

(1982) 01 KAR CK 0033
In the Karnataka High Court
Case No : Second Appeal No. 457 of 1975

Paidi Lakshmayya

APPELLANT

Vs

Indian Bank Ltd.

RESPONDENT

Date of Decision : 27-01-1982

Acts Referred:

Contract Act, 1872 — Section 70

Citation : AIR 1982 Kar 338 : (1984) 56 CompCas 59 : (1982) ILR (Kar) 565 : (1982) 1 KarLJ 345

Hon'ble Judges : N.D. Venkatesh, J

Bench : Single Bench

Advocate : Chandrashekhariah, for the Appellant; B.S. Pranesh Rao, for S. Mani, for the Respondent

Judgement

1. Appellant Sri Paidi Lakshmayya, who has been unsuccessful in his defence both in the Courts of the Civil Judge and District Judge, Bellary, against the claim of the respondent, Indian Bank Limited (Bank), has preferred this appeal.

2. The Bank claimed a money decree against Lakshmayya in O. S. No. 73 of 1962 on the file of the Civil Judge, Bellary. The suit was decreed as prayed for and came to be confirmed in R. A. No. 1 of 1965 on the file of the District Judge, Bellary.

3. The claim has an interesting background. In order to appreciate the question involved in this appeal the facts, on which the Bank's claim against Lakshmayya is based, may be noted:

The Bank took over the Rayalaseema Bank Ltd., in the year 1961 and thus succeeded to all its assets. Prior to its merger the Rayalaseema Bank had advanced Rs. 10,000/- as short term loan to two person:- M Chinnappa Reddy and Harinarayanaswamy of Dharmavararn Taluk, in the year 1951. Since, they did not discharge the debt in time the Rayalaseema Bank filed a suit against them in O. S. No. 30 of 1953 on the file of "he Subordinate Judge, Bellary, and

obtained a decree against them. Towards the decial amount a sum of Rs. 6,000/- is said to have been paid during 1953 and the balance remained unpaid at the time of the take-over of the Rayalaseema Bank by the Bank.

4. The case of the Bank against Lakshmayya was that it was he who was the real beneficiary under the aforesaid loan transaction and that, as a beneficiary and guarantor for the repayment of the loan, he was liable to pay the amount, and, that in spite of several demands he had not done so. On this basis the Bank instituted O. S. No. 73 of 1962 against Lakshmayya on the file of the Civil Judge, Bellary.

5. In his written statement Lakshmayya's contention was that he was not the borrower nor was he the beneficiary and the guarantor for payment of the loan obtained by the aforesaid two persons and, therefore, the suit was not maintainable against him. It was also his case that the suit was barred by time; that the Civil Judge, Bellary, had no jurisdiction to entertain the suit; that there was no cause of action for the same; that it was vexatious; and that, in the circumstances, the same should be dismissed with exemplary and compensatory costs.

6. The trial Court framed 14 issues. On behalf of the plaintiff six witnesses were examined and documents from Exhibits P-1 to P-46 were marked. The defendant did not adduce any evidence on his side. The trial Court answered all the relevant issues in favor of the plaintiff and against the defendant and decreed the suit as prayed for. Concurring with those findings the first appellate Court dismissed the appeal preferred by Lakshmayya.

7. On the merits of the claim the trial Court was of the view that though the loan were Chinnappa Reddy and Narayanaswami the real beneficiary under the transaction was Lakshmayya, and that it was on his behalf! the aforesaid persons had applied for the loan and had obtained it from the Rayalaseema Bank and that being the real beneficiary Lakshmayya was liable to discharge the debt outstanding. It was of the view that since Lakshmayya cannot unjustly enrich himself out of this transaction suit against him by the Bank was maintainable under)"Section 70 of the Contract Act, 1872 (the Act). The first appellate Court has confirmed this view.

8. Though the learned Counsel for the appellant challenged the findings of the Courts below on the merits of the claim and also on the question of limitation and jurisdiction. by and large his argument was confined to attack the findings of the Courts below on the former aspect of the case. The learned Counsel for the. respondent supported the judgments and decrees of the Courts below.

9. Since this appeal can be disposed of on a short point it is not necessary to deal with The other aspects of the case. The point that arises for consideration is as to whether, in the circumstances of the case, the defendant is liable to the plaintiff for the suit claim u/s 70 of the Act ?

10. Now, it is not in dispute that the loan amount, the subject matter of this claim, had been drawn by the aforesaid Chinnappa, Reddy and Harinarayanaswamy, and they were the persons who had applied for the said loan. In Para 4 of the plaint it is stated as follows:

"The loan was ultimately drawn by these two parties in the form of bills discounted Bill Nos. 13 to 16, dated 3-9-1951 payable after 30 days".

After they had committed default in the payment the Rayalaseema Bank had filed the original suit, referred to above, in the Court of the Subordinate Judge, Bellary, only against them. "While trying to make out its claim against Lakshmayya what is stated in the plaint is that "he was the ultimate beneficiary in the transaction and the same became apparent when he disclosed and admitted his responsibility in the matter of clearing the dues".

11. Let us consider, in brief, the evidence on this aspect of the plaintiff's case. The plaintiff's first witness Sri. Sitaramareddy (P. W. 1), who had acted as the Chairman of the Rayalaseema Bank during a period previously has stated about Lakshmayya having told him that he, Lakshmayya, "would help in the collection in the money due from Chinnappa Reddy and Harinarayanaswamy, and that the legal proceedings may not be taken to realize the amount from them". The 2nd witness, Sri Lingareddy, says that Lakshmayya, who was (at the time when the loan was sanctioned to the aforesaid two persons) one of the Directors of the Rayalaseema Bank, was present when their loan application had been taken up for consideration and "had sponsored and recommended" for that loan and "had also testified to the aforesaid applicants" and of the fact that on the basis of his assurances the said loan had been sanctioned. This witness also gave evidence with reference to some letters in which Lakshmayya, it appears, had given an undertaking to collect the debt from the aforesaid persons and pay the same to the Bank. Sri. Venugopalachar, the 3rd witness, was one of the Directors of the Rayalaseema Bank, and his evidence is that Lakshmayya had requested him to support the case of Chinnappa Reddy and Harinarayanaswamy for loan. The 4th and the 5th witnesses gave evidence stating that Lakshmayya had recommended the case of the said two persons and had certified to their solvency etc. The evidence of the 6th witness, Sri Seshagiri Rao, to which my particular attention was drawn by the Counsel for the respondent, is rather interesting. At the time when he gave evidence he was working as a Legal Assistant to the plaintiff Bank. He had joined the Rayalaseema Bank in 1956. As a sub-agent and Legal Assistant. His evidence is that by the time he joined the Rayalaseema Bank proceeding in execution had been taken against the judgment debtors, Chinnappa Reddy and Harinarayanaswamy. By the time this witness came on the scene, as a Legal Assistant Harinarayanaswamy was dead. And Chinnappa Reddy also died in August, 1956. While trying to find out the names of the legal representatives of the deceased judgment-debtors this witness is said to have visited Ananthapur. He states that accompanied by one Satyanarayana, he had been to the house of the defendant and that Satyanarayana, who was the agent of

Ananthapur branch of the Rayalaseema Bank, had asked Lakshmayya to pay the amount due under the decree and Lakshmayya told that he would pay and write a letter to the Directors. Later, on another occasion, Lakshmayya is said to have told him (the witness) that it was he who had utilized the money and would pay the balance soon.

12. During the time when the execution was pending against Chinnappa. Reddy and another, Lakshmayya wrote a letter (Ex. P-0 on 18-1-1957 to Sri. Sitaramareddy, stating that "both the borrowers are unfortunately dead and their children are added as the legal representatives and that he would "see that it is amicably settled and the amount paid". About six months earlier to the writing of this letter Ex. P-1 Lakshmayya had written another letter Ex. P-2 to the Manager of the Rayalaseema Bank on 29-8-1956 stating therein as follows : "Sri. Chinnappa Reddy of Narasanakota had written to him that you are going to execute the decree against him. You know I am responsible for the said amount and a large amount of Rs. 6,000/- had been paid in lump sum and the decree is only for the balance. Please grant him time for a couple of months so that, in the meanwhile, I will see that it is amicably settled. Please do not execute the decree". The rest of the correspondence is not of much consequence.

13. All this evidence is mainly sought to be used by the plaintiff to say that it was the defendant who was the real beneficiary of this loan transaction and therefore was liable to repay the suit claim u/s 70 of the Act. However, there was a feeble attempt at a certain stage of the proceeding to establish the plaintiff's claim on the basis that the defendant had agreed to discharge the debt and therefore he was liable. in this connection reliance was placed on Ex. P-2, the letter written by the defendant to the Manager of the Rayalaseema Bank on 29-8-1956 and also on the evidence of P. W. 6, Narasinga Rao. P. W. 6, admittedly was an interested witness, and, in my opinion, not much value can be attached to what he states. Further, Lakshmayya's say in Ex. P-2 that "he was responsible for the amount" may not in the circumstances, mean that he himself had undertaken to discharge the said loan. It might also mean that he would see to it that the debtors discharge the said debt. Assuming, but not admitting, that Lakshmayya had stated, as aforesaid, that it was his responsibility to discharge the debt, that by itself was not sufficient to proceed against him. The liability to discharge the decial debt cannot be said to have been assigned or transferred to Lakshmayya in any manner known to law so that he could be proceeded against.

14. Counsel for the respondent contends that Lakshmayya had contested for Parliament in the first general election held in the month on Jan., 1952; that he was in need of funds; and that, therefore, he had used these well-wishers of his to obtain the loan from the Rayalaseema Bank and that he was the real beneficiary and, therefore is liable to pay the money. I may say, in the circumstances of this case, this submission is rather untenable. Admittedly the amount had been received by Chinnappa Reddy and Harinarayanaswamy. If Lakshmayya had taken that money from them, Lakshmayya would be liable to

them and not to Rayalaseema Bank or to its successor, Section 70 of the Act is not attracted to a transaction of this nature. That section, with its illustrations, reads as follows :-

"70. Obligation of Person Enjoying Benefit of Non-Gratuitous Act.

Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the things so done or delivered.

ILLUSTRATIONS:

(a) A, a tradesman, leaves goods at B's house by mistake, B treats the goods as his own. He is bound to pay A for them.

(b) A saves B's property from fire. A is not entitled to compensation from B., if the circumstances show that he intended to act gratuitously."

While purporting to apply the principle underlying Section 70 of the Act to the transaction in question the Court below has placed reliance on three decisions, and, in particular, on a decision of the Madras High Court in *Pierce, Leslie and Co. Ltd., Kozhikode Vs. Commissioner of Income Tax, Madras*,

15. Let me first consider the two other decisions relied upon by the first appellate Court. In *Gaviya v. Lingiah* AIR 1957 Mys 65, the Court applying the principle that Courts should not permit unjust enrichment, granted relief to a party, who, having purchased the property subject to mortgage from a person who was subsequently found to have had no right to sell the same, had discharged the mortgage debt and subsequently, having been dispossessed of that property by the real owners, filed a suit to recover the amount which he had paid to the mortgages. The Court applied the above principle and upheld his claim. It may be noted that the suit was against the very person (mortgage) who had received the monies from the plaintiff, and not as in this case. The other is a decision of the Supreme Court in *State of West Bengal Vs. B.K. Mondal and Sons*, . In this case also the suit was against the party who, admittedly, had been directly benefited from the works done by the plaintiff unlike in the case on hand. The facts are thus distinguishable.

16. The facts of the instant case are also different from the facts in *Pierce, Leslie and Co. Ltd., Kozhikode Vs. Commissioner of Income Tax, Madras*, In that case a Tea estate of a Private Company was being managed by the 1st defendant Company as its Secretary. The private company was in financial difficulties. That tea estate was offered for sale. The 1st defendant, the 2nd defendant, and others came forward to purchase the estate. It may be noted that the first defendant-Company had a controlling interest in the 2nd defendant Company (also referred to in the decision as the new company). The facts brought out in the case had established that the 1st defendant-Company, which was managing the private company owning the tea estate, had used its position with the private

company and had got that estate sold from the private company to the 2nd defendant-company for a far lesser sum than the one offered by others. Thus, to the extent of its interest in the 2nd defendant-company the first defendant-company had been benefited from this transaction. In this connection the Court observed that the 1st defendant-company stood in fiduciary capacity to the plaintiffs, who were shareholders of that private company, the owners of the Tea estate, and that having misused that relationship the 1st defendant company had knocked away the property and had enriched itself unjustly and was therefore liable to make good to the plaintiffs that loss to the extent indicated in their judgment. As can be seen from the facts of this case. *Pierce, Leslie and Co. Ltd., Kozhikode Vs. Commissioner of Income Tax, Madras*, it was that defendant who had been directly benefited from this transaction who had been made liable.

17. In the instant case admittedly it is not Lakshmayya who had received the money directly from Rayalaseema Bank. The plaintiff's case is that Lakshmayya was in need of money and, therefore, using his influence as one of the Directors, got that loan sanctioned to his friends, and had taken that money from his friends in order to use it at the time of his election and thereby he had been benefited from the said transaction and was liable to repay the loan. As already stated. to such facts neither Section 70 of the Act nor the principle underlying that section - doctrine of unjust enrichment - is applicable. Construing Section 70, in *State of West Bengal Vs. B.K. Mondal and Sons*, the Supreme Court observes at para 17 as follows :

"Between the persons claiming compensation and persons against whom it is claimed some lawful relationship must subsist, for that is the implication of the use of the word "lawfully" in Section 70; but the said lawful relationship arises not because the party claiming compensation has done something for the party against whom the compensation is claimed but because what has been done by the former has been accepted and enjoyed by the latter." (Head-note-D)

(Para 17) (underlining supplied)

Such a relationship as has been referred to in *State of West Bengal Vs. B.K. Mondal and Sons*, . does not exist between the parties in the instant case because, for the reasons already stated, the

giving and taking, if at all, was between those two, Chinnappa Reddy and Harinarayanaswamy, on the one hand, and Lakshmayya, on the other. Lakshmayya did not receive or obtain the loan directly from the Rayalaseema Bank. In this connection the learned Counsel for the appellant rightly placed reliance on a Division Bench ruling of this Court in *State of Mysore v. Tarachand Venkatachand Shaba* (1973) 2 Mys

LJ 9 : AIR 1973 Mys 333. In that case the 1st defendant had borrowed some money from the plaintiff on executing a bond in favour of the plaintiff undertaking to repay the sum borrowed with a certain rate of

interest. The 2nd defendant and another were sureties. It may be noted that the plaintiff, being the State Government, could not succeed in the suit it had filed to recover the said sum against the defendants for the reason that the contract that had been entered into by the official of the State Government concerned with the 1st defendant was not in accordance with Art. 229(1) of the Constitution of India, but, applying the principle of Section 70 of the Act, the Court gave a decree only against the first defendant but not against others. This was on the ground that the other defendants had not been benefited directly from that transaction. In this connection the following observations made by Venkataramiah, J. (as he then was) may be noted (at p. 335 of AIR) :

"The position of the other defendants is however different from that of defendant 1. As already mentioned, defendant 2 is a surety and defendants 3 to 14 are the legal representatives of the other surety. It is not the case of the plaintiffs that defendant 2 and the other surety Vittalchand Talati had derived any benefit under the transaction. The expression "benefit" in Section 70 of the Act should be understood as referring to a benefit directly derived by the person against whom the claim is made. Since the agreement on the basis of which action is taken as against defendant 2 and the estate of Vittalchand Talati in the hands of defendants 3 to 14 is not an enforceable agreement and since their case does not come within the scope of Section 70 of the Act, the suit against them has to be dismissed".

(underlining supplied)

"Directly derived" does not mean derived through others. In fact, that that would be the meaning is clear by a bare reading of S. 70. The person seeking the aid of Section 70, to obtain compensation from another person, should be one who had done something to that other person or who should have delivered something to that person and that that other person should have accepted directly the work done or the goods delivered. The giver, the person claiming benefit u/s 70, in order to succeed, shall have to prove that the defendant was the person to whom the goods had been delivered or work had been executed. This is how the Madras High Court also had construed Section 70 in Challa Appayya and Another Vs. Desetti Chandra Ayya and Others, the learned Judge observes as follows:

"In order to claim the benefit of Sec. 70, it must be shown that the defendant had the opportunity of accepting or rejecting the benefit of the payment made by the plaintiffs. The words in the section "he enjoys such benefit" must be taken to mean that he does it as a result of his volition." (Head Note B)

Neither Section 70 nor the Doctrine of unjust enrichment can be availed of by the plaintiff to press its claim against the defendant. Both the Courts below have wholly misconstrued the position in law.

18. It was also argued by the learned Counsel for the respondent that Lakshmayya had not stepped into the witness box, had not adduced any evidence on his side, and therefore the plaintiff was entitled to succeed on the

basis of his unchallenged averments in the plaint and the evidence adduced in support of its case. It is well known that the plaintiff cannot succeed on the weakness of his adversary's defense. He has to succeed on, the strength of his own case. Since the claim of the plaintiff, on the face of it, is not sustainable in law, as stated above, the Plaintiff has to fail.

19. Therefore, this appeal is allowed. The judgments and decrees of both the Courts below are hereby set aside, and the plaintiff's suit is dismissed with costs throughout.

20. Appeal allowed.