(1999) 10 MAD CK 0068

In the Madras High Court

Case No : S.A. No. 501 of 1988

State Bank of India APPELLANT

Vs

A.K. Exports RESPONDENT

Date of Decision : 08-10-1999

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 30

Citation : AIR 2000 Mad 303

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : R. Krishnamachari, for Radhakrishnan, for the Appellant; T.P. Sankaran, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—State Bank of India, Madras-1, the defendant/ appellant, after having lost in both the Courts below, has filed this second appeal aginst the decree and judgment dated 31-7-1987 made in A. S. No. 161 of 1986 on the file of the VIII Additional Judge, City Civil Court, Madras confirming the Judgment and decree made in OS. No. 6637 of 1979 on the file of the II Assistant Judge, City Civil Court, Madras.

2. M/s. A.K. Exports, the respondent herein, filed the suit before the trial Court for recovery of Rs. 12,360.60 being the value of the goods, which was not recovered by the defendant from the person concerned while handing over the goods.

3. The defendant/appellant contested the said suit by stating that their Bank was not responsible for the collection of the said amount and the other Bank-California Bank, situate in America, being the substituted agent, to whom the documents and consignments were sent, alone was responsible for the failure to collect the money before parting with the goods and original documents.

4. The trial Court, on consideration of the oral and documentary evidence,

decreed the suit in favour of the plaintiff, respondent herein, and concluded that the plaintiff would be entitled to the decree for the value of the goods along with interest from the date of the suit till the date of realisation. Aggrieved over this judgment, the appellant filed an appeal before the First Appellate Court, which in turn, after hearing the parties, dismissed the appeal and confirmed the judgment and decree of the trial Court. Hence, this second appeal by the defendant.

5. At the time of admission of the second appeal, this Court formulated a substantial question of law, which is as follows :--

"Whether the Courts below are right in holding that the First California Bank is not a substituted agent of the respondent?"

6. While elaborating the above substantial question of law. the learned counsel appearing for the appellant would submit that the appellant-Bank entrusted the bills to the First California Bank of the plaintiff in America and when there is a failure on the part of the Foreign Bank to collect the money before parting with the documents and bills to the person concerned, the appellant-Bank would not be liable to pay any amount to the defendant.

7. In reply to the said submission, the learned counsel appearing for the respondent/plaintiff would contend that the First California Bank is not a substituted agent of the Plaintiff and there is a privity of contract only between the plaintiff and the appellant, namely, State Bank of India, Madras-1 and since the Foreign Bank negligently gave the original bills to the buyer without collecting the amount and violated the instructions given by the defendant-State Bank of India, the defendant Bank alone can be held responsible for the same. He would also cite a number of authorities to show that the appellant-Bank was not a substituted agent and while there is a contract between the principal and agent, there cannot be any suit against the sub-agent with whom there is no privity of contract.

8. I have given my anxious consideration to the respective contentions raised by the counsel on either side.

9. In respect of the very same question, both the trial Court and the lower appellate Court elaborately considered and concluded as a fact that there was an agreement only between the plaintiff/respondent and the defend ant/appellant and that the said First California Bank was never recognised by the plaintiff as a substituted agent.

10. As a matter of fact, both the Courts below held that once the defendant pleaded that it was not responsible and only the substituted agent alone was responsible for collecting the amount while handing over the goods to the person concerned, it is for the defendant to prove the said plea by producing the said documents. In the absence of any document to show that there was a privity of contract between the First California Bank and the plaintiff, both the Courts found that the Foreign Bank cannot be considered to be a substituted agent of the

plaintiff.

11. At this stage, it would be appropriate to refer to some of the decisions dealing with this aspect.

12. In the decision reported in Punjab National Bank Ltd. Vs. R.B.L. Benarsi Das and Co., It is held as follows (at p. 593 of AIR) :--

"19. In my opinion the Punjab National Bank is undoubtedly guilty of negligence in dealing with the business of collecting the draft from Messrs Babu Ram Mela Ram through the Mercantile Bank. It is true that the Mercantile Bank, Nangal had been named by Banarasi Dass and Company for collecting the draft. But the instructions issued to the Punjab National Bank were that on realizing the amount of the draft it was to be credited to the Company''s account. It appears to me fairly well settled that if a banker is dilatory in endeavouring to procure acceptance or payments or is otherwise negligent in doing the business of the agency and his customer suffers for the consequences, the banker would be liable to make it good."

13. In Purushotham Haridas and Others Vs. Amruth Ghee Co. Ltd., Guntur and Others, It is held as follows :--

''The appointment of a sub-agent to put through some sales would not indicate that ipso facto privity of contract was created between the principal and the sub-agent. When once a particular individual was appointed as commission agent for sale of goods and the latter arranged with a third party for carrying through the sale transaction , the agent is responsible to the principal for the negligence and other breaches of duty of the sub-agent in the course of employment."

14. In Punjab National Bank and Others Vs. Millen Sales Corporation and Others, it is held as follows (at p. 155 of AIR) :--

"24. It is to be noticed that u/s 194 of the Indian Contract Act, the relationship between principal and person duly appointed as an agent to act in business of agency, is well defined providing that where principal holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent but an agent of principal for such part of the business of the agency as is entrusted to him."

15. In the light of the above principles, if we look at the materials available on record, it is clear that the First California Bank in America was not acting as a substituted agent of the plaintiff and it had to act under the instructions of the appellant-State Bank of India. Consequently, for the negligence of the sub-agent, the agent only will be responsible.

16. On going through the records, it is seen that the plaintiff, through oral evidence as PW. 1 and documentary evidence i.e., Exs. A1 to A21, clearly established that there was only an agreement entered into between the

defendant-Bank and the plaintiff.

17. Furthermore, as indicated above, both the Courts below, taking into consideration the factual aspects, would hold that the original documents were returned to the plaintiff and the First California Bank, being the sub-agent of the Bank, in violation of the instructions given by the Bank, gave them to the buyer and that therefore, the appellant alone would be liable. The relevant portion of the judgment of the trial Court is as follows ;--

(Vernacular matter is omitted--Ed.)

18. The relevant observation of the lower appellate Court is as follows :--

(Vernacular matter is omitted--Ed.)

These factual findings, in my view, cannot be considered to be perverse.

19. Moreover, the records would show that only xerox copies of the documents, sent by the First California Bank to the appellant, were returned and not the originals. As a matter of fact. DW.1 who was examined on behalf of the appellant-Bank would state that the Bank received the original documents from the First California Bank. Even then, they were not produced either before the Court or handed over to the plaintiff.

20. It is also noticed that the above statement given by DW. 1 in the cross-examination is quite contrary to the written statement filed by the appellant.

21. Under those circumstances, I do not find any valid ground to hold that any of the reasonings given by the Courts below is wrong, as I am in entire agreement with the Impugned Judgments and decrees. Consequently, } do not find any merit in the second appeal and the same is dismissed. No costs.