

**Nedungadi Bank Ltd. Vs. Central Bank of India Ltd.**

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**Court :** Kerala

**Decided On :** Apr-06-1960

**Reported in :** AIR1961Ker50; [1960]30CompCas511(Ker)

**Judge :** M.S. Menon and; T.K. Joseph, JJ.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Sections 20

**Appeal No. :** C.M.A. No. 287 of 1956 (M)

**Appellant :** Nedungadi Bank Ltd.

**Respondent :** Central Bank of India Ltd.

**Advocate for Def. :** P. Govindan Nair,; P.K. Kurien,; G. Balagangadharan Nair

**Advocate for Pet/Ap. :** V. Sheshadri,; K. Vaitheswaran,; C. Gofindankutty Menon

**Disposition :** Appeal dismissed

**Judgement :**

M.S. Menon, J.

1. The plaintiff, the Nedungadi Bank Ltd., Kozhikode, issued two cheques, Nos. 355875 and 355896, on the Central Bank of India Ltd., Barabazar Branch, Calcutta. According to the counterfoil of cheque No. 355875 (Ext. A-3) the date of that cheque should be 24-10-1949, the payee, the Anglo Swiss Watch Company, and the amount covered Rs. 82-8-0. According to the counterfoil of cheque No. 355896 (Ext. A-4) the date of that cheque should be 10-11-1949, the payee, New Standard Watch Company, and the amount covered, Rs. 165-0-0.

2. Cheque No. 355875 when presented at the office of the Central Bank of India Ltd., Barabazar Branch, Calcutta on 3-11-1949 bore the date 29-10-1949. The payee mentioned in the cheque was Amulya Ratan Saha Ray, and the amount, Rs. 1,765-0-0. Cheque No. 355896 when presented at the office of the Central Bank of India Ltd., Barabazar Branch, Calcutta, on 17-11-1949 bore the' date 14-11-1949. The payee mentioned in the cheque was Radheshyam Agarwalla, and the amount, Rs. 3.897-0-0.

The cheques were duly honoured and the Central Bank of India Ltd., Barabazar Branch, Calcutta, debited the amounts in the current account of the plaintiff with that branch. The plaintiff questions the validity of the two debits and seeks recovery of the total of those debits, namely, Rs. 5,662-0-0, on the ground that the Central Bank of India Limited was negligent in the discharge of its duty as a banker of the plaintiff in not discovering the alterations in the cheques and refusing payment on that account.

3. The only question that arises for determination in this C. M. A. is whether the suit can be instituted as has been done by the plaintiff in the Court of the Subordinate Judge of South Malabar, Kozhikode. Issue No. 1--

'Whether this court has jurisdiction to try this suit?' -- relates to this question. The lower court considered the arguments advanced before it and said :

'Both under the general law of banker and customer and on the narrower aspect of the claim made for repayment of two sums of money wrongly' debited in the current account of the plaintiff at Calcutta the cause of action cannot be said to have arisen in Kozhikode. I hold that this court has no jurisdiction to try this suit'.

4. It is common ground that the head office of the Central Bank of India Limited is in Bombay, and that it has a branch at Kozhikode. Under section 20(a) of the Code of Civil Procedure, 1908, it is possible to institute a suit where the defendant 'carries on business', and under Section 20(c) where the 'cause of action, wholly or in part, arises'. Explanation II to Section 20 provides :

'A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place'.

5. As pointed out by Chitale :

'The result of this explanation is to restrict the meaning of the expression 'carries on business' in Clause (a) in relation to corporations. But in the presence of Clause (c) the purpose of the second part of the explanation is obscure. However that may be where' the suit is instituted at a place where a corporation maintains a subordinate office, the Court cannot dispense with the requirement that the cause of action must arise at such a place'. (Civil Procedure Code, Vol. I, page 558; see also the cases cited in the commentary in support of the proposition.

In other words, if no part of the cause of action arises at the place where the branch office is situated, the mere fact of the corporation having a branch office will not give the court of that place jurisdiction to entertain a suit.

6. Paragraph 15 of the plaint reads as follows :

'The cause of action for this suit arose on 3-11-1949 and 17-11-1949 when the defendant paid the amounts respectively under the two cheques and debited the said amounts against the plaintiff in its current account and thereafter in Nagaram amsom in Calicut in South. Malabar where the originals of the forged cheques were drawn within the jurisdiction of this Court. This court has also jurisdiction to entertain this suit as the defendant bank is carrying on its business through its branch at Calicut within the jurisdiction of this court'.

The 'debiting of the' amounts covered by the cheques on 3-11-1949 and 17-11-1949 in the current account of the plaintiff at the Barabazar Branch cannot possibly be said to give rise to a cause of action within the jurisdiction of the Subordinate Judge of South Malabar, Kozhikode. Nor can the fact that the cheques were drawn within the jurisdiction of that court suffice. It is equally clear that the existence of a branch of the Central Bank of India Limited at Kozhikode will not also sustain a suit at Kozhikode if no part of the cause of action arose within the jurisdiction of the Court at Kozhikode. It has also to be borne in mind that, as pointed out by the Supreme Court in *Delhi Cloth and General Mills Co. Ltd. v. Harnam Singh*, (S) AIR 1955 SC 590, 'the obligation of a bank to pay the cheques of a customer rests primarily on the branch at which he keeps his account and the bank can rightly refuse to cash a cheque at any other branch'.

7. The expression cause of action 'refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour', *Mt. Chand Kour v. Partab Singh*, ILR. 16 Cal 98 (PC). There is nothing in the plaint which can lead us to the conclusion that the cause of action arose either wholly or in part at Kozhikode.

8. Counsel for the appellant drew our attention to *Bhokana Corporation Ltd. v. Inland Revenue Commissioners*, 1938 AC 380; *Commr. of Income Tax, Bombay South, Bombay v. Ogale Glass Works Ltd. Ogalewadi*, AIR 1954 SC 429; *Jagdish Mills Ltd. v. Commr. of Income-tax, Bombay North. Kutch and*

Saurashtra, Ahmedabad AIR 1959 SC 1160; Horsburgh, W. P. v. Chandroji Sambajirao, AIR 1957 Madk Bha 90 and Jivatlai Purtapshi v. Lalbhai Fulchand, AIR 1942 Bom 251. We are unable to find anything in these decisions which is of assistance for the decision of this case or which militates against the view we have taken. In AIR 1954 SC 429, for example, the question decided in the passages to which our attention was drawn will be clear from the following extract :-

'There can be no doubt that as between the sender and the addressee it is the request of the addressee that the cheque be sent by post that makes the post office the agent of the addressee. After such request the addressee cannot be heard to say that the post office was not his agent and, therefore, the loss of the cheque in transit must fall on the sender on the specious plea that the sender, having the very limited right to reclaim the cheque under the Post Office Act, 1898, the Post Office was his agent when in fact there was no such reclamation. Of course if there be no such request, express or implied, then the delivery of the letter or the cheque to the Post Office is delivery to the agent of the sender himself. Apart from this principle of agency there is another principle which makes the delivery of the cheque to the post office at the request of the addressee a delivery to him and that is that by posting the cheque in pursuance of the request of the creditor the debtor performs his obligation in the manner prescribed and sanctioned by the creditor and thereby discharges the contract by such performance'.

This certainly has nothing to do with the case before us.

9. In the light of what is stated above we must hold that the plaintiffs' cause of action, if any, in respect of the sum of Rs. 5,662-0-0 debited in their account with the Central Bank of India Ltd., Bara-bazar Branch, Calcutta, did not arise wholly or in part within the jurisdiction of the Court of the Subordinate Judge of South Malabar, Kozhikode, and that this appeal must fail. The appeal is dismissed with costs.

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