
(1938) 11 MAD CK 0025
In the Madras High Court

A.M. Gopalakrishnan

APPELLANT

Vs

The Official Liquidators and Quilon Bank Limited

RESPONDENT

Date of Decision : 18-11-1938

Acts Referred:

Companies Act, 1956 — Section 282B

Citation : (1939) 1 MLJ 209

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—In Application No. 2162 of 1938 one A.M. Gopalakrishnan, an employee of the Travancore National and Quilon

Bank, Ltd., prays for an order that directions should be issued to the Official Liquidators to pay the sum of Rs. 10,000 furnished by him to the

above Bank as security for his post as the Chief Cashier in the Anderson Hall branch, in full and in priority to the claim of any creditor. In support

of the application he has filed an affidavit stating that he was employed on the 9th March, 1938 and that his services were terminated due to the

fact of the Bank being wound up. He submits that the security account was deposited for a specific purpose agreed upon between him and the

Bank and that in the event of any loss caused to the Bank by his misconduct, the Bank might recoup themselves from out of the sum only such loss

and nothing more and that on the termination of his services the amount should be returned to him. He contends that the Bank was trustee to him in

respect of the said sum and that the said sum was trust money in the hands of the Bank entrusted for a specific purpose. One Venkatarangam, also

an employee of the Bank, has made a similar application stating that he was employed in the Mount Road branch of the Travancore National and

Quilon Bank, Ltd., and that he has furnished security for Rs. 500. The Official Liquidators also have made an application asking for directions in

regard to payment of the amount of security furnished by the employees for the due performance of their duties. The question raised in these

applications is one of considerable importance and before dealing with it, it is very necessary to state the facts and circumstances under which the

said deposits were made. The Travancore National and Quilon Bank was the result of an amalgamation effected between the Travancore National

Bank, Ltd., and the Quilon Bank, Ltd., on the 19th September, 1937. Thereafter the amalgamated Bank was styled as the Travancore National

and Quilon Bank, Ltd. It also employed the staff of the Quilon Bank. Both the above-mentioned Banks took cash securities from a large number

of employees. The cash securities given by the employees of the Quilon Bank, Ltd., were transferred to the Travancore National and Quilon Bank,

Ltd. It will be seen from the rules of service of the Travancore National Bank, Ltd., which governs the present Travancore National and Quilon

Bank, Ltd., that it is incumbent on all employees of the Bank to furnish cash security. Rule 29 provides thus:

It is incumbent on all employees of the Bank to furnish a cash security as they have to work in positions of trust. The following table will show the

security required from the different classes of employees:

(a) Superior-

On probationRs. 500.

On confirmationRs. 1,000.

(b) Subordinate-

1. First grade clerks Rs. 500 to 1,000 according to the responsibilities of the office one holds,

(c) Menial-

Rs. 50 to Rs. 200.

In the case of the Menials the management shall have the discretion to dispense with or regulate the amount of security.

2. There is no other rule or regulation as to how the security when furnished is to be dealt with by the Bank. Mr. Verghese, the Superintendent of

the Travancore National and Quilon Bank has deposed to the following effect in

his affidavit:

3. After the passing of the Indian Companies Amendment Act, 1936 and in view of the provisions of Section 282-B of the Indian Companies Act

it was thought necessary to deal specifically with the cash securities and therefore the cash securities deposited with the Travancore National Bank,

Ltd., before the date of amalgamation and those cash securities transferred by the Quilon Bank, Ltd., were treated as having been paid back to

and re-deposited by the employees. The old receipts granted by the Quilon Bank, Ltd., as well as the Travancore National Bank, Ltd., were

returned by the employees and new receipts were issued to the employees by the Travancore National and Quilon Bank, Ltd. The form of the

receipt issued by the Travancore National and Quilon Bank, Ltd., is marked Exhibit "A" and it is filed herewith and it may be read as part of this

affidavit. In the receipt it is stated that it is "Staff Security Deposit Receipt" and that the deposit would bear interest and it further says that the staff

security deposit was subject to the rules and regulations of the Bank for the time being in force. But no rules and regulations were framed by the

Bank as the Bank went into liquidation in last June. I have countersigned the receipt issued as Superintendent, Staff Department.

4. * * * * *

There is a separate account kept for staff security deposits, although the deposits were not invested in specific securities.

7. I also state that after issue by the Travancore National and Quilon Bank, Ltd., of the new deposit receipts they were handed over to the Bank

by the staff duly discharged and a letter was written to the employees in terms of Ex. "3" herewith filed and it may be read as part of this affidavit.

3. The form of the receipt issued by the Travancore National and Quilon Bank, Ltd., which is marked as Ex. A to the said affidavit runs thus:

This Receipt is not Transferable.

Travancore National and Quilon Bank, Ltd.

(Incorporated in Travancore, 1912.)

Staff Security Deposit Receipt.

Central Office,

Madras,.....

Rs.

Received from

Rupees bearing interest at

per cent. per annum and subject to the Rules and Regulations of the Bank

for the time being for such deposits. Received at on

For Travancore National and Quilon Bank, Ltd.

Accountant. General Manager.

and the letter Ex. B referred to therein is in the following terms:

Dear Sir,

Re : Staff Security Deposit Receipt.

We acknowledge receipt of your staff security deposit receipt No.

for Rs. issued by the Bank in your favour. The receipt

will be retained by the office.

The Bank will have a first charge on the deposit for all monies due from

you to the Bank and also for all losses the Bank is put to on account of your

negligence or fraud and the Bank will have a right to appropriate the amount,

to the satisfaction of such claim as aforesaid to the extent thereof.

Yours faithfully,

General Manager.

4. The above allegations in the affidavit have not been controverted. On these facts, the question that arises is: what is the nature of. the relationship

between the Bank and the employee in respect of the amount which was furnished by the employee as cash security in obedience to the rules of

the Bank? As stated in the said affidavit, no rules and regulations have been made though the receipt states that the amount was deposited with the

Bank subject to the rules governing such deposits. The word "such" is significant because the rules regulating the ordinary deposits in a Bank either

in current account or in fixed deposit are not to govern it. When a person deposits money in current account or fixed deposit, the presumption is

that the moment the amount is deposited, it becomes the banker's money. The amount is treated as a loan to the banker who is required to return

the same when demanded or at the expiry of the term of the fixed deposit The

relationship is one of debtor and creditor and not trustee and cestui

que trust but when moneys are placed in or remitted to a Bank to apply them for a specific purpose, in which case the Bank must be deemed to

hold it in a fiduciary capacity. The principle applicable is thus stated in Halsbury's Laws of England, Vol. 2, page 228 (Hailsham Edn.):

Property which is in the possession of the bankrupt for a specific purpose does not, as a general rule, pass to the trustee, but is clothed with a

species of trust and is subject to the same principles as trust property.

5. The ordinary illustration of this principle is where a banker is asked to collect and remit the amount of bills or cheques sent to him. In a case in

Edwards v. Glyn (1859) 2 El. & El. 29 : 121 E.R. 12 a sum of ₹½3,000 was furnished by a certain person for the purpose of saving the bank

from a run but the purpose could not be effected and the money was therefore returned. The question arose in bankruptcy whether the sum of

₹½3,000 formed part of the general assets of the Bank. Held it would not. Earle, J., observed thus:

I also think that this was a specific advance for a specific purpose on the understanding between the bankrupts and their sureties through whom it

was procured for them, that the money, if not used for that purpose, should be returned. The money was required to meet a run upon the

bankrupt's bank on a particular day and the giving of the guarantee by the sureties, the promise to them by the bankrupts that they would use the

money only if it would enable them to meet the run, and the ultimate advance by the defendants of the money, on the strength of the guarantee,

form, in my opinion, one transaction.... The case is entirely within the principle of Toovey v. Milne (1819) 2 B. & Ald. 683 : 106 E.R. 514, where

₹½120 had been advanced to the bankrupt, before bankruptcy, for the purpose of settling with his creditors : and he, no settlement having been

made, returned part of the money. Abbot, C.J., held that, as the money was advanced for a special purpose and was therefore clothed with a

specific trust, the assignee of the bankrupt had no right to it, and that the re-payment of it on the failure of the purpose for which it was advanced,

was protected as against them.

6. In Farley v. Turner (1856) 26 L.J. Ch. 710 a person who was already having a certain money to his credit in a bank sent a further sum to be

placed to its credit intimating at the same time that part of the said sum should be applied in meeting an acceptance of a bill due to a company. The

money was sent by him on the 9th December, 1856. The bill was due on 14th December, but in the meantime owing to the death of one of the

partners of the bank, it had to be closed and the money was never applied for meeting the acceptance of the bill. It was held that in regard to the

sum in respect whereof the above intimation was given, it was money placed in the hands of the bank to be applied for a particular purpose and it

would not come within the rule of money lodged in a bank by a customer in the common course of business. These cases only illustrate the

principle which is a part of the general law of trusts that when a sum of money is handed to another person who accepts it for a purpose declared

at the time a binding trust is constituted in respect thereof. The fact that the person to whom the money is handed over happens to be the bank

does not affect the principle. In this case, it will be seen that the amount was not deposited by the employee for the purpose of investment in the

bank as fixed deposit or in current account just as an ordinary customer. To use the language of Lord Cottenham in *Foley v. Hill* (1848) 2 H.L.C.

28 : 9 E.R. 1002 the position of the bank when they received the money is not the common position of a banker

Which consists of the common case of receiving money from his customer on condition of paying it back when asked for, or when drawn upon, or

of receiving money from other parties, to the credit of the customer, upon like conditions to be drawn out by the customer, or in common parlance

the money being repaid when asked for.

7. From Rule 29 already referred to, it is clear that the amount given by an employee is furnished as cash security and not for the purpose of

investment in current account or fixed deposit. The receipt given also makes it clear. It is styled "staff security deposit receipt". The amount was

given to the Bank for a specific purpose, that is, it should be held by them in trust for the employee until the termination of his service as a security

for his good behaviour, so that, in case he is found guilty of any act or omission in the discharge of his duties and loss should result therefrom, the

Bank might recoup such loss and pay the balance. It was therefore received by the Bank on a specific understanding to be applied by the Bank for

a specific purpose. This case therefore will certainly come within the principle stated by me, namely, that when money is handed to another person

who accepts it for a purpose declared, there will be a trust in respect thereof. The words "security deposit" connote that the money does not

belong to the banker as in the case of an ordinary deposit but is money belonging to the depositor. Vide the observations of Richardson, J., in *In re*

Alliance Bank of Simla, Ltd. 28 C.W.N. 721 . The employee is thus the beneficiary and the Bank is the trustee. The fact that in a certain

contingency the Bank might have recourse to the deposit does not confer any beneficial interest therein in the Bank nor make the Bank a

beneficiary as contended by Mr. Bhashyam. The question therefore arises whether the provision for payment of interest in the receipt given by the

Bank alters the relationship to one of debtor and creditor and converts the money which was advanced for a specific purpose into a mere loan. It

seems to me that a provision authorising the trustee to retain trust money with him and pay interest ought not to be made the foundation of a

decision on the question whether a certain transaction is a loan or a trust. The proper approach should be to determine whether on an

interpretation of a document, if there is one, or from certain proved or admitted acts and circumstances, a trust is established or necessarily arises.

If so, a provision for the payment of interest by the trustee does not destroy the character of trust but if on such an interpretation it is not possible

to find with definite certainty the nature of the transaction, the provision for payment of interest may be taken into account in arriving at a decision.

It is unsafe to negative a trust from the fact that interest is stipulated to be paid on the money received. The reasoning on which the trust is

negated, if I may say so with respect to some of the learned Judges, is not sound. The said reasoning may be best expressed in the language of

one of the learned Judges, Munro, J., who dealt with the question in *The Official Assignee v. Krishnaswami Naidu* I.L.R.(1909) 33 Mad. 154

thus:

The matter is made still clearer by the fact that the Bank was to pay interest at 5 per cent, per annum on the money deposited. This it would

certainly never have agreed to do unless it was to be allowed to use the money and make as much profit as it could. But if the Bank held the

money as trust-money, it could not have lawfully used the money for its own benefit. Section 51 of the Indian Trusts Act prohibits a trustee from dealing with trust property for his own profit.

8. According to this view, if the trustee is allowed to use the trust money for his own benefit, it is inconsistent with the notion of trust. No doubt, it

is an inflexible rule of equity that a person in a fiduciary position is not entitled to make a profit but the rule is subject to the qualification "unless

otherwise expressly provided" - vide the statement of the rule by Lord Herschell in *Bray v. Ford* (1896) A.C. 44 In *re Sykes* (1909) 2 Ch. 241 is

a good illustration of the principle that though a trustee may not make a profit out of the trust he may be allowed to do so by a provision in the

instrument of trust. Section 51 of the Trusts Act enacts the same rule and the use of the word "may" is significant. It connotes that the rule can be

abrogated by the author of the trust permitting the trustee to make a profit for himself. The true principle as enunciated by Lord Herschell and as

laid down in Section 51 of the Indian Trusts Act was not kept in view in the cases which refused to recognise the trust on the ground that the

trustee was allowed to make use of the trust moneys. I may usefully refer in this connection to the case of *Gee v. Liddell* (1866) 35 Beav. 621 : 55

E.R. 1038 which was followed in *In re Alliance Bank of Simla, Ltd.* 28 C.W.N. 721 and *In Re: Fazalbai Mills Limited (In Liquidation)*, , as an

illustration of both the positions which I have outlined above, namely, (1) where a trust is complete, provision for payment of interest by the trustee

would not make the trustee a debtor; and (2) from the fact of payment of interest alone the relationship of trustee and cestui que trust should not be

negated. The following observations of Sir John Romilly in the said case are instructive:

I have therefore only to consider whether, in this case, the relation of trustee and cestui que trust exists. In the first place Stephen Gee, by his will,

leaves ₹2,000 of which the interest is to be paid to his daughter for her life, and after her death to her children equally. The testator also says to

his only son and executor, "You may invest this or not, as you please but if you retain it you must pay interest for it at 4 per cent." Could Joseph

Gee, after proving his father's will and taking possession of his assets, amply sufficient for the payment of the legacy, say that he was not a trustee

of that ₹2,000? That would be impossible. The trust is expressly declared by the will. He is told that he need not invest it, but may retain it in his

own hands as trustee. I am of opinion that the relation of trustee and cestui que trust was completed, and the son was strictly and properly a trustee

of that sum of money, although it had not been separated from the estate; because the will of the testator allowed the executor to retain the

₹2,000 in his hands at interest, and to constitute himself a trustee of that sum without separating it from the mass of the property.

9. The question therefore is, was the relationship of a trustee and a cestui que trust constituted in respect of the sum of money entrusted to a person

apart from the question of any payment of interest by him? Therefore the fact that the deposit receipt allows payment of interest which would imply

the Bank being permitted to use the moneys does not render the relation between the Bank and the employee any the less a relation of trustee and

cestui que trust. It was open to the Bank to have kept the money separate without mixing it with the assets of the Bank but that such deposits stand

on a different footing is evidenced by the fact that a separate account was kept for them. If the matter was governed by the provisions of the Indian

Companies Act as amended by Act XXII of 1936 there can be no doubt about the answer to this case. The answer is that the moneys held in

security deposit were held in trust by the Bank. Section 282-B(1) is decisive of the matter. There is a statutory prohibition against the utilisation of

any portion of the moneys except for purposes agreed to in the contract of service. In my opinion the section only declares the correct legal

position of the Bank in regard to those moneys, namely, that they cannot be considered as mere deposits with a banker and do not form part of the

assets of the Bank. But the provisions of that section cannot apply to the present case because so far as this matter is concerned the Bank is

governed by the provisions of the Travancore Regulations where there is no provision corresponding to Section 282-B(1). My learned brother

Gentle, J., in a similar case, namely, in *The Hindustan Commercial Bank* AIR 1938 Mad. 651 : 1938 M.W.N. 7 in a well-

considered judgment, if I may say so with respect, took the correct view, namely, that the moneys paid by way of security deposit in respect of the

employees' faithful service were trust moneys but the learned Judge felt himself compelled to decide otherwise in a later case (Application No.

1883 of 1937 in O.P. No. 23 of 1937) in view of the decision of a Division Bench (Beasley, C.J. and Cornish, J.) in O.S.A. No. 56 of 1931

decided on 8th April, 1932. Gentle, J., in the course of the judgment remarked thus:

In my view, the facts in that decision of a Bench of this Court are indistinguishable from the facts before me.

10. Then he referred to the following observations of the learned Chief Justice:

It seems to us to be that the appellant agreed with the company that they should receive the Rs. 1,000 and hold that same paying interest at 5 per

cent, for its use, the money being repayable, if not forfeited, for losses occasioned through the appellant's default, upon his ceasing to be the

cashier of the company. That being so, it seems to me that there was no trust here at all.

11. The decision in O.S.A. No. 56 of 1931 confirmed the decision of Madhavan Nair, J., in Venkatasami Achari v. The Madras Publicity Co.

(1938) M.W.N. 1347. It therefore becomes necessary to examine closely the facts and reasoning on which the decision rests and see if it is a

compelling authority. When the matter was first heard by me, I felt like my learned brother Gentle, J., that sitting as a single Judge I should not

ignore the decision of a Bench whatever my personal view of the matter may be; but on a close examination of the case and the reasoning of the

learned Judges in view of later pronouncements on the subject and particularly of those of the very same learned Judges I have come to the

conclusion that though the facts of that case may or may not have justified that decision it cannot be treated as a binding authority on the facts of

this particular case or as laying down a general proposition of law which should govern cases of this description. So far as the facts are concerned,

the learned Chief justice says that he had to deal with the case upon very meagre information. The petitioner in that case was employed in the

company as a cashier in 1925 and he deposited a sum of Rs. 1,000 as security for the office and the same carried a nominal interest of 5 per cent,

per annum. Whether any receipt was given in that case as in this case is not clear from the judgment. After a few days' employment as cashier he

became a purchasing clerk of the company, an office which required no security. He appears to have sued the company and obtained a decree

against it for the return of the deposit money in 1928 but before he could recover it the company was compulsorily wound up in 1929. On that

state of facts both the decision of the learned Judge and that of the division bench rested. It does not appear from the facts whether a separate

account was opened and whether the deposit receipt stated that it was subject to any rules and regulations of the company. The learned Judge

Madhavan Nair, J., purported to follow a decision of the Bombay High Court reported in G.K. Malvankar Vs. The Credit Bank of India Ltd., and

a decision of the Allahabad High Court reported in In the matter of Annapurna Co., Ltd. (1925) 93 I.C. 93 : 24 A.L.J. 347 and incidentally

referred to with approval the case in Nagappa Chettiar v. Official Assignee, Madras (1930) 60 M.L.J. 355. This is what the learned Judge says:

It may be noticed that in the present case the initial deposit after the transfer of the applicant from the cashier's post to that of a purchasing clerk

remained in the hands of the company not as security but only as an advance made by him to the company purely for earning interest.

12. On this finding of fact both the learned Judge's decision and that of the division bench are perfectly justified and are not authorities on the

question which I am now called upon to decide in this case. The observations of the learned Judges in regard to the present question must only be

treated as obiter though they are entitled to great weight. The learned Judge (Madhavan Nair, J.) after that finding goes on to observe thus:

Even if the amount is to be treated as a security according to the Bombay decision it is clear the applicant's position is only that of an ordinary

creditor of the company.

13. The Bombay case referred to by the learned Judge is G.K. Malvankar Vs. The Credit Bank of India Ltd., . The facts of that case are these: A

certain employee at the time of his employment was called upon to give a security of Rs. 5,000 cash to be deposited with the Bank. The amount of

Rs. 4,500 out of Rs. 5,000 was credited to the security deposit account and bore interest at 6 per cent, per annum. A receipt was given to this

effect:

Received...Rs. 4,500 only as a security deposit subject to the service regulations of this Bank bearing interest at the rate of 6 per cent, per annum.

14. In the liquidation proceedings, the employee put forward his claim to Rs.

4,500 in priority to the creditors of the Bank on the ground that the Bank held the moneys in the nature of a trust. Macleod, J., negatived his claim. As this decision was confirmed by the division bench consisting of Scott, C.J., and Davar, J., and followed by the Bombay High Court consistently up to now, I shall quote in extenso the reasoning on which that judgment was based. Macleod, J., observes thus:

Mr. Jinnah argued that the Rs. 4,500 was paid to the Bank to be held by them upon trust, that his client was entitled to follow the trust fund in the hands of the Bank, and that, if the Bank had mixed the trust-money with its own monies, whatever moneys were found with the Bank at the date of liquidation up to Rs. 4,500 must be considered as trust-money. That argument, I think, is perfectly sound. If Malvankar had given Rs. 4,500 to the Bank to be held by the Bank during the period of his employment as security for his honesty and fidelity the Bank would have been bound to keep that sum separate and if they mixed it with their own monies he would be entitled to recover it out of the cash balance of the Bank at the termination of his employment. But unfortunately for him this was not the arrangement he made with the Bank. He agreed in effect that the Bank should treat his Rs. 4,500 in the same way as money deposited by a customer. He was to receive interest on it at six per cent, as long as he remained in the employment in the Bank. If that ceased he would be entitled to recover the principal with interest to date, provided that the Bank had no claim against him in respect of defalcation or otherwise. The Bank was entitled to invest the money in any way they pleased as no stipulation was made regarding the method of investment.... As the case stands I can see no difference between him and an ordinary depositor except that the deposit was not for a fixed period but for the time he remained in the employment of the Bank.

15. Scott, C.J., delivered a very short judgment and he summed up his conclusion thus:

If the money has, with the consent of the giver of the security, been received by the Bank and mixed with its funds in consideration of an agreement to pay interest on it, the Bank is only a debtor and not a trustee.

16. It will be seen from the observations of Macleod, J., that he accepted the argument of Mr. Jinnah as sound, namely, that if the employee had

given the money to the Bank to be held by them during the period of his employment as security for his honesty and fidelity, it would be trust-

money but he took a different view because of the arrangement that the Bank should pay interest, and this was in effect according to the learned

Judge that the Bank should treat it in the same way as money deposited by a customer. Of course the fallacy, if I may say so with respect, lies in

not noticing the principle that the character of a completed trust is not destroyed by the trustee being permitted to use the trust fund and pay

interest thereon, a position which was recognised by *Gee v. Liddell* (1866) 35 Beav. 621 : 55 E.R. 1038 and laid down so far as India is

concerned by the decision of the Privy Council in *Official Assignee of Madras v. Krishnaji Bhat* (1933) 65 M.L.J. 1 ILR 60 IndAp 203 : ILR 56

Mad. 570 (P.C.). The decision also fails to notice that the payment of interest is not necessarily incompatible with the notion of a trust. It is

unnecessary for me to notice the other decisions of the Bombay High Court, for example, *Official Assignee, Bombay v. Moulvi Abdul Hayee*

I.L.R.(1933) 58 Bom. 67 *National Petroleum Co., Ltd. v. Popatlal Mulji* I.L.R. (1936) 60 Bom. 954 and *In re Manekji Petit Manufacturing Co.*

(1931) 34 Bom. L.R. 728 because the reason given in those cases was the same given by Macleod, J., and Scott, C.j., though Kanya, J., took a

different view in *In Re: Fazalbhai Mills Limited (In Liquidation)*, already referred to. The decision of the Allahabad High Court in *In the matter of*

Annapurna Co., Ltd A; does not throw much light on the question. In that case T's son was employed on T furnishing a security of Rs. 10,000

and, the money was to be repaid after the expiry of the term of appointment or as soon as the appointment terminated. With a part of this money,

namely, Rs. 3,500, a flour mill was purchased. On the company going into liquidation, T claimed preference over all the creditors in respect of the

sum of Rs. 3,500 on the ground that it was a charge over the mill. The charge was negatived. With regard to the preferential claim this is all that

appears in the judgment:

As to preferential claim, he is as much in the position of a creditor as anybody else.

17. It may be noticed that no preferential claim was made in respect of the balance of Rs. 6,500 and no argument was based on the question of

trust. This decision was followed by Harries, J., in a recent case, Maheshwari Brothers Vs. Official Liquidators, Indra Sugar Works Ltd., . There

is no discussion of the matter and the learned Judge follows the above cases and also the decisions of the Bombay High Court in G.K. Malvankar

Vs. The Credit Bank of India Ltd., and In re Manekji Petit Manufacturing Co. (1931) 34 Bom. L.R. 728 The learned Judge also notices the

decision of Gentle, J., in In the matter of The Hindustan Commercial Bank AIR 1938 Mad. 651 : 1938 M.W.N. 7 and remarks thus:

There is one very important distinction of fact between this Madras case and the present case. In the Madras case the sum of money handed to the

Bank by way of security deposit was placed to a special account in the Bank, that is, was placed in a fixed deposit account in the name of the

employee who deposited such sums. In the present case the receipt which is before me shows that the company merely acknowledged the receipt

of Rs. 50,000 from the applicants and did not deposit it in any account in the name of the applicants.

18. The view of the learned Judge therefore is that if the deposit were treated differently from an ordinary deposit paid in current account or fixed

deposit, he would have decided the other way. But of course the learned Judge winds up by saying that

even if this distinction of fact is not of importance, I am unable to follow the view expressed by the Madras High Court and I am bound to follow

the Bench decision of this Court which is binding upon me as a single judge.

19. Therefore the learned Judge felt himself compelled to decide in the way he did. It will be seen from the decision of Beasley, C.J., in O.S.A.

No. 56 of 1931 that the learned Chief Justice lays stress on the fact that the company was allowed to use the money paying interest at 5 per cent.

It is unnecessary for me again to say that this view is not sound but the learned Judge sitting with Madhavan Nair, J., has not taken the same view

in a later case, M.R.R.M.M.R. Veerappa Chetty Vs. Official Assignee, . In that case the learned Judge was considering whether a certain

transaction was a trust or not. In that connection he had to consider the decision in Official Assignee of Madras v. Krishnaji Bhat (1929) 59

M.L.KJ. 718 which was later confirmed by the Privy Council in (1933) L.R. 60 I.A. 203 (Privy Council) . The facts in that case were as follows.

The plaintiff's father deposited a sum of Rs. 10,000 in the name of his minor son Krishnaji with Tawker & Sons, the terms being that the defendant

should invest the said sum in their firm or in any other firm as the Tawker & Sons might deem fit and pay interest at 9 per cent, per annum and pay

the principal to the plaintiff when. Krishnaji Bhat attained 21 years. The letter was to the following effect:

It is my request that you should invest in your firm Rs. 10,000 in the name of my minor son T.S. Krishnaji Bhat, and pay him the interest accruing

thereon.... Until my said son becomes 21 years of age, you need not hand over the principal to him, only the interest you can be paying to my

family.

20. A few days later Tawker & Sons gave a receipt to the plaintiff's father in these terms:

Received from Mr. T. Sivasankar Bhat the sum of Rs. 10,000 only through Mr. T. Sadasiva Tawker as fixed deposit in the name of his minor son

T. Krishnaji Bhat as per instructions contained in Mr. Sivasankar Bhat's letter dated 5th instant, carrying interest at 9 per cent, per annum.

21. Four years later the plaintiff instituted a suit against Tawker & Sons alleging that they were then involved in financial difficulties and were likely

to be adjudged insolvents. While the suit was pending, Tawker & Sons were adjudged insolvents. The plaintiff claimed the amount on the ground

that it was a trust fund and he had a preferential claim over the assets of Tawker & Sons. Kumaraswami Sastri, J., who tried the suit observed thus

in Krishnaji Bhat v. Sadasiva Tawker (1926) 24 L.W. 869 ;

The main question is whether the plaintiff is entitled to any preferential claim as regards the Rs. 10,000. There is no dispute that the firm of Tawker

& Sons were trustees in respect of Rs. 10,000 deposited by the plaintiff's father with them in trust for his minor son the plaintiff to be paid on the

plaintiff attaining majority.

22. Having observed thus, he proceeded to deal with the other contentions in the case. At page 875, he remarked thus:

The contention of Mr. Venkatarama Aiyar...is two fold. In the first place what he says is this. In the present case, as Tawker & Sons were allowed

to use the money, there is no trust; the trust is destroyed and all that the plaintiff is entitled to is to treat himself as a creditor of Tawker & Sons.

23. After dealing with the authorities bearing on this contention the learned Judge expressed himself thus:

If the author of the trust deed agrees that the trustee can use the money for his own benefit there seems to me to be no reason for saying that the trust goes and that it cannot be trust property in any sense of the term because of this liberty given to the trustee. No authority has been cited for so broad a proposition and I am not prepared to hold that the mere fact that Tawker & Sons in this case had power to deal with the property for their own purpose provided they paid interest destroys the character of the trust fund in their hands.

24. In appeal this decision was confirmed by Reilly, J. and Cornish, J. Their decision is reported in *Official Assignee of Madras v. Krishnaji Bhat* (1926) 59 M.L.J. 718. In the course of that judgment, Reilly, J., remarked thus at page 727:

The last contention of Mr. Krishnaswami Aiyar is that the subject-matter of this trust was only a debt due from Tawker & Sons to the plaintiff's father. I have indicated already that I do not think on the facts that represents the position correctly.

25. Cornish, J., went fully into this matter and observed thus:

I am of the same opinion. I think that the arrangement evidenced by Exs. A and B was a trust.... When was this trust created? But it has been argued that, notwithstanding the intention of the parties to stand towards one another in the relationship of trustees and beneficiary, the arrangement whereby the trustees were to have the use of the trust money for investment in their business is so incompatible with the notion of a trust, that no trust can be inferred, and that the parties must be taken as standing in the relationship of debtor and creditor only in respect of the Rs. 10,000. No doubt, it is a well-established principle that a trustee is to make no profit out of the trust fund.... But it is open to a settlor when creating a trust to make it advantageous to the person appointed trustee to undertake the trusteeship, and to determine the purpose for which the trust fund shall be utilised. There is nothing illegal in a settlor authorising by the instrument of trust the trustee to invest the trust money in a business, whether the trustee's own business or some other business, and providing that interest shall be paid for the use of the money so invested.

26. It will be seen from these remarks that Cornish, J., fully realises the principle laid down in *Gee v. Liddell* (1866) 35 Beav. 621 : 55 E.R. 1038.

The learned Judge in effect says that there is nothing so incompatible with the notion of a trust by reason of the fact that the trustees were to have

the use of the trust money. The learned Judge also thinks that if a trustee is authorised to invest trust money in a business of his own the character

of the trust is not destroyed. In effect the learned Judge goes back upon the view he expressed while sitting with Beasley, C.J., in O.S.A. No. 56

of 1931. Beasley, C.J., after referring to the facts of the decision in *Krishnaji Bhat's* case as stated by Reilly and Cornish, JJ., agrees with the

conclusion arrived at by the learned Judges in that case vide *M.R.R.M.M.R. Veerappa Chetty Vs. Official Assignee*, he repeats the remarks of

Cornish, J. and then concludes thus:

The defendants there contended that their liability was only the liability of debtor to creditor and that the doctrine of tracing did not apply. This

contention was directly negated by the appellate Court.

27. In effect therefore the learned Judge did not adhere to the view which he indicated in O.S.A. No. 56 of 1931, namely, that the use of the trust

money by the trustee is incompatible with the notion of a trust. In a recent decision reported in *Official Assignee, Madras v. Muthayee Achi* (1937)

M.W.N. 493 Madhavan Nair, J., sitting with Pandrang Row, J., also took a view different from what he did in the application from which the O.S.

Appeal arose. In that case the plaintiff was married to the first defendant. Defendants 2 and 3 were the Official Assignees of Rangoon and Madras

representing the firm of T. Ar. A. Rm. which was adjudicated insolvent. The said firm belonged to the first defendant's family and was carried on

by the first defendant's father Ramanathan Chettiar. The plaintiff sued to recover a large sum of Rs. 79,000 and odd on the ground that it was a

sum held in trust by the firm. One of the questions was whether the money was held in trust or whether the relationship of the firm to her was that

of mere debtor and creditor. The facts accepted by the learned Judge were as follows:

The moneys in the form of hundis are given at the time of the marriage by the bride's parent's family into the hands of the father-in-law of the bride

for investment in business, for the benefit of the bride and the children that may

be born to her after the marriage. These amounts are to be invested in the money-lending business of the bride-groom's family, if that family has such a business or in some other business. When the moneys are received the person who receives it, the bride-groom's father or the senior male member of his family, knows the purpose for which the amounts have been given to him and what he is expected to do with them. He receives them on the understanding that he is to invest them in business and allow them to accumulate by accretions of interest. It was for the purpose just mentioned and for this purpose alone that the hundies were handed over by the plaintiff's grandfather and father to the first defendant's father.

28. After stating those facts, the learned Judge observes thus:

In these circumstances we have no doubt that the hundi amounts received by the first defendant's father must be viewed as constituting a trust fund in favour of the plaintiff to be held by the first defendant's father as a trustee for her benefit and the relationship between her and the first defendant's father with respect to these amounts must be held to be that of cestui que trust and trustee.

29. The learned Judge took this view in spite of the fact that the first defendant's father was allowed to use the money in his own business and

make a profit out of it and he had to pay-interest thereon. The learned Judge also discusses the view laid down in *Nagappa Chettiar v. Official*

Assignee, Madras (1930) 60 M.L.J. 355 namely, where a trustee is authorised by the terms of the trust to invest the trust money in his own

business and directed to pay interest thereon, it ceases to be trust property and holds that this view is overruled by the decision of the Privy

Council in (1933) L.R. 60 I.A. 203 (Privy Council) . The learned Judge further observes that the decision in *Official Assignee of Madras v.*

Krishnaswami Naidu (1909) ILR 33 Mad. 154, must also be deemed to have been overruled. It is therefore clear that the learned Judge did not

adhere to the view which was the foundation of the decision in *G.K. Malvankar Vs. The Credit Bank of India Ltd.*, , which he followed in

Application No. 1883 of 1937 in O.P. No. 23 of 1937. Thus all the learned Judges, Beasley, C.J., Madhavan Nair, J. and Cornish, J., have gone

back upon the observations made by them in the case out of which O.S.A. No. 56 of 1931 arose. Further as I have pointed out, the facts of the

case on which the decision rested as stated by, Madhavan Nair, J., were different. It is no doubt true that the decision of the Privy Council in

(1933) L.R. 60 I.A. 203 (Privy Council) proceeds on the footing that a trust was admitted but the learned Judges who dealt with the case in the

High Court inferred a trust, apart from the admission. The said case is an authority for the position that a trustee can be allowed to use trust

moneys and make a profit for himself paying interest to the beneficiaries, if authorised by the author of the trust. It is also an authority for the

position that the character of a trust fund is not destroyed by allowing the trustee to utilise such moneys in his own business. In the circumstances I

do not feel that the judgment in O.S.A. No. 56 of 1931 is a binding authority on me and the observations therein on the question before me are

only obiter. Before my learned brother Gentle, J., the judgment of Madhavan Nair, J., was not referred to nor was my learned brother referred to

the decisions embodying their later view. Therefore on principle I am of the opinion that the amounts received by the Bank as security from the

employees were held by the Bank in trust for the employees and they did not form part of the assets of the Bank divisible among its creditors. I

therefore direct that the sum of Rs. 10,000 and interest thereon up to the date of winding up be paid by the Official Liquidators to the applicant

A.M. Gopalakrishnan and also a sum of Rs. 500 with interest up to the date of winding up to Venkatarangam but these amounts shall not be

disbursed by the Official Liquidators until the expiry of six weeks from this date.

30. So far as costs are concerned, in Application No. 2065 of 1938, I direct a sum of Rs. 250 to be paid to the Official Liquidators and Rs. 250

to Messrs. Section Parthasarathy and V.K. Tiruvenkatachari and Rs. 350 to be paid to Mr. Bhashyam Aiyangar. In Application No. 2162 of

1938, Mr. K.N. Visvanathan will have Rs. 150 for his costs.