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S.A.No.347 of 1998

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 22/08/2025

CORAM:

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

S.A.No.347 of 1998

- 1.Hariprasad Sureka (Died)
- 2.Arunkumar Sureka
- 3.Anand Kumar Sureka
- 4.Kishore Kumar Sureka

: Appellants

(Appellants 2 to 4 are brought on record as
legal representatives of the deceased
sole appellant vide order dated 04.03.2022
made in C.M.P.(MD)Nos.4704 to 4706 of 2017 in
S.A.(MD)No.347 of 1998)

.VS.

- 1.The Bank of Baroda,
through its Branch Manager,
154-A, Victoria Street,
Tuticorin.
- 2.The Bank of India,
through its Branch Manager,
Bani, Ranchi District,
Bihar - 836 201.

: Respondents



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PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.No.202 of 1994, on the file of the Subordinate Court, Tuticorin, dated 28.11.1997, reversing the Judgment and decree passed by the Principal District Munsif, Tuticorin made in O.S.No.463 of 1999, dated 10.09.1991.

For Appellants : Mr.P.Senthil

For Respondents : No appearance

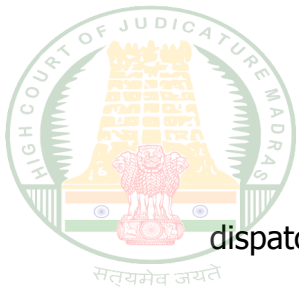
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J U D G M E N T

This Second Appeal is directed against the judgment and decree passed by the learned Subordinate Judge, Tuticorin, in A.S.No.202 of 1994, whereby the judgment and decree of the trial court in O.S.No.463 of 1990, passed by the learned Principal District Munsif, Tuticorin, decreeing the plaintiff's suit for recovery of money, was reversed. The appellant herein was the plaintiff before the trial court, and the respondents were the defendants.

2. The brief facts giving rise to the litigation are as follows:

The plaintiff is engaged in the business of selling salt in Thiruvananthapuram. In the normal course of its trading activities, the plaintiff



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dispatched 350 bags of salt worth Rs.5,125/- to a buyer, Achhum Ansari, residing at Bano in the State of Bihar. The dispatch was made through the Indian Railways under Railway Receipt No.363747 dated 08.06.1987. In order to facilitate the transaction, the plaintiff availed of a bill purchase facility, commonly referred to as an "Hundi," from the 1st defendant Bank of India. Under this informal credit arrangement, the plaintiff was provisionally credited with the amount of Rs.5,125/- on the understanding that the payment would be recovered by the 1st defendant from the buyer through its Bano branch, i.e., the 2nd defendant. The documents, viz., including the railway receipt were endorsed in favour of the bank for this purpose. The understanding was that the amount would be settled after the realization of the bill by the 2nd defendant. The 1st defendant, on 09.06.1987, credited the plaintiff's account with Rs.5,125/-. However, the amount was not recovered by the 2nd defendant from the buyer, and the documents were neither returned to the plaintiff nor was any formal intimation given of non-realization. Subsequently, the 1st defendant debited the plaintiff's account with Rs.5,870.50 (Rs.5,125/- plus interest), allegedly on account of non-payment by the consignee. The plaintiff protested against such unilateral debit, asserting that the failure to realize the bill was due to the negligence or inaction of the 2nd defendant and that the 1st defendant had assumed full responsibility for the collection. The plaintiff contended that once the bank had accepted the railway receipt and assumed the duty to collect or



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return, any loss arising from the failure to perform such duty would lie on the bank and not the consignor. Hence, the plaintiff filed a suit seeking recovery of Rs.8,235.50, inclusive of the principal amount and interest, along with costs.

3. The 1st defendant resisted the suit by contending that the plaintiff had full knowledge of the transaction, that the consignee failed to honour the bill, and that all due steps had been taken. The 2nd defendant denied liability, claiming that the bill was not realized and that there was no negligence on its part.

4. Before the Trial Court, on the side of the plaintiff, the plaintiff himself was examined as P.W.1, and 12 documents were marked as Exhibits A1 to A12. On the side of the defendants, two witnesses were examined as D.W.1 and D.W. 2, and two documents were marked as Exhibits B1 and B2.

5. The trial court held that the 1st defendant was negligent and liable to compensate the plaintiff, including interest at 12% per annum on the amount of Rs. 5,870.50 from 29.03.1988 until payment. The 1st defendant was held liable to pay the claim, while the 2nd defendant was not found liable. Although interest at 18.5% was claimed, the court restricted it to 12%. The suit against the 2nd defendant was dismissed without costs.



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6. The Appellate Court held that while the appellant/1st defendant had sent the documents to the 2nd respondent/2nd defendant, which was also confirmed by the Postal Department through communication, it was not due to any mistake on the part of the appellant/1st defendant, as held by the trial Court. It further held that the 1st defendant/appellant had only deducted the commission, and it was not substantiated that the 1st defendant/appellant had purchased the bill as a sale, as held by the Trial Court. However, since the sale of bill by the 1st defendant was not proved, the appellant/1st defendant could not be held liable to pay the sale amount for the bills. Accordingly, the Appellate Court set aside the order passed by the Trial Court. Aggrieved by the judgment and decree passed by the appellate Court, the appellant/plaintiff has filed the present second appeal.

7. The learned counsel appearing for the appellant submitted that the first appellate Court committed a manifest error in law in holding that the Hundi marked as Ex.A2 and the Invoice under Ex.A1 had been entrusted to the first respondent merely for the purpose of collection on commission basis. It was submitted that such a finding is wholly unsustainable in view of the specific admission made by the first respondent in the written statement to the effect that the bill, along with the Railway Receipt and the Hundi, had been purchased



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and the value thereof credited to the account of the appellant. The learned counsel submitted that the said admission unequivocally established that the transaction was not one of mere collection on behalf of the appellant, but a purchase of the bill by way of discounting. The learned counsel further contended that the first appellate Court failed to examine and appreciate the legal significance of the endorsements made in the Bill and the Hundi, particularly the endorsement under Ex.A2, which clearly indicated that the instruments had been negotiated and transferred in accordance with the provisions of Sections 46 and 50 of the Negotiable Instruments Act, 1881. It was submitted that such endorsement conferred upon the first respondent all the rights of a holder in due course, and the transaction assumed the character of a discounting of the bill rather than a mere agency for collection. It was argued that the first appellate Court erred in ignoring the specific findings recorded by the trial Court, which had duly considered the conduct of the first respondent and found that despite the issuance of communications under Exs.A9 to A11, the first respondent had taken no action to safeguard the interest of the appellant. The failure of the first respondent to act diligently and with due care amounted to gross negligence, particularly in light of the fact that the first respondent had unilaterally debited the appellant's account without lawful justification and without returning the discounted instrument. The learned counsel submitted that the first appellate Court misdirected itself in assuming that the responsibility of



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the first respondent came to an end upon the forwarding of the bill to the second respondent for collection. It was submitted that such a view was legally erroneous and unsustainable, inasmuch as it failed to take into account the legal effect of the endorsement made in favour of the first respondent, which clearly amounted to a transfer of title in the instrument for the purpose of discounting. Once the bill was discounted, the first respondent stepped into the shoes of the holder and was under an obligation to act in accordance with the duties of a collecting banker and a holder in due course. It was further contended that the first appellate Court failed to consider that the very nature of the transaction was one of discounting, and not mere forwarding of the bill for collection. The legal relationship between the appellant and the first respondent was that of customer and banker in the context of a bill discounted, and the obligations of the banker in such a case were altogether different from those of an agent collecting on behalf of the principal. The first respondent, having received the endorsed bill under discounting, was not entitled to debit the appellant's account without either returning the instrument or establishing a valid legal basis for doing so. In conclusion, the learned counsel submitted that the first appellate Court erred in proceeding on presumptions unsupported by the record, while ignoring the clear admissions of the first respondent and the documentary evidence which established that the transaction was a purchase of the bill by discounting. The failure to advert to the legal consequences arising from the endorsement and the



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rights and duties flowing therefrom under the Negotiable Instruments Act has rendered the impugned judgment unsustainable in law and on facts.

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8. The respondent has not appeared in this Court despite repeated opportunities, and this Second Appeal has been pending since 1998. In these circumstances, this Court proceeds to decide the matter on merits on the basis of the pleadings and evidence on record.

9. Heard the learned counsel for the appellant and perused the materials available on record.

10. The Second Appeal was admitted on the following substantial questions of law:-

(i) Whether the findings of the lower appellate Court are vitiated by its failure to consider the admission of the first respondent in the written statement that the Bill under Ex.A1 and Hundi under Ex.A2 purchased by the first respondent by discounting?

(ii) Whether the lower appellate Court is right in not considering the rights of the endorser of Ex.A1 and Ex.A2, on the basis of the endorsement made under Ex.A1 and Ex.A2 in accordance with Section 50 of the Negotiable Instruments Act?



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11. The specific case of the appellant is that it is engaged in the business of selling salt at Thiruvananthapuram. In the normal course of business, 350 bags of salt worth Rs.5,125/- were dispatched to one Achhum Ansari at Bano, Bihar, under Railway Receipt No.363747 dated 08.06.1987. The appellant availed the "Hundi" or bill purchase facility from the first respondent Bank of India. Under this arrangement, the first respondent credited the discounted value of Rs. 5,125/- to the appellant's account on 09.06.1987, after receiving the bill and railway receipt duly endorsed in its favour. The appellant's case is that the bill was thus purchased and the bank became the holder in due course. The bill was sent by the first respondent to its Bano branch (second respondent) for collection, as per the appellant's direction. When payment was not received even after considerable delay, the appellant informed the first respondent. Despite repeated letters (Exs.A9 to A11) urging action, no effective steps were taken to secure payment. Later, without returning the bill or establishing lawful authority, the first respondent unilaterally debited the appellant's account for Rs.5,870.50 (principal plus interest). The appellant asserts that once the bill was discounted, the risk of non-payment passed to the first respondent, and any loss due to inaction or negligence could not be recovered from the appellant.



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12. The specific case of the first respondent, as set out in the written statement, is that the documents were forwarded to the second respondent for collection on the appellant's behalf, and the consignee failed to honour the bill. It is claimed that there was no negligence in handling the documents and that the credit given to the appellant was provisional and subject to realisation. The first respondent denies having purchased the bill outright and contends that it was merely acting as a collecting banker. The second respondent has also denied negligence and liability.

13. Insofar as the first substantial question of law is concerned, according to the appellant, once the bill was discounted, the first respondent stepped into the shoes of the holder and was under an obligation to act in accordance with the duties of a banker in such circumstances, and not merely as a collecting banker. However, the first appellate Court failed to appreciate that the nature of the transaction was one of discounting and not a mere forwarding of the bill for collection. It is to be noted that the legal relationship between the appellant and the first respondent was that of customer and banker under a contract. When a bill is discounted, the obligations of the banker are altogether different from those of a mere collecting banker, and the rights over the property in the instrument also differ accordingly. The first respondent, having purchased the bill



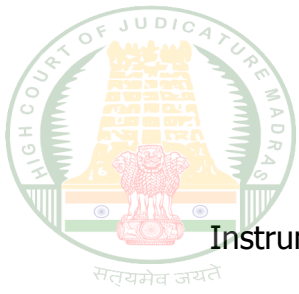
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by way of discounting, failed to account for the proceeds or return the instrument, thereby acting contrary to the legal obligations arising from such a transaction. Furthermore, paragraph No.3 of the written statement filed by the first respondent contains the following clear admission:

“It is true that the plaintiff tendered the bill along with the Railway Receipt for discounting and the same was purchased by this defendant and credited the plaintiff for the discounted bills.”

It is a well settled principle that a fact which is admitted does not require proof. In the present case, the first respondent has clearly admitted that the bill and the railway receipt were submitted for discounting, that they were purchased by it, and that the discounted amount was credited to the plaintiff's account. This admission clearly establishes that the transaction was a purchase effected through discounting. In view of this admission, the conclusion of the first appellate court that there was no proof of purchase is inconsistent with the pleadings and is unsustainable. The first substantial question of law is, therefore, answered in favour of the appellant.

14. Insofar as the second substantial question of law is concerned, once the bills under Ex.A1 and Ex.A2 were purchased and endorsed in favour of the first respondent, the provisions of Sections 46 and 50 of the Negotiable



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Instruments Act, 1881, applied. At this juncture, it is useful to set out these provisions in full:

" 46. Delivery.—The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive. As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf. As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein. A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof. A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

50. Effect of indorsement.—The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person."

From these legal provisions, it is clear that when an instrument is endorsed and delivered, ownership passes to the endorsee unless there is a clear restriction or condition. In this case, there was no such restriction, so the endorsement and delivery gave the first respondent full ownership of the bills. This means the first



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respondent was not just acting as a collecting agent but was the legal owner, entitled to recover the amount in its own name and also responsible for the risk of non-payment. A holder in due course is the owner of the instrument, not merely an intermediary, unless there is a special agreement saying otherwise. No such agreement exists here. The first appellate court ignored this principle and wrongly assumed that the first respondent's role ended with sending the bill to the second respondent. This is incorrect because a banker who discounts a bill has a duty to act carefully to realise its value, and if that fails, cannot simply debit the customer's account without returning the bill or showing a legal right to recover the money. In this case, the first respondent did not return the bills and did not prove any such right. On the contrary, Exhibits A9 to A11 show that despite repeated reminders from the appellant, the first respondent failed to take timely steps to protect the appellant's interests. This inaction amounts to negligence in performing its duties as a holder in due course.

15. Considering the admission in the written statement, the evidence on record, and the legal effect of endorsement under the Negotiable Instruments Act, the first appellate court's findings cannot be sustained. The second substantial question of law is therefore decided in favour of the appellant.



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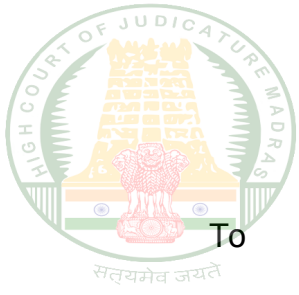
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16. As a result, the judgment and decree of the first appellate court are set aside, and the judgment and decree of the trial Court is restored. Accordingly, the Second Appeal is allowed with costs.

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Index: Yes/No.
Speaking Order : Yes/No.
Neutral Citation Case : Yes/No.

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To

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- 1.The Principal District Munsif, Tuticorin.
2. The Subordinate Court, Tuticorin.



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P.VELMURUGAN, J.

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Pre-Delivery Judgment made in
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