

(1914) 08 BOM CK 0018
In the Bombay High Court
Case No : O.C.J. Appeal No. 20 of 1914

G.K. Malvankar

APPELLANT

Vs

The Credit Bank of India Ltd.

RESPONDENT

Date of Decision : 28-08-1914

Acts Referred:

Citation : AIR 1914 Bom 118 : (1914) 16 BOMLR 733

Hon'ble Judges : Davar, J; Basil Scott, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Basil Scott, Kt., C.J.—The appellant's claim is that he should be paid in full by the Liquidator of the Bombay Credit Bank the amount deposited by him in 1910 as security for the faithful discharge of his duties as the agent of the Bank's branch at Ahmedabad.

2. The money was originally placed by the Bank Manager to an ordinary Fixed Deposit Account bearing interest at six per cent, but upon objection being made by the appellant it was transferred in 1911 to the Security Deposit Account bearing interest at the same rate as before. There was a separate ledger kept by the Bank for such accounts, and after 1911 a counterfoil receipt-book specially made out for Security Deposit Accounts was prepared and from it a receipt was given to the appellant for his money held at interest.

3. The Liquidator contends and the learned Chamber Judge has held that the appellant can only rank as an ordinary creditor in the liquidation. The appellant contends that the money is earmarked and must be treated as trust property in the Liquidator's hands. That in the case of a going Bank the Bank is entitled to treat a security deposit as earmarked for a particular purpose and refuse to deal with it for any other purpose cannot be disputed, but in a liquidation of an insolvent Bank the question is whether the security fund can be identified and followed by the giver, if the occasion for realizing the security has not arisen. 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.

4. We have no doubt that this is the position in the present case. The appellant agreed that the Bank should receive and hold the money paying interest at 6 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 Bank's agent. So thoroughly did the parties realise that the Bank and the appellant were debtor and creditor that the appellant at the desire of the Bank's Manager used in rendering his accounts of his management to debit the Bank with the interest on his deposit. This has been admitted by the appellant himself.

5. The appellant, therefore, can only rank as an ordinary creditor. We affirm the order of the learned Judge which was without costs and dismiss this appeal also without costs as it is a test case governing several others in this liquidation.