IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1994] SGHC 8

S1379/1991

Between

Raman Subbalakshmi Krishnan

… Plaintiff

And

Indian Overseas Bank

… Defendant

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

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Raman Subbalakshmi Krishnan v Indian Overseas Bank

[1994] SGHC 8

S1379/1991
L P Thean JA
07 January 1994

1 **Judgment:**

2 Coram: L P Thean JA

3 **GROUNDS OF JUDGMENT**

4 The plaintiff at all material times was a customer of the defendants (`the bank'), which carry on business in Singapore and elsewhere. On or about 29 April 1987 and 12 September 1989, the plaintiff placed with the bank on fixed deposit respectively two sums, namely: US$21,259.40 (`the first deposit') evidenced by the receipt No. 27006 (`the first receipt') and US$29,702.82 (`the second deposit') evidenced by the written confirmation No. 128319. In respect of these deposits the bank received two letters expressly headed `Letter of Authority' both in identical terms, one dated 10 June 1987 and the other dated 12 September 1989, and both on the face thereof bore the signature of the plaintiff. Each letter of authority referred to the respective deposit and, so far as material, contained the following:

5 In consideration of your having at my/our request, agreed to grant/granted/agreed to continue the loan/advance/credit facilities/any other liability arising out of credit facilities to me/us/Mr./M/s M/S CONSMECH ENGINEERING PTE LTD I/we hereby authorise you to hold the undermentioned deposit(s) or any deposit(s) in renewal thereof as security for all moneys now owing or which shall at any time hereafter be owing from me/us/Mr./M/s M/S CONSMECH ENGINEERING PTE LTD in any manner whatsoever as continuing security.

6 Should the said loan/advance/ credit facilities/any other liability of mine/ours is irregular or overdue or found difficult to recover, you have my/our authority without any reference or notice to me/us to apply the proceeds of the said deposits including interest at any time either on due date(s) or before the due date(s) of all or any of the deposits, towards adjustment of loan/advance/credit facilities and/or any other liability of mine/ours in any manner whatsoever and pay/credit the surplus, if any left to my/our account. In the event of foreclosure before maturity we are agreeable to your allowing interest as per Bank's rules for premature withdrawals.

7 Thus it was the case of the bank that each of the deposits or any renewal thereof was held by the bank as security for payment of all moneys owing at any time from Consmech Engineering Pte Ltd (`Consmech').

8 The first deposit was renewed annually and was last renewed on or about 28 April 1989 to mature on 30 April 1990 as evidenced by the written confirmation No. 123742. The second deposit matured also on 30 April 1990. On that day, 30 April 1990, the two deposits were combined into one sum of US$58,409.94 and were renewed to mature on 30 April 1991 as evidenced by the written confirmation No. 136836. Prior to the date of maturity, the bank on

21 February 1991 wrote to the plaintiff referring to the deposit given to the bank `as security for the cash credit facilities' allowed to Consmech, advising that the amount then due from Consmech exceeded the limit prescribed and requesting the plaintiff to prevail upon Consmech to reduce the overdue amount, and further stating that otherwise the bank would proceed `to foreclose the deposit' and apply the proceeds towards the amount due. On 16 March 1991, the plaintiff wrote to the bank stating that she had not at any time consented to the fixed deposit `to being lien for the borrowings' of Consmech. Subsequently, on 18 March 1991, the bank wrote to the plaintiff stating that in view of the failure on the part of Consmech to pay the outstanding in their `cash credit account' the bank had on 13 March 1991 `foreclosed the deposits' given as security and appropriated the proceeds of US$61,174.47 towards partial payment of the amount due and owing from Consmech in the cash credit account.

9 On 29 June 1991, the plaintiff instituted this action against the bank claiming the sum of US$58,409.94 together with interest and damages and costs. In her statement of claim the plaintiff in substance averred that she had deposited with the bank the sum of US$58,409.94 on fixed deposit which was the cumulative total of the two deposits placed with the bank on or about 29 April 1987 and 12 September 1989, that she did not signed the two letters of authority dated 10 June 1987 and 12 September 1989 respectively under which the bank claimed to have a security on the deposits and that she did not at any time authorise the bank to apply the deposits in payment to themselves. She also averred in the alternative that the bank negligently applied the moneys due to the plaintiff towards settlement of the account of Consmech. The bank contested the claim and did not admit that the plaintiff did not sign the two letters of authority, and they denied that they were negligent in applying the money towards settlement of the account of Consmech. The action was heard before

me and at the conclusion of the hearing I dismissed the plaintiff's claim with costs. I now give my reasons.

10 The central issue before me was whether the two letters of authority were signed by the plaintiff. The plaintiff's case was that she did not sign them. On this issue the burden of proving that the documents were signed by the plaintiff rests with the bank: see s 69 of the Evidence Act (Cap 97, 1990 ed). That section provides:

11 69. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

12 I now turn to the evidence adduced by the parties. The plaintiff's evidence, so far as material to the issue, was this. In April 1987 she withdrew her moneys from United Commercial Bank Ltd, converted the amount into US Dollars and deposited half of the amount with the defendant bank and the other half with the Bank of India. K R Krishnan (`Krishnan'), her nephew, assisted her in these transactions. He brought her to United Commercial Bank Ltd to withdraw the moneys and to the defendant bank and Bank of India to place the deposits. Other than this occasion she did not go to the defendant bank in relation to this transaction. In September 1989 she withdrew her deposit then placed with the Bank of India and wanted to place all her money with the defendant bank. Again, Krishnan assisted her; he brought her to the Bank of India to withdraw the money and she received a cheque for the amount, but Krishnan did not bring her to the defendant bank to place her deposit. She gave the cheque to him and he deposited it with the bank. Soon after she withdrew her money from the Bank of India she received news that her son in India had

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an accident, and she and her daughter, Krishnan Vasanthi, left for India on 10 September 1989. She produced her passport and other evidence to show that she was in India during the period from 10 September 1989 to 28 February 1990.

13 Krishnan is her late husband's nephew. Her late husband brought Krishnan from India and obtained a job for him in Singapore. Krishnan stayed with her and her family. While she was in India (i.e. during the period September 1989 - 28 February 1990), Krishnan got married and on her return she moved in and stayed with Krishnan and his wife. Her relationship with them was normal. The plaintiff further said that Krishnan did not tell her that the deposit was placed `under lien' with the bank and she did not understand what was `lien'. The plaintiff said that she did not sign the two letters of authority. On discovering that her signatures had been forged she made a report to the police.

14 In cross-examination, the plaintiff denied that she signed the two letters of authority. She admitted that Consmech was an engineering company which was formed to take over the business of her late husband. Her husband, when he was alive, was carrying on the business of a firm called Raman & Company. When her husband passed away, Consmech was formed and took over the business of her late husband. She admitted that she knew that Consmech was an engineering company and that as at 29 April 1987 she was aware that her daughter, her late son and her nephew, Krishnan, were all directors of Consmech. She, however, said that she did not know anything of the business and did not discuss any matter concerning the company with her son or daughter because she would not understand company matters. Krishnan handled all the documents pertaining to the opening and placing of the two fixed deposits. She had never seen the fixed deposit receipts - not even the first receipt. She denied that she signed on the reverse of that first receipt. She admitted that she trusted Krishnan. As to why she should withdraw the second deposit from the Bank of

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India and placed it with the defendant bank, she said that `it would facilitate' for her and it was Krishnan who told her to put it in the defendant bank.

15 The plaintiff's daughter, Krishnan Vasanthi, also gave evidence. She said that her late father ran a business known as Raman & Company prior to his death. He arranged for Krishnan to work in Singapore. After his death, Consmech was formed and it was formed by Krishnan sometime in 1983. The company took over the business of Raman & Company. She and her late brother were directors of Consmech. In cross-examination she admitted that she was a director as well as a shareholder of Consmech. She was not involved in running the business but she was requested to sign a personal guarantee in favour of the defendant bank and she did sign such a guarantee.

16 Giving evidence on behalf of the bank are three bank officers, Rajandeeran, Devi Nambiar and Satish Chandra. Rajandeeran testified that in April 1987 he was working in the fixed deposit department of the bank and that whenever a customer came to place deposits he would handle the transaction. The specimen signature card signed by the plaintiff was produced and he confirmed that he verified the signatures of the plaintiff. He said he signed under the column `verification signature' as a token that he had verified the signatures of the depositor. Normally, a depositor was required to sign the specimen signature card in front of him and he checked the identification documents. He confirmed that he issued the first receipt; it bore his signature and the signature of the manager of the bank. He would only issue the receipt after the cheque for the deposit had been cleared. He was the one who stamped the words `under lien to us' on the deposit receipt. He had seen the first letter of authority and had verified the signature against that on the specimen signature card. He also said that where a deposit was placed `under lien' to the bank, the depositor would sign on the reverse side of the receipt. In this case, he saw the signature on the

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reverse of the first receipt and he verified that signature against the specimen signature. But he could not recall whether the depositor signed it in his presence.

17 The next witness was Devi Nambiar who was the officer working in the fixed deposit department of the bank in September 1989. She testified that the written confirmation of the second deposit was a computer generated document. She confirmed that she instructed the document to be prepared with the words `under lien to us' as stated there and she signed against those words. This was done pursuant to a request by the customer and she had the letter of authority. She also verified the signature there against that in the specimen signature card. She further said that the bank did not issue the written confirmation of deposit before the cheque for deposit was cleared.

18 The third officer of the bank who testified is Satish Chandra, senior manager of the bank. His testimony was not of much assistance and was essentially on the practice of the bank. One salient point he testified with regard to the practice was that where a deposit is charged or given as security to the bank the depositor would be required to sign the deposit receipt on the reverse thereof and return it to the bank. The first receipt (for the first deposit) was in the bank's possession after June 1987 with the reverse thereof bearing the signature of the plaintiff.

19 The bank also called Mrs Ng Gek Kwee, the senior scientific officer of the Department of Scientific Services. She testified that she examined the signatures on the following documents:

20 (a) the first letter of authority, marked `MR 75';

21 (b) the second letter of authority, marked `MR 76';

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22 (c) the first receipt (for the first fixed deposit) with a signature on the reverse side thereof, marked `MR 77';

23 (d) five sheets of paper containing specimen handwriting of the plaintiff, marked `MR 78', and

24 (e) five sheets of paper containing specimen signatures of the plaintiff, marked `MR 79'.

25 She prepared a report which was tendered. Her conclusion was that the writer of the specimen signatures and handwriting in `MR 77 to MR 79' made the signatures on `MR 75 and MR 76'. Mrs Ng in her evidence was very positive in her conclusion. She said that there were six categories of conclusion, and in this case her conclusion was of the highest level.

26 On a balance of probabilities, I found that the two letters of authority dated 10 June 1987 and 12 December 1989 were respectively signed by the plaintiff. The letters of authority authorised the deposits or any renewal thereof to be held by the bank as security for the account of Consmech. At all material times Consmech was run and operated by Krishnan who is the plaintiff's nephew. From the evidence it appeared that Krishnan was close to her at the material times. He came from India and stayed with them, and after her husband had passed away he formed Consmech which took over the business of her late husband. Her daughter and her late son were shareholders of Consmech, and her daughter was a director. Her daughter also gave a personal guarantee in favour of the bank to secure the account of Consmech.

27 When the first deposit was placed with the bank, Krishnan assisted her in withdrawing her moneys from United Commercial Bank Ltd and depositing

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the same partly with the defendant bank and partly with the Bank of India. She was brought to United Commercial Bank Ltd to withdraw the money and to the defendant bank and the Bank of India to place the deposit. On that occasion, she did visit the bank and there was no dispute that she signed the necessary documents for opening the bank account. There was also no dispute that she signed the specimen signature card at the time. The deposit receipt was issued soon thereafter. There was no dispute that shortly thereafter, in June 1987, the first letter of authority and the first receipt were delivered to the bank. That first receipt had since then remained with the bank. The first receipt on the reverse side contained her signature. Originally, it was not her case that that signature was not hers. She did not say so in any document, e.g. letters or pleadings. She did not say so in the examination-in-chief. Only in the cross- examination, following her evidence that she had never received the first receipt, did she say that that signature was not hers. That, in my view, was an afterthought. She said that merely to render her evidence consistent with what she had said earlier. Counsel for the bank submitted, and I agreed with her, that the plaintiff had, long before the trial, copies of all the relevant documents, namely, the letters of authority, the first receipt and the report of Mrs Ng Gek Kwee, and she had never disputed the signature on the reverse side of the first receipt until the cross-examination. In the circumstances, I found it difficult to accept her evidence that the signature on the reverse side of the first receipt was not hers.

28 The plaintiff, who gave evidence before me, is not an illiterate or ignorant lady. In giving her evidence, she was quite perceptive. She reads English and writes English though she gave evidence in Tamil. I am sure that when the deposit was placed with the defendant bank, the first receipt must have been issued to her at that time or soon thereafter. She must have had it and knew exactly what was it. If the deposit receipt had not been issued and had been

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missing and continued to be missing without her consent, she would have made enquiry with the bank or written to them for it. The deposit was for a period of one year maturing on 29 April 1988 and subsequently that deposit was renewed successively for two years. In my view, she must have known that the deposit was held by the bank as security. From the documents produced, it appeared that the bank had on few known occasions at least sent copies of confirmation receipt of the deposit to the plaintiff which bore the words `under lien to us'. No objection or query had been raised by the plaintiff. Her explanation was that she did not receive the documents; but the documents were sent to the addresses she gave to the bank. I found her evidence difficult to accept.

29 In September 1989, she withdrew her money from the Bank of India and redeposited the amount with the defendant bank. Krishnan again brought her to the Bank of India to withdraw the money, but she said he did not bring her to the defendant bank and she gave the cheque to Krishnan to deposit it with the defendant bank on fixed deposit. Her reason for withdrawing the money from the Bank of India and depositing the same with the defendant bank was unclear. My inference is that at that time the defendant bank required further security from Consmech and she agreed to withdraw her money then placed with the Bank of India and deposit it with the defendant bank to provide the latter with further security for the account of Consmech. It might well be that she was persuaded to do so by Krishnan. Although she had no interest in Consmech, her children had substantial interest in the company. According to the search made with the Registry of Companies her children held majority shares in Consmech. It is true that on the date of the second letter of authority, i.e. 12 September 1989, she was in India. But from the totality of the evidence adduced it appeared to me that the second deposit was made with the bank and the documents were signed before she left for India. My inference is that she must have signed the

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second letter of authority before she left for India and left it with Krishnan to deliver it to the bank.

30 It was not disputed that the cheque for the second deposit was handed to the bank on or soon after 4 September 1989. Devi Nambiar was then the officer in the fixed deposit department and her clerk prepared the written confirmation of deposit which was a computer generated document. It was dated 12 September 1989 and her explanation was that it would take about seven days to clear a US Dollar cheque, and that the bank would not issue a confirmation of deposit before the cheque was cleared. Hence, the confirmation of deposit was dated 12 September 1989. At that time the second letter of authority had been delivered to the bank which on the face of it bore the signature of the plaintiff. Devi Nambiar testified that she verified the signature against the specimen signature card and she was the one who authorised the endorsement to be made on the confirmation that the deposit was `under lien' to the bank.

31 All this circumstantial evidence and the clear and positive evidence of Mrs Ng Gek Kwee led me to the conclusion that the two letters of authority must have been signed by the plaintiff. I rejected her evidence that she did not sign the documents. I held that she did.

32 It was contended on behalf of the plaintiff that the two letters of authority covered only the first and second deposits respectively and since these two deposits had merged and combined into one deposit, the two letters of authority did not bite. The short answer to this argument is that this point was not pleaded in the statement of claim and it was therefore not open to the plaintiff. Assuming that it was available, it still failed. It was accepted by the plaintiff that the combined deposit was the cumulative total of the first deposit and the second

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deposit. This consolidated amount was a renewal of the two deposits and fell within the terms of the letters of authority.

33 It was suggested that the bank had committed a breach of the duty as banker in that the bank was negligent in accepting the letters of authority without ensuring that they were properly signed by the plaintiff in the presence of someone else. I do not see how this breach, assuming there was a breach, would assist the plaintiff in her claim against the bank. Once it was accepted that the plaintiff did sign the two letters of authority, it is immaterial whether or not she signed them before an officer of the bank.

34 Lastly, it was argued that in the circumstances of this case the bank should for its own protection have insisted that the plaintiff take independent and legal advice, and the bank had failed to do so and further that the bank had also failed to explain the nature and effect of the letters of authority to the plaintiff. Again, this point was not pleaded in the plaintiff's statement of claim; it was not part of her case. It was therefore not open to counsel for the plaintiff to raise this argument.

L P Thean JA

N Sreenivasan with Chua Swee Leen for the plaintiff
Michelle Rasanayagam for the defendant

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