

(2014) 07 CAL CK 0081

In the Calcutta High Court

Case No : A.P.D. No. 357 of 2012 and C.S. No. 297 of 1987

Central Bank of India

APPELLANT

Vs

R.K. Agencies Limited

RESPONDENT

Date of Decision : 30-07-2014

Acts Referred:

Contract Act, 1872 — Section 32
Transfer of Property Act, 1882 — Section 131

Citation : (2015) 5 CHN 381 : (2015) 2 WBLR 883

Hon'ble Judges : A.K. Banerjee, Acting C.J.; Arijit Banerjee, J

Bench : Division Bench

Advocate : Hirak Mitra, Senior Advocate, Sandip Mukherjee and Usha Doshi, Advocate for the Appellant; S.N. Mookherjee, Senior Advocate, Dhruva Ghose and U.S. Menon, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Ashim Kumar Banerjee, Actg. C.J.

1. R.K. Agencies Limited made a fixed deposit with Central Bank of India through their Advocate M/s. Khanna and Company on May 27, 1984. The contents of the letter would be as follows:

Under instructions from and on behalf of our client, M/s. R.K. Agencies Limited we beg to enclose cheque No. 3148553 of the 27th November 1984 for Rs. 20 lacs drawn on Allahabad Bank in our favour with a request to have the cheque encashed and put the proceeds thereof in a short term fixed deposit for six months carrying your usual interest. The original fixed deposit receipt may be kept under lien by the esteemed Bank and if necessary, we will formerly discharge the same in favour of the bank. We agree that the said receipt will continue to remain under lien with the bank and may be renewed from time to time for identical periods pending RBI permission as stated hereinafter.

Needless to add that appropriate permission will be applied for and obtained

from the Reserve Bank of India in consultation with under advice to you for credit of the said sum to Foreigner's account as and when such permission is granted.

2. Contents quoted above would show, it was not a fixed deposit simplicitor. It was kept as a co-lateral security that would continue to remain "under lien" with the Bank and would be kept renewed from time to time pending "RBI permission". The permission was required for credit of the said sum to a "foreigner's account". The account was however, not specified. It appears, Central Bank of India applied for permission that the Reserve Bank declined. M/s. Khanna and Company prayed for encashment vide letter dated May 28, 1985 that the Bank denied. Khanna and Company in their letter observed, "The understanding for arrangement sought to be arrived at, in terms of our letter dated 27 November, 1984 was never acted upon and nothing definite was achieved between the parties". R.K. Agencies filed suit inter-alia, claiming a decree for Rs. 28,04,027.76 being the proceeds of the said fixed deposit. The Bank contested the suit by taking the plea of adjustment. According to the Bank, R.K. Agency would belong to one Sethia group that did have various overseas transactions with the Bank. The Bank already filed suit before the Queen's Bench Division in U.K. against SL Sethia Liner's Limited and K.C. Sethia (1944) Limited on a money claim. The Bank would contend, the subject fixed deposit was nothing but a deposit to the credit of the said claim hence, R.K. Agencies Limited would not be entitled to any decree as prayed for. The learned Single Judge rejected such contention and decreed the suit. His Lordship held, the fixed deposit was kept subject to credit of a foreigner's account that the Reserve Bank did not permit to transmit hence, R.K. Agencies would be entitled to the proceeds. Moreover, the Bank failed to establish nexus between R.K. Agencies Limited and the overseas litigation. Being aggrieved, the Bank preferred the instant appeal that we heard on the above mentioned dates.

CONTENTIONS:

3. Mr. Hirak Kumar Mitra learned Senior Counsel placed the pleadings as well as the relevant correspondence. Mr. Mitra would suggest, letter dated November 27, 1984 addressed to the Bank by M/s. Khanna and Company was not a deposit simplicitor. It was on a lien account that would be supported by the letter of the overseas advocate Zaiwalla dated February 11, 1985. He would also rely upon a subsequent letter of Zaiwalla dated July 4, 1985 that would also relate to the deposit of R.K. Agencies. Mr. Mitra placed all the correspondence including the letter of Simmons and Simmons the overseas advocates acting on behalf of the Sethias dated May 30, 1986. He would also refer to the Reserve Bank correspondence dated September 5, 1986 and July 26, 2006 in this regard. He would also rely upon the other correspondence exchanged between the Bank and Sethias and their lawyers. Mr. Mitra would contend, the deposit receipt was duly discharged by R.K. Agencies. Once it got discharged the Bank became the absolute owner. In any event, plaintiff did not examine any representative of Khanna and Company, connected with such deposit, so that he could throw some

light on the same. Mr. Mitra would heavily rely on a paragraph from Zaiwalla's letter dated July 4, 1985 being exhibit 4. The paragraph is quoted below:

With regard to the deposit of Rupees 2 million with your clients' Calcutta Branch, our clients are simply appalled that your clients, by acknowledging receipt of Rupees 2 million from our clients' Indian Solicitors, Messrs Khanna & Company should plead ignorance of the fact that these monies were deposited on our clients' behalf. If your clients now wish to ignore the deposits placed with them by Messrs R.K. Agencies on our clients' behalf through Messrs Khanna & Company, then our clients have asked you to take instructions from your clients and confirm that the Bank would allow Messrs R.K. Agencies to withdraw this deposit on demand.

4. To support his contention, Mr. Mitra cited the two decisions:

1. Neuchatel Asphalte Company Limited Vs. Barnett reported in 1957 Volume-I All England Law Reports Page-362.

2. Mobarik Ali Ahmed Vs. The State of Bombay,

5. He would lastly refer to various paragraphs of the judgment and decree impugned to suggest, it was based without any support of law.

6. Per contra, Mr. S.N. Mookherjee learned Senior Counsel would refer to the written statement filed by the Bank and contend, the cases cited at the bar would have direct conflict with the pleadings that the Bank used before the learned Single Judge.

7. Mr. Mookherjee would specifically refer to the exhibits being the correspondence exchanged by the Bank on the one hand and the plaintiff on the other, to show, there was no reason for withholding the deposit even after deblocking. He would contend, under the agreement as pleaded by the Bank, the plaintiff was supposed to obtain appropriate permission from the Reserve Bank under the Foreign Exchange Regulation Act to repatriate the money abroad. The plaintiff did not make any such application, Bank made the application that the Reserve Bank refused. Hence, the so-called lien for which the Bank would write at the initial stage would be invalid and the plaintiff would be entitled to get back the matured value of the fixed deposit.

8. As and by way of alternative submission, Mr. Mookherjee would contend, even if there was a contract to keep the money in deposit earmarked for payment to the foreign account of Sethias, in absence of permission from the Reserve Bank of India such contract would be void and not enforceable in law.

9. He would heavily rely on Section 32 of the Contract Act to support his contention, the contract based on a contingency would become void in the instant case. According to the Bank, the fixed deposit was kept in lien earmarked to be credited to the foreign account subject to Reserve Bank permission. There was no certainty on Reserve Bank permission hence, such type of contract would

be void u/s 32 of the Contract Act that the learned Judge erred in appreciating. Mr. Mookherjee was critical about the letter dated August 7, 2006, the Bank appropriated the sum without any reference to Court that would be illegal and would be liable to be set aside. The Bank was duty bound to remit the amount in the fixed deposit account. On the issue of deblocking, Mr. Mookherjee would rely upon the letter dated June 23, 2006 and July 26, 2006 appearing at Page 62-65 of the compilation wherein we find, the Enforcement Directorate categorically observed, no charge could be framed under the Foreign Exchange Regulation Act and thus the fixed deposit was deblocked. Mr. Mookherjee would contend, after such deblocking the plaintiff would have no claim whatsoever.

10. On the issue of interest, Mr. Mookherjee would contend, the Bank unnecessarily harassed the plaintiff. Plaintiff was entitled to the proceeds of the fixed deposit on the date of maturity, once it was kept pending the Bank was obliged to pay interest on the said sum as per the prevalent Bank rate and that too, with half yearly rest as per the terms and condition of the fixed deposit as if the fixed deposit was kept renewed every six months.

11. On the evidence, Mr. Mookherjee would rely upon re-examination of the witness particularly question No. 384 and 394 wherein it was absolutely made clear, the Enforcement Directorate caused a thorough investigation and came to the finding, there was no violation of the Foreign Exchange Regulation Act. According to him, the learned Judge should have granted appropriate interest particularly when the Bank miserably failed to produce the fixed deposit ledger that would show the fate of the deposit.

12. He would rely upon AIR 1928 Sindh 63 to contend, the contract, if any, as pleaded by the plaintiff was barred in terms of Section 32 as it was contingent upon appropriate permission under the Foreign Exchange Regulation Act.

13. He lastly distinguished the decisions cited by Mr. Mitra. Mr. Mookherjee would contend, even if Mr. Mitra would raise doubt on the letters written on behalf of the plaintiff, those documents could be proved by the letter of Simmons, the advocate for the Bank where the subject letters had duly been dealt with. Hence, the decisions would rather support the plaintiff.

14. In the case of Neuchatel Asphalte Company Limited (supra) Lord Denning commented on the inconsistency in the pleading. His Lordship held, the words inconsistent with the main object and intent of the transaction should not be considered by the Court being repugnant to the main object of the transaction. According to him, this was no inconsistency.

15. Pressing his cross objection on interest, Mr. Mookherjee would draw the Court's attention to the Grounds of the Cross-Objection where the plaintiff claimed contractual rate of interest at the compounded rate.

16. While giving reply Mr. Mitra contended, respondent did not deal with the issue of Foreigner's Account. What was Foreigner's account, Zaiwalla clarified,

as would appear from page 18 of the Compilation. The respondent did not deal with such aspect. Mr. Mitra further contended, lot was said on Section 32 of the Contract Act that would have no role to play as the transactions could not be said to be the contingent contract. He would refer to Khanna's letters that would clearly indicate money to be transferred to the Foreigner's Account. What was meant by Lien, was absolutely clear from the documents exhibited for the purpose. Foreigner's account of Sethias was transferred from London to Bombay. The Bank was entitled to appropriate the said sum. He would distinguish the decision in the case Ismail Khan (supra) by contending, in the said case there was no contract that would clearly distinguish it from the present situation.

17. Adding to what he had stated earlier Mr. Mookherjee contended, no case was made out earlier u/s 131 of the Transfer of Property Act. It was nothing but an afterthought. In any event, the same would have no application in the instant case. The parties never exchanged any correspondence, giving mandate to appropriate the amount. The contention that FERA permission was not required, was never made.

18. Before we deal with the rival contentions, we first examine in detail the documents exhibited by the parties as the decision in the present Lis would lie on interpretation of the rival documents. Letter of Khanna and company dated November 27, 1984 would indicate cheque for Rs. 20 lakh drawn on Allahabad Bank was sent to the Central bank for being invested in the fixed deposit that "may be kept under Lien", subject to appropriate permission from the Reserve Bank of India for credit to Foreigner's account as and when such permission was granted. From the letter it is not clear who was to apply for permission. The Bank applied for permission that the Reserve Bank declined. Hence the purpose for which amount was kept in deposit was frustrated. The Bank heavily relied on letter of Zaiwalla who acted for Sethias. Their letter would denote, a sum of Rs. 20 lacs was to be deposited against indebtedness and the amount would be set off against dues of Sethias. Hence the amount that Khanna and Company deposited was to be appropriated against Foreigner's Account, meaning thereby, Sethias' dues were required to be adjusted against the proceeds of the deposit. However, in absence of permission, the same was not possible. The respondent wanted to contend, it was a deposit simplicitor. We are unable to accept. The documents were sufficient enough to establish the nexus. The dues of Sethias were to be adjusted against the deposit. To that extent, the Bank was able to establish the nexus. In this regard, we may also take assistance from the letters of Simmons, another advocate that would discuss about the proposed settlement between Sethias and the Bank at London. Mr. Mitra contended, since London Account was transferred to Bombay, permission was not required and the Bank was entitled to have adjustment. Even if we accept such argument, we are unable to appreciate how without a court proceeding, money could be adjusted, particularly, when there was no clear mandate on that score in the letter of Mr. Khanna making the fixed deposit.

19. If we bring the controversy in a narrow campus, as we get on a composite reading of the documents, we would find, Khanna deposited Rs. 20 lacs earmarked for payment to the Foreigner's Account. What was meant by Foreigner's Account, was not clearly spelt. Under the appropriate Laws prevalent at the time for transfer of money from the country to abroad, permission was required. Such permission was denied. Even if the nexus was proved that would clearly indicate transfer of the proceeds of the deposit to the Foreigner's Account, in the absence of permission, money could not be transferred to the said account. Mr. Mitra would contend, the account was transferred from London to Bombay, no sufficient evidence came out.

20. Just on the eve of the closure of the hearing the Bank filed an application for additional evidence. We were not at all satisfied as to the grounds of non-disclosure of those documents earlier. By judgment and order dated July 25, 2014 we dismissed the said application. We held, second document was already on record, other two were not binding upon the respondent.

21. Even if we take into account those three documents, we would not be in a position to conclusively hold in favour of the Bank. The first letter of the Bank dated February 21, 1986 was the application of the Bank made to Reserve Bank of India. There, the Bank gave details of the transactions. According to the Bank, the deposit was held in the name of R.K. Agency Limited. The Controlling block of share in the said company was held by Sethia that would relate to Ranjit Sethia who was the debtor in the London Account. Next document was dated January 9, 1985 was a decree passed by Queen's Bench Division against Drumplace Limited amounting to US Dollar 1360388.80. The 3rd document was a letter of Simmons dated July 27, 1990 written to the Bank solicitor at Calcutta giving appropriate advise for enforcement of the Judgment and/or Decree passed in London suit.

22. The 3rd document was an internal document that the London solicitor exchanged with their counterpart at Calcutta that would be of no consequence. Similarly, the first letter was a letter by the Bank to the Reserve Bank of India and would have no binding effect on Sethia or RK Agencies.

23. To enforce the decree against the Drumplace Limited an appropriate method should be adopted by the Bank. The Bank suo motto would not be entitled to appropriate even if we give full credence to the decree of the Queen's Bench Division.

24. As observed hereinbefore, the decision in this case would squarely lie on the interpretation of the documents that we have discussed hereinbefore.

25. The decision in the case of Ismail Khan (supra) would relate to Section 32 that would have relevance in the present case and the distinction made by Mr. Mitra would perhaps be not the correct one.

26. We fully agree with Mr. Mookherjee, there was no inconsistency in the pleadings. Hence the observation made by Lord Denning in the case of Neuchatel

Asphalte Company Limited (*supra*) would have no application.

27. The decision in the case of Mobarik Ali Ahmed (*supra*) was relied upon on the proof of genuineness of the documents. Since we give full credence to all the documents that the parties exhibited, the issue may not be dealt with in detail and the decision may not be required to be discussed.

28. To sum up, we find, Sethia had dues in London. If Drumplace Limited is a company of Sethia, it did suffer the Decree before Queen's Bench Division. Central Bank of India was thus entitled to enforce such decree provided it is lawfully enforced through appropriate mechanism. Suo motto appropriation on the pretext of transfer of account from London to Bombay, would have no factual or legal support.

29. The money was certainly deposited to square up Foreigner's Account of Sethia that would depend upon permission from the Reserve Bank of India. Reserve Bank of India declined. Hence, Section 32 would have role to play. The Bank suffered deblocking for a considerable period. Once the Reserve Bank delocked the account and the Enforcement Directorate exercised their inability to frame any charge to block the account, money was liable to be refunded. The holder of the fixed deposit would not be entitled to contractual interest for the whole of the period in the facts and circumstances, as discussed above. To that extent, cross objection would fail.

30. We agree with the ultimate finding of the learned Judge, however, on an independent appreciation of facts as above. At the same time, we intend to give an opportunity to the Bank to have appropriation of the amount through proper court mandate being obtained for the purpose.

31. The appeal succeeds in part. The Decree passed by the learned Single Judge would remain stayed for a period of six months from date to enable the Bank to initiate appropriate proceedings to have appropriate mandate for adjustment of the fixed deposit proceeds against their claim for adjustment. In case Bank would fail in doing so the decree would immediately become executable on the expiry of the said period of six months together with interest as directed by the learned Single Judge.

32. We make it clear, we do not express any opinion on the enforceability of the Queen's Bench Judgment for the purpose of appropriation of the subject fixed deposit amount. We do not vouch for the authenticity of the said Decree. It would be for the appropriate Forum to judge the authenticity of the Decree, enforceability thereof and the Bank's competence to appropriate the proceeds of the subject deposit as against such Decree. Our decision can only be used as an establishment of nexus to the extent we discussed- no far and no less.

33. We have fixed a period of six months to enable the Bank to approach the appropriate forum. In case appropriate forum is approached it would be for the Forum to extend the period appropriately so that they could finally resolve the

issue at a later date.

34. The appeal is disposed of accordingly without any order as to cost.

Arijit Banerjee, J.

35. I agree.