

**Sundaram Vs. The State**

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**Court :** Chennai

**Decided On :** Feb-27-2015

**Judge :** T.S.Sivagnanam

**Appellant :** Sundaram

**Respondent :** The State

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

04. 11/2009 C O R A M THE HONOURABLE Mr.JUSTICE C. NAGAPPAN Appeal Suit No.890 of 2004 S. Shanmughasundaram ... Appellant/Defendant Vs Indian Overseas Bank Erode Main Branch rep by its Manager. ... Respondent/Plaintiff Appeal against the judgment and decree dated 19.2.1999 made in O.S.No.531 of 1995 on the file of Addl. Subordinate Judge, Erode. For Appellant ... Mr. C.Prakasam For Respondent ... Mr. T.Ravikumar J U D G E M E N T The defendant has preferred the appeal challenging the judgment and decree dated 19.2.1999 made in O.S.No.531 of 1995 on the file of the Court of the Additional Subordinate Judge, Erode.

2. The respondent herein filed the suit seeking for a Decree directing the defendant to pay the plaintiff Bank a sum of Rs.3,53,547-95/- with subsequent interest thereon at 26% per annum from the date of suit till the date of realisation and for costs of the suit. The case of the plaintiff Bank is that the defendant is

doing business in running a Boarding and Lodging under the name and style of "Sri Ram Lodge" and on 16.7.1990, he opened the account at the Regulated Market Extension Counter of the plaintiff Bank at Erode under Current Account No.149 and from then onwards, he was depositing amounts on various dates and withdrawing the same by issuing cheques on the Extension Counter and he also availed overdraft facility in the current account. It is further stated in the plaint that the defendant used to issue cheques and to credit the amount with credit challan in duplicate and the main challan would be kept in the bank and the counterfoil handed over to the defendant as acknowledgement for receipt of the amount and the plaintiff Bank has produced three cheques and three credit challans for the relevant period in the suit. According to the plaintiff Bank, on 17.9.1992 it was found that the large amount of overdraft facility was allowed to the defendant and notice of demand dated 10.4.1993 was issued to the defendant calling upon him to clear the balance outstanding in the account and he failed to respond or clear the dues and again on 4.4.1994, another registered notice was sent by the plaintiff Bank to the defendant and though he received the notice on 5.4.1994, he neither sent reply nor complied with the demand and hence, the suit. It is further stated in the plaint that the defendant is bound to pay interest at 26% per annum from the date of suit till the date of realisation since the transaction is commercial one and the defendant is not entitled to the benefits of the Debts Relief Act.

4. The defendant in his written statement admitted that he had a current account with the Regulated Market Extension Counter of the plaintiff Bank at Erode and he has stated that he was not granted with any overdraft facility and he did not avail himself of such facility and he does not owe any amount to the plaintiff Bank. According to the defendant, T.C.Sengappa and P.Manivannan working as Assistant Manager (in-charge) and Clerk respectively at the plaintiff Bank were charged with the alleged offences of conspiracy, cheating, falsification of accounts, etc. and also under the Prevention of Corruption Act and they were sentenced to undergo imprisonment and to pay fine. It is further stated by the defendant that the plaintiff Bank, which faces huge loss, is resorting to file suits like present one in a desperate attempt to minimise the loss. It is further stated by the defendant that the period of limitation cannot be computed from 31.12.1992 and the suit is barred by limitation. According to the defendant, he was under the impression that it was

not necessary to make any reply to the notice of demand since police investigation was going on against the Officers mentioned above.

5. The trial court framed three issues and the plaintiff Bank examined its Assistant Manager as P.W.1 and marked Exs.A1 to A12 on its side and the defendant examined himself as D.W.1 and no document was marked on his side. On a consideration of oral and documentary evidence, the trial Court held that the plaintiff Bank is entitled for the suit claim and decreed the suit for a sum of Rs.3,53,547.95 with interest at 12% per annum from the date of suit till the date of realisation. Challenging the judgment and decree, the defendant has preferred the present appeal. For the sake of convenience, in this judgment, the parties are referred to as arrayed in the suit.

6. The points for determination in the appeal are - (1) Whether the suit is barred by Limitation. (2) Whether the plaintiff Bank is entitled for the suit claim. (3) To what rate of interest the plaintiff Bank is entitled to. POINT Nos.1 & 2:

7. It is admitted by the defendant that he is running a Boarding and Lodging under the name and style of "Sri Ram Lodge" and on 16.7.1990, he opened a current account at the Regulated Market Extension Counter of the plaintiff Bank at Erode under Current Account No.149 and he used to issue cheques and credit the amount with the credit challan and on 17.9.1992, it was found that large amount of overdraft facility was allowed to the defendant and he has not cleared the balance amount due from him. P.W.1 is the Assistant Manager of the plaintiff Bank and he has testified about the defendant operating the current account by issuing cheques and making remittances. Exs.A2 to A4 are the cheques issued by the defendant dated 22.8.1992, 28.8.1992 and 1.9.1992 respectively and they were passed for payment. Exs.A5 to A7 are the main challans of remittances made by the defendant on 7.9.1992, 17.9.1992 and 18.9.1992 respectively. The defendant has not disputed the plaint averment with regard to issuance of cheque and remittances made by the defendant. In his testimony as D.W.1, he has disputed the signatures found in Exs.A5 to 7 Remittance challans. The fact remains that the defendant has issued Exs.A2 to A.4 Cheques in the months of August-September, 1992, and he has not disputed the same. The trial Court observed in the judgment

that it visually compared the signature of the defendant found in the written statement with the signatures found in the cheques and found it to be the same. Hence, it is clear that the defendant was operating the account in the months of August-September, 1992. The suit came to be filed on 2.7.1995. The trial Court has rightly concluded that the transaction is a running account and the suit has been filed within three years and it is not barred by limitation.

8. Exs.A8 and A10 are the notices sent by the plaintiff Bank to the defendant calling upon him to remit the balance outstanding in the account. Exs.A9 and A11 are the respective postal acknowledgements evidencing the receipt of the notices by the defendant and the defendant neither replied nor made any payment. Ex.A12 is the Statement of Accounts on the file of the plaintiff Bank which shows the balance outstanding amount as on 11.6.1995 at Rs.3,53,547.95 and that is the suit claim. The plaintiff Bank, by Oral and documentary evidence, has proved the suit claim as rightly held by the trial Court. The points are answered accordingly. POINT No.3:

9. The plaintiff Bank claimed interest at 26% per annum from the date of suit till the date of realisation in the plaint. The trial Court awarded interest at the rate of 12% per annum from the date of suit till realisation. The learned counsel appearing for the appellant/defendant submits that the interest awarded by the trial Court at the rate of 12% per annum is excessive and unjust. Per contra, the learned counsel for the respondent/plaintiff submits that the transaction is a commercial transaction and though there is no agreement, the plaintiff Bank is entitled to interest at the market rate. Admittedly, there is no agreement between the parties with regard to overdraft facility availed by the defendant. There is no evidence let in by the plaintiff Bank pertaining to interest. In the absence of any agreement or statutory provision or a mercantile usage, the determination of interest has to be made on just and reasonable ground. The Apex Court in the recent decision in C.K.SASANKAN v.. THE DHANALAKSHMI BANK LTD [2009 (3) SCALE724 has determined the rate of interest awarded for pendente lite and future interest at 9% per annum for the facility availed by a customer of the bank. Applying the above ratio in the present case, the plaintiff Bank is entitled for pendente lite and future interest at the rate of 9%, which is just, proper and reasonable. The Point is

determined accordingly. The judgment and Decree of the trial Court with regard to awarding of interest have to be modified accordingly.

10. In the result, the appeal is partly allowed and there shall be a Decree directing the defendant to pay the plaintiff Bank a sum of Rs.3,53,547.95/- together with interest at 9% per annum from the date of plaint till the date of realisation with costs and the judgment and Decree of the trial Court are modified accordingly. There shall be no order as to costs in the appeal. Consequently, CMP No.12421 of 2004 is closed. 4.11.2009 Index: yes Internet: yes pb To 1. The Additional Subordinate Judge, Erode.

2. The Section Officer, V.R.Section, High Court, Madras. C.NAGAPPAN, J.

pb A.S.No.890 of 2004 4.11.2009

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