

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.01.2021

CORAM

THE HONOURABLE MR. JUSTICE T. RAVINDRAN

S.A.No. 1061 of 2008

and

M.P. No.1 of 2008

1. V.T. Ittiyarkutty

Sree Egg Market

Coonoor 2

2. Theresa

W/o. Ittiyarkutty

... Appellants/2nd Defendant /
LR of the Decreased 1st Defendant

Vs.

Syndicate Bank

Rep. by its Manager

Figure of 8 Road

Nilgiris District.

... Respondent / Plaintiff

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against judgment and decree dated 26.02.2008 passed in A.S. No.2 of 2008 on the file of the learned District Judge (Appellate Authority), Nilgiris at Uthgamandalam reversing the judgment and decree dated 28.08.2000 passed in O.S. No.224 of 1997 on the file of the learned District Munsif of Coonoor.

For Appellants : Mr. S. Kingston Jerold

For Respondent : Mr. P. Srinivasalu

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 26.02.2008 passed in A.S. No.2 of 2008 on the file of the District Judge (Appellate Authority), Nilgiris at Uthgamandalam reversing the judgment and decree dated 28.08.2000 passed in O.S. No.224 of 1997 on the file of the District Munsif

Court, Coonoor.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. The defendants in O.S. No.224 of 1997 are the appellants in the second appeal.

4. Suit for recovery of money.

5. Briefly stated, according to the plaintiff, the second defendant, as the guardian and father of the first defendant, opened a Pigmy Deposit A/C. No.6009 on 02.11.1991 with the plaintiff's branch at Coonoor and the abovesaid account is to be matured on 02.02.1997 and on 14.09.1994, the second defendant, as the guardian and father of the first defendant, made an application for advance by way of loan on the aforesaid deposit for the sake of his minor son's expenses and availed a loan amount of Rs.40,000/- from the plaintiff's bank. The abovesaid sum of Rs.40,000/- had been paid to the second defendant vide loan on deposit A/c. No.189/94 and credited to S.B. A/c. No.6379 of the second defendant with the plaintiff's bank and the second defendant has also collected the said sum from his S.B. account on the same date. The second defendant had agreed to repay the borrowed sum with accrued interest as per the RBI guidelines as applicable from time to time. The second defendant, on 04.04.1995, approached the plaintiff's bank for the pre-mature closure of the Pigmy Deposit Account No.6009 in the name of the first defendant and the plaintiff's bank also closed the said account and paid a total sum of Rs.94,076/- being the proceeds with accrued interest thereon by crediting the same to the S.B. A/c. No.6379 of the second defendant with the plaintiff's bank and the second defendant had withdrawn the entire amount on the same day. At the time of the closure of the Pigmy Deposit Account, the plaintiff's bank by mistake paid the entire sum stood to the credit of the first defendant without deducting the loan amount on deposit and the second defendant, in all, only paid a sum of Rs.25,000/- towards the loan amount and there is a balance of Rs.15,000/- together with accrued interest, which he had availed and neglected to pay. Hence, the suit for recovery of money.

6. The defendants resisted the plaintiff's suit admitting

that the Pigmy Deposit Account was opened in the said bank in the name of the minor, the first defendant, and the same was closed on 04.04.1995 and the plaintiff's bank paid the balance amount and the documents after adjusting all the amount due thereon after due verification. Therefore, it is incorrect to state that by mistake the entire amount was paid to the first defendant and still there is a balance of Rs.15,000/- together with accrued interest to be paid by the second defendant. After verification of the accounts and settling the same, the plaintiff's bank cannot claim the suit amount stating that by mistake, the account had been closed. The suit is bad for non joinder of parties. There is no cause of action for the suit and hence, the suit is liable to be dismissed.

7. In support of the plaintiff's case P.W.1 was examined, Exs. A1 to A11 were marked. On the side of the defendants, D.W.1 was examined and no document has been marked.

8. On a consideration of the oral and documentary evidence adduced in the matter and the submissions put forth by the respective parties, the trial court was pleased to dismiss the plaintiff's suit with costs. On an appeal by the plaintiff, the first appellate court on an evaluation of the materials placed on record and the submissions put forth by the respective parties, was pleased to allow the appeal in part preferred by the plaintiff's bank and by way of the same, set aside the judgment and decree of the trial court and held that the plaintiff is entitled to a decree for Rs.16,168/- with proportionate costs with interest at the rate of 6% per annum from the date of the plaint till the date of realisation and dismissed the plaintiff's suit as against the first defendant. Impugning the judgment and decree of the first appellate court, the defendants have preferred the present second appeal.

9. At the time of the second appeal, the following substantial questions of law were formulated for consideration.

- 1) Whether the judgment and decree of the lower appellate court is sustainable especially when the deceased first defendant-minor could not be a borrower?
- 2) Whether the decree granted against the appellants personally is right especially when the appellants are not the borrowers as found by the lower

appellate court?

- 3) Whether the decree of the lower appellate court is sustainable especially when the suit is dismissed against the first defendant he being borrower represented by his guardian the first appellant from the respondent/bank?
- 4) Whether the lower appellate court is right in granting a personal decree against the second appellant she being the legal representative of the deceased first defendant?

10. The parties are not at issue with reference to the opening of the Pigmy Deposit Account with the plaintiff's bank by the second defendant as the guardian and father of the first defendant/minor in the name of the first defendant. It is also not in dispute between the parties that the second defendant had availed the loan of Rs.40,000/- against the abovesaid Pigmy Deposit account and following the sanction of the loan, it is seen that the loan amount had been credited to the S.B. A/c. No.6379 of the second defendant and the same had been withdrawn by the second defendant. Ex.A1 is the application for the loan made by the second defendant. Ex.A2 is the receipt given by the second defendant and Ex.A9 is the loan account statement copy. Further the parties are not at issue that the abovesaid Pigmy Deposit Account was prematurely closed by the second defendant and thereby the plaintiff's bank had credited the proceeds of the abovesaid deposit account amounting to Rs.94,076/- in the S.B. A/c. No.6379 of the second defendant and the same had been withdrawn by the second defendant. The abovesaid facts could be gathered from the copy of the Pigmy Deposit Account marked as Ex.A8 and the slip marked as Ex.A5.

11. Qua the loan amount obtained by the second defendant against the Pigmy Deposit Account, as above stated, Ex.A1 is the loan application form submitted by the second defendant. On a perusal of Ex.A1, it is seen that the lien has been created in favour of the plaintiff's bank for the abovesaid loan amount against the proceeds available in the Pigmy Deposit Account.

12. Now according to the plaintiff's bank, against the borrowal of the loan of Rs.40,000/-, the second defendant has paid only Rs.25,000/- vide Exs.A10 and A11. That only a sum of Rs.25,000/- has been paid by the second defendant under Exs.A10

and A11 has not been controverted by the second defendant. Though the second defendant has taken a plea that he has discharged the entire loan amount, however, no material worth acceptance has been projected by the second defendant to hold safely that he has discharged the entire loan amount particularly before the premature closure of Pigmy Deposit Account. In the abovesaid circumstances, as rightly held by the first appellate court, the second defendant is due to the plaintiff's bank a sum of Rs.15,000/- towards the loan transaction with accrued interest as per law.

13. The Pigmy Deposit Account had been prematurely closed by the second defendant and as abovestated, the plaintiff's bank has also disbursed the entire proceeds of the said account amounting to Rs.94,079/- by crediting the sum in the S.B. A/C. No.6379 of the second defendant, which had also been withdrawn by the second defendant on the same day.

14. Now according to the plaintiff's bank, while closing the Pigmy Deposit Account, the plaintiff's bank by mistake disbursed the entire amount without deducting the amount to be paid by the second defendant towards the loan transaction and therefore, seeking for the recovery of the balance loan amount to be paid by the second defendant amounting to Rs.15,000/- with accrued interest, according to the plaintiff's bank, it has been necessitated to institute the present suit.

15. When the availment of the loan of Rs.40,000/- against the Pigmy Deposit Account has not been controverted by the second defendant and when the materials disclosed that only a sum of Rs.25,000/- has been paid by the second defendant and no material has been projected by the second defendant to hold that he had discharged the entire loan amount, as rightly contended by the plaintiff's bank, the sum of Rs.15,000/- with accrued interest is liable to be paid by the second defendant to the plaintiff's bank. However, it is seen that though under Ex.A1, lien has been created in favour of the plaintiff's bank on Pigmy Deposit Account for the clearance of the loan amount, however, the plaintiff's bank by mistake, while prematurely closing of the Pigmy Deposit Account, had proceeded to disburse the entire proceeds of the same, without deducting the amount due to it towards the loan transaction. In the light of the abovesaid factors, merely because, the plaintiff's bank had paid the entire

proceeds of the Pigmy Deposit Account on which the lien had been created, on that score, it cannot be held that the loan in question had been discharged by the second defendant as per law. When the second defendant had failed to prove the plea of discharge of the loan by placing acceptable material, in such view of the matter, the first appellate court is found to be justified in holding that the second defendant is liable to pay Rs.15,000/- to the plaintiff's bank.

16. The first appellate court has also further held that since the plaintiff's bank had failed to recover the loan in time and also by mistake disbursed the entire proceeds of the Pigmy Deposit Account, on the delay caused due to the abovesaid facts, the plaintiff's bank would not be entitled to seek the interest as prayed for, accordingly, rightly proceeded to grant the interest in favour of the sum of Rs.15,000/- at the rate 6% per annum only from the date of the plaint till the date of realisation and not the interest amount as claimed by the plaintiff's bank in the plaint. The abovesaid determination of the first appellate court do not warrant any interference.

17. The defendants' counsel during the course of arguments would contend that when the plaintiff's bank after verifying the accounts had settled the same, cannot be allowed to turn back and contend that still the loan amount is due from the second defendant and therefore, according to him, the plaintiff bank is estopped from demanding the loan amount. However, the abovesaid contention does not merit acceptance. In this connection, as rightly contended by the counsel appearing for the plaintiff coupled with the right of lien which the bank had over the Pigmy Deposit Account viz-a-viz the loan amount disbursed to the second defendant, when it is noted that the plaintiff's bank had paid the entire proceeds of the Pigmy Deposit Account on the closure of the same to the second defendant without deducting the amount to be repaid by him towards the loan by way of mistake, it is seen that the position of law with reference to the same has been outlined in Section 72 of the Indian Contract Act 1872. Section 72 of the Indian Contract Act, 1872, reads as follows:

"72. Liability of person to whom money is paid, or thing delivered, by mistake or under coercion - A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it."

Applying the abovesaid position of law to the case at hand, it is noted that the plaintiff's bank had paid the entire proceeds of the Pigmy Deposit Account to the second defendant without deducting the amount due from the second defendant towards the loan transaction and moreso, when the plaintiff's bank is also having the right of lien over the proceeds of Pigmy Deposit Account against the loan amount and the abovesaid acts of the plaintiff's bank are only due to the mistake. The person who had benefitted by way of the abovesaid mistake is liable to repay the amount and cannot contend that he is not liable to make the payment. In this connection, the counsel appearing for the plaintiff's bank would rely upon the decision of the Apex Court reported in AIR 1990 Supreme Court 313 (Mahabir Kishre and others vs. State of Madhya Pradesh), wherein the Supreme Court has held that where a person derives unjust enrichment owing to the mistake committed at the expenses of another party and the retention of the enrichment is found to be unjust, Section 72 of the Indian Contract Act directs the party who had attained the unjust enrichment to repay the amount paid to him. The position of law has been outlined by the Apex Court in the abovesaid decision as follows:

(A) Contract Act (9 of 1872), S.72 - Unjust enrichment requires: first, that the defendant has been 'enriched' by the receipt of a "benefit", secondly, that this enrichment is "at the expense of the plaintiff", and thirdly, that the retention of the enrichment be unjust. This justifies restitution. Enrichment may take the form of direct advantage to the recipient's wealth such as by the receipt of money or indirect one for instance where inevitable expense has been saved.

18. In the light of the abovesaid discussions, when the second defendant is found to be the beneficiary of the loan transaction as well as the recipient of the proceeds of the Pigmy Deposit Account on its premature closure and the second defendant has failed to establish that he has discharged the entire loan amount which had been borrowed by him from the plaintiff's bank, even though the Pigmy Deposit Account has been opened in the name of the first defendant/minor, however, the same had been transacted only by the second defendant as the father and guardian of the first defendant/minor, in such view of the matter, taking into consideration the abovesaid factors in toto, the first appellate court is found to be justified in granting

the decree in favour of the plaintiff's bank as determined by it by rightly setting aside the judgment and decree of the trial court.

19. In such view of the matter, in my considered opinion, no substantial question of law, as such, is involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal, for the reasons aforesaid, are accordingly answered in favour of the plaintiff's bank and against the defendants/appellants.

20. For the reasons aforesaid, the judgment and decree dated 26.02.2008 passed in A.S. No.2 of 2008 on the file of the District Judge (Appellate Authority), Nilgiris at Uthgamandalam are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

bga

To

1.The District Judge (Appellate Authority),
Nilgiris at Uthgamandalam

2.District Munsif Court, Coonoor.

Copy To:

The Section Officer,
VR Section, High Court, Madras

+1cc to M/s.S.Kingston Jerold, Advocate, S.R.No.3292

S.A.No.1061 of 2008

CNR(CO)
SB(30/09/2021)