(2003) 11 BOM CK 0027

In the Bombay High Court

Case No : Company Petition No. 1017 of 2002

Basant Lal Agarwal APPELLANT

Vs

Lloyds Finance Ltd. RESPONDENT

Date of Decision : 21-11-2003

Acts Referred:

Companies Act, 1956 — Section 433, 434
Limitation Act, 1963 — Article 22

Citation : (2004) 118 CompCas 764 : (2006) 66 SCL 342

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : K.K. Shroff, instructed by Firdosh and Co, for the Appellant; Armin Kalyanram, instructed by V.V. Jurish, for the Respondent

Judgement

D. Y. Chandrachud J.

1. On December 6, 1996, the petitioner placed with the respondent an amount of Rs. 3,75,000 in deposit for a period of three years. The maturity date of the deposit was December 5, 1999, and interest was payable at the rate of 18 per cent, per annum. The terms and conditions governing the deposit provided, inter alia, in Clause (3) thus :

"3. Due date is recorded upon the receipt to enable the depositor either to receive payment of the amount due or to arrange for renewal of the deposits. No further information will be given to the depositor." Clause 5 stipulated as follows :

"5. Deposit receipts must be returned duly signed by the depositors at least two weeks before the date of maturity to arrange for refund/ renewal."

2. The deposit matured on December 5, 1999. On April 16, 2002, a statutory notice u/s 434 of the Companies Act, 1956, was addressed by the petitioner to the respondent claiming repayment of the monies due and payable. There were further notices dated May 9, 2002, July 2, 2002, and July 19, 2002, before the company petition came to be instituted in this court on August 23, 2002. The

notice dated July 2, 2002, was addressed to a company by the name of Lloyds Housing Finance Ltd. and the reason for addressing the notice to that company was spelt out in paragraph 4 of the letter. It was stated therein that when the petitioner had taken a search with the Registrar of Companies, it was found that there was no company registered in the name of Lloyds Finance and that the name of the company had been changed to Lloyds Housing Finance Ltd. The addressee of the letter Lloyds Housing Finance Ltd. was called upon to intimate as to whether the name of the company has been changed failing which proceedings would be adopted against both the companies.

3. Eventually, when the company petition was filed, it was styled as one in the matter of "M/s. Lloyds Housing Finance Ltd, also known as "Lloyds Finance Ltd." Subsequently, by a judges summons (Judges Summons No. 446 of 2003) an amendment was sought in the petition so as to provide that the petition was against Lloyds Finance Ltd. and to delete the reference Lloyds Housing Finance Ltd. While allowing the amendment, the question as regards the maintainability of the petition and the defence of the debt being barred by limitation were kept specifically open,

4. In the course of the hearing, the defence which has been urged on behalf of the respondent is that the company petition must fail since the debt was time-barred. Counsel appearing on behalf of the respondent has urged that (i) the deposit became due for repayment on December 5, 1999 ; (ii) a suit Ought to have been filed within a period of three years thereafter ; (iii) the company petition was instituted on August 23, 2002 ; (iv) as originally filed it was against Lloyds Housing Finance Ltd. ; and (v) it was only on September 30, 2003, that an amendment came to be allowed by this court permitting the petitioner to delete the reference to Lloyds Housing Finance Ltd. and to proceed against Lloyds Finance Ltd.

5. In order to consider whether the debt on the basis of which the petition has been instituted is barred by limitation, it would be material to advert to the provisions of articles 21 and 22 of the Schedule to the Limitation Act which provide thus :

"Description of suit Period of limitation Time from which period begins to run

21.

For money lent under an agreement that it shall be payable on demand

Three years When the loan is made

22.

For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable".

Three years When the demand is made

6. The distinction between a loan and a deposit is well settled in law. The line which divides them is one that is real though occasionally difficult to draw. The Privy Council in Mohammad Akbar Khan v. Attar Singh AIR 1936 PC 171; 63 I A 279 , held that a distinction which is perhaps the most obvious is that a deposit not for a fixed term does not seem to impose an immediate obligation on the depositee to seek out the depositor and repay him. The depositee is to keep the money till he is asked for it. A demand by the depositor would, therefore, seem to be a condition of the obligation of the depositee to repay. Following this judgment, of the Privy Council, a Division Bench of the Madras High Court in Abdul Hamid Sahib and Others Vs. Rahmat Bi, , held that the real point of distinction between the two concepts is when the repayment is to be made. In the case of a deposit, repayment will depend upon the maturity date fixed therefore or the terms of the agreement relating to the demand, on the making of which the deposit will become repayable. The Madras High Court held that unlike a loan there is no immediate obligation to repay in the case of a deposit. The judgment of the Madras High Court was followed by a Division Bench of the Allahabad High Court in Mansa Ram and Sons (Bankers) and Others Vs. Janki Dass Om Prakash and Others, . The Allahabad High Court adverted to Sheldon''s Practice and Law of Banking (10th edition at page 145) wherein the law was summarised thus :

"The statute begins to operate immediately the money is due to be repaid i.e., after the expiration of the specified notice of withdrawal. If the deposit is for a fixed period, the statute begins to run immediately upon expiration of the agreed period. If the repayment of the money is conditional upon the return of the receipt, then the date of its return is the date upon which the statute begins to run."

7. Applying these tests in the present case, what was placed with the respondent was a deposit. The deposit receipt provides that the deposit would lie with the respondent for a period of 36 months carrying interest in the interregnum at the rate of 18 per cent. per annum and would fall for maturity on December 5, 1999. Clauses 3 and 5 of the terms and conditions governing the deposit are material for the purposes of the present controversy. The deposit receipt spells out that the due date is recorded upon the receipt to enable the depositor either to receive payment of the amount due or to arrange for the renewal of the deposit. Moreover, Clause 5 stipulates that the deposit receipt has to be returned duly signed by the depositor at least two weeks before the date of the maturity to arrange for refund or renewal. These terms and conditions, therefore, demonstrate that the obligation of the depositee, the respondent in the present case, to repay would arise upon a demand being made by the depositor, the petitioner, and it is on that basis that Clause 5 stipulates that the receipt must be returned before the refund or renewal is made. The due date, it was expressly provided, was spelt out in order to enable the depositor either to receive the amount or to arrange for renewal. Therefore, after the term of the deposit expired upon the lapse of 36 months, the deposit was payable on demand and

upon the due discharge of the deposit receipt. Counsel for the petitioner has stated that the petitioner is in possession of the original receipt and is ready and willing to furnish it to the respondent against the repayment of the amount which is due and payable. The limitation of three years in such a case would begin to run when a demand is made within the meaning of article 22 of the Schedule to the Limitation Act. Thus, I do not find any merit in the defence that the debt is time-barred.

8. However, having regard to the defence which has been raised in the present case, I am of the view that it would not be appropriate for this court to pass a decree in a petition for winding up. At this stage, instead, the appropriate order for the court to pass will be in the following terms :

(i) The respondent shall deposit the amount of the deposit, namely Rs. 3.75 lakhs, together with interest computed thereon at the rate of 18 per cent. per annum from the date of the deposit until the date of its maturity with the Prothonotary and Senior Master, within a period of four weeks from today ;

(ii) Upon the respondent depositing the amount as directed, the petition for winding up shall stand disposed of and the petitioner will be at liberty to file an ordinary civil suit for the recovery of its dues ;

(iii) Thereupon the amount deposited by the respondent shall be credited to the account of the suit and it will be open to the petitioner to apply for appropriate orders before the learned trial judge in regard to the withdrawal or, as the case may be investment of the proceeds ;

(iv) In the event of the respondent failing to deposit the aforesaid amounts as directed, the petition for winding up shall stand admitted ;

(v) In the event of the petition for winding up being admitted, upon the failure of the respondent to deposit the amount, it shall then be advertised.

9. There shall, accordingly, be an order on the company petition in the aforesaid terms.

