

SUREME COURT OF INDIA

Indian Relief Bank Limited

Vs.

P.K. Thomas

(A Gupta, D Desai and E Venkataramiah JJ.)

07.03.1980

JUDGMENT

A.C. GUPTA, J.

1. This appeal arises out of a suit, O.S. 81 of 1953 instituted in the District Court of Quilon on July 14, 1953 by the appleeant, Indian Relief Nank Ltd, Now under liquation. for recovery of a sum of Rs. 52034-15 annnas-4 pirs with interest and costs from respondent P.K. Thomas who had been the Managing Director of the Bank for many years since its inception in 1934. The plaintiff bank had its had office at Madras and branches at various places including Quilon. Plantif's case is that deffent P.K. Thomas, while he was the Managing Director or, had been dealing freely with all financial matters of the bank. Admitted he had opened a current account in the, Quilon branch of the bank and received large sums as overdraft in his account, in addition he also used to draw money the bank in his other persons accounts by getting documents executed by them. In this way the defendant had overdrawn large sums of money from the bank in different accounts. In 1951 and 1952 the auditors on inspection of the accounts of the bank objected to these dealings by the Managing Director and reported the matter to the directors of the bank. It was found that the defendant maintained two accounts in the Quilon branch, one in the name of P.K. Thomas and the other in the name, Kora Thomas. On the instruction of the auditors, on December 29, 1951 three debit entries were made in the account in the name of Kora Thomas in partial adjustment of the defer dant's liability. In this appeal we are concerned with the two accounts in the name of P.K. Thomati and Kora Thomas. In October 1952 the directors of the bank appointed a committee consisting of three of the directors to enquire into defendant's liabilities. The three-man committee met at Madras on October 7, 1952 in the presence of the defendant and on inquiry found, among other things, that a sum of Rs. 47000/- and odd wan due from the defendant in his current account at Quilon. in the name of Kora Thomas. On October 13 1952 the defendant sent two singed blank cheques with a letter addressed to Shri Krishnamoorthy, agent of the back at Quilon, for settling the defendant's liability in the account Kora Thamas, and one of the cheques was filled in by Krishamoorthy and utilised for that purpose. The cheque was drawn in favour of Kora Thomas for Rs. 47,228-1 anna 1 pie. The account covered by the cheque was transferred from the account of P.K. Thomas to that of Kora Thomas. A sum of Rs. 49,765-9 annas -3 pies was still due from the defendant in his current account in the name of P.K. Thomas on December 30, 1952 besides his liabilities in other accounts. The sum for which the suit was brought represents, according to

plaintiff, the defendant's liability as on June 30, 1953.

2. The defendant in his written statement denied liability and asserted that if proper accounts were taken it would be found that he was entitled to recover a considerable sum of money from the bank. He instituted a suit, O.S. 113 of 1954, against the bank for settlement of his accounts. Both the suits were heard by the Additional District Judge, Quilon; part of the evidence recorded in the two suits is common and the suits were disposed of by the trial Court and on appeal by the High Court by one judgment. This appeal arises out of suit O.S. 81 of 1953 brought by the bank against P.K. Thomas.

3. The Additional District Judge decreed the suit. He held that the three debit entries made on December 29, 1951 in the account, Ext. P-9, were 'unauthorised' because the debit slips were not "supported by the defendant's endorsement". However, he found on a consideration of the evidence that the defendant was estopped from denying the validity and correctness of these entries. The facts upon which the trial Court reached this conclusion are these. These debit entries had been made on December 29, 1951 when the defendant was the Managing Director of the bank and he admitted, deposing as D.W. 1 that he used to go to the various branches of the bank three or four times every year to inspect the accounts. The entries showed that the debits were made according to the instructions of the auditOrs. The accounts of the bank used to be audited every year and the Balance Sheet was prepared every year under the direct supervision and guidance of the Managing Director on the basis of the auditors' report. The Balance Sheet of 1951 was prepared prior to the defendant's service as Managing Director was terminated. On a consideration of these facts the trial Court held that it was "impossible to believe that the defendant was not aware of these three disputed entries". The following circumstances also weighed with the trial Court in rejecting the defendant's case that the debit entries were made on 29-12-1951 without his knowledge. The defendant was admittedly present when the directors of the bank met on October 7, 1952 and passed a resolution to the effect that the account in the name of Kora Thomas should be transferred to the account in the name of P.K. Thomas. A few days later, on October 13 1952, the defendant sent two signed blank cheques with a covering letter (Ext. P-20) to Krishnamoorthy (P.W. 1) who was the agent of the bank at Quilon. After the cheques were received, one of them (Ext. P-21) was filled in by P.W. 1 and the sum drawn was Rs. 47,228-1-1. The trial Court accepted the evidence of P.W.1 that the cheques were not signed on the reverse when he received them. On October 16 1952 the bank wrote to the defendant: "...we have closed Kora Thomas account and debited Mr. P.K. Thomas for the entire sum of Rs. 47,042-7-7 together with interest accrued till date amounting to Rs. 47,228-1.1 Your cheque No. 18765 is drawn for Rs. 47.228-1-1 in favour of Kora Thomas and credited to Mr. Kora Thomas account as i transfer entry As you have not signed on the reverse of the cheque we could not treat it as a cash entry." The trial Court also accepted the case of the plaintiff that the defendant was present in Quilon on the day the letter was addressed to him and that he came and signed on the back of cheque the same day. In these circumstances, it was held the defendant could not dispute that the sura of Rs. 47,228 1-1 was validly debited in his account in the name of P.K. Thomas. The trial Court found on evidence that the debit entries had been made with the full knowledge and consent of the defendant and that his subsequent conduct also showed that he acquiesced in these entries being made. Clearly, therefore, the further finding recorded by the trial Court that the debit entries were unauthorised but the defendant was estopped from challenging them, was not only inconsistent and unnecessary but also wrong.

4. The High Court on appeal preferred by the defendant held that the defendant was not liable for the sum decreed against him and that the amount due from him was only Rs. 1622-0-11. In reaching this conclusion however the High Court did not advert to the evidence relied on by the trial Court

and proceeded on certain assumptions of fact unsupported by the evidence on record. The High Court accepted the finding of the trial Court that the debit entries were unauthorised but did not agree that the defendant was estopped from questioning the validity of these entries. The High Court held that there was "nothing to invest the appellant with the knowledge of these entries at any time" without considering the evidence upon which the trial Court had found that the entries had been made with the defendant's knowledge and consent. We have already pointed out that on the evidence found acceptable by the trial Court, the entries could not be called unauthorised and no question of estoppel therefore arises in this case. The fact that the defendant had signed the proceedings of the meeting of the three-men committee in Madras on October 7, 1952 (Ext. P. 53) was taken by the trial Court as evidence of the defendant's acceptance of the liability. The genuineness of the signature is not denied but according to the High Court this only indicated that the defendant was present at the meeting and did not further imply that he accepted the correctness of the sum found by the committee as due from him. The proceedings of the meeting however contain nothing to suggest that the defendant had asserted that he did not accept the liability. The trial Court further found that the defendant signed on the back of the cheque (Ext P-21) after the cheque had been drawn for Rs. 47,228-1-1 which, according to the trial Court, proved defendant's knowledge and so his acceptance of the liability. The High Court set aside this finding on the assumption that P.W. 1 had admitted that 'the name on the back of Ext P. 21 was written even when Ext. P-21 was received by the bank". This is incorrect and quite contrary to what P.W. 1 had stated; we have earlier referred to his deposition on the point Counsel for the appellant contended that this Court should not upset the findings of fact arrived at by the High Court. We have pointed out that these findings are not based on evidence. The findings of the trial Court on the basic issues in the case were upset by the High Court not because on the evidence on record it took a different view, but on the incorrect reading of the evidence and without considering the relevant evidence on these issues.

5. We therefore allow this appeal, set aside the judgment and decree of the High Court and restore those of the trial Court. The appellant will be entitled to costs of the appeal.