(2003) 02 MAD CK 0078

In the Madras High Court

Case No : Appeal Suit No. 806 of 1987

The Kumbakonam Co-operative Urban Bank Ltd. APPELLANT

Vs

A.R. Manoharan, K. Devadoss and Haridoss RESPONDENT

Date of Decision : 06-02-2003

Acts Referred:

Citation : AIR 2003 Mad 377 : (2003) 116 CompCas 124 : (2003) 3 LW 135 : (2003) 1 MLJ 544

Hon'ble Judges : M. Chockalingam, J;A.S. Venkatachalamoorthy, J

Bench : Division Bench

Advocate : N.R. Chandran, for the Appellant; G. Nagarajan, For R-1, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Venkatachalamoorthy, J.—The first defendant in O.S. No. 100 of 1983 on the file of the Subordinate Court, Kumbakonam, is the

appellant.

2. The first respondent/plaintiff filed a suit for recovery of a sum of Rs. 32,638.85 being the principal and interest due on two Fixed Deposit

Receipts and for costs.

3. The case of the plaintiff can be briefly stated as under:-

The plaintiff is a merchant and landlord carrying on business in Kumbakonam. He used to deposit amounts in his name, in his wife''s name so also

in his son''s name with the appellant/first defendant bank. There was repeated canvassing by the bank officials for depositing amounts in the first

defendant-bank. On 16.2.1983, the plaintiff went to the first defendant-bank to invest and deposit Rs. 20,000/- as fixed deposit. The plaintiff met the 2nd defendant viz., the Special Officer and told him that he would go to the United Commercial Bank of India, withdraw the amount and

deposit the same with the first defendant-bank. The 2nd respondent offered the service of a Bank Employee viz., the 3rd defendant by name

Haridoss to encash the cheque and asked the plaintiff to draw the cheque of the United Commercial Bank of India in the name of the 3rd

defendant Haridoss. Responding to the suggestion, the plaintiff drew a cheque in the name of Haridoss and he encashed the same from United

Commercial bank of India, Kumbakonam Branch and the amount of Rs. 20,000/- was brought to the first defendant-bank''s premises. Necessary

challan was filled up in the name of the plaintiff alone for 36 months fixed deposit and the challan and the amount were handed over to the Special

Officer. The Special Officer verified the amount of Rs. 20,000/- and stated that F.D. receipt will be issued within sometime. Shortly thereafter, the

counterfoil of the challan and the F.D. receipt bearing No. 9331 were handed over to the plaintiff. The plaintiff was again approached by the bank

officials for further deposit and as such, the plaintiff went to the Bank on 25.4.1983. The bank officials promised to give incentives for the deposits

and said that they would give interest to the F.D. amount of Rs. 10,000/- to be deposited on that day from 17.3.1983. As in the previous

occasion, again, the services of employee Haridoss was offered and the plaintiff issued a cheque in the name of Haridoss as done before, as per

the instructions. The plaintiff was given the F.D. receipt for Rs. 10,000/- with interest to be paid from 17.3.1983 onwards. Here again, the amount

was handed over to the Special Officer. Somewhere in September 1983, the plaintiff''s brother complained some malpractice in the bank and

hence the plaintiff wanted to close all the fixed deposits, savings bank account and recurring deposit account and issued notice to the Special

Officer. Though the notice was acknowledged, no reply was received by the plaintiff. Then the plaintiff sought the services of the Union Bank of

India.

The plaintiff was informed by Union Bank of India, his bankers, that till the date of filing of the suit, in spite of the repeated demands, the United

Bank of India could not able to get any reply. Without responding to the request of the plaintiff, the first defendant instituted a complaint with police against its employee Haridoss and the plaintiff was served with summons for the enquiry u/s 65 of the Co-operative Societies Act. Since the F.D.

Receipts had already been handed over, the plaintiff is in possession of only photocopies of the same. Defendants 2 and 3 have been added as

they are necessary parties. The Bank is directly and vicariously liable to pay the suit amount. Any fraudulent act or entry by defendants 2 and 3

would not in any manner affect the interests of the plaintiff. In fact, during the enquiry u/s 65 of the Co-operative Societies Act, the plaintiff was

threatened and coerced to give various false statements and sign certain documents, which the plaintiff refused to do so. In substance, the plaintiff

would claim that he is entitled for Rs. 32,638.85 due under fixed deposit receipts numbering 9331 and 9311 with interest as stipulated up to

30.09.1983 and from that date onwards at 21% per annum.

4. The first defendant-bank filed a written statement, denying the various allegations. According to the first defendant, the plaintiff used to move

closely with the 3rd defendant. The claim that there was canvassing for Fixed Deposits by the bank officials has been denied. A specific statement

is made that the plaintiff used to move only with the 3rd defendant regarding every transaction and he never consulted the officials of the first

defendant for any deposit in the bank. The Special Officer was not met by the plaintiff and the Special Officer never stated that he would go to the

United Commercial bank to withdraw the amount and to deposit the said amount in the first defendant-bank. A fraud has been played on the Bank

by the plaintiff in collusion with the 3rd defendant. According to the bank, no cheque was drawn in the name of the first defendant-bank and that it

is not aware of the cheque issued to the 3rd defendant and the encashment of the same by the 3rd defendant. The deposit of Rs. 20,000/- was

made only by the 3rd defendant in the name of the plaintiff and himself and the real fixed deposit receipt was issued in the name of the plaintiff and

the third defendant under either or survivor account. According to the first defendant, even the challan for payment was in the name of both the

persons. Instead of giving the real F.D. receipt, the 3rd defendant, taking advantage of his work and custody of blank F.D. Receipts, has chosen

to issue a fraudulent F.D. receipt in 9000 series when actually real F.D. receipts were being issued in 5000 series. Therefore, according to the bank, the receipt issued to the plaintiff is a fraudulent one and the 3rd defendant has issued the same to the plaintiff forging the signature of the

officials. The prestige and the public confidence in the bank were smashed by the act of the 3rd defendant in collusion with the plaintiff and others.

The third defendant has issued several such fraudulent F.D. Receipts. In fact, when the bank came to know of this, the Special Officer took

prompt action by issuing a Memo to the 3rd defendant calling for his explanation. The 3rd defendant admitted his guilt and prayed for time till

30.10.1983 to settle the account. Pending further enquiry, the 3rd defendant was put under suspension. For the notices received by the plaintiff, no

reply could be sent since the equiry regarding the third defendant was pending and accounts were being looked into. According to Bylaw 25, in

case of borrowing from non members, the receipt has to be executed by at least 3 members of the Board of Directors of whom the President shall

be one. Again, under Bylaw VIII, under the head ""current deposit"", all entries in the pass book should be done by the authorised officer and the

customers have been particularly requested to see that all entries of receipts and payments have to be carefully examined and any error discovered

should be pointed out at once. According to the first defendant, the plaintiff ought to have been more vigilant in giving the cheque in the name of a

third party viz., third defendant and without verifying the receipts and accounts of the Bank, he cannot claim the amount after knowing the

suspension of the third defendant by the Bank. The first defendant however would admit that strangers are entitled to assume that all things

connected in a transaction with a bank and pertaining to the internal management have been validly done and would contend that the same has no

application to fraudulent and forged instruments. A bank or a limited company cannot be held to be answerable to third parties for the fraudulent

acts of its servants or officers when the latter is not acting within the scope of his authorities and when he is acting in breach of the rules and bylaws

of the bank. Hence, the plaintiff cannot claim any amount under the forged fraudulent F.D. receipt bearing No. 9331. In the statement, the first

defendant would explain the procedure by stating that for opening a fixed deposit account, a party should approach the concerned clerk who will

give him the F.D. application specimen signature card etc. Then the party should sign before the manager of the bank and he will counter sign the card. Then, amount has to be paid under challan and the cashier should receive the amount and make an endorsement ""cash received"" and seal

should be fixed both on the foil and counter-foil of the challan and the amount paid will be noted in the chitta. Thereafter the F.D. sanction assistant

will receive the application, signature card and challan and he will enter the particulars in the F.D. account book, fill up the F.D. Receipt and put

the seal of the bank on the centre of foil and counter foil of the F.D. receipt so that half of the seal will be on the party''s F.D. receipt and the other

half in the bank''s counterfoil. Thereafter, all the papers will be sent to the Manager and he will verify everything and after satisfying himself, he will

note down the amount in his chitta and will sign the F.D. receipt both foil and counterfoil and he will send it to the Secretary. The Secretary, after

checking everything, will put his full signature on the party F.D. receipt and he will put his initials in the counterfoil and will send it to the Special

Officer. The Special Officer will in turn check the whole thing and after satisfying himself, he will sign and then send it to the Section Clerk. The

Section Clerk will get the signature of the party in the counterfoil and will give the original F.D. receipt to the party. There is a categorical statement

in the written statement that this procedure has not been followed in the instant case.

The claim that on 25.4.1983 the plaintiff met the Special Officer has been denied, as the latter was on leave on that day. It is averred in the

statement that from the facts and circumstances, it is clear that everything has been done by the 3rd defendant presumably at the instance of the

plaintiff without the knowledge and consent of the higher authorities of the bank and against the rules and bylaws of the bank and behind the back

of the first defendant. Therefore, the plaintiff is not entitled to claim any amount under F.D. receipt No. 9311. The other contentions made in para

Nos. 7, 8 and 9 of the plaint have been denied.

5. The trial court framed as many as five issues for consideration and both the parties let in oral and documentary evidence. The trial court, after

elaborately considering the oral and documentary evidence, came to the conclusion that the plaintiff has proved his case and thus entitled for a

decree for Rs. 32,188.85 with interest on Rs. 30,000/- at the rate of 9% p.a. from the date of plaint up to the date of decree and thereafter at 6%

p.a. till relisation.

6. Learned Advocate General appearing for the appellant reiterated the stand taken by the first defendant-bank. Learned Advocate General

contended that it cannot be said that the third defendant acted in the course of employment and that being so, the Bank cannot be made liable.

Secondly, it is contended that when the plaintiff received the fixed deposit receipts, he should have verified as to whether the same has been duly

signed by all the officials required as per the Bylaws. Had he verified, he could have found out and complained to the Bank authorities. That apart,

it is also submitted that apart from verifying that aspect, he should have also verified that while the earlier F.D. receipt carried latter number, the

F.D. receipts issued subsequently carried earlier numbers and from this also, the plaintiff could have found out that something is wrong and

informed the bank authorities.

7. Learned counsel appearing for the plaintiff/1st respondent would submit that it is only on the suggestion of the 2nd defendant/Special Officer,

services of the 3rd defendant were utilised by the plaintiff. That apart, it is also contended that it is the 3rd defendant, who was in charge of the

F.D. Section, in the sense that he was the concerned clerk in the bank, who used to receive money and issue the F.D. receipts. A further

submission has been made to the effect that the claim that the 3rd defendant did not act in the course of employment is without any basis. So far as

the case of the bank that there was negligence on the part of the plaintiff, in that, he failed to verify whether the F.D. receipts have been signed by

all the officials concerned, it is submitted that all that the plaintiff has to verify is whether the same has been signed. The bylaws streamline the

internal management of the bank and the first defendant-bank has not placed any material to show that the plaintiff was put on notice about the

bylaws and that the plaintiff was called upon to verify at every stage as to whether the bylaws have been followed while issuing the F.D. receipts.

In fact, the bank has admitted that the plaintiff is entitled to assume that all things connected in a transaction with the bank and pertaining to the

internal management have been validly done.

8. For better appreciation, at the outset, this Court considers it necessary to refer to certain statements made in the statement filed by the bank. In

the written statement, it is specifically admitted in para No. 4 that the 3rd defendant, taking advantage of his work and custody of the blank F.D.

receipts, had chosen to issue fraudulent F.D. receipts to the plaintiff. There is yet another categorical admission that strangers are entitled to assume

that all things connected in a transaction with a bank and pertaining to the internal management have been validly done. There is no denial of the

fact that at the relevant time, the 3rd defendant was the concerned clerk in the F.D. Section. In the written statement itself, the procedure to be

followed, when a person approaches the bank for the purpose of depositing money in F.D. Account, has been set out as under:-

Further for opening a fixed deposit account a party should approach the concerned clerk who will give him the F.D. application specimen

signature card etc. Then the party should sign before the manager of the bank and he will counter sign the card. Then amount has to be paid under

chalan and cashier should receive the amount and made an endorsement ""cash received"" and seal should be fixed both on the foil and counter-foil

of the challan and the amount paid will be noted in the chitta. Then the F.D. sanction assistant will receive the application, signature card and

challan and he will enter the particulars in the F.D. account book and he will fill up F.D. receipt and he will put the seal of the Bank on the centre of

foil and counter foil of the F.D. receipt so that half of the seal will be on the party''s F.D. receipt and the other half in the bank counter foil. Then

everything will be sent to the Manager and he will verify everything and after satisfying himself he will note the amount in his chitta and he will sign

the F.D. receipt both foil and counter foil and he will send it to the Secretary. The Secretary will check everything and he will put his full signature

on the party F.D. receipt and he will put his initials in the counterfoil and he will send it to the special officer. The special officer will again check the

whole thing and after satisfying himself he will sign and then send it to the section clerk. The section clerk will get the signature of the party in the

counter foil and will give the original F.D. receipt to the party. This is the procedure and in the above case nothing has been done.

9. From the above, it is clear that one has to sign the F.D. application form before the Manger of the Bank and the Manger will counter sign the

card. Again, it is stated that the Manager, before signing the F.D. receipt, should verify everything and only after satisfying himself, he has to affix his signature. As already pointed out, in the written statement itself, it is admitted that this procedure has not been followed. From this, two things

are evident, ie., not only the 3rd defendant did not follow the procedure but also the manager of the bank. It is not the case of the bank that the

manager of the bank got the signature of the plaintiff in the specimen signature card etc. When the officers concerned themselves have committed

mistakes and irregularities, it would be futile to contend that the plaintiff should have been very vigilant. The position may be different if the plaintiff

has approached a watchman in the bank for the purpose of depositing some money in F.D. and that Watchman handed over certain bogus or

fabricated F.D. receipts to the plaintiff.

10. We do not see any substance in the submission of the learned counsel for the appellant that the plaintiff is guilty of contributory negligence in

that he should have verified the F.D. receipts to find out whether the Fixed Deposit receipt has been issued as per the bylaws. As already pointed

out, the bank has admitted that strangers are entitled to assume that all things connected in a transaction with a bank and pertaining to the internal

management have been validly done. That apart, it is not the case of the first defendant/bank that the plaintiff was served with a copy of the bylaws

and that the plaintiff, before investing amount in the F.D., has made a declaration that he is aware of the various bylaws of the bank.

11. Learned counsel appearing for the appellant would draw the attention of this Court to a Ruling of the Supreme Court reported in State Bank of

India (Successor to The Imperial Bank of India) Vs. Shyama Devi, and submit that the 3rd defendant did not act in the course of his employment

and that the whole thing has been perpetuated only by the fraudulent acts of the plaintiff along with the 3rd defendant. The above ruling relied on by

the appellant would not apply to the facts of this case. That was a case where a client of the bank paid certain amount to an employee of the bank

for crediting it to her account and the Supreme Court, in that case, ruled that the onus was on the client to show that she paid the amount to the

employee of the bank and was received by that employee in the course of his employment with the bank. As already pointed out, in this case, the

plaintiff handed over the cheque to the 3rd defendant, who is the concerned clerk in the bank and secondly, as per the procedure, the Manager of the bank should have obtained a signature of the plaintiff in the application specimen signature card etc., but however, the Manager failed to do so.

12. Reliance is also made on a Judgment of a single Judge of this Court in A.S. No. 804 of 1986 (Syndicate bank, Coimbatore vs. T.M. Khader

Shah and another). We may straight away say that the said ruling would not apply to the facts of this case. That was a case where the plaintiff

opened a Pigmy Deposit Account on 15.2.1980 with first defendant-bank. The 2nd defendant, who was an employee of the first defendant-bank

was collecting a sum of Rs. 100/- per day from the plaintiff and he misappropriated the same. It could be seen from the said Judgment that the

plaintiff was informed about the rules and regulations relating to the said scheme and the plaintiff was informed that weekly card system was

introduced to ensure that the savings were properly accounted for and by that system, the balance upto the end of previous week could be

verified. In the communication sent to the plaintiff, he has been informed that the depositors should authenticate the correct weekly collections and

sign the confirmation part which would be retained by the bank and the depositors would be issued counterfoil showing the balance of previous

week duly confirmed by the bank and the weekly collections authenticated by the depositors and confirmed by the collecting representatives would

be given and that the plaintiff, in acceptance of the same, has also signed. In the evidence also, in that case, the plaintiff admitted that he was aware

of the weekly card system and what is expected is issuance of weekly card. However in that case, the plaintiff was given a pass book and there

was no initial in the said book by the officials. In those circumstances, the court held as against the plaintiff.

We deem it necessary to point out what the learned single Judge has observed in that case.

Though the bank has also acted in a negligent manner in not sending weekly confirmation reports to the plaintiff, yet the negligence is not sufficient

to enable the plaintiff to claim the amount collected by the second defendant in some other account other than Pigmy Deposit Account"".

Suffice to say that the negligence on the part of the bank cannot be taken in such a light manner. Any how, we are not concerned with that in this

appeal and we are not here to examine as to whether that reasoning is correct or not.

13. Before winding up the discussion, we deem it necessary to refer to a ruling of the Supreme Court reported in Union Bank of India Vs. Vishwa

Mohan, , wherein the Supreme Court has ruled thus:-

... It needs to be emphasised that in the Banking business, absolute devotion, diligence, integrity and honesty needs to be preserved by every

bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would be impaired. ...

14. In this view of the matter, we hold that the first defendant-bank is liable to make good the loss to the plaintiff. Consequently, we confirm the

judgment and decree of the trial court and dismiss the appeal.

15. In the result, the appeal is dismissed with costs.

