



WEB COPY



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2024

CORAM:

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

**OSA (CAD) NO.57 OF 2023
AND
CMP NO.12610 OF 2023**

Indus Ind Bank Limited
Rep. By its Manager
No.3, Village Road, Nungambakkam,
Chennai – 600 034.

... Appellant

Vs.

- 1.Sivakumar S/o.Boologapandian
Proprietor Muthuramman and Co.,
No.54, G.V.T. Complex,
Varadarajapuram, Nazrethpuram,
Chennai – 602 103.
- 2.Surya Exports and Imports
A Firm Rep. By its Proprietor
Mr.N.Surya Srinivas S/o.Bhaskara Rao,
Flat No.15, Rams Flats,
Second Floor, New No.5,
Old No.2-A, Madhavan Nair Road,
Mahalingapuram, Chennai – 600 034.



3. Indian Bank

Rep. By its Assistant Regional Manager

W-100, II Avenue, Anna Nagar,

Chennai – 600 040.

... Respondents

PRAYER: Appeal filed under Order XXXVI Rule 11 of Original Side Rules read with C1 XV of Letters Patent, to set aside the order of the learned Single Judge dated 09.06.2022 made in C.S.(Com.Div) No.591 of 2018.

For Appellant : Mr.E.Om Prakash
Senior Advocate
for M/s.Ramalingam Associates

For Respondent-1 : Mr.SharathChandran
for M/s.Govind Chandrasekhar

For Respondent-2 : No appearance

For Respondent-3 : Mr.G.V.Kalyanaraman
for M/s.Aiyar&Dolia

J U D G M E N T

(Judgment of the Court was made by **R.SUBRAMANIAN, J.**)

This appeal is at the instance of the Bank which figured as the second defendant in C.S.(Comm.Div) No.591 of 2018.

2.For convenience, the parties will be referred to as per their



rank in the Suit.

WEB COPY

3.The plaintiff sued for recovery of a sum of Rs.1,15,09,628/- with interest at 18% on the principal amount of Rs.1,06,33,863/- from the date of plaint till the date of realization. According to the plaintiff, he had supplied Steel (TMT Bars) weighing about 2,55,540 Kgs at Rs.38.20 per kg to the first defendant under an Invoice dated 22.05.2017. A Bill of Exchange was drawn by the plaintiff and the same was discounted with the plaintiff's Banker, namely the third defendant. The third defendant on receipt of the Bill of Exchange, forwarded it to the second defendant, which is the Banker of the first defendant / purchaser seeking its acceptance for collection. According to the plaintiff, the second defendant initially accepted the Bill of Exchange, however, subsequently came up with a false reason that the goods were returned by the buyer for quality issues and therefore, it is not liable to pay. The plaintiff would further plead that having accepted the Bill of Exchange through a SFMS message on 29.05.2017, the second defendant cannot resile from the contract and refuse to pay on an imaginary pretext of return of the goods. The plaintiff hence sued for recovery.



WEB COPY

4.The first defendant did not appear either in person or through counsel duly instructed before the Trial Court. The second defendant though appeared through a counsel did not file a written statement within the time allowed under law.

5.The plaintiff was examined as P.W.1 and Exs-P.1 to P.12 were marked. One Mr.K.N.Choudhary, Senior Manager of Indian Bank, the Banker of the plaintiff was examined as C.W.1 and one Mr.K.V.S.Prakash Rao, former Additional General Manager of the Anna Nagar Branch of Indian Bank was examined as C.W.2.

6.The only contention that was raised by the second defendant Bank was that the transaction was not a 'Discounting of Bill' but it was a 'Document Collection Method' which according to the second defendant will not involve liability for payment on its part. The second defendant did not also let in any evidence. Upon consideration of the evidence on



WEB COPY

record, the Commercial Division came to the conclusion that the transaction is one of bill discounting which would fall within the scope of Section 37 of the Negotiable Instruments Act, 1881 and therefore, as the collecting Banker who had assured payment, the second defendant would also be jointly and severally liable along with the first defendant for the Suit claim. The learned Trial Judge also took note of the fact that there was neither pleading nor evidence on the side of the second defendant Bank. The learned Trial Judge also granted interest at 9% per annum on the Suit claim. The Suit cost was directed to be paid by the first and second defendants. Aggrieved by the order, the second defendant Banker is on appeal.

7. Heard Mr. E. Om Prakash, learned Senior Counsel appearing for the appellant and Mr. Sharath Chandran, learned counsel appearing for the first respondent and Mr. Kalyana Raman, learned counsel appearing for the third respondent / third defendant Indian Bank.

8. Mr. Om Prakash, learned Senior Counsel appearing for the



WEB COPY

appellant would vehemently contend that the learned Trial Judge was not right in treating the transaction as a 'Bill Discounting Transaction' where the appellant had assured payment. According to the learned Senior Counsel, the transaction is only a 'Document Collection Method' which does not involve any liability on its part as a collecting Bank.

9. Inviting our attention to the correspondence that has been marked as Exs-P.5 to P.8, the learned Senior Counsel would contend that there is no indication in those documents to show that there was an undertaking to pay in order to create a financial liability on the part of the second defendant. According to the learned Senior Counsel, the e-mail dated 06.06.2017 was issued on the pretext that the e-mail will not amount to an acceptance and the acceptance had to follow.

10. We are unable to accept the said submission of the learned Senior Counsel for the simple reason that there is neither a plea nor evidence in support of the said contention of the learned Senior Counsel. The series of transactions is as follows:



WEB COPY

(i) On 24.05.2017, the third defendant / the plaintiff's Banker had forwarded a collection schedule to the second defendant requiring the second defendant to send its acceptance through SFMS and requiring the second defendant Bank / appellant herein to pay the bill amount of Rs.1,02,49,709/- on the maturity date i.e., 22.08.2017. The second defendant Banker had confirmed the same by sending a SFMS message on 29.05.2017. The print out of the said message has been marked as Ex-P.6.

11.A perusal of the document shows that the type of message is 'IFN 754' message and it also indicates the due date as 22.08.2017. It is not in dispute that this message pertains to the suit transaction. The Circular of the Reserve Bank of India, issued regarding SFMS messages between Banks would show that MT 754 amounts to Advice of Payment / Acceptance / Negotiation and it is also seen from the said Circular that SFMS messages are sent in MT 754 only when the transaction is secured by a LC or BG or an OCC limit.



WEB COPY

12. Though Mr. E. Om Prakash, learned Senior Counsel would contend that there was no underlying LC or BG or an OCC limit in favour of the first defendant to support these transactions, we are unable to accept his contention as the arrangement between the first and second defendants are exclusively within their knowledge and the presence or absence of LC or BG or an OCC limit will not affect the liability of the second defendant as against third parties more so when the Bank has chosen to issue a SFMS message confirming that the bill will be cleared on 22.08.2017. This is also confirmed by the e-mail dated 06.06.2017 wherein there is a clear and categorical undertaking by the appellant / Bank to pay the bill amount on the due date.

13. A similar question was considered by a Single Judge of this Court in ***REVATHI – C.P. EQUIPMENTS LTD. VS. SANGEETHA TUBEWELL CORPORATION, MADRAS [1989 (1) L.W. 320]*** wherein the impact of Sections 32 and 37 of the Negotiable Instruments Act, 1881, was considered. This Court ultimately concluded that if the Bill of



WEB COPY

Exchange is accepted by a Bank that by itself confirmed a separate and independent contract. This Court also referred to the judgment of the Hon'ble Supreme Court in ***U.P.CO-OPERATIVE FEDERATION LTD. VS. SINGHCONSULTANTS & ENGINEERS P. LTD., [1987 (4) S.C. 406]*** wherein the Hon'ble Supreme Court considered a similar question and had observed as follows:

“The letter of credit has been developed over hundreds of years of international trade. It was most commonly used in conjunction with sale of goods between geographically distant parties. It was intended to facilitate the transfer of goods between distant and unfamiliar buyer and seller. It was found difficult for the seller to rely upon the credit of an unknown customer. It was also found difficult for buyer to pay for goods prior to their delivery. The bank's letter of credit came into existence to bridge this gap. In such transactions, the seller (beneficiary) receives payment from issuing bank when he presents a demand as per the terms of the documents. The bank must pay if the documents are in order and the terms of credit are satisfied. The bank, however, was not allowed to determine whether the seller had actually shipped the goods or whether the goods conformed to the requirements of the contract. Any dispute between the seller and the buyer must be settled between themselves. The Courts, however, carved out an



WEB COPY



exception to this rule of absolute independence. The Courts held that if there has been a "fraud in the transaction", the bank could dishonour beneficiary's demand for payment. The Courts have generally permitted dishonour only on the fraud of the beneficiary, not the fraud of somebody else."

14. In ***INDIAN BANK VS. KAPOL CO-OP. BANK LTD. AND OTHERS [2009 (5) MH.L.J 318]*** the Bombay High Court has also taken a similar view after considering the impact of Section 37 of the Negotiable Instruments Act, 1881.

15. Section 37 of the Negotiable Instruments Act, 1881, reads as follows:

"37. Maker, drawer and acceptor principals.—The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be. "



Once the Bill of Exchange is accepted by the Bank, the Banker would be liable as an acceptor under Section 37 of the Act.

16. In the light of the law laid down by the Hon'ble Supreme Court as well as this Court, we do not think that we could countenance the contentions of the learned Senior Counsel for the appellant. Once an acceptance is issued, the Bank cannot go back and contend that the acceptance was not backed by proper documentation. We therefore see no reason to interfere with the judgment of the learned Single Judge and the appeal fails and the same is dismissed. However, in the circumstances, there shall be no order as to costs in this appeal. Consequently, connected Civil Miscellaneous Petition is closed.

[R.S.M., J.]

[R.S.V., J.]

03.01.2024

Index : No

Internet : Yes

Neutral Citation : No

Speaking order

TK

To

The Assistant Regional Manager

Indian Bank, W-100, II Avenue, Anna Nagar,



Chennai – 600 040.

WEB COPY



R.SUBRAMANIAN, J.

AND

R.SAKTHIVEL, J.

TK

OSA (CAD) NO.57 OF 2023



WEB COPY



03.01.2024