(1920) 03 MAD CK 0028

In the Madras High Court

Rangasami Pillai APPELLANT

Vs

Banker Sankaralingam Aiyar RESPONDENT

Date of Decision : 18-03-1920

Acts Referred:
Negotiable Instruments Act, 1881 (NI) — Section 6

Citation : (1920) ILR (Mad) 816 : (1920) 12 LW 367 : (1920) 39 MLJ 377

Hon'ble Judges : Seshagiri Aiyar, J;Oldfield, J

Bench : Full Bench

Judgement

Oldfield, J.—I agree with the Judgment which my learned brother is about to deliver. I desire only to add that it is probably impossible and

for the purpose of the present case is unnecessary to give an exhaustive definition of the terms ""bank"" or ""banker"" ; and that in agreeing with my

learned brother''s observations I do not desire to commit myself to any.

Seshagiri Aiyar, J.

2. The 1st Defendant in O.S. No. 52 of 1916 is a contractor under the District Board of Trichinopoly. The Plaintiff obtained a decree against him.

He attached a certain amount of money in the hands of the District Board Engineer on the allegation that the money belonged to the 1st Defendant.

Thereupon the 2nd Defendant put in a claim petition on the 16th October, 1914. His claim was allowed. On the 17th October, 1914, the plaintiff

brought the present suit (O.S. No. 52 of 1916) for a declaration that he is entitled to attach the money as belonging to the 1st Defendant. He

obtained an injunction on the 20th October 1914. It was served on the District Treasury of Trichinopoly on the 22nd. On the very same day

without knowledge of the injunction a cheque was issued to the 2nd defendant.

He end orsed it over on the 23rd October to the 4th defendant,

who was a Banker. Subsequently the money was paid to the 4th defendant on his undertaking to return it in case the plaintiff succeeded in the suit.

Plaintiff succeeded before the Munsif but that judgment was reversed by the District Judge. He has preferred this second appeal.

3. The main question for consideration is whether the 4th Defendant is a holder in due course. To decide this question we have to see what the

position of the Treasury is with reference to the District Board of Trichinopoly. In form, the order which directed the payment of money to the 2nd

Defendant is a cheque. If it is a Cheque there can be no doubt it can be negotiated. The learned Vakil for the appellant contended that as the

Treasury is not a bank, it was not competent to the District Board Engineer to issue a cheque on it u/s 6 of the Negotiable Instruments Act. Mr,

Srinivasagopalachariar contended that the Treasury is a bank within that section. After giving careful consideration to the question I have come to

the conclusion that the Treasury is not a Bank. Many of the Judges in England have felt considerable difficulty in defining a bank. Lord Brougham in

Foley v. Hill 2 E.R. 1002 mentions certain characteristics of a bank. In the view of the noble and learned Lord, the element of making a profit by

the business must exist in such cases. The case nearest in point is Halifax Union v. Wheelwright. (1876) L.R. 10 Ex. 183In that case Baron

Cleasby delivering the judgment of the Court, expressed himself thus at page 193 :-"" First it was said that, taking that statute together with several

other statutes on the same subject the word "" banker "" was not to be restricted to persons regularly engaged in the business of banking, but that

any person who receives the money of another into his charge, and according to the course of business between them, pays it out by having drafts

drawn upon him payable to order, ought to be considered a banker within that enactment. We cannot accede to that argument."" The present case

is practically identical with the one decided by the Exchequer Court. The definition attempted by Mr. Hart in his book on the '' Law of Banking,''

namely that "" A banker is one who in the ordinary course of his business honours cheques drawn upon him by persons from and for whom he

receives monies on current accounts "", indicates that the business must have a commercial side to it. The mere fact that a. Treasury receives money from the District Board and respects orders issued to it for payment will not constitute the Treasury a bank. Moreover, the District poard cannot

be regarded as a customer.

4. It was suggested by the learned Advocate for the respondent that as the money deposited by the Board is utilised by the Treasury it must be

taken that a profit was made by the Treasury. But the language of Lord Brougham and the judgment of the Exchequer Division both require that

there must be the business of utilising the money for purposes of profit. I am therefore of opinion that the Treasury is not a bank and that

consequently the use of the word "" Cheque "" in respect of orders issued by the District Board to the Treasury is a misnomer.

5. The next question is whether the order in question cannot be construed as a Bill of Exchange. Apart from the concession made by the learned

Vakil for the appellant, I am. clear, from the reading of Section 5 of the Negotiable Instruments Act, that all ingredients of a Bill of Exchange are to

be found in the order issued by the District Board. It is an instrument in writing containing an unconditional order, signed by the maker, directing the

Treasury to pay a certain sum of money to or to the order for the first defendant.

6. The next question is, if it is a Bill of Exchange, is it within the competency of the District Board to issue such a negotiable document ? The chief

difficulty arises from the language of Section 26 of the Negotiable Instruments Act. The proviso is in these terms "" nothing herein contained shall be

deemed to empower a Corporation to make, endorse or accept such instruments, except in cases in which, under the Law for the the time being in

force, they are so empowered"". There can be no doubt that the District Board is a corporation. Section 27 of Act V of 1884 says that ""every local

Board shall be a body corporate by the name of the local Board."" Section 54 deals with the funds at the disposal of District and local Boards;

(Clause) (2) of that section enables the lodgment of the fund in a bank or government treasury. It is under this provision that monies are being

deposited in the treasury and orders are being issued for paying out. So far, there is nothing to indicate that the board is authorised to issue

negotiable instruments. Section 144 of the Act enables the Governor in Council by cla''use (XVI) to make rules consistent with the Act for the

guidance of Local Boards, their agents and officers and the officers of

Government in all matters connected with the carrying out of this Act.'' u/s

145 the rules are to be published. Section 147 is very important. It says that ""such rules and forms shall, until they are cancelled or altered have the

force of Law."" I must confess that the language that ""the form shall have the force of Law"" does not strike me as either very clear or artistic; but,

however there can be no doubt that the legislature intended that the Governor in Council to whom was delegated the prescribing of rules and

forms, should have power to give to these forms the force of law. Now turning to the Local Fund Code, we find at page 379 a form which

corresponds to the one issued in the present case. That undoubtedly contains language which denotes that the order can be negotiated. If the act of

the Governor in Council in prescribing the forms was certainly intra vires the question therefore is whether we can infer from it that the District

Board was impliedly. authorised to issue negotiable orders; Rule 549 of the Local Fund Code says that such forms shall be supplied to the

Engineer or to other officers in books to be operated upon. Reading therefore Sections 144 to 147 of Act V of 1884 with Rule 549 of the Local

Fund Code and the form at page 379 of the Code, I am of opinion (hat the Local Board is empowered to make, endorse or accept negotiable

instruments. It follows from this that the endorsement in favour of the 4th defendant was properly made, The District Judge has found that the

endorsement was bona fide and that he was a holder in due course. I see no reason for not accepting this finding of fact. I am therefore of opinion

that the conclusion come to by the learned District Judge is right and that this appeal should be dismissed.

7. O.S. No. 483 of 1916 was rightly brought by the 4th defendant as plaintiff because the action of the appellant in instituting O.S. No. 52 of 1916

necessitated his surng to have his rights secured as against him and in the alternative against the 1st and 2nd defendants. But we think that the 4th

defendant was not justified in preferring Appeal No. 97 of 1918 to the Lower Appellate Court in paying Court fees as if the claim was one for the

recovery of the money. In the first Court, Court fee was paid on the declaration prayed for. In this Court also, Court fee was paid only on the

declaration. Therefore in directing the appellant in S.A. No. 838 of 1919 to pay the costs of the respondent (4th defendant) the excess Court fee paid by him in the Lower Appellate Court should not be charged against him. In other respects both the second appeals are dismissed with costs.

