

(1943) 11 MAD CK 0021
In the Madras High Court

S.P. Bhoominathan Chettiar

APPELLANT

Vs

K.S.N. Chari and Co., by sole proprietor, K.S.
Narasimhachariar

RESPONDENT

Date of Decision : 18-11-1943

Acts Referred:

Citation : AIR 1944 Mad 321 : (1944) ILR (Mad) 713 : (1944) 57 LW 137

Hon'ble Judges : Leach, C.J

Bench : Division Bench

Judgement

Leach, C.J.—The plaintiff is a Nattukottai Chetti carrying on a banking business at Devakottai. The defendant carries on business as a commission agent in Madras under the style of K. S. N. Chari & Co. On 13th December 1939 the plaintiff commenced dealing with the defendant in cotton futures and the dealings continued until 10th June 1940. During this time the plaintiff had entered into nine contracts with the defendant for the sale of Broach cotton for future delivery and ten contracts for the purchase from him of similar cotton. Cotton was never demanded or delivered. The plaintiff was in fact entirely ignorant of what was meant by Broach cotton. At the end of these transactions there was due by the defendant for differences a sum of Rs. 5076-7-1. The plaintiff had deposited with the defendant as cover for the due payment of differences, should he lose on any transaction, a total sum of Rs. 3000. On 26th March 1942 he filed this suit to recover from the defendant these two sums with interest. Notwithstanding that the defendant claims to be a broker, and according to his learned advocate he entered into many such transactions, he pleaded that the plaintiff's suit could not be maintained because the transactions represented wagering contracts. The learned trial Judge, Bell J., accepted this plea, but held that the defendant was liable to repay Rs. 2000 out of the Rs. 3000 which the plaintiff had deposited with the defendant and for this amount he gave a decree with interest at four and a half per cent. The plaintiff has appealed and the defendant has filed a memorandum of cross-objections. The plaintiff says that even if the contracts are to be regarded as wagering transactions, he is entitled

to a decree for Rs. 3000 the full amount of his deposit. The defendant says that the learned Judge erred in holding that the defendant was responsible to make any repayment to the plaintiff. He also complains that the learned Judge passed an erroneous order with regard to costs. The plaintiff had failed, except as regards Rs. 2000 but costs were allowed on the full amount claimed.

2. There can be no doubt that the learned Judge was right in holding that these transactions were of a wagering nature. In fact, . nothing has been said in favour of the appeal on this point. Mr. T. V. Viswanatha Ayyar, for the appellant, has limited his arguments to his client's claim for the return of the Rs. 1000, the balance of the deposit. On 13th December 1939 the plaintiff deposited with the defendant Rs. 2000, as cover for any sum which might become due to the defendant in respect of the transactions entered into or to be entered into. On 14th February 1940 the defendant required the plaintiff to increase his deposit by another Rs. 1000 and this the plaintiff did. On 8th March 1940 there was money due by the plaintiff to the defendant, "who appropriated Rs. 1000 of the money deposited in settlement of the account. As the result of further transactions the defendant became indebted to the plaintiff. On 29th March 1940 there was due by the defendant to the plaintiff for differences a sum of Rs. 2568-14-6. The defendant induced the plaintiff to agree to Rs. 1000 of this sum being retained by the defendant in place of the Rs. 1000 which had been deposited on 14th February 1940 and appropriated on 8th March 1940. The defendant paid the balance of Rs. 2568-14-6 to the plaintiff by cheque. This arrangement meant a total deposit of Rs. 3000 by the plaintiff with the defendant as cover for differences. The learned Judge disallowed Rs. 1000, as in his opinion it represented a payment of differences. "We find ourselves unable to concur in this opinion. The transaction represented a payment made by the defendant to the plaintiff and the deposit by the plaintiff of the amount as cover.

3. While a wagering contract cannot be enforced, a deposit made by one gambler with the other as security can be recovered, unless the amount has in fact been appropriated for the purpose for which it was deposited. Section 18, Gaming Act, 1845, said that:

No suit shall be brought or maintained in any Court of law or equity for recovering any sum of money or valuable thing which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made.

4. In *Strachan v. Universal Stock Exchange, Ltd.* (1895) 2 Q.B. 329 it was held that this section only applied to money or valuable things deposited as the stake to abide the event of a wager and did not apply to money or valuable things deposited as security for the observance by the loser of the terms of the wagering contract. It was further held that a person making the deposit might revoke the arrangement and recover his security at any time before the holder had appropriated it. This decision was approved of by the House of Lords in *Universal Stock Exchange Ltd. v. David Strachan (No. 1)* (1896) 1896 A.C. 166.

In the course of his judgment Lord Herschell observed:

It is said that although it may be a gambling contract, yet nevertheless the very provisions of the section against gaming and wagering prevent the plaintiff recovering the security which he deposited with the defendants inasmuch as it is an "article of value" deposited with them "to abide the event" of a wager. That seems to me not to be the case. It was deposited as security against a debt which might arise from a gambling transaction. What the defendants are really seeking is to avail themselves of that security by virtue of a void contract, and it is impossible to say that that was an "article of value" deposited with the defendants to abide the event of a wager. That was not really the nature of the transaction at all.

Here, as in that case, the deposit was made as security for the fulfilment of the plaintiff's obligation. At the time when this suit was filed the defendant held Rs. 3000 of the plaintiff as such security, but there was nothing owing by the plaintiff to the defendant. On the other hand the defendant owed the plaintiff Rs. 5076-7-1. In these circumstances the plaintiff is entitled to the recovery of the full amount deposited by him. It follows that the amount awarded by the trial Court will be increased by Rs. 1000 and the total amount will carry interest at four and a half per cent. from the date of the institution of the suit to this date. Hereafter, the defendant will pay interest at the rate of six per cent. on the decretal amount until payment or realisation. The plaintiff is entitled to his costs below and here on the sum of Rs. 3000. The memorandum of cross-objections will be dismissed without costs.