to a customer on account in another country, ""The

contract between a banker and customer contains special terms and cannot in its entirety be expressed in the phrasing of an ordinary indebitatus

count."" To hold otherwise would, in the language of Atkin L. J. in Joachimson v. Swiss Bank Gor poration. 1921 3 KB 110 , ""subvert banking

business."" The Supreme Court of India in the decision reported in the The Delhi Cloth and General Mills Co. Ltd. Vs. Harnam Singh and Others, ,

summarised the law thus :

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 A.C. 212 , Bank

of Travancore Ltd. v. Dhrit Ram, 69 Ind App 1 : (A.I.R. 1942 P.C. 6); and 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:

1921 3 KB 110, quoted with approval by Lord Reid in Arab Bank Ltd. v. Barclays Bank. 1954 A.C. 495 . The rule is the same whether the

account is a current account or whether it is a case of deposit The last two cases refer to a current account; the Privy Council case, 69 Ind App 1 :

(A.I.R. 1942 PC. 6), was a case of deposit. Either way, there must be a demand by the customer at the branch where the current account is kept,

or where the deposit is made and kept, before the bank need pay, and for these reasons the English courts hold that the situs of the debt is at the

place where the current account is kept and where the demand must be made,

8. There can be no doubt that if the defendant firm were to be held to be bankers as the term is understood in English law, and if there are no

special circumstances, attendant on the terms of the suit deposits express or implied, the failure on the part of the plaintiffs to make a demand for

payment at Dabein in Burma may have the result of non-suiting the plaintiffs. The first question that has, therefore, to be considered is whether the

defendant firm can at all be called bankers or the business of the firm called banking in their well accepted sense in English law.

9. In England commercial usage and the course of banking practice have embodied particular and definite kinds of transactions within the concept

of the terms, banker and banking. In Halsbury''s Laws of England, Vol. II, 3rd Edn. at page 150, paragraph 277, the said terms are defined as

follows :

A ""banker"" is an individual, partnership or corporation, whose sole or predominating business Is banking, that is the receipt of money on current

or deposit account and the payment of cheques drawn by and the collection of cheques paid in by a customer.

In the footnote (f) occurring at page 15 it is stated as follows :

A savings bank formed and registered under the repealed Joint Stock Companies Act, 1856 from which money could not be withdrawn except

upon a stated period of notice and on which cheques could not be drawn in an ordinary form, was not a banking company : Re District Savings

Bank Ltd., ex parte Coe, 1861 3 De GF& J 335.

in Sheldon''s Law of Banking, 6th Edn. at page 183, the following description of banking business is given :

...... a person cannot claim to be carrying on the business of banking unless he receives money or instruments, representing money on current

account, honours cheques drawn thereon, and collects the proceeds of cheques which his customers place into his hands for collection. The

banker performs many other functions, as we shall see presently, but this function of receiving money from his customers and repaying it, by

honouring their cheques as and when required, is the one function above all other functions which distinguishes a banking business from any other

kind of business. Dr. Hart in his Law of Banking, 4th Edn. p. 1 defines a banker or bank as a person or company carrying on the business, of

receiving moneys, and collecting drafts, for customers subject to the obligation of honouring to the extent of the amounts available on their current

accounts''.

10. Reference may also be made for a similar definition to the Law of Banking by Sir John Paget 5th Edn. page 5:

It is a fair deduction that no person or body corporate or otherwise can be a banker who does not (i) take deposit accounts; (ii) take current

account; (iii) issue and pay cheques and (iv) collect cheques, crossed and uncrossed for his customers.

The essence of the relationship of banker and customer is the affording of the facility to the customer to draw funds from the bank by issuing

cheques. This is the primary characteristic of a banking business. Without it the business is not banking as known and understood in the English

law. It such business can yet be called banking, it can only be of an indigenous or particular variety not susceptible of the application of the rules of

English law in the matter.

11. Judged by this standard, as it should be, the principles of English law cannot be applied to the money lending business carried on by the

Nagarattars or Nattukottai Chettiars in India or in foreign parts. It is true that in common parlance they describe themselves as bankers. But such a

description cannot per se make them bankers within the concept of that term in the English law. In C.V.R.M. Ramaswami Chettiar and Others Vs.

P. Jeevarathunammal, , a Division Bench of this court observed:

It cannot be said that these Nattukottai Chettiars who are carrying on business in money lending are bankers in the strict sense of the term in order

to attract the observations of their Lordships in The Delhi Cloth and General Mills

Co. Ltd. Vs. Harnam Singh and Others, .

On the principles set forth above we have no hesitation in agreeing with this observation of the Division Bench. There is no evidence in this case

that the defendant allowed their customers to draw upon the current or deposit accounts by the issue of cheques. Therefore the plaintiffs cannot be

held to be disentitled to maintain the suit in the Subordinate Judge''s court at Pudukottai without a prior demand for the payment of the money at

Dabein in Burma. A similar contention in respect of a negotiable instrument payable at Rangoon was overruled by a Division Bench in

Arunachalam Chettiar and Another Vs. Murugappa Chettiar and Another, .

12. Even assuming that the defendant can be said to constitute a firm of bankers, there is no disability on the part of the plaintiffs to maintain the

present suit. The mere fact that the deposits were made by the plaintiffs in a foreign firm is not enough to hold that the plaintiffs are compelled to

seek their remedy only at the place where the foreign firm is situate. As explained by the Judicial Committee in 69 Ind App 1 ; (A.I.R. 1942 PC

6),

The law which governs a contract depends on the intention of the parties, express or implied. There is no intention expressed in these documents

and the courts are left to infer the intention by reference to considerations where the contract was made and how and where it was to be

performed.

In the present case all the contracting parties, the plaintiffs and defendants are permanent residents of India. The amounts deposited were in terms

of Indian currency. It is true that at the time when the deposits were made Burma was a part of India. When one Nattukottai Chettiar lends money

to another member of his community who invests it in a foreign firm it is implicit in that transaction that the borrower agrees to pay the money back

in India and in Indian currency. The investment in a foreign firm is merely an incidental use of the loan.

The essential part of the transaction is the lending of the money in India by drawing a hundi upon a foreign firm. If it is implict at the very Inception

of the contract that the repayment of the loan was to be only in India and in Indian currency the fact that subsequently Burma ceased to be a part

of India and came to have a currency of its own cannot really affect that liability.

By reason of the subsequent happening it will not be open to the

defendant firm to insist upon paying in Burmese currency at Dabein in respect of a loan obtained by him in Indian currency.

The court can take judicial notice of the fact that the rupee in Burma today is of a different value from the rupee in India. For example the Canadian

dollar is different from the dollar of the U.S.A. The sterling in the United Kingdom is different from the Sterling in New Zealand or in Australia. The

following observation describes the position aptly.

Money has a different value in different parts of the world even although it may be expressed in the same currency, and I cannot conceive it

possible that a man who has, we will say, 10001 sterling to his credit at a bank in New Zealand on coming to London would have the legal right to

demand payment of 10001 at an office of the same bank in London."" Clare and Co. v. Dresdner Bank, 1915 2 K.B. 576.

We are of opinion that in the circumstances under which the suit deposits came to be made by the plaintiffs with the defendants firm it must be

taken to be an implied term of the contract that the repayment of the debt was to be in India in Indian currency. A point, which was stressed by the

learned counsel for the appellants to substantiate the contention that the deposits were repayable only at Dabein was that in making part payments

towards the deposits the defendants firm debited the plaintiffs with remittance charges and discount (vattam) for the transmission of the money from

Dabein to Kilasivalpatti.

It was contended that if the plaintiffs were entitled to have the repayment at Kilasivalpatti they would not have allowed the defendants to charge

them for the remittances made. But this circumstance is not in any way inconsistent with the plaintiffs'' right as claimed because it may be that there

is an usage governing these transactions in and by which the firm or person accepting a deposit is enabled to charge the creditor with the charges of

remittance.

13. At the trial evidence was let in on the side of the plaintiffs to prove that Chockalingam Chettiar, the deceased father of the first defendant, came

to the house of Sinnakaruppan Chettiar, the father of plaintiffs 1 and 2 at Kilasivalpatti in Ramnad District, and requested the latter to deposit the

money with Dabein firm and promised to pay the same on demand in India. This evidence remains uncontroverted. Though as the learned

Subordinate Judge points out there was no explicit plea on the part of the plaintiffs that it was an express term of the contract that the money was

repayable in India, the omission is not important in the view we are taking of the matter.

14. The defendant firm is not an incorporated company or body. The learned counsel appearing for the appellants referred to us several sections of

the Indian Partnership. Act and contended that a firm of partnership is as good as an incorporated company. We are unable to perceive the

relevance of the reference to the provisions of the Indian Partnership Act; nor can we appreciate the soundness of the contention that a firm and an

incorporated body are alike. On the other hand, the law makes a vital distinction between a firm and an Incorporated body. It is unnecessary to

pursue this point further.

15. All the decisions governing the rights and liabilities of a banker and customer, especially in regard to the place where the banker can be made

liable for the repayment of the debt, relate to banks which are all incorporated bodies. We do not think that this is really a matter of accident.

There is a distinction between an individual banker or a firm of banking business and a bank which is an incorporated body. Dealing with the situs

of debts Cheshire in his text book on Private International Law at page 449 observes thus:

Thus the residence of the debtor has been selected as the determining factor because it is there that proceedings for recovery will normally be

taken, and the modern rule Is that a debt is situated in the place where it is properly recoverable. This test clearly admits of a multiple situation,

since recovery may be had in any court to whose jurisdiction the debtor is subject. If, to take a simple case, he resides in France, but is served

with notice of a writ under Order XI. the debt according to English law is situated both in England and in France. The difficulty is greater if the

debtor is a corporation having offices and branches all over the world. In this case the courts, realising that the appropriate forum for recovery

must be determined by some further test, have selected the place where, according to the contract under which the debt has arisen, payment would

normally be exigible. Thus the situation of a debt due from a bank to a customer is at the branch where the account is kept, and a debt arising

under a policy of insurance or under a sterling bill Issued by a foreign Government is situated in the place where it is payable.

16. Halsbury''s Laws of England, Vol. 7, 3rd Edn. page 44. para 87 runs thus:

A debt arising out of a contract is deemed to be situated in the place in which it is properly recoverable by action, that is, in general, the country in

which the debtor is resident. There may be more than one forum for the recovery of the debt; in such cases the situs of the debt is the place where

payment would be required in the normal course of commercial usage, for example, in the case of a debt due from a bank to a customer, at the

branch where the account is kept, in the case of a debt due under a policy of insurance, at the place where the policy moneys are made payable by

the policy, and similarly with a debt due under a sterling bill issued by a foreign Government. If, however, the debtor is not resident in England, the

mere fact that the debt can be recovered by action in England from the debtor out of the jurisdiction does not make the debt locally situate in

England.

17. Whatever may be the rule of law governing a banking institution, which is an incorporated body, in respect of its obligations to repay the

deposit amounts only at the place or at the branch where the money is deposited, it is not necessary to extend the said principle readily and without

any further examination of the subject to all kinds of banking institutions whether incorporated or not, whether they are strictly banking institutions

within the English law or not. It is enough for us to say that so far as the present case is concerned, the rigid and technical rules of English law

governing banks cannot have any application.

18. The decision of the learned Subordinate Judge is correct. The appeal fails and is dismiss ed with costs of respondents 1 to 3.