
(1974) 01 RAJ CK 0014
In the Rajasthan High Court
Case No : Civil First Appeal No. 14 of 1970

Bank of Baroda

APPELLANT

Vs

Krishna Ballabh and Others

RESPONDENT

Date of Decision : 14-01-1974

Acts Referred:

Contract Act, 1872 — Section 140, 141

Citation : (1974) WLN 23

Hon'ble Judges : S.N. Modi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Modi, J.—This is a first appeal by the defendant Bank of Baroda against the judgment and decree of the Additional District Judge No. 2, Jaipur City, dated 11-9-69 in a suit for recovery of Rs. 10,491,63P. instituted by the plaintiff-respondent Krishna Ballabh. The others respondents Nos. 2 to 5 are the heirs of the deceased N.V. Vakhariya.

2. The undisputed facts of the case are these: N.V. Vakhariya, the husband of respondent-defendants no 2 and father of respondent-defendants Nos. 3 to 5 carried on business in the name and style of Messrs. Jam Chemical and Pharmaceutical Works in the City of Jaipur upto 28-6-61 on which date N.V. Vakhariya expired. During the relevant period he was the sole proprietor of "he said business. On 39 7-60 he opened a Cash Credit Account with the Bank of Baroda Ltd., here in after referred to as the Bank, in the name of Messrs. Jam Chemical at Pharmaceutical Works and executed an agreement Ex.A/14 in favour of the Bank. By this agreement N.V. Vakhariya was to be given cash credit facilities by the Bank against the Security of goods to be pledged with the- Bank On 11-3-61 the value of the goods pledged with the Bank was Rs. 40,812/ and the amount drawn from the Bank by N.V. Vakhariya against the goods pledged was Ks 24,028/66P. Almost the same position continued in the Cash Credit. Account on 14-3-61, on which date N.V. Vakhariya and Krishna Ballabh plaintiff

applied to the Bank for opening a Loan Account in the name of Messrs. Jem Chemical & Pharamiceutical Works on the security of F.D.R No 142576 dated 13-3-61 for Rs. 9,315/- standing in the name of Krishna Ballabh. The case of the Bank is that on the same day, that is, 14.3.61, a sum of Rs. 8,400/- was advanced to N.V. Vakhariya in the Loan Account. This fact is, however, denied by the plaintiff Krishna Ballabh. A prohibitory order dated 2-5-61 was received by the Bank on 3-5-61. This order was issued by the Court of Civil Judge, Jaipur City, in the execution case Jugalkishore and Ors. v. N.V. Vakhariya prohibiting the Bank until further orders from making payment to N.V. Vakhariya of the balance of the Current Account and what" ever amount remains after appropriation of the Bank loans to the Cash Credit Account from the proceeds of the goods kept in the Bank custody in security of the loans. N.V. Vakhariya thereafter deposited Rs. 14,500/- and Rs. 9,600/- on 19 5 61 and 24-5-61 respectively in the Cash Credit Account and thereby paid off the entire amount due to the Bank in the said account. On 24-5-61 he also got released all the goods pledged with the Bank. On 2-6-61 N.V. Vakhariya deposited Rs. 5,012/- which were credited in the Cash Credit Account. On 3-6-61 Rs. 5,000/- were transferred from the Cash Credit Account to the Sundry Deposit Account in pursuance of the prohibitory order dated 2-5 61. The Cash Credit Account was squared up and closed on 3-6-61. Or 13-3 62 the Bank issued a warrant in the form of a receipt for Rs. 773.10P showing adjustment of Rs. 8891.22 (Rs 8400/- plus interest thereon) to the Loan Account of N.V. Vakhariya out of the amouunt of the F.D.R. and showing a surplus of Rs. 773 10 to be received by the plaintiff. The plaintiff signed the said warrant and received the amount Rs. 773.10 on 13 3 62. After a period of more than a year on 29.8.63 plaintiff Krishnaballabh addressed a letter calling upon the Bank to pay him Rs. 5300/- approximately held by the Bank towards the prohibitory order dated 2-5-61. Again on 30-8-63, plaintiff Krishna Ballabh wrote another letter to the Bank bringing to its notice that it Wrongly represented to the court that a sum of Rs. 2325574P. only was outstanding against Messrs Jem Chemical & Pharmaceutical Works on 2 5 61 when in fact the dues of the Bank against the said firm amounted to Rs. 31,635.74P. (i. e. Rs. 23,255.74P. in the Cash Credit Account and Rs. 8,380/- in the Loan Account of Messrs. Jem Chemical & Pharmaceutical Works) Krishna Ballabh further warned the Bank that "if any amount is vastest by the Bank on account of such mis-information by the Bank to the court or to any body, it will be the sole responsibility and at the risk of the Bank." The Bank, however, on 3-9-63, withdrew sum of Rs. 5,000/ from the Sundry Deposit Account and paid it to the court towards us prohibitory order dated 2-5-61. The plaintiff Krishna Ballabh thin instituted the present suit out of which this appeal has arisen on 13-3-65 for the recovery of Rs. 8891.22P deducted from the Fixed Deposit Receipt for Rs. 9,315/- and Rs. 1,600/41 by way of interest at the rate of 6% per annum-total Rs. 10,491,63P, on the grounds which are mentioned in para No. 9 of the plaint and are reproduced below:

A. Because in pursuance of the term of the letter of 14-3-61 of the plaintiff for

granting loan over-draft facility to said Shri N.V. Vakhariya, Proprietor of Messrs Jem Chemical and Pharmaceutical Works, Jaipur, defendant No. 1 the Bank of Baroda Ltd., Jaipur, did not grant any loan actually to said Shri N.V. Vakhariya and therefore the Bank of Baroda Ltd. Jaipur, defendant no 1 could not deduct any amount whatsoever from the proceeds of the said Fixed Deposit Receipt No 142676 for Rs. 9315/-.

B. Because on 2nd June, 1961 the defendant no 1 the Bank of Baroda Ltd. Jaipur owed a sum of Rs. 31,645.74P plus interest etc that may have accrued thereon up till that date but the Bank of Baroda Ltd., Jaipur, defendant No 1 released the total goods on the security of which the said defendant No 1 the Bank of Baroda Ltd. had advanced the sum of Rs. 31,645.74np on accepting a lesser payment of Rs. 28,512/- only without any reference to "the plaintiff and thereby by its act and omission the security of the Fixed Deposit Receipt No 142576 for Rs. 9315/- Was discharged under law. Moreso, because the plaintiff was entitled to the benefit of every security which the creditor viz. defendant no 1 the Bank of Baroda Ltd. Jaipur had against the principal debtor Mr. N.V. Vakharta at the time contract of surety was entered into with the said Bank of Baroda Ltd. Jaipur, defendant No 1.

C. Because in case the plaintiff's contentions mentioned in sub-paras A and B above may not be held to be tenable in law, the plaintiff's said Fixed Deposit Receipt No 142676 for Rs. 9315/-. Can only be held liable for payment to the extent of the difference of the loan received from said Shri N.V. Vakhariya.

The plaintiff, in the alternative, prayed for a decree of Rs. 5,15650P."against the Bank on the ground that although this amount was lying in deposit with the Bank the same was not paid to him nor it was credited in the Loan Account outstanding against M/s. Jem Chemical & Pharmaceutical Works The plaintiff further prayed in the alternative that in case the decree is not passed against the Bank the suit be decreed against defendants Nos. 2 to 5 In the plaint the plaintiff besides impleading the Bank and the heirs of deceased N.V. Vakhariya, also arrayed as defendants the decree-holders in the execution case in which the prohibitory order dated 2-5-61 was passed. The suit was contested by all the defendants who traversed the allegations made in the plaint. The important findings arrived at by the learned Additional District Judge and which are relevant for the disposal of this appeal may now be stated as under:

1. No loan whatsoever was advanced to N.V. Vakhariya against the plaintiff's Fixed Deposit Receipt for Rs. 9315/-. The transfer of Rs. 8891.22P out of the plaintiff's F.D.R. for Rs. 9315/- was therefore unwarranted.

2 The Cash Credit Account and the Loan Account were two separate accounts in the name of Messrs Jem Chemical and Pharmaceutical Works but that did not mean that it was not open to the Bank to recover its dues outstanding against its debtor under some particular account from his other account if the Bank in its wisdom thought proper to do so.

3. When the prohibitory order dated 2-5-61 was received by the Bank on 3 5.61 the amount due to the Bank in the Cash Credit Account and the Loan Account was Rs. 31,530/-, and the goods pledged with the Bank were of the value of Rs. 39,000/- against which the drawing power of N.V. Vakhariya was about Rs. 29,000/-. The Bank therefore should have intimated to the court in answer to the prohibitory order dated 2-5-61 that no amount was due to N.V. Vakhariya from the Bank. The Bank was not legally justified in sending Rs. 5000/- to the court in pursuance of the prohibitory order dated 2-5-61.

4. The act of the Bank in releasing the goods on 24-5 61 on the deposit of the amount due under the Cash Credit Account without taking the care that Rs. 8400/- along with interest thereon were also outstanding against N.V. Vakhariya was a wrong, negligent and imprudent act on the part of the Bank and it discharged the surety u/s 141 of the Contract Act, to the extent of the value of the security lost or parted with.

5. The Bank should not have credited Rs. 5000/- deposited by N.V. Vakhariya on 2-6-61 in the Cash Credit Account when nothing was due from N.V. Vakhariya under that account. This sum of Rs. 5000/- should have been credited by the Bank in the Loan Account,

6. The contention of the Bank that the plaintiff accepted Rs. 773.10P. on 13-3-62 in full and final settlement of his Fixed Deposit Receipt for Rs. 9315/- and that acceptance of Rs. 773.10 debarred him from claiming the suit amount, was rejected by the Court on the ground inter alia that the plaintiff received the amount of Rs. 773.10 under protest.

3. On the above findings, the learned Additional District Judge decreed the suit against the Bank and dismissed it against other defendants. Aggrieved by the said judgment and decree, Bank of Baroda, the successor-in interest of the Bank of Baroda Ltd., has preferred this appeal.

4. On behalf of the appellant, it is contended in the first place that the court below was wholly unjustified in holding that no loan was advanced to N.V. Vakhariya or Messrs. Jem Chemical and Pharmaceutical Works on 14-3-61 against the security of the Fixed Deposit Receipt for Rs. 9315/-dated 13.3.61. In this connection, the learned Counsel for the appellant produced certain documents in this court. The learned Counsel for the plaintiff-respondent admitted their genuineness, and the documents were admitted in evidence under the provisions of Order 41, Rule 27 C P.C. vide the order sheet of this Court dated 19 9 73. The first document on which stress has been laid is the letter dated 6.3 61 addressed to the Bank by Krishna Ballabh. By this letter, Krishna Ballabh requested the Bank to release his Fixed Deposit Receipt for Rs. 9,000/- issued by the State Bank of Bikaner and lying pledged with the said Bank against the loan to Messrs Jem Chemicel and Pharmaceutical Works amounting to Rs. 8,000/. He further assured the Bank that in case of such release by if, he would re-pledge it with the Bank against the over draft facilities granted to discharge

the liability of Messrs. Jem Chemical and Pharmaceutical Works. The Bank agreed to this proposal. The Cash Book of the Bank dated 6 3 61 shows that Rs. 8,000/- were and to the State Bank of Bikaner and debited to the Suspense Account of Krishna Ballabh. On 13.3 61 the Fixed Deposit Receipt No 142576 for Rs. 9,315/- was prepared in the name of Krishna Bllabh and on the application of N.V. Vakhariya and Krishna Ballabh dated 14 3 61 a Loan Account was opened in the name of Messrs Jem Chemical and Pharmaceutical Works and a sum of Rs. 8,400/- was debited to the Loan Account against the security of the Fixed Deposit Receipt for Rs. 9,315/- dated 13 3 61 In pursuance of the Loan granted to N.V. Vakhariya a promissory note Ex.A/1 was executed by N.V. Vikhanya on 14.3.61 The cash Payment Book of the Bank dated 14-3-61 shows that a sum Rs. 8,400/- was debited to the Loan Account of Messrs. Jem Chemical and Pharmaceutical Works on that day. All these documents clearly go to show that Rs. 8,400/ were advanced to Messrs Jem Chemical and Pharmaceutical Works and debited to its Loan Account which was secured by the plaintiff's Fixed Deposit Receipt It is important to notice that Krishna Bhallabh even in his letter dated 26.8.63 addressed to the Bank no where complained that no loan was advanced to N.V. Vakhariya on 14.3.61 against the security of his Fixed Deposit Receipt. He also did not complain about it in his subsequent letter dated 30.8.63 If there had been any truth in the fact that no loan was advanced to N.V. Vakhariya on 14-3-61, the plaintiff would have immediately complained about it when a sum of Rs. 8,891.22P. was deducted from his Fixed Deposit Receipt on 13-3-62 In view of the above circumstances I cannot agree with the finding of the lower court that a sum of Rs. 8400/ was not advanced by the Bank to Messrs. Jem Chemical and Pharmaceutical Works on 14 3.61 against the security of the plaintiff's Fixed Deposit Receipt.

5. The learned Additional District Judge has found that the loan of Rs. 8400/- was advanced to N.V. Vakhariya on 11 3 61 against the security of some other Fixed Deposit Receipt of Rs. 9350/- belonging to some other person. The entire basis for this conclusion rests on Ex.A/11 which is a transfer-form dated 11.3.61 for Rs. 8400/- A very look at this document would reveal that it is a discarded document with its material portions struck off. A perusal of this document goes to show that it originally stood in the name of Hindustan Trading Company but that name was struck off and over that name the word "Loan Account Jem Chemical Pharmaceutical Works" were substituted in red ink. How Could Rs. 8400/- be debited to the Loan Account of Messrs. Jem Chemical and Pharmaceutical Works on 11.3.61, when no such account existed on that date in the Bank The Loan Account of Messrs. Jem Chemical and Pharmaceutical was admittedly opened on 14.3 61 on the joint application Ex.A/2 filed by N.V. Vakhariya and the plaintiff. Ex A/11 appears to me to be a faked document prepared and brought on record with some ulterior motive. Who prepared it is not necessary to find out. It is true that this document had its origin from the Bank but merely on that account it cannot be binding on the Bank In my opinion, no reliance ought to have been placed on such a document by the learned

Additional District Judge.

6. My attention was also drawn to the statement of DW I.B.L. Banerjee, Accountant of the Bank He has deposed that Rs. 8400/ were advanced to N.V. Vakhariya on 11-3-61 vide Ex. A/11. This is a thoughtless statement and must have been made on account of Ex. A/11 which on being shown must have forced him to make this sort of statement. In face of reliable evidence, documentary and circumstantial, no reliance can be placed on the oral testimony of the witness to the contrary In my opinion, this statement of the witness deserves to be rejected.

7. I therefore hold that the sum of Rs. 8400/- was advanced to N.V. Vakhariya as loan on 14-3-61 against the security of the plaintiff's Fixed Deposit Receipt. The question that now arises is whether the Bank was unjustified in deducting Rs. 8891.22 p (Rs. 8400/- plus interest) from the amount of Fixed Deposit Receipt on the security of which the loan was advanced. This raises the question whether the surety was discharged on the release of the goods pledged under the Cash Credit Account to the principal debtor, namely, N.V. Vakhariya. There is no dispute that the goods pledged with the Bank under the Cash Credit Account were released by the Bank on 24-5-61 and on that day a sum of Rs. 8400/-plus interest thereon was outstanding against N.V. Vakhariya in the Loan Account. There is again no dispute that the value of the goods so released was much more than the amount due to Bank under the Loan Account and for the payment of which the plaintiff had stood surety by pledging his Fixed Deposit Receipt with the Bank. The learned Additional District Judge has found that the Cash Credit Account and the Loan Account were two separate and distinct accounts. This finding has not been challenged before on by either party. It may be pointed out that the plaintiff in his plaint made certain allegations to show that in fact there was one account only but he failed to prove the same. The learned Additional District Judge has placed reliance on Section 141 of the Contract Act. It reads as under:

Section 141. Surety's right to benefit of creditor's securities --A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

This section lays down that the surety is entitled to the benefit of every security which the creditor has against the principal debtor provided such security was in existence at the time of the contract of the suretyship. According to this section, the surety is entitled to the benefit of every security irrespective of the fact whether the surety was aware of such security or not. The surety is discharged to the extent of the value of the security if the creditor loses such security or parts with it. The appellant's contention is that the words "surety is entitled to the benefit of every security which the creditor has" refer to a case of a single

debt secured by the surety as well as other security or securities. On the other hand, it is contended on behalf of the plaintiff-respondent that the words "every security" are wide enough to cover all the securities separately given by the debtor to secure separate debts.

8. The question that arises for consideration is whether u/s 141 of the Contract Act, a surety undertaking to pay the amount due to the creditor under a particular debt or account, is entitled to the benefit of the security held by the creditor against the same debtor to secure the amount under other debt due to him. The words "every security" used in the section are no doubt some-what ambiguous, but useful guidance can be had in construing the section from the Illustrations appended to the section. I am not unmindful of the principle that Illustrations cannot control the language of a Section But it is also well settled that Illustrations appended to a section certainly afford a useful guidance to its construction specially when the language of the section is doubtful. Doubtful sections justify reference to Illustrations appended to them. Relevant Illustrations appended to Section 141 of the Contract Act are (a) & (D). They run as under:

(a) C advances to B, his tenant, 2,000 rupees on the guarantee of A. G has also a further security for the 2,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and G sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(b) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. G afterwards takes B's goods in execution under the decree, and then without the knowledge of A, withdraws the execution. A is discharged.

Keeping in view the language of the section and the Illustrations appended to it, I am clear in mind that the principle incorporated in Section 141 applies, so as to discharge the surety from the liability, only in a case where the creditor loses or parts with the security held by him to secure the same debt for which the contract of suretyship was entered into. If there are two or more debts each secured by separate security, the surety for one of the debts is not discharged if the creditor loses or parts with the security or securities relating to other debts, In view of the above, I do not agree with the learned Additional District Judge that the plaintiff's liability as surety was discharged on account of the release of the goods pledged with the Bank to secure the amount under the Cash Credit Account of Messrs Jam Chemical and Pharmaceutical Works.

9. The learned Counsel for the plaintiff-respondent has drawn my attention to Section 140 of the Indian Contract Act. His argument is that on 13.3.62 when the entire liability as surety was paid off by the plaintiff, the latter became entitled to Rs. 6012/- which lay in deposit with the Bank in the Cash Credit Account of Messrs Jem Chemical and Pharmaceutical Works and which were later on forwarded to the court in pursuance of the prohibitory order dated 2.5.61. Section 110 reads as under:

Section 140. Rights of surety on payment or performance--Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

This section embodies the general rule of equity expounded by Sir Samuel Romilly as counsel and accented of the Court of Chancery in *Crythorne v. Swinburne* (1807) 14 Ves, 160, namely,

The surety will be entitled to every remedy which the creditor has against the principal debtor, to enforce every security and all means of payment; to stand in the place of the creditor; not only through the medium of contract, but even by means of securities entered into without the knowledge of the surety having a right to have those securities transferred to him, though there was no stipulation for that; and to avail himself of all those securities against the debtor. This right of a surety also stands, not upon contract but upon a principle of natural justice.

Their lordships of the Supreme Court had the occasion to interpret Section 140 as well as Section 141 of the Contract Act in *State of Madhya Pradesh Vs. Kaluram*, With reference to Section 140, it was observed as follows:

The surety is entitled on payment of the debt or performance of all that he is liable for, to the benefits of the rights of the creditors against the principal debtor which arises out of the transaction which gives rise to the right of liability : he is therefore on payment of the amount due by the principal debtor entitled to be put in the same position in which the creditor stood in relation to the principal debtor.

(Italics is mine).

The above observation makes it plain that the plaintiff in the present case was entitled to those benefits only which arose out of the transaction which rise to the light or liability. As already noticed above, the sum of Rs. 5012/- was deposited by the debtor in the Cash Credit Account which was an account separate from the Loan Account guaranteed by the plaintiff. Since the right or liability of the plaintiff arose out of the Loan Account he was not entitled to claim or demand the amount which lay in deposit in all together separate account, that is, Cash Credit Account. Section 140 is thus also of no assistance to the plaintiff and on the basis of that section he cannot claim the amount of Rs. 6012/- lying in deposit in the Cash Credit Account or the Sundry Deposit Account.

10. If the plaintiff had no right to claim the amount of Rs. 5012/- he cannot grudge if the amount was sent to the court in pursuance of the prohibitory order dated 2.5.61. The Bank's Account Ex.9 shows that N.V. Vakhariya deposited the amount of Rs. 5012/- in the Cash Credit Account on 26.6.61 and on the next day the amount of Rs. 5000/- out of Rs. 5012/- was transferred to the Sundry Deposit Account. And the Cash Credit Account was closed. To my mind, all this

happened with the consent of N.V. Vakhariya. I say so because N.V. Vakhariya did not complain about this transfer showing as he survived. The plaintiff who was working under N.V. Vakhariya in the office of Messers Jem Chemical and Pharmacaetical Works also did not complain about it for a considerable time even after the deduction of the amount of Rs. 8891.22 P from his Fixed Deposit Receipt. The plaintiff complained about it and demanded the amount of Rs, 5000/- for the first time by his letter dated 26.8.63. If the amount was transferred from the Cash Credit Account and credited to the Sundry Deposit Account with the consent of N.V. Vakhariya with a view that the amount may be sent to the court in pursuance of the prohibitory order, it was no longer open to the plaintiff to claim the amount.

11. The learned Additional District Judge has also held that the Bank should not have credited the amount of Rs. 5000/- deposited by N.V. Vakhariya on 2-6-61 in the Cash Credit Account as nothing was due from N.V. Vakhariya under that account on 2.6.61. This argument is wholly fallacious. The Bank had no say in the matter. If N.V. Vakhariya was desirous to deposit the amount in the Cash Credit Account, the Bank could not have said "no" to him & credited the amount in the Loan Account against the wishes of the depositor. The Cash Credit Account of N.V. Vakhariya was not closed on 2.6.61, the date on which the money was deposited by him. In the circumstances, the depositor had every right to deposit the amount in the said account. I find no fault with the Bank if it credited the amount in the Cash Credit Account.

12. The last contention of the learned Counsel for the appellant is that the plaintiff having signed the warrant Ex. A/4 which is in the form of a receipt and having accepted the amount of Rs. 773.10 P. in full satisfaction of the amount outstanding against the Bank under the Fixed Deposit Receipt dated 13.3.61, he cannot now claim any amount from the Bank. The learned Additional District Judge has observed that the amount of Rs. 773.10 P. was received by the plaintiff under protest. I however find nothing in Ex. A/4 indicating that the plaintiff signed Ex. A/4 or received the amount of Rs. 773.10 P. under protest. The learned Counsel for the plaintiff-respondent too was not able to support this finding of the learned Additional District Judge.

13. Ex. A/4 runs as under:

This warrant is in the form of the receipt and is therefore not transferable by endorsement.

Jaipur 13.5.1962

Received from the Bank of Baroda Ltd., Jaipur, the sum of rupees seven hundred and seventy three and NP ten only on account of Ms. Krishna Ballabh and Co. being your FDR No. 142576 for Rs. 9315/- plus interest 349.32-Rs. 9664, 32 less Rs. 8891.22 being amount transferred to Loan Account Jem Chemical and Pharmaceutical Works in order to liquidate the account.

Rs. 773.10 sd/- For Krishna Ballabh Signature & Co. Sd/- K. Ballabh Proprietor
Debit Bills Payable Account.

This receipt or warrant was sent by the Bank to the plaintiff for his signature and also for receiving the amount mentioned therein. The plaintiff admittedly signed Ex A/4 and received the amount of Rs. 773.13 P. on 13.12.61 from the Bank. It is argued on behalf of the appellant that where a party accepts a payment in these circumstances, it should be deemed that he has accepted it on the condition on which it was offered and it is not open to him to say subsequently that he accepted the payment in part satisfaction of his claim. The contention is well founded. In the present case, the proposal which the Bank made to the plaintiff under Ex A 4 was that it was offering Rs. 773.10 P. in full satisfaction of the amount due under the Fixed Deposit Receipt after deducting the sum of Rs, 8891.22 P. which has been transferred to liquidate the Loan Account of Messrs Jem Chemicals & Pharmaceutical Works. The plaintiff without any objection signed Ex. A 4 and received the amount of Rs. 773 10 P. from the Bank. I have not been shown any document on the record to show that the plaintiff raised any objection at the time of signing it or soon thereafter to the amount deducted from his Fixed Deposit Receipt Having accepted the deduction and the amount of Rs. 773.10 P., it is now not open for the plaintiff to turn round and say subsequently that he signed Ex. A 4 and received the amount in part satisfaction and that he disputed the deduction. The acceptance of the amount in the circumstances was the acceptance of the entire amount due to him under the Fixed Deposit Receipt dated 13-3-61.

14. For the reasons stated above, the appeal is allowed, the decree of lower court is set aside¹ and the suit against the appellant is dismissed. Since the loan was admittedly taken by N.V. Vakhariya and was paid off by the plaintiff, the suit must be decreed against respondents Nos. 2 to 5 who are the heirs of deceased N.V. Vakhariya. The suit is therefore decreed against respondents Nos. 2 to 5 with costs and pendent elite and future interest at the rate of six percent per annum on the principal amount of Rs. 8891.22 P. The respondents Nos. 2 to 6 shall not be personally liable to pay the decretal amount. Their liability shall extend only to the extent they had inherited the property of the deceased N.V. Vakhariya.