

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 22.12.2016

Delivered On: 23.12.2016

CORAM

THE HONOURABLE DR.JUSTICE G. JAYACHANDRAN

S.A.No.566/1990

Sangli Bank Ltd.,
Scheduled Bank, Head Office
at Rajwada Chowk, Sangli 416 416.
Rep.by its Authorised Representative

.. Appellant/Defendant

..Vs..

1.S.Padmini
2.M.S.Sambandam

.. Respondents/Plaintiffs

Prayer: Appeal filed Under Section 100 C.P.C. against the Judgment and Decree dated 30.12.1989 in AS.NO.121/1989 on the file of the learned Principal District Judge, Erode, confirming the Judgment and Decree dated 24.07.1989 in OS.No.407/1985 on the file of the learned II Additional Sub Judge, Erode.

For Appellant : Mr.V.Bhiman
for M/s.Sampathkumar Associates

For Respondents : No Appearance

JUDGMENT

The defendant / Bank is the appellant herein. The suit for damages and recovery of money filed by the plaintiffs, in OS.No.407/1985 was allowed by the Trial Court vide Judgment and decree dated 24.07.1989 and the same was confirmed by the First Appellate Court, viz., the learned Principal District Judge, Erode, in AS.No.121/1989, vide judgment and decree dated 30.12.1989. Aggrieved by the concurrent findings of the Courts below, the present appeal has been preferred by the defendant / Bank.

2 For the sake of convenience, the parties are described as per the ranking and status shown in the plaint.

3 The plaintiffs 1 and 2 are the Proprietors of Sri Kumar Textiles and Sri Kumar Mills respectively. The first plaintiff has presented a Hundi for a sum of Rs.7,330/- and the second plaintiff has presented a Hundi for a sum of Rs.5,900/- on 20.10.1981 at the defendant / Bank for collection. The drawer of the Hundi is one Thilak Textiles. The Paying Bank for these two Hundis is Oriental Bank of Commerce, Lucknow.

4 The contention of the plaintiffs is that these two Hundis were presented for collection in their account maintained at the defendant / Bank. But the defendant / Bank has not credited the amounts in the plaintiffs' respective Bank Accounts. The defendant / Bank was negligent in causing collection of the Hundis and hence, it is liable to pay compensation of Rs.20,000/- with interest.

5 The defendant / Bank contested the suit on the ground that they are only the Collecting Bank and the Paying Bank, viz., the Oriental Bank of Commerce, Lucknow, is the proper and necessary party, which is liable to honour the Hundis. The paying Bank failed to honour the Hundi and it negligently returned the Hundis to the Drawer, viz., M/s.Thilak Textiles, in stead of intimating and paying the Hundi amounts to the Collecting Bank, viz., the Sangli Bank Ltd. It is further contended by the defendant / Bank that the suit is barred for misjoinder of parties since the plaintiffs 1 and 2 are distinct individuals having two different accounts under two different name and style and for non-joinder of necessary party namely Oriental Bank of Commerce, Lucknow.

6 The Trial Court, after framing five issues based on the pleadings and considering the evidence let in by the respective parties, had allowed the suit, vide judgment and decree dated 24.07.1989 made in OS.No.407/1985, on the ground that having accepted the Hundis and endorsed the same, the defendant / Bank is liable for non-collection of Hundi amounts.

7 On appeal, the First Appellate Court, viz., the learned Principal District Judge, Erode, has also confirmed the judgment and decree of the Trial Court, vide its judgment and decree dated 30.12.1989 made in AS.No.121/19989, holding that the defendant / Bank is responsible for the non-collection of the amounts.

8 Aggrieved by the concurrent findings of the Courts below, the present appeal has been preferred by the defendant / Bank, raising the following substantial questions of law:-

"[1] Is the defendant, as Collecting banker, liable on the suit Hundis handed over to it for

collection when the paying banker who has not been impleaded in the suit had wrongly handed over the Hundis to the drawer without making payment?

[2] Is the suit maintainable against the Defendant collecting Banker alone without making the Drawer, Drawee and other indorsees as parties to the suit?

[3] Was the defendant "Negligent" in law?

[4] Did the property in the suit Hundis pass to the defendant bank in whose favour they were endorsed for collection?"

9 On considering the pleadings and the relief sought for by the plaintiffs, this Court, at the outset, is forced to record that the Courts below have not properly understood the basic Principle of Banking Law and the nature of the Negotiable Instrument, viz., Hundi.

10 For better appreciation, the meaning of "Hundi" as defined in the Negotiable Instruments Act, 1881, is extracted below:-

"a Hundi is a form of Bill of Exchange, where it contains an unconditional order , signed by the maker, directing a certain person to pay a

certain sum of money only to, or to the order of a certain person or to the bearer of the instrument."

11 It is an admitted fact that the defendant / Bank is only a Collecting Bank, facilitating the collection of the Face Value of the Hundi from the Paying Bank. The plaintiffs, being the customer of the defendant / Bank, on presentation of the Hundis, the defendant / Bank had forwarded it to the Paying Bank, viz., the Oriental Bank of Commerce, Lucknow, for collection. The said Paying Bank has failed to discharge its duty and has erroneously returned the Hundis back to the Drawer, viz., M/s.Thilak Textiles. While the facts being so, the Courts below have entertained the suit without impleading the Drawer, viz., M/s.Thilak Textiles and the Paying Bank, viz., the Oriental Bank of Commerce, Lucknow.

12 The defendant / Bank, has taken a plea of mis joinder and non-joinder of necessary party. However, both the Trial Court, as well as the First Appellate Court have overlooked this point and has erroneously held that the paying Bank namely the Oriental Bank of

Commerce, Lucknow, is not a necessary party. Similarly, the Courts below have not even considered the plea of mis-joinder of parties. On the face of the pleading, it is very clear that the first plaintiff and the second plaintiff are two different individuals having two different commercial Establishments and two different Bank Accounts. While so, both of them have joined together to file this suit alleging negligence on the part of the defendant / Bank and have also surprisingly succeeded before both the Courts below.

13 The responsibility of an endorser under the Negotiable Instruments Act, 1881, has been settled long back by this Court in the Judgment reported in ***AIR 1940 Madras 27 [Mellepeddi Pitchamma Vs. Medabalimi Venktaramayya]***, wherein this Court has held thus:-

"....An indorsee for collection must be held to be an agent for collecting the money due on the promissory note. He might have been able to indorse it for that purpose if expressly authorised to delegate the authority given to him...."

14 In the case on hand, the defendant / Bank has made an

endorsement for the presentation of the Hundis and forwarded the same to the Paying Bank for payment. The Courts below have held that because the defendant / Bank has endorsed on the Hundis, they are liable to pay the face value of the Hundis and failure on their part to pay, they are liable to compensate the plaintiffs. While it is evident that the defendant / Bank is only a Collecting Agent for the plaintiffs and the Paying Agent for the Drawer of the Hund is Oriental Bank of commerce at Lucknow, the patent difference between the Collecting Agent and the Paying Agent has lost sight of by the Courts below leading to perverse finding.

15 For the above said reasons, the judgments and decrees of the Courts below, viz., the Judgment and Decree dated 30.12.1989 made in AS.NO.121/1989 on the file of the learned Principal District Judge, Erode, confirming the Judgment and Decree dated 24.07.1989 in OS.No.407/1985 on the file of the learned II Additional Sub Judge, Erode, are set aside.

16 In the result, the Second Appeal is allowed with costs.

.12.2016

Index : No

Internet : Yes

AP

To

1.The Principal District Judge
Erode.

2.The II Additional Sub Judge
Erode.

DR.G.JAYACHANDRAN.,J.

AP

Judgement in
S.A.No.566/1990

Reserved On : 22.12.2016

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