

(1949) 02 CAL CK 0006
In the Calcutta High Court

In Re: Continental Bank of Asia Limited

Date of Decision : 08-02-1949

Acts Referred:

Citation : (1949) 02 CAL CK 0006

Judgement

Sinha, J.—This is an application on behalf of the Assam Provincial Co-operative Textile Supply Society, Ltd. (hereinafter referred to as the "Assam Company") and the Comilla Union Bank, Ltd. (hereinafter referred to as the "Bank") for an order that the Official Liquidator of the Continental Bank of Asia, Ltd. (hereinafter called the "Company") be ordered to pay Rs. 21,818-14-9 to the Applicants in preference to the ordinary creditors of the Company.

2. The Company had its registered office at 12, Netaji Subhash Road, in Calcutta and a branch office at Sunamganj in Assam. It suspended payment in the year 1946. According to the Petitioners, it suspended payment in August, 1946. According to the Respondent, the suspension of payment was in November, 1946.

3. The Company presented an application in this Court u/s 153A of the Indian Companies Act on the re-opening day after the Long Vacation in 1946 for amalgamation with Chandpur Model Bank, Ltd., when an order was made staying all actions and proceedings against it. Thereafter the Company made an application u/s 153 of the Indian Companies Act. Both the applications were dismissed and the Company was directed to be wound-up on August 26, 1947. Mr. B. Das was appointed the Provisional Liquidator on July 9, 1947, and the Official Liquidator on September 26, 1947.

4. The Assam Company used to collect bills payable by its customers at Sunamgunj through the Bank, who sometimes used to collect the same through the Sunamganj branch of the Company. Between June 17 and June 24, 1946, four bills of the aggregate value of Rs. 21,818-14-9, payable by the Sunamganj Cloth and Tarn Dealers Co-operative Wholesalers Society, were delivered by the Assam Company to the Bank and by the Bank to the Company for collection. The Company collected the bills, but failed to remit the proceeds. The Assam Company was not a constituent of the Company.

5. According to the Petitioners, the collection was made by the Company sometime in May, 1947, who informed the Bank about the realisation on June 10, 1947. The Official Liquidator in his affidavit states that it appears from the books of the Company that the collection had been made by August 12, 1946.

6. Demands were made by the Petitioners on the Official Liquidator to pay the amount collected by the Company on the footing that the Company held the proceeds in a fiduciary capacity and that the Petitioners were entitled to preferential payment. The Official Liquidator did not pay on the ground that the Petitioners were only entitled to pro rata payment as ordinary creditors.

7. The Petitioners have annexed to the petition certain correspondence which tends to show that the amount of the four bills, to which I have referred, was not collected at least before March, 1947. It is conceded that, if the bills were collected after November, 1947, the Petitioners are entitled to preferential payment of the amount collected by the Company.

8. Mr. R. Chaudhuri for the Petitioners submitted that they are entitled to preferential payment, even if the bills had been collected before suspension of payment by the Company.

9. It is contended, on behalf of the Petitioners, that the Company were only agents for collection and had no right to the use of the money collected. The Company, therefore, held the collections as trustee for the Petitioners, which never became part of the general assets of the Company. It is, however, submitted on behalf of the Official Liquidator that, if the bills were collected before the Company had suspended payment, the collections became part of the general assets of the Company and the Petitioners are only entitled to rank as ordinary creditors.

10. Section 229 of the Indian Companies Act makes Insolvency Rules applicable in the winding-up of an insolvent company. Section 52 of the Presidency-towns Insolvency Act provides that property held by the insolvent on trust is not divisible amongst creditors. An agent holding money for a special purpose and having no right to use it or mix it up with his own monies has no general, but only special, property in the monies collected on behalf of his principals. If the monies are held for a special purpose by an agent, he is a trustee for the real owner.

11. Mr. D.N. Sen appearing for the Official Liquidator referred me to the case of *In re Farrow's Bank, Limited* (1923) 1 Ch. 41. In that case, the facts were as follows : One Voyce was a customer of Farrow's Bank. He endorsed and paid into his account at the same bank a crossed cheque for ₹1,493 drawn on the West Bromwich branch of the London Joint City and Midland Bank. Farrow's Bank credited Voyce with the amount in their ledger and remitted it to Barclay's Bank as its clearing agents. On December 20, at about 1-30 p.m., the Midland Bank settled with the Barclay's Bank through the clearing house, whereupon the latter bank advised Farrow's Bank that the cheque had been collected. Farrow's Bank

suspended payment at 8-30 a.m. on December 20.

12. Two questions arose : (a) whether Farrow's Bank were holders for value or agents for collection : (b) whether the money received for the cheque became the property of Farrow's Bank as on a debtor-and-creditor account as distinguished from agent and principal account. It was held on the facts that the Farrow's Bank were agents for collection and the money collected did not become its property on a debtor-and-creditor account, inasmuch as, before the money had been collected, the bank had suspended payment. At the time of the collection, the bank had given up all its functions as a bank. It had, therefore, no right to receive and retain the money as a banker. The bank was not, therefore, entitled to claim the money as part of its assets and the creditor was entitled to preferential payment.

13. In my opinion, this case has no application to the facts of the case before me. Voyce was a customer of the bank and had paid the cheque into his account for collection and for crediting his account with the proceeds. The bank, therefore, was to act as Voyce's agents up to the time of collection and thereafter as his bankers.

14. If the bank held the money as agents, it was liable to pay Voyce preferentially. If it held the money as banker, Voyce would rank as an ordinary creditor. The only question was whether the bank held the money as banker or as agents for collection and the decision was that the bank, having suspended payment before collection, could not, in regard to the monies, collected, assume the position of a banker. This case is no authority for the proposition as contended for by Mr. Sen, that a bank, after collection of proceeds of a cheque in the capacity of agent, automatically becomes a debtor, although it was not a banker of the person paying in the cheques for collection and although it had collected the money expressly as agent and had no right to use it.

15. If the course of dealings between the parties raised an implication that the agent for collection had a right to mix the proceeds of the bills with its own monies, it could possibly be said that the banker was a debtor and not a trustee, but that is not the case here. The Company had only authority to collect the bills and after collection to remit the proceeds. It had no authority which could justify it in mixing the proceeds of the bills with its own monies.

16. A reference was made to the case of Indian Hume Pipe Co. Ltd. Vs. Travancore National and Quilon Bank Ltd., by Official Liquidator, . The Indian Hume Pipe Company (hereinafter referred to as the company) had a current account with Travancore National and Quilon Bank at the Nagarcoil office of the bank. The bank had also a branch office at Bombay. The company instructed the branch office of the bank to collect a cheque for Rs. 5,000 drawn in its favour on the Bombay bank and to remit the proceeds to the Nagarcoil office of the bank to be credited to the company's account. The Bombay bank collected the cheque but did not remit the proceeds to the Nagarcoil office. When the company went

into liquidation, the money collected was with the Bombay branch. The company applied for an order on the Official Liquidator to pay Rs. 5,000 to the company on the ground that the bank held the money in trust. The application was rejected by Venkataramana Rao J., whereupon there was an appeal. The appeal Court held that the money was held on trust and observed as follows:

Undoubtedly, if the money had got into the company's account at Nagarcoil, the bank's position would no longer have been that of an agent holding his principal's monies. It would then have been entitled to the control and the use of the money, which would give the Official Liquidators a right to it for the benefit of the general body of creditors. But as the money never go to Nagarcoil, it belonged to the company and the company's money cannot be retained for paying the bank creditors.

17. On the facts of this case, the Assam company had no account with the Continental Bank of Asia, Ltd., into which money-collected could have been paid. The Company could, therefore, never be entitled to the control and the use of the money collected. The Company had only a special authority to collect the bills and, on such collection, held the money as agent and in a fiduciary capacity for the Applicants. The money could not, therefore, form part of the general assets of the Company.

18. On the evidence before me, I am also not satisfied that the bills had been collected by August 12, 1946. I am of opinion that the bills were not collected before the Company had suspended payment.

19. The Official Liquidator states that he has no money in his hands to answer the claim of the Petitioners. I hold that the Petitioners are entitled to preferential payment and I direct the Official Liquidator to pay the amount claimed as soon as funds are available to him to make the payment.

20. The Petitioners are entitled to the costs of this application. Official Liquidator will retain his costs out of the assets.