sIN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

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THE HONOURABLE **MR.JUSTICE K.KUMARESH BABU**

A.S.No.39 of 2002

American Express Bank Ltd.,
a Banking Company having
one of its Offices/ Branches
in New York, U.S.A. … 5th Defendant/Appellant

Vs

1.Corporation Bank
a Body Cororate under the
Banking Companies
(Acquisition and Transfer of undertakings)
Act of 1980, having its Head Office at
Mangalore in Karnataka State and a Branch,
interalia at 192 Mangalam Road, Tiruppur,
Tiruppur Taluk,
Represented by its Senior Manager and
Power of Attorney Agent
M.V.B.Mani … Plaintiff/ 1st Respondent

2.Kongarar Cotton and Synthetics (P) Ltd.,
a Company incorporated under the Companies Act,
having its Registered Office at 57,
Madathur Road, Pallapalayam Post
Udumalpet, Udumalpet in
Coimbatore District ... 1st Defendant/ 2nd respondent

3.R.Gurusamy … 2nd Defendant/ 3rd respondent
4.R.Pankajam … 3rd Defendant/ 4th respondent

5.Yapi Ve Kredi Bankasi A.S.,
a Banking Institution in Turkey
having one of its offices
at Danizili, Turkey. … 4th defendant/ 5th respondent

PRAYER: This First Appeal has been filed under Order 41 Rule 1 read with Section 96 of the Civil Procedure Code, against the judgment and decree dated 03.12.2001 made in O.S.No.322 of 1996, on the file of the Sub Court, Tiruppur.

For Appellant : Mr.J.N.Preethi
for M/s.King and Partridge

For Respondents : Mr.N.Sivabalan for R1
for Mr.S.Sethuraman

: Mr.Sam Jayaraj Houston for RR2 & 3
for M/s.Sarvabhauman Associates

: RR4 & 5 – no appearance

JUDGMENT

This Appeal suit has been filed as against the judgment and decree made in O.S.No. 322 of 1996, holding the defendants jointly and severally liable for the suit claim. For easy reference, the parties are identified as per their rank in the Original Suit.

2. The brief facts of the case is that the plaintiff had granted a

Foreign Documentary Bills Negotiation Facility to the first defendant herein. The defendants 1 to 3 had executed various documents gauranteeing the payment of the Facility that had been extended by the plaintiff. A Letter of Credit also seems to have been executed in favour of the plaintiff by the fourth defendant/ Bank. The payments by the fourth defendant to the plaintiff, were too have been effected through the fifth defendant on the due dates, but, however, there was a delay in payments/ honouring of Letter of Credits. There were correspondence between the plaintiff, fourth and fifth defendants and from those correspondences, it is found that the payment of amount had been unduly delayed. Therefore, the plaintiff had initiated the suit seeking for recovery of sum of Rs. 2,19,729/- together with interest for the delayed payment till the date of filing of the Suit at Rs.1,47,555/- and in total the suit amount claimed was Rs.3,67,284/-. The suit was contested only by the fifth defendant and the defendants 1 to 4 had remained ex-parte, the fifth defendant had filed this Appeal suit.

3. Heard Mr.J.N.Preethi, learned counsel appearing on behalf of M/s.King and Partridge for the appellant/ fifth defendant, Mr.N.Sivabalan, learned counsel appearing on behalf of Mr.S.Sethuraman, learned counsel for the first respondent/ plaintiff and Mr.Sam Jayaraj Houston, learned

counsel appearing on behalf of M/s.Sarvabhauman Associates for second and third respondent and 4^{th} & 5^{th} respondents remained exparte.

4. Mr.J.N.Preethi, learned counsel for the appellant would contend that there was no privity of contract between the fifth defendant and the plaintiff for holding that the fifth defendant also to be jointly and severally liable for the suit claim. She would vehemently contend that the fifth defendant was only the enabling Bank for the payment from the fourth defendant to the plaintiff. The fifth defendant cannot be held liable for any deficiency of service. She would further contend that the Letter of credit issued by the fourth defendant was duly honoured on receipt of payment from the fourth defendant and therefore, the fifth defendant ought not to have been held liable for payment of interest on the delayed payment. She would further contend that none of the original copy of the documents had been filed before the Court for the Court to come to the said conclusion. She would also contend that there was no issue framed as regards to the liablity of the fifth defendant in the terms of the alleged deficiency of service. She would further contend that the plaintiff had not proved its case by filing necessary statement of accounts for claiming the interest in tune with the RBI Circulars. She would also submit that the Court had failed to note that the defendants 1 to 4 had purposely remained ex-parte and that

therefore, the fifth defendant cannot be impelled with responsibility of payment. Therefore, she would seek intereference of this Court with the judgment and decree of the Court below and discharge the fifth defendant/ appellant from being jointly and severally liable for the suit claim.

5. Countering her arguments, Mr.N.Sivabalan, learned counsel appearing on behalf of the plaintiff/ first respondent would submit that the amount due to the plaintiff from the first defendant had all been paid but they had been paid much beyond the due dates for which the plaintiff is entitled for interest. The plaintiff being a Banking institution, deals with monies of various public and any delay in repayment of the amount due to it, the plaintiff bank would be entitled for interest. He would further submit that it is not the case of the appellant/ fifth defendant that the payment to it as and when had been received from the fourth defendant Bank on behalf of the first defendant, the suit amount had been transmitted immediately to the plaintiff. He would heavily rely upon Ex.P.12 to contend that the fourth respondent had intimated the plaintiff that the amount had already been sent to the fifth defendant Bank and that there is a delay only on the behalf of the fifth respondent to make the payment. He would submit that there was a confusion in the fifth defendant Bank as to where the amount should have

been remitted. When they had received such a deposit into their account for payment to a third party and if the instruction to the fifth defendant was not clear, it is for them to seek necessary clarification from the remitter of the amount as to where the amount should be credited. He would submit that the fifth defendant had not taken any steps to get clarification. He would submit that if the case of the fifth defendant is correct then it is the fourth defendant who had failed to give necessary instructions is also liable to pay the amount. That apart, the defendants 1 to 3 who had executed various security documents including repayment on the due date through the fourth defendant are also jointly and severally liable for the delayed payment as they have not taken any steps to get the amount disbursed on the due dates. He would submit that there is no error on the part of the Trial Court to hold the defendants 1 to 5 are jointly and severally liable for the payment of the Suit claim.

6. I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record.

7. In my considered view, the following issue would arise for

consideration by this Court.

1.Whether the plaintiff is entitled for interest?

2. Whether the defendants 1 to 5 would be jointly and severally liable for the delayed payment of interest?

Issues 1 and 2

8. The undisputed facts are that the first defendant had availed certain facilities in the course of his business from the plaintiff. It had also executed various security documents along with defendants 2 and 3. It is also not disputed that the fourth defendant had opened a Letter of credit in favour of the plaintiff. For honouring the Letter of Credit, an agreement had also been made between the 4 and 5 defendants for routing the payment to the plaintiff Bank on behalf of the defendants 1 to 3. It is also not disputed that the Letter of Credit had been honoured by the fourth defendant through the fifth defendant. It is also not disputed that payment to plaintiff had been made beyond the due dates much belatedly. Hence, the plaintiff Bank being a financial institution would be entitled for the interest in the delayed payments.

9. Now the question that arises before this Court is to who would be

liable to pay such interest as claimed by the plaintiff Bank. Eventhough, the fifth defendant/ appellant had claimed that various documents that were marked were only photocopies and that the Trial Court ought not to have relied upon such documents. I am of the view that such a stand at this stage at appeal suit cannot be entertained. The fifth defendant/appellant had a right to object the marking those documents, and from the record of proceedings, I do not find any objections that had been raised when the documents had been marked, which would only mean that they had admitted such documents. Further, the defendants had not produced any documents or have examined any witness too substantiate their claim that they had forwarded the payment, when the amount was credited to them from the fourth defendant Bank. If such facts had been let-in by the fifth defendant, then they could have been held not liable for payment of interest. Further, from Ex.P12, it could be seen that the fourth defendant had informed the plaintiff that the amount had already been forwarded to the fifth defendant for their payment to the plaintiff. It is admitted by the fifth defendant, as regards to when the payment should be made. I have already indicated that there has been no documents or evidence let-in by the fifth defendant to substantiate their claim and hence I am of the view that they had failed to dislodge the claim against them by producing any documents seeking any clarification from the fourth defendant as to whom the payment should be made. Only after the plaintiff had been taken steps to get the payment released to it, the fourth and fifth defendants have seem to looked into the matter and the payment was released thereafter. The defendants 1 to 3 on whose behalf the payment have to be made had also not taken any deligent steps to see that the amount is being transmitted to the plaintiff through the fourth and fifth defendants to honour their commitments.

10. In view of the aforesaid finding of the fact, I do not find any infirmity or illegality in the judgment and decree impugned before this Court. In fine, the Appeal Suit fails and is accordingly, dismissed. However there shall be no order as to costs.

12.07.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation:Yes/No
gba

K.KUMARESH BABU,J.

Gba

To

The Sub Court, Tiruppur.

A.S.No.39 of 2002

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