(Koshi, C.J., and Varadaraja Iyengar, J.,)

Appeal Suit No.42 of 1954 (E)

Judgment.

Varadaraja Iyengar, J:

The suit which has given rise to this appeal was for money due under Exhibit D hypothecation bond dated 17-4-1107 and securing the balance under an overdraft account opened by the 1st defendant with the South Indian Peoples Bank Ltd., (in liquidation). The plaintiff is the purchaser of the rights of the Bank under Exhibit D from the Official Liquidator. According to the plaintiff an amount of Rs.3001-15-3 pies was outstanding due at the close of the transaction on 29-8-1109 corresponding to 11-4-1934 and this, along with interest, came to Rs.6954-15-6 pies for which the claim was made in the suit, which was laid on 24-6-1118. The 1st defendant was ex parte. The 2nd defendant who had been impleaded as purchaser of the property charged under Ext D, put the plaintiff to proof of the Pattuvaravu transaction and of the amount actually due. He objected specifically however that the interest liability had been put down in excess.

2. The court below on a previous occasion, on 16th December 1947, decreed the suit in favour of the plaintiff, though disallowing his prayer for further evidence. It found, for the purpose, that the 1st defendant had Pattuvaravu dealings on foot of Ext D hypothecation bond to the extent of the principal amount claimed but the method of calculation of interest was not correct and had to be modified.

The 2nd defendant then preferred appeal before the Travancore-Cochin High Court as A.S.No. 1' of 1124 (T) while the plaintiff filed cross-appeal in respect of the interest disallowed. The High Court, by its judgment in the appeal dated 1st October 1952, observed that the ledger and journal maintained by the Bank had alone been produced in the case without any attempt at proving the validity or genuine character of the transactions, the 1st defendant even, who was ex parte, not having been examined. The plaintiff examined as P.W.2 had no personal knowledge about any of the transactions, nor was the cashier of the Bank examined as P.W.1 able to speak to the transactions. The cheques said to have been drawn by the 1st defendant on the Bank had not also been produced and moreover the journal itself was not complete and at any rate the pages which were to contain the entries corresponding to the first two entries in Ext A(1) ledger were missing. Taking these circumstances into consideration the High Court allowed the appeal but, in view of the interests involved, they directed the court below to dispose of the case de novo after examination of certain witnesses as prayed for by the plaintiff. After remand as above, further evidence was let in on behalf of both the plaintiff and the 2nd defendant and the court below has once again decreed the suit practically on the original basis. Hence this appeal by the 2nd defendant.

3. Learned Counsel for the 2nd defendant - appellant contends that the position of the plaintiff has not materially improved after the remand and that there is still no legal evidence xx

in the case sufficient to justify the decree in appeal. However, having heard learned Counsel and scrutinised the evidence, we have no hesitation in saying that this criticism is entirely unjustified. The evidence let in in the case has disclosed that the South Indian People's Bank Ltd was the successor-in-interest of the Travancore People's Bank Ltd., and it was mostly in settlement of the 1st defendant's original pro-note liability to the latter Bank that Ext D itself came into existence. P.Ww.4 and 5 who were examined in the case after remand were co-directors of South Indian People's Bank Ltd., along with the 1st defendant, P.W.4 being also an agent of the Bank. P.W.4 has sworn that himself and other directors of the Bank requested the 1st defendant to discharge his pro-note liability either by payment or by executing security deed and the 1st defendant then offered to and did execute Ext D overdraft agreement for Rs.4900 so that the Bank could adjust the balance of the pro-note debt after setting off the probable amount due to him under a Chitty scheme, from the Travancore People's Bank Ltd., also taken over by the South Indian People's Bank. P.W.4 also proves Ext A pro-note loan ledger and Ext A (1) overdraft account ledger and also Ext B journal of the Bank. Ext A shows that on 23-11-1931 an amount of Rs.4634-5-0 was due to the Bank from the 1st defendant under the pro-note. On December 8, 1931, Rs.3000 were credited in that account being the proceeds of a cheque issued by the 1st defendant as against the overdraft account Exhibit A(1) which shows a corresponding debit. P.W.4 has sworn that he obtained the concerned cheque

from the 1st defendant and also speaks to the respective debit and credit. P.W.5 speaks generally of the liability of the 1st defendant under the pro-note and over-draft agreement. It is no doubt true that these and other entries in the accounts are in the hand-writing of clerk P.C.Mathew whose examination also was sought for by the plaintiff at time of remand and that he has not been examined in the case. Learned Counsel for the plaintiff - respondent explains that this P.C. Mathew could not be got at subsequent to the remand. We think the explanation can be accepted in the circumstances. Anyhow P.W.4 had sworn that the accounts were maintained in the usual course and under his supervision and that all the cheques covered by Exts A and B accounts did pass under his scrutiny. The evidence of P.W.1 cashier of the Bank, though generally discounted by the remand judgment, may also be referred to at this stage to the extent at least it speaks to the debit entry of Rs.3001-15-3 plus as on 11-4-1934, as made in P.W.1's own hand-writing. Learned Counsel for the appellant says that Ext B is in a mutilated form and the cheques supporting the entries in Ext A(1) overdraft account are still not forthcoming. But these defects do not, in our opinion, much matter in the circumstances. It should not be forgotten, after all, that the 2nd defendant does not deny the liability of the 1st defendant on any count but has only put the plaintiff to proof. The 1st defendant who had notice of the assignment in favour of the plaintiff did not repudiate his liability and does not also contest this case. We hold therefore that the court below was perfectly

justified in its finding, on the evidence on record, that the plaint transaction has been fully proved and there is no substance in this appeal.

4. The appeal fails in the result and it is dismissed with costs.

19th November 1956.