

(1956) 07 CAL CK 0022
In the Calcutta High Court
Case No : Suit No. 3163 of 1949

Calcutta National Bank Ltd.	Vs	APPELLANT
Sonapur Tea Co. Ltd.		RESPONDENT

Date of Decision : 26-07-1956

Acts Referred:

Bankers Books Evidence Act, 1891 — Section 4
Banking Companies Act, 1949 — Section 2, 45F
Evidence Act, 1872 — Section 65

Citation : AIR 1957 Cal 9

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : B. Das, for the Appellant; A.C. Bhabra, for the Respondent

Judgement

P.B. Mukharji, J.—This is a suit instituted by the Calcutta National Bank Limited as early as 19-8-1949 claiming a decree for Rs. 6,04,513-10-5 and a charge for the same amount under a hypothecation deed. Since the institution of the suit the plain-tiff Bank has gone into liquidation. The order winding up the plaintiff Bank was made on 2-12-1952. The written statement of the defendant had been filed before that order of winding up. In fact the written statement was filed on 21-9-1949.

2. On behalf of the plaintiff bank now in liquidation Kanak Nath Bhattacharjee and Bimal Chandra Majumdar have given evidence. No one on behalf of the defendant or the defendant himself has given evidence.

3. Kanak Nath Bhattacharjee on behalf of the plaintiff Bank has proved the hypothecation deed dated 10-1-1943 executed by the defendant company in favour of the plaintiff Bank. In fact Kanak Nath Bhattacharjee was an attesting witness to the deed. He also proved a copy of the statement of account, 1948-49, a copy of which has been annexed to the plaint. This account is certified by the then Manager of the plaintiff Bank Bimal Chandra Majumdar. The evidence of Kanak Nath Bhattacharjee also shows that the total amount now due

to the plaintiff bank by the defendant is Rs. 8,00,040-0-10 after giving credit for two sums of about Rs. 4000/- and about Rs. 1,00,000/- received since the Institution of the suit.

4. Mr. Bimal Chandra Majumdar has proved the certified copy of the statement of account of the defendant and he has proved his own certificate to this account. His certificate is in these terms:

"I certify that the above entries are the true copies of the entries of the account Sonapur Tea Co. Ltd. (hypothecation) 51/D, Sambhunath Pundit Street, Calcutta, made in the ledger of the Calcutta National Bank Ltd., P 2, Mission Row Extension, Calcutta, kept in the usual and ordinary course of business and that the serial ledger is still in the custody of the bank.

Sd. Bimal Chandra Majumdar,

Manager,

13-8-49."

This account was made up to the date of the institution of the suit in 1949 and shows that a sum of Rs. 6,04,513-10-5 was due by the defendant to the plaintiff bank on that account at the time of the institution of this suit. Since then seven years have elapsed.

5. Mr. Bhabra appearing on behalf of the defendant has taken three defences. His first defence is that the statement of account should not be taken as proved. His second defence is that the hypothecation deed limits the amount of advance to three lacs of rupees and therefore the charge should not be made for any amount exceeding three lacs of rupees. His third defence is that at any rate no interest should be allowed on a sum beyond three lacs of rupees.

6. I shall take up the defences in the order that they have been argued by Mr. Bhabra. Mr. Bhabra relied on Section 45F, Banking Companies Act, 1949 to say that the liquidator's certificate to the statement of account should have been obtained before it became proved in evidence. Now that section says that entries in the books of account and other documents of a banking company which has been wound up shall be admitted in evidence in all the proceedings by or against the banking company and all such entries may be proved either by the production of the books of account or other documents of the banking company containing such entries or by the production of a copy of the entries certified by the Official Liquidator under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the books of account or other documents of the banking company in its possession. Therefore Mr. Bhabra said that the Official Liquidator should have certified these entries.

7. Now there are many answers to this argument. The first answer is that Section 45P, Banking Companies Act, 1949 as amended is not a provision in derogation of the Evidence Act, the Bankers Books Evidence Act and the ordinary

laws of evidence but is in addition thereto. That is the effect of Section 2, Banking Companies Act. It gives an add-ed facility to the Banking Companies in liquidation to prove the entries in the books of, account either by production of the books or by the requisite liquidator's certificate instead of the principal accountant's or Manager's certificate as required by the Bankers' Books Evidence Act. That does not mean that an original statement of account citified by the Manager cannot be accepted as evidence if the statement with the certificate is proved by the author himself of such statement and certificate as in this case proved by Bimal Chandra Majumdar. Secondly this banking account has been certified by the Manager and the principal officer in charge of this account when the account was filed. That was Bimal Chandra Majuaidar. His certificate shows that it is a true copy of the entries in the ledger in the custody of the Bank. Now Section 2(8), Bankers' Books Evidence Act defines a certified copy to mean a copy of an entry in the books of a bank together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank made in the usual and ordinary course of business and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank. I consider the present certificate by the Manager to be in conformity with this provision. Then Section 4, Bankers' Books Evidence Act clearly states that such certified copy shall, in all legal proceedings, be received as prima facie evidence of the existence of such entry and shall be admitted as evidence as the matters, transactions and accounts therein recorded in every case where and to the same extent as the original entry itself is now by law admissible lut not further or otherwise. I therefore, shall accept that to be sufficient proof for the purpose of this suit. Thirdly, Mr. Bhabra cannot complain against this statement of account because he never objected to the statement of account when it was tendered as an exhibit. Mr. Bhabra argued that the original ledger should have been produced. I do not agree. In fact the original ledger is not one of the disclosed documents in the suit in the plaintiff's affidavit of documents. The document disclosed in the affidavit is the certified copy of the account and that certified copy is the original document which has been tendered in evidence here. Mr. Bhabra then argued that neither Mr. Bhattacharjee nor Mr. Majumdar really had any personal knowledge of the transactions entered in this statement of account. Precisely so but no banking officer ordinarily can have personal knowledge of the transactions represented in the entries in the books of the bank with its constituents. That is the very reason why law provides for proof to be given of statements of account, either by a certified copy of the accounts from the entries in the ledgers or by the ledgers themselves. If the defendant wanted inspection of the ledger then the defendant should have either called for a further and better affidavit of documents or the production of the original ledger which the defendant has not done, or he should have asked for inspection of such document. In fact a question was put to Kanak Bhattacharjee asking where the ledger was. His evidence is that the ledger was taken in custody by the Police Court while a prosecution against the directors of the plaintiff bank

was pending. The books came for some time in the High Court in appeal and thereafter Bhattacharjee's evidence is that he is not sure whether the ledger has gone back to the Police Court or not. In any event a Court has under the Evidence Act and also under the Bankers' Books Evidence Act ample power to admit certified copy of the statement of account of the entries in a bankers' book as evidence. Fourthly the copy of this certified statement of account was annexed to the plaint and disclosed in 1949 when the plaintiff Bank had not gone into liquidation because the winding up order was made in this case three years after the institution of this suit.

8. In any event I find the amount is proved even aliunde by oral evidence and there is no evidence given by the defendant himself or on his behalf to prove the contrary. The point, therefore, is academic on the question of proof of the amount. I, therefore, overrule this objection.

9. The next set of defences relates to the limit provided in the hypothecation deed. Now the operative part of the hypothecation deed does not contain the limit. The limit, if any, is to be found in the recital. The recital reads in one part as follows:

"And whereas the company has applied to the bank for advance up to an amount not exceeding at any time the sum of Rs. 3,00,000/- at an interest of 7 per cent, per annum payable monthly with half-yearly rests in the account" and in the other part "Whereas the Bank have agreed to advance the company up to the amount not exceeding Rs. 3,00,000/- only."

It is, therefore, argued by Mr. Bhabra that the charge contained in Clause 1 of the operative part of the hypothecation deed is limited to the maximum three lakhs and no more because in Clause 1 of the deed the words used are "stand and remain hypothecated and charged for payment of all advances under this deed with interest at the rate of 7 per cent. per annum". Therefore, Mr. Bhabra says that the advances "under the deed" cannot exceed the limit of Rs. 3 lakhs as specified in the recital.

10. There are two answers to this argument. One is that this maximum limit is a condition in favour of the company and can be waived by it having regard to the language in which the recital is made. On the facts of this case it appears to me that it was waived not only by the plaintiff bank but also by the defendant. The entire statement of account is shown as the "hypothecation account" and this hypothecation account was for more than three lakhs of rupees. Therefore, the fact that those accounts were put as hypothecation accounts shows that all the extra money beyond Rs. 3 lakhs was treated as hypothecation account and put in the hypothecation account as such. In fact the statement of account begins with the words

"Sonapur Tea Co. Ltd. 51/D, Sambhu Nath Pandit Street, Bhowanipore, Calcutta.....in Hypothecation."

The certificate of the Manager at the end of the account also describes the account as "entries of the account Sonapur Tea Co. Ltd. (Hypothecation)". I, therefore, on the facts of this case hold that even if there was an outside limit of Rs. 3 lakhs by this hypothecation deed, both the parties waived the outside limit and treated these sums beyond three lakhs as coming under this hypothecation charge. I need only point out that this is a hypothecation of the export quota rights and it is not a case of mortgage of immovable property so as to be hit by any question of registration.

11. The next answer to this argument is that this hypothecation deed must be read as a whole. Now Clause 9 of that hypothecation deed says that if the proceeds of the sale of the hypothecated properties are not sufficient for payment of the dues under this deed; then the bank would be entitled to proceed according to law for the realisation of its dues and Clause 26 of the hypothecation deed says that besides the security the defendant bound itself personally to pay the said debt that might be due and owing by the defendant to the bank. Then again Clause 12 of the deed says that this hypothecation deed was a continuing security for the floating balance of the account. Finally Clause 25 of the deed provides:

"That we the borrowers undertake and agree that until and unless all your dues in respect of all accounts shall be fully paid and satisfied by us we will not create any charge or mortgage on the said Tea Estate or crops or rights thereof in favour of any other person".

Now this is a very clear indication that the defendant undertook not to create any charge or mortgage of the hypothecated Tea Estate or crops or rights until all the dues of the bank in respect of all accounts would be fully paid and satisfied. Now what does this negative covenant or this engagement by the defendant not to encumber the estate mean? it can only mean this that the hypothecated tea estate shall remain beholden to meet the dues of the bank in respect of "all accounts" and until "all dues" were paid. Taking and construing the hypothecation deed as a whole and interpreting in particular Clause 25 thereof it seems to me that the argument of maximum limit of Rs. 3 lakhs cannot be allowed to prevail on the facts of this case. I, therefore, overrule this argument and hold that the entire amount of Rs. 8,00,040/-/10 is duly charged under this deed on a proper construction thereof. This also disposes of the argument about reduction of interest because that also is based on the interpretation about the maximum limit under the deed.

12. There will therefore be a judgment and decree in favour of the plaintiff bank in liquidation for the sum of Rs. 8,00,040/-/10 with interim interest and interest on judgment at 6 per cent. and costs. There will also be a declaration as claimed in prayer (iii) of the plaint but subject to the express provisions of the hypothecation deed and an order for sale as claimed in prayer (iv) of the plaint.