IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.10.2025
PRONOUNCED ON : 06.11.2025

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

A.S. No.481 of 2020
and
C.M.P.No.6209 of 2020

State Bank Of India
Richmond Town Branch (11352),
No.56, Mission Road,
Richmond Town,
Bangalore - 560 027. ...Appellant

Vs.

1.M/S.RV Consulting Services Pvt Ltd
Rep. By Its Manager (Accounts)
And Authorized Signatory V.Sudhakar Reddy
At Plot No.111, Road No.10,
Jubilee Hills, Hyderabad - 500 033.

2. The Superintendent Engineer
Tangedco, Udumalpet Eletricity District Circle,
Udumalpet 642 154.

3. M/s.The Professional Couriers,
Corporate Office,
At No.101, Jade Arcade,
Mg Road, Paradise,
Secunderabad - 500 003

4. State Bank Of India

No.7A, Katcheri Road,
Udumalpet (No Relief Sought For In The Appeal)

5. Mr.Sakthikumar
Customer Service,
M/s.Gamesa Wind Turbines Pvt. Ltd.,
At 24, U.K.P.Street, Gandhi Nagar,
Udumalpet - 642 154. ...Respondents

PRAYER: Appeal Suit filed praying to set aside the decree and Judgment dated 30.04.2019 of the trial Court passed in O.S.No.154 of 2014 on the file of the II Additional District and Sessions Court, Tiruppur with costs and thus render justice.

For Appellant : Mr.M.L.Ganesh,
Mr. S.Arun Kumar, Advocates.

For Respondents : Mr.S.R.Raghunathan, Mr. R. Karthikeyan,
Mr. R. Bharanidharan, Advocates for R1.
Ms.J.Hemalatha Gajapathy,
Standing Counsel for R2.
Mr. Ahmad Associates for R3.
R4 – served.
Mr. J. Antony Jesuraj for R5.

J U D G M E N T

Heard.

2.This appeal has been filed challenging the Judgment passed in

O.S.No.154 of 2014 on the file of the II Additional District and Sessions Court, Tiruppur with costs.

3.In this appeal, the fourth defendant is the appellant and the plaintiff and the defendants 1 to 3 & 5 are the respondents before the trial Court. Parties are hereinafter referred as per their rank in the trial Court for the sake of convenience.

4.Plaintiff's case in brief: The plaintiff is a wind-power electricity generator company at Udumalpet that supplied power to the 1st defendant/TANGEDCO. In consideration, the 1st defendant issued Cheque No. 155841 dated 03.10.2013 for Rs.10,12,921/-. The cheque was received by the 5th defendant, the plaintiff's authorised agent, who forwarded it to the plaintiff through the 2nd defendant's courier service on 05.10.2013. When the consignment did not arrive, the plaintiff enquired and, on 15.10.2013, the 2nd defendant informed that the consignment had been lost in transit, later confirming this in writing on 23.10.2013. Even before receiving that written confirmation, the plaintiff, by letter dated 15.10.2013, requested the 1st defendant to instruct the 3rd defendant (the drawee bank) to stop payment of the cheque. The 1st defendant, however, failed to act diligently and wilfully neglected to protect the plaintiff's interests. The 1st defendant is liable to pay the cheque amount of Rs.10,12,921/-.

5.The cheque was lost due to the 2nd defendant's carelessness and negligence; hence, the 2nd defendant is personally liable to compensate the plaintiff for the loss. The mere lodging of a police complaint does not absolve the 2nd defendant of liability to make good the loss and settle the cheque amount. Notably, although the theft and a police complaint dated 10.10.2013 are asserted, the 2nd defendant disclosed these facts to the plaintiff only on 15.10.2013, after undue delay.

6.Subsequently, one Sayeed Maqsood Elahi fraudulently encashed the cheque through the 4th defendant. The plaintiff's name on the cheque was scored out and replaced with "Sayeed Maqsood Elahi" without any authentication. The 4th defendant failed to verify the genuineness of this alteration and negligently honoured the cheque. The whereabouts of the said person who encashed the cheque are not known to the plaintiff. Hence, the 4th defendant is exclusively responsible for the fraud committed in respect of the cheque. The 4th defendant made the payment in contravention of the directions and circulars issued by the Reserve Bank of India and is, therefore, liable to compensate the plaintiff for the loss.

7.The 3rd defendant, in connivance with the 4th defendant, permitted the encashment without due and proper verification. As the banker maintaining the 1st defendant's account, the 3rd defendant owed a duty to alert the 4th defendant to the manipulation and alteration in the cheque and to inform both the plaintiff and the 1st defendant of the fraudulent encashment. No such intimation was given. The 3rd defendant thus failed to safeguard the plaintiff's interests and is equally liable for the loss.

8.The 5th defendant is not liable for the cheque amount. Although the 4th defendant has made certain allegations against the 5th defendant, he has been impleaded only as a formal party to the proceedings.

9.Accordingly, the plaintiff has filed this suit seeking a direction to defendants 1 to 4 to pay Rs.10,12,921/- together with interest at 18% per annum from 15.10.2013 until realisation.

10.The written statement of the 1st defendant in brief: This defendant issued a cheque for Rs.10,12,921/- in favour of the plaintiff, dated 03.10.2013, drawn on the State Bank of India, Udumalaipet Branch, and entrusted the same to the 5th defendant in accordance with the arrangement between the plaintiff and this defendant. It was the duty of the plaintiff to ensure the cheque was duly encashed.

11.This defendant upon receiving the plaintiff's letter dated 18.10.2013, stating that the courier had lost the cheque at Hyderabad, came to know of the issue. This defendant's staff then inquired and learned that the cheque had already been encashed on 13.10.2013 at SBI, Richmond Town Branch, Bengaluru. Had the plaintiff acted promptly, the fraudulent encashment could have been averted. The loss occurred solely due to the plaintiff's negligence; therefore, this defendant denies liability and submits that the suit is liable to be dismissed.

12.The written statement of the 2nd defendant in brief: This defendant submits that the suit is bad for non-joinder of necessary parties, namely Mr. Sayeed Maqsood Elahi and M/s. Sagar Cements Limited. There is no privity of contract or legal relationship between the plaintiff and this defendant; accordingly, the plaintiff has no right to institute the present suit against this defendant.

13.It is specifically denied that the 5th defendant has not entrusted to this defendant any cover containing the cheque allegedly issued by the 3rd defendant in favour of the plaintiff, or that such cover was lost in transit. The consignment bearing No. UPT0844378 dated 05.10.2013, booked by M/s. Sagar Cements Limited, was duly intimated to the consignee. An oral complaint was lodged with the Jubilee Hills Police on 10.10.2013, followed by a written complaint on 23.10.2013. The courier delivery person had parked outside Karur Vysya Bank, Jubilee Hills Branch, leaving his handbag in the vehicle; upon return, he discovered that 27 covers were missing, including the one pertaining to M/s. Sagar Cements Limited. On 10.10.2013 itself, this defendant informed both the cement company and the plaintiff of the loss of the cheque, and also approached the 3rd defendant-bank requesting stoppage of payment on the said instrument.

14.The written statement of the 3rd defendant in brief: This defendant bank maintains the 1st defendant's account. The 1st defendant issued a cheque dated 03.10.2013 for Rs.10,12,921/- in favour of the plaintiff. The loss of that cheque in transit is solely attributable to the 2nd defendant, who also delayed communicating the loss to both the 1st defendant and this defendant bank. Although the plaintiff came to know of the loss on 10.10.2013, he notified the 1st defendant only on 17.10.2013.

15.It is specifically denied that defendants 1 to 4 colluded with or aided Mr. Sayeed Maqsood Elahi in encashing the cheque or withdrawing the funds. The alteration on the cheque, where the original payee's name was struck out and another inserted, bore a counter-signature that matched the 1st defendant's genuine signature; accordingly, there was no apparent reason for this defendant to suspect irregularity. The suit is, therefore, vitiated by non-joinder of necessary parties and is liable to be dismissed.

16.The written statement of the 4th defendant in brief: Though the plaintiff came to know of the loss of the cheque on 10.10.2013, he informed the 1st defendant only on 17.10.2013. Although the payee's name on the cheque had been altered, the alteration was duly counter-signed, and the counter-signature matched the drawer's specimen. There was therefore no cause for suspicion; the cheque was cleared and the amount paid in good faith, without any negligence on the part of the 4th defendant.

17.According to the 4th defendant's reply, one Sayeed Maqsood Elahi encashed the cheque on 17.10.2013, withdrew Rs.2,00,000/- on 19.10.2013, and a further Rs.8,00,000/- on 21.10.2013. The 5th defendant ought to have immediately notified the plaintiff and taken steps to stop payment. This lethargic conduct of the 5th defendant suggests possible collusion with the said Sayeed Maqsood Elahi. The suit is also vitiated by non-joinder of a necessary party, namely Mr. Sayeed Maqsood Elahi as a defendant.

18.The written statement of the 5th defendant in brief: This defendant worked for the plaintiff and coordinated with the 1st defendant in relation to the transaction. He collected the cheque dated 03.10.2013 from the 1st defendant on the same day and dispatched it through Professional Couriers, Udumalaipet Branch, under Receipt No. 0844378 dated 05.10.2013. The dispatch was duly intimated to the plaintiff by e-mail dated 08.10.2013.

19.Thereafter, by e-mail dated 10.10.2013, the plaintiff informed this defendant that the cover containing the cheque had not been delivered. This defendant immediately notified the 1st defendant of the non-delivery by letter dated 15.10.2013, which the 1st defendant acknowledged on 17.10.2013. This defendant had no role in the loss of the cheque during transit and was neither negligent nor in default. Accordingly, the suit against this defendant is misconceived and liable to be dismissed.

20.The trial court, after framing the necessary issues, decreed the suit against the 4th defendant (the collecting bank) and dismissed it in its entirety as against defendants 1 to 3 and 5. The 4th defendant preferred this appeal; the plaintiff did not file any appeal or cross-appeal against the dismissal as against defendants 1 to 3.

21.The appellant assails the trial court's judgment, inter alia, on these grounds: (i) the trial court failed to appreciate that the cheque amount was unlawfully withdrawn by Mr. Syed Maqsood Elahi who, despite being the person responsible for the fraudulent encashment, yet he was not impleaded, rendering the suit bad for non-joinder of a necessary party; (ii) the plaintiff lodged the complaint belatedly; (iii) the 2nd defendant failed to deliver the cheque and, through careless and negligent conduct, caused its loss in transit; and (iv) in these circumstances, the trial court erred in fastening the entire liability on the appellant when the wrongful act was attributable to the negligence and omissions of the other defendants.

22.The points to be considered in this appeal are:

1.Whether the suit is bad for non-joinder of necessary party (the fraudster)?

2.Whether SBI Bangalore Branch can be held liable for payment made on an altered or forged cheque, despite absence of privity of contract with the plaintiff?

3.Whether protection under Section 131 of the Negotiable Instruments Act, 1881, applies to the 4th defendant?

4.Whether fastening the entire liability upon the 4th defendant / appellant is justifiable?

5.Whether the Judgment and decree of trial court are liable to be set aside?

23.Issues No.1 : The appellant-bank's principal contention is that the suit is vitiated by non-joinder of the third party who actually encashed the cheque, and that, in the absence of privity of contract between the plaintiff and the collecting branch at Bengaluru, no liability can be fastened on it. The appellant further claims protection under Section 131 of the Negotiable Instruments Act, 1881, asserting that the cheque was collected in good faith and without negligence.

24.This Court is not persuaded by that contention. The absence of the third party, alleged fraudster does not render the suit defective for non-joinder of necessary party, as an effective decree can still be passed against the bank in his absence.

25.It bears emphasis that the appellant bank never ascertained the fraudster's identity or whereabouts. Had it exercised due diligence in verifying the credentials of the person who encashed the cheque, his identity could have been established and appropriate steps taken to recover the wrongfully withdrawn amount.

26.The materials on record further shows that the individual who executed the fraudulent transaction produced only a voter identity card when opening the account. Given that his true identity and present whereabouts remain unestablished, the 1st defendant's plea that the suit is defective for non-joinder, as though his particulars were known, is wholly untenable.

27.For the reasons discussed, the objection of non-joinder of a necessary party fails, and the issue is determined in the plaintiff's favour.

28.Issue Nos.2 and 3: The collecting banker's liability in these circumstances is not contractual but arises in tort for conversion, since the banker is under a legal duty to exercise reasonable care when collecting a cheque for someone purporting to be the payee. Where, as here, the cheque admittedly bore an alteration in the payee's name, the bank was obliged to verify the instrument before permitting encashment. Its failure to do so constitutes clear negligence, disentitling it to the statutory protection of Section 131 of the Negotiable Instruments Act, 1881.

29.It is well settled by the Hon'ble Supreme Court in ***Re Canara Bank v. Canara Sales Corporation [(1987) 2 SCC 666]*** and ***Kerala State Co-operative Marketing Federation v. State Bank of India [(2004) 2 SCC 425)]*** that a collecting banker is liable to the true owner of a cheque if the collection is made negligently or in disregard of obvious defects or suspicious circumstances.

30.A banker presented with an instrument showing an apparent alteration must exercise heightened caution and prudence. Here, the 4th defendant failed to undertake even the minimum verification a prudent banker would perform before honouring such a cheque. Passing the instrument without proper inquiry or confirmation from the drawer's branch, despite the alteration being evident on its face, clearly establishes negligence and a lack of due diligence on the part of the 4th defendant bank.

31.It is contended that the cheque in question bore the alteration of the payee's name with a counter-signature purporting to be that of the drawer, and hence the same was a valid instrument. This Court cannot accept that plea. Section 87 of the Negotiable Instruments Act provides that any material alteration of a negotiable instrument such as a change in the name of the payee renders the instrument void unless made with the drawer's consent and duly authenticated by his signature before the cheque leaves his possession. The alteration of the payee's name goes to the root of the instrument as it alters the person entitled to receive payment and therefore constitutes a material alteration. The alleged counter-signature cannot validate an alteration effected after delivery or without the drawer's conscious authorization. Consequently, the collecting bank, having honoured a cheque that was ex facie altered, acted negligently and cannot claim the statutory protection of Section 131 of the Act.

32.The material records, including the communication from the 3rd defendant, State Bank of India, Udumalaipet Branch, shows that the 4th defendant made no enquiry or verification with the drawer's branch before clearing the disputed cheque. This omission is particularly significant given the visible alteration in the payee's name and the high-value nature of the transaction. The duty to act without negligence applies equally to a collecting banker as it does to the drawee bank.

33.Accordingly, this Court holds that the 4th defendant did not discharge its statutory duty under Section 131 of the Negotiable Instruments Act, 1881, and is therefore not entitled to the statutory protection afforded to a collecting banker acting in good faith and without negligence. This issue is, hence, answered against the 4th defendant/appellant.

34.Issue No. 4: The trial court rightly exonerated defendants 1, 3, and 5 of liability. The 1st defendant issued the cheque at the plaintiff's instance and handed it to the 5th defendant. Intimation of the loss of the cheque reached the 1st defendant only on 18.10.2013, by which time the cheque had already been cleared. The record discloses no evidence of negligence on the part of the 1st defendant.

35.There is likewise no act on the part of the 3rd defendant-bank that prejudiced the plaintiff's rights. On the contrary, the evidence shows that the 4th defendant-bank cleared the altered cheque without seeking confirmation or verification from the drawer's branch i.e the 3rd defendant-bank. Accordingly, there is no basis to fasten liability on the 3rd defendant.

36.The 5th defendant, acting as the plaintiff's agent, merely collected the cheque and entrusted it to the 2nd defendant, courier for delivery to the consignee. The consignment was admittedly booked in the name of M/s. Sagar Cements Limited, a sister concern of the plaintiff. Beyond this limited role, the 5th defendant had no involvement in subsequent events, and the plaintiff has sought no specific relief against him.

37.In these circumstances, the trial court's exoneration of defendants 1, 3, and 5 is just and proper and warrants no interference.

38.The trial court's exoneration of the 2nd defendant, Professional Couriers, is not sound. The evidence on record clearly establishes that the cheque was entrusted to it for safe delivery and that the loss, followed by the fraudulent encashment, stemmed solely from its negligence in transit. As a commercial courier engaged for consideration, the 2nd defendant stood as a bailee under Sections 148–152 of the Indian Contract Act, 1872, and owed a corresponding duty to exercise reasonable care and diligence in safeguarding the bailed article.

39.The 2nd defendant's explanation, that its delivery employee parked his vehicle outside Karur Vysya Bank, Jubilee Hills Branch, left his handbag unattended, and returned to find 27 covers stolen, including the one containing the subject cheque, amounts to gross negligence in handling entrusted consignments. Leaving valuable documents unattended in a public place is a plain breach of the bailee's duty of care. As the employer, the 2nd defendant is vicariously liable for the negligence of its servant committed in the course of employment.

40.Further, the evidence shows that although the theft occurred on 05.10.2013, the 2nd defendant gave only an oral intimation to the plaintiff on 15.10.2013 and issued a written communication only on 23.10.2013. This unexplained delay in reporting the loss and notifying the concerned parties deprived the plaintiff of the opportunity to take timely steps to stop payment of the forged cheque. The delay and negligence of the 2nd defendant have directly contributed to the fraudulent encashment.

41.The trial court's finding that only the 4th defendant (the collecting bank) is liable under Section 131 of the Negotiable Instruments Act, 1881, without acknowledging or apportioning the concurrent negligence of the 2nd defendant, is untenable. While the collecting bank is primarily responsible for having collected an altered instrument without due diligence, the 2nd defendant’s negligence was the proximate and precipitating cause that enabled the fraudulent encashment. Both are joint tort-feasors, and the loss would not have occurred but for the courier’s failure to secure delivery of the cheque.

42.In these circumstances, this issue is answered thus: a complete exoneration of the 2nd defendant, courier is unsustainable. On a consideration of the record and rival submissions, this Court finds that the loss of cheque amount of Rs. 10,12,921/- resulted from the concurrent negligence of (i) the 2nd defendant/3rd respondent in appeal, Professional Couriers, and (ii) the 4th defendant/appellant, the collecting bank, State Bank of India, Richmond Town Branch. The evidence shows that the cheque entrusted to the 2nd defendant was lost in transit, enabling a third party to alter and encash it; the 4th defendant then collected and credited the proceeds of a materially altered instrument without exercising the due diligence required under Section 131 of the Negotiable Instruments Act, 1881.

43.Accordingly, negligence is apportioned as 75% to the 4th defendant (collecting bank) and 25% to the 2nd defendant (courier). However, since the plaintiff did not file an appeal or cross-appeal against the dismissal of the suit as against the 2nd defendant, that decree has attained finality. Consequently, in this appeal filed solely by the 4th defendant, no executable monetary liability can be fastened on the 2nd defendant.

44.Accordingly, while this Court records the concurrent negligence and apportionment of fault, the operative decree against the 4th defendant is modified to fix its liability at 75% of the suit claim, Rs.7,59,690.75, rounded to Rs. 7,59,691 (Rupees Seven lakh fifty-nine thousand six hundred and ninety-one only), together with proportionate interest and costs as awarded by the trial court.

45.For completeness, this Court records the 25% negligence attributed to the 2nd defendant–courier; however, in the absence of any appeal by the plaintiff, this finding does not disturb the finality of the decree in the 2nd defendant's favour. The plaintiff is, if so advised, at liberty to pursue an independent remedy against the 2nd defendant in accordance with law.

46.Save for the foregoing modification, all other findings and directions of the trial court stand affirmed and unaltered.

47.In light of the foregoing discussion and findings on the issues, this Court concludes as follows:

(i) This Court affirms the trial court's finding exonerating defendants 1, 3, and 5 from liability.

(ii) The trial court's fixation of the entire liability on the 4th defendant–bank is modified: both the 2nd defendant, Professional Couriers, and the 4th defendant, collecting bank, were negligent in discharging their respective duties, and their concurrent negligence jointly caused the plaintiff's loss.

(iii) Having regard to the degree and nature of negligence, liability is apportioned 75:25, fixing seventy-five percent on the 4th defendant-bank and twenty-five percent on the 2nd defendant-courier.

(iv) The plaintiff is entitled to recover the decretal amount of Rs.7,59,691/- (being 75% of the suit claim) from the 4th defendant/appellant, to the extent of its apportioned liability, together with proportionate costs, interest at 9% per annum from the date of plaint to the date of decree, and thereafter interest at 6% per annum from the date of decree until the date of realisation.

(v) Subject to the above, the trial court's judgment and decree are otherwise affirmed in full.

48.In the result, the appeal is partly allowed to the limited extent set out above. Consequently, all connected miscellaneous petitions, if any, stand closed.

06.11.2025

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Index: Yes / No
Speaking Order / Non-speaking Order
Neutral Citation: Yes / No

To

1.The II Additional District And Sessions Court,
Tiruppur.

2.The Section Officer,
V.R.Section,
High Court Of Madras,
Chennai.

DR. A.D. MARIA CLETE, J

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A.S. No.481 of 2020

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