
(2011) 10 MAD CK 0105

Madras High Court (Madurai Bench)

Case No: Appeal Suit No. 792 of 1993

Central Bank of India

APPELLANT

Vs

Korampallam Milk
Producers'
Co-operative Society
and Others

RESPONDENT

Date of Decision: Oct. 19, 2011

Acts Referred:

- Evidence Act, 1872 - Section 114

Hon'ble Judges: G. Rajasuria, J

Bench: Single Bench

Advocate: G. Sridharan for Mr. T.M. Hariharan, for the Appellant; No Appearance for Respondents 2 and 6 and Died for Respondents 1, 3 to 5, for the Respondent

Final Decision: Allowed

Judgement

Honourable Mr. Justice G. Rajasuria

1. This Appeal Suit is focussed by the original plaintiff animadverting upon the judgment and decree dated 28.06.1990, in O.S.No.22 of 1998 by the learned Subordinate Judge, Tuticorin.

2. The parties, for sake of convenience, are referred to hereunder according to their litigative status and ranking before the trial Court.

3. Broadly but briefly, narratively but precisely, avoiding discursive delineation, the germane facts would run thus:

The plaintiff being a nationalised Bank filed the suit for recovery of money seeking the following reliefs:

(a) directing that the defendants to pay the plaintiffs a sum of Rs.46,294.60 with interest at 12.5% from 14.07.1985 till date of decree and subsequent interest thereafter at 12 1/2% till realisation;

(b) directing that the defendants do pay the plaintiffs the cost of the suit;

(c) and awarding such other relief or reliefs that this Hon'ble Court may deem fit to grant under the circumstances of the case.

4. The defendants 4, 7 and 8 resisted the suit by filing a written statement. The 10th defendant filed a written statement separately. Whereupon, relevant issues were framed.

5. During the trial on the side of the plaintiff, P.W.1 was examined and Exs.A.1 to A.9 were marked. On the side of the 10th defendant Ex.B.1 was marked. No oral evidence was adduced on the side of the defendants.

6. Ultimately, the trial Court decreed the suit as against defendants 1, 4, 5, 7 and 8 and as against the 10th defendant, the suit was dismissed on merits. During the pendency of the suit, the defendants 2, 3, 6 and 9 died and their legal heirs were not added.

7. Being aggrieved by and dissatisfied with the dismissal of the suit as against the 10th defendant, the present Appeal Suit has been filed on various grounds by the original plaintiff, namely the Bank.

8. The learned counsel for the plaintiff reiterating the grounds of appeal would submit that as per tripartite agreement, Ex.A.9, the 10th defendant being the institution responsible for collecting milk from defendants 1 to 9 and selling the same and paying the money in discharge of the loan, which the first defendant had availed from the bank, had not discharged its liability. The trial Court has erroneously held that in ink, in the type written plaint a sentence was added as though the 10th defendant was liable to discharge the loan. The trial Court also wrongly observed that P.W.1 was not competent to speak about the 10th defendant's liability as he was not working as Manager in the plaintiff bank at the relevant point of time. P.W.1, who is an official of the plaintiff Bank, is competent to speak on behalf of the bank based on records. Accordingly, he prays for setting aside the portion of the judgment and decree in dismissing the suit as against the 10th defendant and for decreeing the suit as against the 10th defendant and thereby making it liable along with others to discharge the decretal debt.

9. The point for consideration is as to whether the trial Court was justified in holding that the 10th defendant's liability was not established by the plaintiff, despite marking Ex.A.9?

10. P.W.1 is an official of the plaintiff bank, who is competent to depose before the court based on records and no personal knowledge is needed to depose about the facts of the loan having been lent in favour of the defendants by the Bank and also about the execution of the documents by the debtor. In fact, the 10th defendant did not examine

anybody on its behalf to torpedo and pulverize the deposition of P.W.1. In fact the written statement of the 10th defendant is vague as vagueness could be and it is cryptic. A mere poring over and perusal of the written statement of the 10th defendant would indicate and exemplify that there was no challenge to Ex.A.9 and in such a case, the trial Court was not justified in simply exonerating the 10th defendant from its liability.

11. The learned counsel for the appellant has drawn the attention of this Court to various portions of the records available before this Court and implored and entreated that the Bank lent loan only on accepting the tripartite agreement -Ex.A.9, whereby the 10th defendant undertook to pay the dues payable to the bank under the loan. It is not the case of the 10th defendant that the milk was not supplied by defendants 1 to 9 to the 10th defendant, that no money was due in favour of the defendants 1 to 9 and that consequently, the 10th defendant was not able to deposit the amount in the bank.

12. A bare perusal of the judgment of the trial Court would display and demonstrate that the trial Court observed that the liability of the 10th defendant under the tripartite agreement was found inserted in the plaint in ink, but not in Ex.B.1, the copy of the plaint served on the 10th defendant. Whether the liability of the 10th defendant was found recorded in ink or type written, the legal consequences of the same has to be seen. In Ex.B.1, the copy of the plaint served on the 10th defendant, no doubt the insertions made in ink as found in the original plaint, were not found incorporated in the cause of action paragraph and that it does not mean that it is fatal to the claim of the plaintiff, because in the written statement, understanding the scope of the case as against the 10th defendant such a statement was made. Over and above that Ex.A.9 is not pleaded to be a forged and fabricated one. Hence, in such a case the presumption contemplated under illustration (e) to Section 114 of the Indian Evidence Act is also available in favour of Ex.A.9, which is a public document emerged at the instance of public officials, in the discharge of their duties as public servants. In such a case, the trial Court is wrong in simply dismissing the suit as against the 10th defendant.

13. In the result, the point for consideration is decided to the effect that the trial Court was wrong in dismissing the suit as against the 10th defendant based on the alleged grounds set out in paragraph No.7 of the judgment of the trial Court. Accordingly, that portion of the judgment exonerating the 10th defendant, is set aside and the 10th defendant, is jointly and severally liable to discharge the actual debt along with the other judgment debtors as per the decree passed by the trial Court. On balance, the Appeal Suit is allowed with costs.