Indian Bank v Vishnu Dairy Farm Pte Ltd and Others
[2000] SGHC 25

Case Number : Suit 1171/1999

Decision Date : 22 February 2000

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Mirza Namazie & TM Tan (Mallal & Namazie) for the plaintiffs; Harish Kumar & Lim Tanguy Yuteck (Chor Pee & Partners) for the first, second and third defendants

Parties : Indian Bank — Vishnu Dairy Farm Pte Ltd; Mangala Gowri Subramaniam; Chellam Subramaniam; K Jayaram; Vasantha w/o Jayaram

JUDGMENT:

GROUNDS OF DECISION

The background

1. Indian Bank (the plaintiffs) is a branch of a foreign bank and carries on banking business in Singapore. At all material times the first defendant (referred to either as the first defendant or the farm) was a customer of the plaintiffs and maintained an account with the plaintiffs.

2, The second, third, fourth and fifth defendants were/are directors of the first defendant at all material times. In addition, the son of the second defendant one Venkata Chellam (Venkata) is also a director; he is a lawyer practising in Kuala Lumpur. The second defendant is the wife of the third defendant while the fifth defendant is the wife of the fourth defendant; the fourth defendant is the first defendant's managing-director.

3. The plaintiffs granted various credit facilities (the facilities) to the first defendant under several letters of offer the first of which was dated 10 March 1993. These facilities were (inter alia) secured by personal guarantees (the guarantees) executed by the second to fifth defendants in favour of the plaintiffs the last of which was dated 23 March 1997. Under the guarantees, the defendants jointly and severally agreed to guarantee the due payment by the first defendant of sums due and owing to the plaintiffs up to the limit of S$3.6m, plus interest on the principal sums owed.

4. By letters of demand dated 27 May 1999 addressed to all the defendants by their solicitors, the plaintiffs demanded payment of the sums due and owing by the first defendant, pursuant to the facilities granted; none of the defendants paid on the demand. Consequently, the plaintiffs commenced these proceedings against all five (5) defendants.

5. As no Memorandum of Appearance was filed by the second, third and fifth defendants to the writ after service, the plaintiffs applied for and obtained, judgment in default of appearance against them on 20 August and 27 September 1999 respectively, on the following terms:-

> a. the sum of S$1,310,701.81 with interest thereon at the rate of 2% per annum above the plaintiffs' prime lending rate from 31 July 1999;
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> b. the sum of S$252,474.57 and interest thereon at the rate of 3.5% per annum above the plaintiffs' prime lending rate from 31 July 1999;
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> c. the sum of S$1,650,843.85 and interest thereon at the rate of 2% per annum

above the plaintiffs' prime lending rate from 31 July 1999;

d. all solicitor and client costs as provided for in the guarantees against the [three] defendants.

6. Appearance to the writ having been entered for the first and fourth defendants, the plaintiffs applied for summary judgment against them in the same terms as the default judgment they had obtained against the second, third and fifth defendants. The plaintiffs were granted an order in terms of their application against the first defendant on 21 October 1999.

7. Meanwhile, on 10 September 1999, the fifth defendant applied (vide summons in chambers No. 5516 of 1999) to set aside the default judgment the plaintiffs had obtained against her. On 28 September 1999, the second and third defendants filed a similar application (see summons in chambers no. 6093/99).

8. On 1 October 1999, the application of the fifth defendant was heard and dismissed with costs by the learned Deputy Registrar. Similarly, he heard and dismissed the same application of the second and third defendants on 21 October 1999. On 21 October 1999, the learned Deputy Registrar also heard and granted, summons in chambers no. 6473/99 (the plaintiffs' application) wherein the plaintiffs applied to strike out paragraph 6 of an affidavit filed by Venkata on 14 October 1999 on the ground it was irrelevant, scandalous or otherwise oppressive and ordered costs against the first to third defendants.

9. Being dissatisfied with the decisions of the learned Deputy Registrar, the second and third defendants filed Registrar's Appeal Nos. 440 and 442 of 1999 while the first defendant filed Registrar's Appeal No. 441 of 1999 and joined in the appeal under Registrar's Appeal No. 440 of 1999. I heard and dismissed all three Appeals on 10 November 1999. The three (3) defendants have appealed against my decisions (in Civil Appeal Nos. 193 and 194 of 1999). I should add that the fifth defendant ultimately withdrew her appeal (in Registrar's Appeal No. 415 of 1999) against the dismissal of her application to set aside the default judgment (obtained against her on 20 August 1999).

The appeals

10. The three defendants/appellants were represented by one counsel. He referred to an affidavit filed by Venkata (on 17 September 1999) to support his contention that there was merit in his clients' applications to set aside the plaintiffs' judgment as the plaintiffs were involved in a fraudulent scheme. Counsel submitted that a triable issue was whether the plaintiffs had knowingly assisted the fourth defendant to commit a breach of trust against the first defendant which issue is the subject of Suit No. 1153 of 1999 (Suit 1153) in which the first defendant had sued (inter alia) the plaintiffs and the fourth defendant; that suit is still pending.

11. In his aforesaid affidavit filed to resist the plaintiffs' O 14 application against the first defendant, Venkata had exhibited the pleadings relating to Suit 1153; he contended that the plaintiffs' facilities should be set aside for fraud because the plaintiffs were involved in a scheme which caused the first defendant to suffer losses.

12. Briefly, in Suit No. 1153 (which was filed one day before this suit), the first defendant alleged that in March 1997 it was unable to service its loan facilities with plaintiffs. The plaintiffs requested the first defendant to inject further funds into the company to regularise its account with the plaintiffs.

The first defendant managed to raise $500,000 which sum was deposited into its account with the plaintiffs. The plaintiffs then granted new facilities to the first defendant which included letters of credit.

13. The first defendant alleged that between March and July 1997, the fourth defendant caused numerous invoices totalling $451,000 to be issued in the name of a business called Muhamed Sheriff Trade Agencies (MSTA) purportedly for goods sold by the former to the plaintiffs. The fourth defendant caused the plaintiffs to issue irrevocable letters of credit on the letter of credit facilities for payment of the invoices of MSTA which sole-proprietor was Muhamed. Payment of the invoices was to be and was, made against presentation of delivery orders countersigned by an authorised signatory of the first defendant. The first defendant alleged that the transactions whereby the letters of credit were negotiated were fraudulent as the goods or a large part thereof were never delivered to the first defendant.

14. The first defendant further alleged that Muhamed had told Venkata that the letters of credit transactions were effected for the purpose of procuring money from the first defendant to settle personal loans made by Muhamed to the fourth defendant. Th first defendant added that the plaintiffs (in particular their Mr M Nachiappan) well-knew the letters of credit transactions were fraudulent and carried out without the first defendant's authority. In support of this allegation, reference was made to a conversation between Venkata and M Nachiappan on 31 March 1998 wherein the latter purportedly said that everyone knew about the letters of credit transactions. The fourth defendant had also allegedly told the first defendant's auditors that the letters of credit transactions were in fact accommodation transactions to raise short term funds to meet the first defendant's needs and, they were done with the plaintiffs' full knowledge.

15. The alternative contention by the first defendant in Suit 1153 was, that the plaintiffs and the first defendant had entered into a contract on or about 22 March 1997 whereby it was agreed (for the banking/letter of credit facilities) that:-

> a. the plaintiffs would not debit the first defendant for the facilities without the first defendant's authority;
>
> b. the plaintiffs would act in good faith towards the first defendant.

The first defendant alleged that the plaintiffs breached the contract and their duty by the fraudulent letters of credit transactions.

16. In answer to the allegations raised in Venkata's (first) affidavit, the plaintiffs filed an affidavit affirmed by M Nachiappan, their Assistant Manager (credit division) which deposed that:-

> a. the conversation on 31 March 1998 took place in the presence of two (2) other officers of the plaintiffs, when Venkata came to the plaintiffs' office with $725,000 cash to pay into the first defendant's account to settle the company's long overdue letters of credit transactions (which had been converted into trust receipts) totalling $451,000;
>
> b. Venkata has asked the plaintiffs whether they knew of any irregularities in the manner of operation of the company's account which inquiry surprised Nachiappan;
>
> c. Nachiappan informed Venkata that by the terms of the plaintiffs' letter of offer

dated 16 June 1995, the plaintiffs were to disburse the loan directly to invoicing parties who supplied materials to the first defendant or machinery to upgrade its farm. However the plaintiffs had, at the first defendant's request, credited certain payments to the first defendant instead, on the basis of several letters written by the first defendant to the plaintiffs stating the suppliers had already been paid by the first defendant. In that context Nachiappan said he might have told Venkata that 'everyone knew' about the payments being made to the first defendant and not the suppliers;

d. however, Nachiappan did not mention letters of credit or any letter of credit arrangement in that conversation, neither was he referred to any specific letter of credit transaction let alone any scheme by which the first defendant had been defrauded. As he had never worked in the plaintiffs' trade department (which receives applications for letters of credit), Nachiappan would not know how, when and for what purpose letters of credit are issued – his duties were to sanction credit and not monitor the day to day operations of any particular facility granted to a customer;

e. neither the first nor the second and third defendants raised the alleged conversation with the plaintiffs or with Nachiappan until in writing 18 months later;

f. neither Nachiappan nor his predecessor (Sundaresan allegedly in March 1997) had agreed that the plaintiffs would not exercise their rights on any personal guarantee for the facilities granted to the first defendant, contrary to the claim made by the second and third defendants in their letter dated 3 April 1998 to the plaintiffs;

g. in their reply dated 18 April 1998 to the aforesaid letter, the plaintiffs advised that the sum of $725,000 paid in by Venkata did not wholly extinguish the sums owed by the first defendant and the plaintiffs expected the position to be regularised within 3 months pending which, the plaintiffs would not sue on the guarantees although, they reserved their rights against the guarantors;

h. the second and third defendants in their further letter dated 2 May 1998 to the plaintiffs insisted that the plaintiffs had released them from their guarantees but they made no mention of any fraudulent scheme;

i. the plaintiffs then replied on 20 May 1998 to reiterate that they had never given any assurance the plaintiffs would not exercise their rights on the guarantees and making it clear their withholding action for three months was not to be construed as a release of any of the guarantors; the defendants did not reply to this letter.

17. The plaintiffs' general manager V Srinivasan also filed an affidavit (on 11 October 1999) wherein he deposed that:-

a. Venkata became an authorised signatory of the first defendant's bank accounts on or about 16 April 1998 before his appointment as a director in August 1998;

b. the first defendant's account with the plaintiffs was first opened on 30 November 1992. As at July 1999, the first defendant owed in excess of $3.2m for the banking facilities granted by the plaintiffs and another sum of $217,063.58 on the trust receipt facility;

c. Venkata's allegation that the plaintiffs had participated in a scheme to defraud the first defendant of $451,000 was preposterous as the plaintiffs are a fully licensed bank in Singapore and are guaranteed by the government of India;

d. the directors of the first defendant were unable to operate the farm profitably; they were not the founders of the farm but had taken over from the original owners in or about December 1994. Had the second to fifth defendants conducted a due diligence search on the first defendant before they became shareholders, they would have realised the farm's dire financial straits;

e. in 1995 the first defendant's loans with the plaintiffs were rescheduled. By the terms of the plaintiffs' letter of offer dated 16 June 1995, the plaintiffs agreed to grant an initial 6 months moratorium during which the first defendant did not have to repay the loans (then amounting to $2.7m) but only service the interest;

f. by October 1996, the first defendant was again in arrears on the facilities extended by the plaintiffs. Despite repeated notices and reminders from the plaintiffs, the second to fifth defendants did not regularise the position; the plaintiffs were saddled with the prospects of classifying the loans as non-performing;

g. finally, on 29 November 1996, the fourth defendant replied requesting the plaintiffs to again restructure the credit lines of the first defendant; the letter stated that attempts made by the defendants to bring in new investors or joint venture partners were not successful; the fourth defendant promised to settle the outstanding interest payments by end 1996;

h. in December 1996 the plaintiffs again wrote to the first defendant asking that it regularised its account. This resulted in a meeting where the plaintiffs were requested to allow the first defendant to reschedule its debts;

i. finally, in March 1997, the first defendant took steps to regularise its accounts by depositing a sum of $500,000 to reduce its indebtedness to the plaintiffs. Discussions also took place with the plaintiffs wherein the first defendant's directors requested the plaintiffs to increase the trust and other facilities to $600,000. This resulted in a letter of offer from the plaintiffs to the first defendant dated 21 March 1997;

j. thereafter the first defendant again defaulted in its payments on the trust receipt facility and, despite repeated written reminders from the plaintiffs between 31 March 1997 and 23 February 1998, the first defendant and the other defendants took no steps to regularise the overdue accounts;

k. on 11 March 1998 the plaintiffs' solicitors sent letters to all five defendants demanding the sum of $3,898,877.37 in relation to all the facilities granted by

the plaintiffs to the first defendant, including the trust receipts which were the subject of Suit 1153;

l. it was only then that Venkata came to the plaintiffs' office to pay cash $725,000 on 31 March 1998. Srinivasan was present at the meeting between M Nachiappan and Venkata that day and he did not recall M Nachiappan telling Venkata *'everyone knew about the letters of credit arrangement'* or words to that effect. Shortly thereafter, the second and third defendants instructed the plaintiffs to change the signatories to the first defendant's accounts and to freeze the letter of credit facility;

m. the plaintiffs subsequently received the resolution of the first defendant's board of directors appointing Venkata as a bank signatory in addition to the other authorised signatories which represented the Chellam and Jayaram families;

n. by May 1998 the first defendant's account was again significantly overdue. The plaintiffs sent a notice to the first defendant and to the other defendants as guarantors, requiring the accounts to be regularised by 30 June 1998;

o. when there was no response by the deadline of 30 June 1998, the plaintiffs set off against the first defendant's outstanding account the fixed deposits pledged by the fourth defendant amounting to $272,067.08. At the same time the plaintiffs reduced the first defendant's facilities to $3.35m from $3.6m by withdrawing the trust receipt facility of $250,000. This was notified to the first defendant by the plaintiffs' letter dated 2 July 1998 which was copied to all the other defendants;

p. he had never seen N Rajan Associates' (the auditors) letter dated 6 July 1998 until it was exhibited in the affidavit of the first defendant. Neither did the other defendants or Venkata speak to him on the allegations contained in the letter;

q. the Chellam and Jayaram families were also directors, shareholders and guarantors of another account with the plaintiffs namely that for a travel agency called Sunseekers (88) Pte Ltd (Sunseekers). When the plaintiffs decided to classify the first defendant's account as a non-performing asset (as notified to the first defendant on 13 April 1999), it took similar action against Sunseekers' account. The plaintiffs gave Sunseekers 30 days' notice to make alternative arrangements as the plaintiffs intended to withdraw its facilities to the company. Sunseekers took no action and its account with the plaintiffs eventually became dormant;

r. although the first defendant complained to the commercial affairs department of the Criminal Investigation Division, no one from that department contacted the plaintiffs on Venkata's complaint of a scheme to defraud the first defendant. A similar complaint to the Monetary Authority of Singapore drew no reaction from the latter save to request the plaintiffs to reply to the complainant direct, copied to the Authority.

18. It would be appropriate at this juncture to set out the text of the letter dated 6 July 1998 of the auditors as it forms the gravamen of the defendants' appeal as well as the first defendant's case against the plaintiffs in Suit 1153; the letter addressed to the board of directors of the first

defendant states:-

> Dear Sir,
>
> **Audit of the Accounts for the year ended 31 December 1997**
>
> In the course of the audit of the accounts of the company for the year ended 31 December, 1997, we observed that the company established certain letters of credit for certain intended purchases totalling S$320,000. You have advised that these were accommodation transactions to raise short term funds to meet the needs of the company. You have also confirmed that these moneys were deposited into the company's bank account and the liability to the bank has been fully liquidated in respect of these transactions. You further advised that these transactions were done with the full knowledge of the bank so that your overdue to the bank could be regularised in this till you were able to arrange additional funds.
>
> In our opinion, the documentation that we have sighted is not in conformity with the substance of what actually took place. As such the bankers may take the view that funds are being obtained by the company by producing documents that are not reflective of what has actually happened.
>
> As such, we strongly recommend that the company does not enter into similar transactions in the future to obtain funding from the bankers unless it receives written confirmation from the bankers that they are fully cognizant of the nature of the transactions and are willing to make advances knowing that the form and substance of the transactions are different.
>
> We are also copying this letter to all shareholders for their information.

19. A number of observations on the auditors' letter can be made: Firstly, the plaintiffs' disclaimer (in Srinivasan's affidavit) of all knowledge of the letter and its contents until they saw it as an exhibit in the defendants' affidavit was not effectively challenged by the defendants. Neither could the defendants challenge the plaintiffs' contention that at no time did Venkata or his parents or the Jayaram family (fourth and fifth defendants) mention the letter to any of the plaintiffs' officers; there was certainly nothing in writing to prove they did. Secondly, it is significant that all information contained in the auditors' letter emanated from the first defendants' directors although the actual informer was not identified. There was no verification of the information furnished nor was it said that the plaintiffs had been approached to ascertain that they indeed knew of the questionable transactions referred to, as alleged by the auditors' source of information. At best therefore, the letter is self serving. Accordingly, the auditors' letter cannot be said to raise any triable issue.

20. My comment on the auditors' letter would equally apply to the first defendant's submission that its statement of claim (in its proceedings against the plaintiffs, the fourth defendant, Muhamed and M Nachiappan) in Suit 1153 raised triable issues. It is trite law that allegations of fraud touching on letters of credit and knowledge of the bank involved must be clearly established. The allegation of fraud raised in Suit 1153 not having yet been determined by a court, it remained a mere allegation, not an established fact (emphasis added). Counsel for the appellant defendants had relied particularly on para 15 of the statement of claim in Suit 1153 which states:-

> In or about May 1999, in a telephone conversation the 2nd defendant [Muhamed]

> told Mr Venkata Chellam who was to be appointed as a director of the plaintiffs that he had extended a personal loan to the 1st defendant [fourth defendant here] and the letter of credit transactions were issued to procure money from the plaintiffs to pay off the personal loan.

However, the above allegation was specifically denied by Muhamed in para 11 of the defence he filed to Suit 1153 where he said:-

> Save that there were telephone conversations between the 2nd defendant and V Chellam on or about May 1990 as pleaded in paragraph 15, the second defendant denied that he had told the said V Chellam that the letters of credit transactions were issued to procure money from the Plaintiffs to pay off personal loans
>
> .

Far more significant, the fourth defendant had, in his affidavit (filed on 1 October 1999) denied the allegations made in Venkata's affidavit (filed on 17 September 1999) in the following paragraphs:-

> 7. ….At the relevant time, I was the person in charge of the company's [the first defendant's] affairs and I strenuously deny the allegations made therein that the plaintiffs was [sic] involved in a scheme to defraud the first defendant (emphasis added). There is no basis for the said Venkata Chellam to make such an allegation especially when he was not involved in the first defendant's affairs at that time.
>
> 9. In respect of Suit No. 1153/99, I also wish to inform the court that I am also one of the defendants therein together with the plaintiffs in this Suit. In respect of that Suit, I have instructed my solicitors to file a Defence denying the allegations of fraud levelled against the Plaintiffs' bank, its officers and myself.

Although the fourth defendant was separately represented in these proceedings, he nevertheless shared a common liability with the three appellants here as, he was sued by the plaintiffs as a co-guarantor for the facilities extended to the first defendant. It was therefore not in his but against his, interests to say anything in favour of the plaintiffs but he did. Consequently, I gave considerable weight to the denials in his affidavit. Once I did that, the allegations of fraud made by Venkata needed to be bolstered by something far more concrete than mere words, in order to render the allegation a triable issue; Venkata had nothing to offer in that regard except to reiterate his allegations and deny the statements made by Srinivasan and or Nachiappan (save that where it suited his/his parents' interests to do so, such as the plaintiffs' setting off the fixed deposit monies of the fourth defendant, he agreed with what the plaintiffs did).

21. I did not share counsel's view that this suit and Suit 1153 are closely related albeit they sprang from the same facilities granted by the plaintiffs to the first defendant. The causes of action in both suits are entirely different. If the first defendant eventually succeeds in its claim in Suit 1153 against the plaintiffs and the fourth defendant, it would not be prejudiced by the plaintiffs' having secured judgements in this suit.

22. At this juncture, I should add that, contrary to the allegation of Venkata that the auditors alerted the first defendant to irregularities in the course of auditing the accounts of the company for 1997, it was the plaintiffs who had taken up with the first defendant the unsatisfactory state of its accounts. V Srinivasan had in his affidavit (referred to earlier) deposed that the plaintiffs had written to the first

defendant on 2 November 1997 to state that the plaintiffs' internal auditors took a serious view of the accounts of the company and required a definite improvement before the next review on 31 March 1998. When the plaintiffs received the accounts of the first defendant for 1997 in September 1998, Srinivasan wrote in early November to the first defendant for clarification, in particular on the overstatement of stock at $259,989 when the auditors were only able to verify stock worth $80,000. It is significant that it was Venkata who replied on the first defendant's behalf on 6 November 1998 to inform the plaintiffs that *'no actual count was carried out at year end to verify the exact amount of stocks. Proper stock records have been implemented since'*. The matter did not rest there as the plaintiffs wrote for further clarification on the company's cash flow projections and this was eventually furnished in December 1998. If indeed there were any irregularities in the first defendant's 1997 accounts touching on the letters of credit transactions ($451,000), the same would or should have been detected by the auditors and in turn by Venkata by the time he was appointed a director in mid-1998. The total silence on the part of Venkata and his parents (apart from the casual verbal inquiry he made to the plaintiffs' officers on 31 March 1998) until they launched Suit 1153 on 11 August 1999 is a telling reflection of the merits of their current complaint, especially as Venkata is himself a practising lawyer.

23. It is equally significant that the first defendant's letter to the plaintiffs dated 9 October 1997 (exhibited in Srinivasan's affidavit) was signed by both the third and fourth defendants; that letter inter alia stated:-

> We are writing to you regarding the current outstanding trust receipts, which are over due and for which the company is finding difficulty to meet from the existing revenues…..
>
> We have discussed with outside parties to participate in our business but before doing so they want the following commitment from the Bank.
>
> Since current revenues are inadequate to repaying the loans they want the bank to
>
> (a) reduce interest rate to prime rate;
>
> …….
>
> (d) overdue TR's to be rescheduled…..

It therefore does not lie in the mouth of Venkata or his father (the third defendant) to complain about the overdue trust receipts. By then (according to Srinivasan), 6 out of the 7 letters of credit complained of by the first defendant in Suit 1153 had been converted into trust receipts and were already overdue by between 43 and 70 days. By 31 March 1998, when Venkata came to make payment of $725,000 to the plaintiffs, all 7 letter of credit had been converted into trust receipts and all were overdue by between 216 and 243 days (the first letter of credit was applied for on 24 March 1997 and the last on 25 July 1997).

24. Venkata had also alleged that the plaintiffs constantly were in breach of the terms of the letter of offer by exceeding the limit of the OD Trust Receipt facility which was limited to $600,000. Srinivasan had rebutted this allegation, pointing out that there was no such facility. What the plaintiffs offered to the first defendant was a trust receipt facility of $600,000 upon which the first defendant drew. Each trust receipt was for 120 days and if, as did happen, the first defendant did not pay within 120 days, the trust receipt became overdue and attracted interest causing the sum owed on the facility to exceed $600,000, a fact which Venkata did not seem to appreciate.

25. Venkata had also raised other allegations including inter alia, that the plaintiffs had failed to give a breakdown of the facilities and interest charged which he alleged was 'exorbitant'. I had no hesitation in dismissing these allegations as completely baseless, judging from the voluminous correspondence the plaintiffs exhibited in their affidavits and the fact that the plaintiffs sent monthly statements of accounts to the first defendant. Equally, I rejected as far-fetched, the allegation that the plaintiffs had actively promoted the farm to the second/third defendants as an investment opportunity. It also defies belief that Venkata, a practising lawyer, would have remained inactive for 18 months (March 1998 to August 1999) after discovering that the plaintiffs had connived in or knowingly assisted in, a fraud committed by the fourth defendant.

26. The history of the first defendant's account with the plaintiffs clearly showed that the account was hardly satisfactory from its inception and it eventually became a delinquent account. The primary cause was due to the farm being undercapitalised which situation was not helped by the friction and acrimony between the Chellam and Jayaram families (each holding 50% equity in the farm), which, despite Venakta's denial (in para 7 of his second affidavit filed on 14 October 1999) I accept did exist, from the chronology of events recounted in Srinivasan's affidavit. According to Srinivasan (see his affidavit filed 18 Ocotber 1999), when the farm was still unprofitable after the two families took it over, the Chellams blamed the Jayarams. Both families had acknowledged the need for additional capitalisation to make the farm viable in their letter to the plaintiffs dated 9 October 1997 (supra).

27. I note further that after the Jayaram and Chellam families bought over the farm from the original owners in December 1994, the plaintiffs received a director's resolution from the first defendant requiring the accounts with the plaintiffs to be operated by at least one signatory from each of the two (2) groups, group A represented the Chellam family and group B the Jayaram family. That being the case, it would be hard to imagine how the fourth defendant (as alleged) could have misused the first defendant's letters of credit facilities to his own benefit or to the benefit of Muhamed without the knowledge of the second/third defendants and their son (Venkata).

The plaintiffs' application

28. I revert now to the plaintiffs' application which granting by the Deputy Registrar formed the basis of the first, second and third defendants' appeal in Registrar's Appeal No. 440 of 1999. The plaintiffs had applied to strike out the following paragraph in Venkata's reply affidavit filed on 14 October 1999 (in answer to Srinivasan's affidavit set out in para 17(c) above):-

> 6. Although the Plaintiffs are allegedly a full licensed bank and fully guaranteed by the Government of India, their officers have been embroiled in schemes concerning sums much larger than the amounts at hand. In particular, the Plaintiffs were recently the subject of the biggest scandal in Indian Banking history whereby they reportedly lost S$534m for the 1995-1996 fiscal year and wiped out their entire capital base. The Plaintiffs' losses compelled the Indian government to intervene and re-capitalise the Plaintiffs and criminal investigations are currently pending against a number of the officers heading the plaintiffs at the material time. Incidentally, (a) the Plaintiffs' Meyappan Nachiappan was involved in a claim brought by the Plaintiffs regarding losses suffered as a result of the scandal in Suit No. 2355 of 1996 and (b) N Sundaresan the Plaintiffs' deputy general manager during the material time was named in the First Investigation Report filed in respect of the scandal.

In my view, the Deputy Registrar quite rightly struck out para 6. In his affidavit (filed on 18 October 1999) Srinivasan had deposed that the offending para 6 was totally irrelevant and, was an overt attempt to prejudice the Court and scandalise the action to suit the needs of the first defendant and the Chellams. Srinivasan was also not aware of any First Investigation Report naming Mr N Sundaresan.

29. I fully agreed with Srinivasan's comment. Even if Venkata's (unsubstantiated) allegation in para 6 is true, it has no relevance to the plaintiffs' claim herein; his sole motive was to unfairly tarnish the reputation of the plaintiffs in the eyes of the law.

The conclusion

30. The onus was on the first defendant to show there were triable issues or, that there ought for some other reason for the plaintiffs' claim to proceed to trial (O 14 r 3(1) of Rules of Court). As the first defendant had not raised any reasonable doubts on the plaintiffs' claim and, Venkata's affidavits had not satisfied me that the first defendant had a fair and reasonable probability of showing a real or bona fide defence, I saw no reason to disturb the order made by the court below.

31. As for the second and third defendants, they had a higher burden to discharge than that for an O 14 application. In this regard I refer to the Court of Appeal decision in *Abdul Gaffer v Chua Kwang Yong* [1995] 1 SLR 484 cited by counsel for the plaintiffs. In order for the court to exercise its discretion to set aside a judgement in default, the two (2) defendants had to show that they had a defence with a real prospect of success which carried some degree of conviction, not merely an arguable defence, this the second and third defendants failed to do. Accordingly, I also dismissed their appeals.

LAI SIU CHIU

JUDGE