IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2020

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

A.S. No.182 of 2006
and C.M.P. No.1387 of 2007

1.M/s.Karur Vysya Bank Ltd.,
Rep. by its Manager,
Purasawakkam Branch,
54, Gangatheswarar Koil Street,
Purasawakkam,
Chennai - 600 007.

2.M/s. Karur Vysya Bank Ltd.,
Rep. by its Manager,
Anna Nagar Branch,
AC-6, II Avenue,
Anna Nagar,
Chennai - 600 040. ... Appellants/Defendants 1 & 2

Versus

1.M/s.Sriram Chits & Investments Ltd.,
Rep. by its Principal Officer &
Chief Executive Officer,
No.1, Club House Road,
Mount Road,
Chennai - 600 002. ...1st Respondent/Plaintiff

2.C.S.Sathish
3.Mohan
4.V.Gururajan
5.Nirmala ... Respondents/Defendants 3 to 6

Appeal suit filed under Section 96 of C.P.C. against the decree and judgment passed in O.S. No.3873 of 2001 dated 30.06.2005, by the learned II Fast Track Court, Additional District Judge, Chennai.

For Appellants : Mr. Balasubramanian
for A.V.Radhakrishnan

For Respondent No.1 : Ms. Rita Chandrasekar
for M/s.Aiyar & Dolia

JUDGMENT

The defendants 1 and 2 in the suit in O.S. No.3873 of 2001 on the file of II Fast Track Court Additional District Judge, Chennai, are the appellants in this appeal. The first respondent in this appeal filed a suit in O.S. No.3873 of 2001 for recovery of a sum of Rs.1,97,466/- and a further sum of Rs.5,53,441/- along with interest at the rate of 12% from the date of suit.

The case of the plaintiff in the plaint is as follows:

The plaintiff is conducting chits of various denominations. On 29.09.1998, two crossed cheques drawn on the first defendant bank, in favour of one Suresh for a sum of Rs.13,355/- and for a sum of Rs.33,600/- respectively, were issued on behalf of the plaintiff. Similarly, on 27.02.1998, a third cheque drawn on the first defendant bank in favour of one Sankar for Rs.98,733/- was also issued on behalf of the plaintiff. All the three cheques were signed only by one V.Gururajan, the fifth defendant in the suit. There was no second signatory to any one of the three cheques. The bank was authorised to honour the cheques only if it is presented with the signatures of any two out of three authorised signatories of the plaintiff. The three cheques were presented for payment through the second defendant Bank. In utter disregard to the instructions given by the plaintiffs that the cheques issued on behalf of the plaintiff should be signed by any two of the defendants 3 to 6 and the Accounts Officer under the joint signatory system, the cheques issued on behalf of the plaintiff without the signatures of the authorised signatories have been honoured by the first defendant. The amounts have been paid to third parties through the cheques which were not signed by the authorised signatories as per the instructions given by the bank. Therefore, the plaintiff has incurred a loss to the tune of Rs.1,45,688/-. Again three more crossed cheques issued by the plaintiff in the name of one V.Sankar, K.Sankar and one S.Lakshmi for a sum of Rs.3,24,000/-, Rs.33,142/- and Rs.34,090/- respectively, were wrongly credited by the defendant bank in the Savings Bank Account maintained in the name of One S.Lakshmi and S.Sankar who were not the payees of the cheques. Thus the defendants 1 and 2 have assisted defendants 3 to 6 to defraud the plaintiff who has incurred a further loss to the tune of Rs.3,91,482/-. Since the three cheques were signed by 5th defendant, he was also made liable jointly with the first defendant for the amount due under the first count. Similarly, defendants 4 and 6 were also made liable for the sum of Rs.3,91,482/- due under the second count. The plaintiff prayed for interest at 12% till the date of plaint.

2. The suit was contested by the appellants mainly on the ground of limitation by stating that the cheques were drawn in the year 1997 and 1998 and that the suit which was not presented within three years from the drawing of the cheque is barred by limitation. It was further stated by the appellants in the written statement that the plaintiff's representative have requested the bank to pass the cheques with single signature and that the bank has received specific instructions authorising to honour the cheques signed by any one of the three authorised signatories of the plaintiff. As regards the wrong credits given by the defendant bank, it is stated in the written statement that the plaintiff filed a complaint before the Banking ombudsman, Chennai and that by order passed by the Banking ombudsman dated 24.02.2020, the complaint was dismissed on the ground that the matter is still under police investigation and that therefore, the ombudsman cannot give any safe verdict. It is further stated that the suit without impleading the persons in whose favour the amount were credited is not maintainable. In other words, it is contended that the suit is bad for non joinder of necessary parties.

3. The trial Court, after considering the pleadings and evidence, came to the conclusion that the defendant bank has acted in utter disregard to the instructions given by the plaintiff to honour the cheques only if it is signed by two of the three authorised signatories as per the communications given by the plaintiff to the bank. Similarly, the trial Court also found that the appellant has no valid defence justifying their conduct in crediting amounts in the name of third parties to whom the cheques were not drawn. The trial Court decreed the suit as prayed for. Defendants 1 and 2 have preferred the above appeal.

4. The following points arise for consideration in this appeal:

a) Whether the appellants can be made liable along with other defendants for the suit claim ?

b) Whether the suit is barred by limitation ?

c) Whether the suit is bad for non joinder of necessary parties ?

5. Learned counsel appearing for the appellants submitted that the lower Court came to a wrong conclusion that the suit is not barred by limitation. He further submitted that suit is barred for non-joinder of necessary parties namely the persons to whom the cheques were issued and the persons in whose accounts the amounts were wrongly credited. Learned counsel for the appellant submitted that plaintiff has given specific instructions to the Bank to honour the cheques even if it is

signed by a single person who is one among the three authorised signatories of the plaintiffs. Learned counsel for the appellant submitted that burden lies on the plaintiff to prove that the cheques issued by the plaintiff was signed by a person who was not a signatory and that the bank has honoured the cheques in violation of the instructions given by the plaintiff.

6. Learned counsel appearing for the first respondent however submitted that the three cheques signed by one of the authorised signatory were honoured by the defendant bank even though specific instruction has been given to the bank by their communication, dated 11.06.1997. The communication dated 11.06.1997, is marked as Ex.A3. This letter reveals clear intimation to the bank authorising any two of the three named staffs of the plaintiff to sign cheques under joint signature system. The then Division Manager, Branch Manager and Account Officer of the plaintiff were the three authorised signatories of cheques drawn by the plaintiff to any one. All the three designated staffs of plaintiff are named in the said communication. It is specifically mentioned that the plaintiff authorise any two of the three named officers of plaintiff for the operation of the bank accounts under joint signature system as per the revised instructions given under the letter addressed by the plaintiffs to the defendant on 04.06.1996.

7. Learned counsel for the appellants however relied upon the communication dated 21.12.1994 wherein the plaintiff has requested the bank to honour those instruments with single signatures. The relevant portions of the letter dated 21.12.1994, is extracted hereunder:

> "We have been maintaining Current Accounts bearing Nos:320,321,322,453,502,503,504 & 505 with your branch. Though our Head Office has given mandate for Joint Operation of the account, we while acknowledging your intimation over phone regarding cheques coming with single signature, we request you to honour those instruments with singly signature also. We request you to consider this request as a Special Case considering the practical difficulties faced by the authorised signatories and to protect the hard earned name of our Company in public minds. We thank you very much for the excellent service extended to us."

This letter was signed by one S.Sathish who has described himself as authorised signatory. It is contended before the trial Court that the plaintiff has also stated that the communication dated 21.12.1994, was never authorised by the plaintiff. Even the designation of the person who signed the letter is neither revealed nor it is pleaded or proved that this letter was issued by the person who is competent to give instruction to the Bank on behalf of plaintiff. The trial Court has specifically given a finding that the appellant has not proved that the letter dated 21.12.1994 was issued by or on behalf of the plaintiff. It is to be noted that the letter dated 21.12.1994 cannot be relied upon by the appellant in view of the subsequent instructions which were given by the plaintiff to the bank on various occasions. Even assuming that the letter dated 21.12.1994, is true, it suggest that in December 1994, the bank was intimated by the plaintiff to honour cheques even if it is signed by a single signatory. However, all the subsequent communications which are marked in this case go to show that the bank has requested specifically to honour the cheques only if it is signed by two of three signatory indicated in the letter dated 11.06.1997 and subsequent communications.

8. It is to be seen that by a letter dated 04.10.1994, the plaintiff authorised three individuals for opening and operating the bank accounts under Joint Signature System by any two of the three named individuals. The specimen signature of all the three individuals mentioned in the communication has been given to the bank. This communication was sent by the Executive Director of the plaintiff to the Manager of the defendant bank. In all the communications before and after the communication dated 21.12.1994, specific instructions given to the bank is consistent and the only communication that was relied by the appellants on 21.12.1994 does not go well with the object and purpose of issuing such authorisation letter earlier and after the said communication dated 21.11.1994. From the communication dated 04.10.1994, 11.06.1997 and 04.08.1997, the specific instruction given to the bank by the plaintiff is evident and it is made clear that the bank is authorised to honour the cheques only if the cheque is signed by two of the three authorised signatories. It was further made clear that in the absence of any two of the three mentioned officers, the bank account was expected to be operated under joint signature system as per the revised instructions given in the letter of plaintiff dated 04.06.1996. In the light of several documents filed by the plaintiff, this Court is convinced that the plaintiff has authorised to operate the account by any two of three named individuals under joint signature system and that the bank is not supposed to honour the cheques if it is signed by only one of the three authorised signatories of the plaintiff. The plaintiff was careful enough to give proper instructions to the bank to protect its interest. However, the bank has allowed the account to be operated to debit amount from the plaintiff's account by honouring unauthorised cheques issued in the name of plaintiff.

9. It is the specific case of plaintiff that the plaintiff by virtue of the powers conferred on it by the Board's resolution has authorised any two from among defendants 3 to 6 to operate the Bank Account with the first defendant under Joint Signatory System. It is not denied that the first plaintiff had furnished to the first defendant the specimen signatures of defendants 3 to 6. It is also pleaded that defendants 3 to 6 issued cheques in the names of fictitious and non-existent persons, opened accounts with the second defendant in Benami names and got the cheques encashed to defraud the plaintiff. Since the 5^{th} defendant, the staff of plaintiff has signed and presented the cheque to swindle the money, the prayer in the suit is to direct the first defendant and 5^{th} defendant jointly and severally to pay to the plaintiff the amount covered under the three cheques signed by the 5^{th} defendant alone. Hence, this Court is unable to interfere with the findings of the trial Court making the appellants jointly liable to make good the loss caused to the plaintiff by honouring the cheques in utter disregard to the specific instructions given by the plaintiff to the bank.

10. It is not in dispute that three further cheques on different dates given in the name of three different persons were credited in the account in wrong name who is not the drawee of the cheque. A sum of Rs.3,24,250/- was drawn on the appellant bank in favour of one V.Sankar as per the cheque dated 16.10.1997. However, this cheque was credited to the savings bank account of one S.Lakshmi and S.Sankar by the appellants. Similarly, a cheque dated 17.01.1998, was drawn on the first defendant bank payable in name of one K.Sankar for a sum of Rs.33,142/-. Though this cheque was crossed so that the amount is payable only to the account holder, the cheque was wrongly credited to the savings bank account standing in the name of one S.Lakshmi and S.Sankar. Similarly, another crossed cheque for a sum of Rs.34,090/- was wrongly credited to the savings bank account of the same joint holders of account No. 5356. The cheques were issued in the name of individuals with different initials and it was not explained as how these amounts were credited in the joint account of S.Lakshmi and S.Sankar by the appellant bank. By passing three cheques and crediting the amounts in the account of a wrong person, the plaintiff has lost a substantial amount to the tune of nearly Rs.4,00,000/-. When the wrong credits were intimated to the Bank, the Bank could have reversed the entry as the cheques were wrongly credited in the accounts of a stranger.

11. Despite an intimation given to the appellant bank that the amount had been credited in wrong accounts, the bank, after knowing that it could have happened by mistake, did not respond properly. It is not in dispute that the plaintiff gave complaint

against the signatories of the cheque as well as the bank to retrieve the money which they have lost by crediting the cheque amounts in the accounts of strangers who are not the drawees. It is unfortunate to notice that the complaint given by the plaintiff to banking ombudsman was dismissed on the basis of a peculiar stand taken by the appellant bank before the banking ombudsman that the wrong credits in different accounts was on account of the fraud committed by some of the staffs of plaintiff and that the banking ombudsman cannot entertain the complaint filed by the plaintiff unless the criminal case initiated by the plaintiff against its own employees are over.

12. It is admitted that the plaintiff has lost substantial money because of the irresponsible and unbecoming attitude of the appellants. By honouring the cheques signed by one of the three authorised signatories, substantial amount has been swindled from the accounts of plaintiff by one of the staffs of the plaintiff. The appellants ignored their lawful duty and failed to adhere to the strict instructions bypassing three cheques. In other words, the appellant bank has aided the fraud by honouring the cheques despite specific instruction given by the plaintiff not to honour the cheque unless it is signed at least by two of the three authorised signatories.

13. However, regarding the claim on second count mischief was played by the staffs of the plaintiff while issuing cheques in the name of three different individuals and presenting them with wrong account. All the three cheques were credited in the account of a stranger who was not the drawee of the cheque. It is stated that the cheques were presented by the account holder in whose account the cheques were credited. How the Bank can permit anybody to present a cheque which was drawn in the name of a stranger? Even though it was pointed out by the plaintiff that the bank has deposited in the wrong accounts by mistake and that the mistake could have been rectified by the appellant bank, the appellant bank did not undo the wrong at the right time. The bank appears to have taken advantage of the fraudulent behaviour of some of the staffs of plaintiff and added insult to the injury by refusing to do what they could do immediately by retrieving the amounts wrongly credited in the name and account of a stranger.

14. This Court is unable to justify the conduct of appellant bank in refusing to set right things even though the amounts might have been deposited by mistake in the name of wrong persons especially when a third party cannot be permitted to present the cheque if they are not the persons to whom the cheques were actually drawn. The bank has made an attempt to justify their stand by producing another letter dated 02.03.1988, acknowleging the receipt of the sum of Rs.98,733/-

which was drawn in favour of Sankar. This letter dated 02.03.1988, was signed by one Sathish and the said Sathish has signed the letter as an authorised representative of plaintiff. This Court has already seen that the bank has produced another letter dated 21.12.1994, signed by one C.Sathish as an authorised representation of the plaintiff. The letters dated 02.03.1988 and 21.12.1994 were signed by the same person and produced by the appellants. Another letter dated 06.10.1998, has also been produced to show that the same person by name C.S.Sathish, has given intimation to the appellant bank acknowledging the authenticity of passing two other cheques which were signed only by one of the three authorised signatories of the plaintiff. These letters indicate that the appellants have colluded with some of the staffs of plaintiff to defend the legal action initiated by the plaintiff against the bank. The appellant Bank never made an attempt to prove that the said C.Sathish or C.S.Sathish or Sathish is an authorised officer of plaintiff who was introduced by plaintiff at any point of time earlier. The attitude and conduct of the defendant bank by producing unauthorised letters prove that the Bank has come down to the level of a normal litigant to aid fraud and misappropriation at the cost of its valuable customers.

15. In the absence of any material or proof that the three letters produced by the bank in the present case with contents contrary to the series of letters and correspondence produced by the plaintiff were issued by an authorised person or officer of plaintiff, this Court is of the view that the trial Court is right in decreeing the suit by holding the appellants jointly liable to the loss to the plaintiff to the tune of Rs.1,45,688/- with interest at 12%. Similarly, the plaintiff is also entitled to a sum of Rs.3,91,482/- along with the interest due to wrong credits given by the bank. This Court has already commented about the conduct of the scheduled bank in refusing to rectify the mistake while depositing the amounts in the name of wrong persons to whom the cheques were not drawn. The bank has exhibited its unbecoming conduct. The plaintiff has filed this suit after suffering a great loss on account of gross negligence of the bank by passing three cheques which are not authorised. Refusing to undo the wrong to make good the loss is something which reflects the bad conduct and attitude of appellant and cannot be ignored.

16. The plaintiff promptly approached the appellants when they come to know about the wrongs in May 1999. It is not the case of defendants that the plaintiff had knowledge about the loss even earlier. It is stated that they came to know about the irregularities during the course of criminal investigation. The plaintiff approached the Banking ombudsman in December 1999. During February the ombudsman closed the complaint with a

direction to approach judicial forum. Hence, the suit filed in April 2001 is well within time.

17. It is contended by appellants that the suit is bad for non joinder of persons to whom the cheque was issued or the amounts were wrongly credited. It is pleaded by plaintiff that the persons to whom the cheques were drawn are fictitious persons. The plaintiff need not implead them when they have a cause of action against the defendants who were made parties and who are liable to make good the loss. The plaintiff has no business ties or connection with such strangers whose identity is not known to the plaintiff. Unless the plaintiff has reasons to believe that they can also independently sue strangers, it is not possible for the plaintiff to implead them in the present suit. Hence the suit is not bad for non-joinder of necessary parties.

18. This Court having regard to the overall facts, circumstances and conduct of the appellants is inclined to dismiss this appeal with exemplary cost of Rs.20,000/- payable by the appellants for their indifferent and unbecoming conduct to defend the suit and to collude with some of the staffs of the plaintiff exhibiting clear intention and determination to help some individuals who made an attempt to defraud the plaintiff, a customer of appellants.

19. Accordingly the Appeal Suit is dismissed with a direction to the appellants to pay a further sum of Rs.20,000/- (Rupees Twenty Thousand Only) by way of exemplary cost for refusing to come forward to make good the loss suffered by the plaintiff and for their callous indifference and wilful negligence and apart from exhibiting an unbecoming conduct aiding fraud to camouflage their mistake / mischief. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

bkn

To

The Additional District Judge,
II Fast Track Court,
Chennai.

Copy to

The Section Officer,
VR Section, High Court,
Madras-104.

+2cc to Mr.A.V.Radhakrishnan, Advocate R.35353

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and C.M.P. No.1387 of 2007

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