(1959) 05 KL CK 0006

High Court Of Kerala

Case No: S.A. No. 125 of 1956 (E)

Chalakudi Bank Ltd.	APPELLANT
Vs	
Kunju Vareed	RESPONDENT

Date of Decision: May 28, 1959

Citation: (1959) KLJ 1081

Hon'ble Judges: G. Kumara Pillai, J

Bench: Single Bench

Advocate: T.S. Venkiteswara Iyer C.S. Ananthakrishna Iyer, for the Appellant; K. P. Abraham, for the Respondent

Judgement

Kumara Pillai, J.

This second appeal arises out of a suit for recovery of money due from a joint stock Bank under a fixed deposit receipt. The defendant Bank was conducting a kuri and in that kuri one Kittunni Nayar a minor, was a subscriber. The ticket subscribed for by Kittunni Nayar was prized for on his behalf by the mother, the guardian, and the balance of the prize-amount, after deduction of the subscription due to the Bank, was deposited with the Bank on 24-6-1108 was and Ext IV, fixed deposit receipt, was received by the guardian for the same. The undertaking in Ext. IV, that the amount would be returned on demand, but simultaneously with Ext. IV, another document, Ext. V, was also executed. Ext. V was executed by Kittunni Nayar''s mother and it purports to make Ext. IV-deposit security to the Bank for payment of the future subscriptions in the Kuri. On 8--5--1111, when Kittunni Nayar is said to have become a major, an application was made by him to the Bank for return of the deposit amount. In connection with that application, he also made a statement to the Bank agreeing that the future subscriptions payable in respect of the kuri might be deducted from the deposit amount and interest due to him, and the balance alone need be paid to him. Nevertheless, no amount was returned to him, evidently because of the stand taken by the Directors of the Bank that Kittunni Nayar should prove that he had become a major by that time. This can be seen from Ext. II A, the endorsement made by the Directors on Ext. II. Kittunni Nayar was unable to prove his

age, because the directors wanted a copy of the certificate from school, and he had not studied in any school. Subsequently, Kittunni Nayar assigned his rights to the plaintiff by Ext. A and plaintiff, after issue of a notice to the Directors of the Bank in 1123, brought the present suit for recovery of the amount under Ext. IV and interest thereon in 1950 A.D. The suit was dismissed by the court of first instance on the ground that it was barred by limitation. The lower appellate court reversed this finding, and holding that there was no bar of limitation, gave the plaintiff a decree for the entire deposit amount and interest thereon, till the date of recovery, less the subscriptions due to the Bank. The second appeal is filed by the defendant Bank against this decree of the lower appellate court. The first point urged by the appellant''s Learned Counsel before me was that the suit was barred by limitation. According to him, as well as according to the court of first instance which upheld the defendant''s contention, Ext. IV is an unconditional fixed deposit, the suit is for return of the amount under that fixed deposit, the deposit was made under the agreement that it would be returned on demand, and the depositor having made a demand on 2-5-1111, which was refused or not complied with by the Bank, the suit filed in 1125 (1950 A.D.) about 14 years after the demand, is barred by limitation under Article 60 of the Limitation Act. I am unable to accept this contention, for, to me, it appears that Ext. IV was not an unconditional deposit under an agreement that the amount should be returned on demand. Exts. IV and V should be read together, and the previous history of the transaction has also to be looked into. Ext. IV is admittedly the balance of the prize amount less the subscriptions due to the Bank till the date of the deposit, Ext. V makes the deposit security for payment of the future subscriptions. Therefore, in the absence of a fresh agreement between the parties, the deposit was to remain with the Bank as security for payment of future subscriptions till the date of the termination of the chitty. Both sides admit that the chitty terminated only on 5--6--1120. In the view that I have taken, the article which applies to this case is Art. 120 and that Article gives to the plaintiff 6 years'' time from the date of the termination of the chitty to file the suit. It was contended by the appellant''s Learned Counsel that the negotiations between the parties in connection with the application of 6-5-1111 should be held to constitute a fresh agreement terminating the agreement to treat the deposit as security for the future subscriptions, that is to say, terminating the agreement evidenced by Ext. V. This contention also I am unable to accept, for, the endorsement on Ext. II shows that the Directors of the Bank did not comply with the demand made by Kittunni Nayar. They wanted him to fulfil an impossible condition and prove his age and he was unable to fulfil that condition and prove his age to their satisfaction. Therefore, nothing further was done by either parties in pursuance or in furtherance of the application for return of the amount and there was hence no fresh agreement.

2. For the reasons stated above, I hold that the lower appellate court was right in holding that the suit was not barred by limitation.

3. The decree of the lower appellate court, however, calls for interference as regards one matter. As stated already, the lower appellate court has allowed interest to the plaintiff on

the whole of the fixed deposit amount from the date of the deposit till the date of recovery of the decree amount and directed the subscriptions due to the Bank to be deducted from this aggregate. This is not correct. The proper method of accounting between the parties would be that interest on the fixed deposit amount should be calculated from the date of deposit to the next drawing of the chitty. From the total amount thus due, the subscription payable for the drawing should be deducted and on the balance remaining with the Bank, interest for the period till the next drawing should again be calculated and added and then the subscription for the next drawing should be deducted and so on. On this basis, the amount due to the plaintiff on the date of the termination of the chitty will be Rs. 253 as. 13 ps 10. Plaintiff can be allowed to recover only this amount and interest thereon from the date of the plaint. Interest will be at 6 per cent per annum. In the result, in modification of the decree of the lower appellate court, I give a decree to the plaintiff to recover, from the defendant Bank, a sum of Rs. 253 as. 13 ps. 10, and interest thereon from the date of the plaint till date of recovery of the decree amount at 6 per cent per annum, and proportionate costs in all the courts.