

(1943) 03 MAD CK 0016
In the Madras High Court

The Travancore National Bank Subsidiary Company Ltd.

APPELLANT

Vs

Tranabank Union, a partnership firm consisting of the employees of the Travancore National and Quilon Bank Limited, now in liquidation and Another

RESPONDENT

Date of Decision : 12-03-1943

Acts Referred:

Contract Act, 1872 — Section 230(2)

Citation : AIR 1943 Mad 530 : (1943) 56 LW 325 : (1943) 1 MLJ 425

Hon'ble Judges : Somayya, J

Bench : Division Bench

Judgement

Somayya, J.—This is an appeal against the decree of the City Civil Judge passed in O.S. No. 900 of 1940. The plaintiff is the Travancore

National Bank Subsidiary Company, Limited (now under liquidation) represented by its Official Liquidator. The lower Court dismissed the suit

which was one to recover the balance of subscription due in respect of two chits. The plaintiff-company was carrying on a chit fund business.

Various chits were started from time to time. The first defendant is styled "" Tranabank Union"" which admittedly consists of the employees of the

Travancore National and Quilon Bank, Ltd. (now in liquidation) and also of the plaintiff-company which is the Travancore National Bank

Subsidiary Company. The first defendant subscribed for two chits and was the successful bidder of both the tickets at the auction held on the 4th

January, 1938. A sum of Rs. 1,340 in cash was paid to the first defendant-company and an agreement was executed for the future instalments on

the 10th January, 1938. This agreement was signed by the second defendant on behalf of the first defendant. Though the suit was filed against both

the defendants, the present appeal is pressed only against the second defendant who is the second respondent in this appeal. We are not

concerned with the claim against the first defendant. The second defendant was sought to be made liable on the ground that though he signed as an

agent in Ex. A, the suit document, the case is one coming u/s 230 (3) of the Contract Act for the reason that the principal though disclosed cannot

be sued, This ground of liability is based upon the fact that the Tranabank Union is an unregistered union of the employees of the two companies.

In such a case it is said that all the persons who were members of the Tranabank Union are liable under the contract. At any rate it is said that the

persons who signed the document on behalf of that unregistered union are liable. The lower Court rejected the plaintiff's case and dismissed the

suit. Hence this appeal.

2. The second defendant when affixing his signature to Ex. A expressly added the word "" agent"" to his signature. The document itself begins by

saying that it was executed by the Tranabank Union which is called the borrower. So the document is executed by the Tranabank Union and it was

signed by the second defendant as agent. It therefore clearly means that he signed it as the agent of the first defendant Union. It cannot therefore be

said that he (second defendant) did not indicate in that document that he was signing only as the agent. I therefore agree with the City Civil Judge in

holding that the second defendant cannot be made personally liable on the ground that when he signed his name, he did not say that he signed for

the Tranabank Union. That he did so for and on behalf of the Tranabank Union is fairly clear from the document read as a whole.

3. The chief ground which was pressed before the lower Court was that the Tranabank Union cannot be sued and that therefore the second

defendant was liable. This claim is covered by Section 230, Clause (3) of the Indian Contract Act. The lower Court declined to accept the

plaintiff's contention that the Tranabank Union cannot be sued. After setting out a quotation from the evidence of the second defendant, the lower

Court stated that it was clear from his evidence that the Tranabank Union was an association of the employees of the bank and the plaintiff-

company, that is, the main Travancore National and Quilon Bank and the plaintiff-company"" without a register of members, without subscriptions

and that it had been disbanded. Then dealing with the contention that the Tranabank Union cannot be sued, the Judge said that it was not an illegal body and that it may be difficult, and indeed very difficult to hold that the Tranabank Union is a party which cannot be sued. He winds up the discussion by saying that it was left to the plaintiff-company to find out who were the members of the Union and to take steps to have them properly summoned and indicated that possibly the procedure under Order 1, Rule 8, Civil Procedure Code, maybe adopted. The learned Judge here overlooked the fact that under the law an unincorporated body cannot be sued as such for recovery of a debt or on a contract. That the procedure under Order 1, Rule 8 indicated by the City Civil Judge is inapplicable to a case of this kind has been laid down by Venkatasubba Rao and Abdur Rahman, JJ., in Rathnaswami Nadar and Others Vs. The Prince of Arcot's Endowments under the control of His Highness the Prince of Arcot, G.C.I.E. represented by his authorised agent Shamsul Ulama Moulvi Mohammad Abdur Rahman Sahib Bahadur "Shakeer", ". That an unincorporated body cannot be sued is clear. In Halsbury's Laws of England (Hailsham Edition], Volume IV, page 498, paragraph 921 runs thus: It has already been stated that an unincorporated members' club is not a partnership nor an association which, as an association is legally recognised; and questions frequently arise as to who are the persons liable for goods supplied to such a club, or on contracts professedly made on its behalf. These questions depend on the ordinary principles of agency. The person supplying the goods must proceed against the persons who gave or authorised the giving of the order; he must prove that the defendants, either by themselves or by their agent, entered into the contract. In Walker v. Sur (1914) 2 K.B. 930 it is laid down that only those persons who signed the contracts on behalf of the association and those who adopted them can be sued and that other persons who are members of an unincorporated body cannot be proceeded against. Here the second defendant is admittedly an employee of the Travancore National and Quilon Bank, Limited, and the first defendant-company is admittedly composed of all the employees of the Travancore National and Quilon Bank, Limited and of the Subsidiary Company as well. The second defendant thus being a member of the first defendant union is liable to be sued under the authorities just referred to. This being so, the plaintiff is

entitled to a decree against the second defendant in his capacity as a member of the first defendant-company and as the person who admittedly signed the document in question on behalf of the first defendant.

4. I reverse the decree of the lower Court and grant a decree for Rs. 1,050 with interest from the date of suit at six per cent, per annum against the second defendant with costs here and in the lower Court.