

(1920) 03 MAD CK 0010
In the Madras High Court

Rangaswami Pillai

APPELLANT

Vs

Sankaralingam Ayyar

RESPONDENT

Date of Decision : 18-03-1920

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 6

Citation : (1920) ILR (Mad) 816

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

Bench : Division 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 term "bank" or "banker", and that in agreeing with my

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

Seshagiri Ayyar, J.

2. The first defendant in Original Suit No. 52 of 1916 was a contractor under the District Board of Trichinopoly. The plaintiff obtained a decree

against him. He attached a certain sum of money in the hands of the District Board Engineer on the allegation that the money belonged to the first,

defendant. Thereupon, the second defendant put in a claim petition on 16th October 1914. His claim was allowed. On 17th October 1914, the

plaintiff brought the present suit (Original Suit No. 52 of 1916) for a declaration that he is entitled to attach the money as belonging to the first

defendant. He obtained an injunction on 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 second

defendant. He endorsed it over on 23rd October to the fourth

defendant, who was a banker. Subsequently, the money was paid to the fourth defendant on his undertaking to return it in case the plaintiff

succeeded in the suit. Plaintiff succeeded before the District 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 fourth 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

second defendant is a cheque. If it is 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.

Srinivasagopala Achariyar 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* (1848) 2 H.L. Cas., 28 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* (1875) L.R. 10 ch.,

183. In 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.

4. 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,

5. 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 Board cannot be regarded as a customer.

6. 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.

7. 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 of, the second defendant.

8. The next question is, if it is a bill of exchange, is it within the competence 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 time being in force, they are so empowered.

9. 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.

10. 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 payment

out. So far, there is nothing to indicate that the Board is authorized to issue negotiable instruments. Section 144 of the Act enables the Governor in

Council by Clause (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.

11. 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.

12. 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 prescription 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 is whether we can infer from it that the District Board was impliedly

authorized to issue negotiable orders. Rule 549 of the Local Fund Code says, that such forms shall be supplied to the Engineer or to other officer

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 that the Local Board is empowered to make, endorse or accept negotiable instruments.

13. It follows from this that the endorsement in favour of the fourth defendant was properly made, The District Judge has found that his action 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.

14. Civil Suit No. 483 of 1916 was rightly brought by the fourth defendant as plaintiff, because the action of the appellant in instituting Civil Suit

No. 52 of 1916 necessitated his suing to have his rights secured as against him and in the alternative against the first and second defendants. But we think that the fourth defendant was not justified in preferring Appeal No. 97 of 1918 to the lower Appellate Court, in paying court fees, and as if the claim was one for 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 Second Appeal No. 838 of 1919 to pay the cost of the respondent (fourth 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.