

(1952) 03 CAL CK 0019
In the Calcutta High Court
Case No : Matter No. 184 of 1951
In Re: Dass Bank Ltd.

Date of Decision : 20-03-1952

Acts Referred:

Companies Act, 1913 — Section 153, 155

Citation : AIR 1954 Cal 45 : (1953) 23 CompCas 213 : 57 CWN 526

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : R. Chaudhuri, for the Appellant;

Judgement

Banerjee, J.—The question I have to decide arises on a winding up petition which has been presented by the petitioner Surendranath Banerjee claiming to be a creditor of the bank. Mr. R. Chowdhury on behalf of the bank opposes the application and he contends that the petitioner is not a creditor at all and is not entitled to present the petition. The question is important and though the matter has been settled as between the petitioner and the bank, at the request of Mr. Chowdhury I deliver this judgment. But it must be remembered that this judgment is given on the basis of the facts I have found in this case on the evidence before me.

2.The petitioner Surendranath Banerjee opened on 3-9-1943, a savings bank account in the Rajbari branch of the pass Bank Ltd. He also opened in the name of his two sons Gajendra and Sailendra two fixed deposit accounts on 7-1-1946 and 1-5-1947 respectively. One of the fixed deposit receipts bears No, 1460 and the other 1458. The receipts were issued by the Rajbari Branch. On one of these receipts, the last payment namely of the sum of Rs. 600/- was made on 20-9-1947, and on the other the last payment of the sum of Rs. 350/-was made on 20-9-1947. The petitioner on his savings bank account also received some payment on that date. Thereafter there was no further payment made or received on any of these accounts.

3.The two sons of the petitioner have affirmed affidavits which are filed as of records in these proceedings stating that the monies standing in their names

belong to their father and that they have no interest in the money. In other words, they accept the position that the petitioner is entitled to the money in all the accounts.

4. This bank met with reverses. It is not necessary to state the history. Suffice it to say that in May 1949, a scheme, was sanctioned by this Court. But in the scheme no difference was made between a creditor who had opened an account in places which are now within the Union of India, and a creditor who opened his account in places which are now within the dominion of Pakistan.

5. It appears that certain creditors of the bank made an application in the High Court at Dacca for the winding up of this bank. I am told by Mr. R. Chaudhuri counsel for the bank that the Dacca High Court was informed about the scheme, but that that Court has refused to recognise the scheme as framed by this Court and made a winding up order on 26-5-1950. Mr. Chaudhuri's statement is confirmed by the petitioner's counsel.

6. Rajbari is now within Pakistan. The bank opposes the application on the ground that whatever rights the petitioner has, he can enforce in Pakistan and not in the Union. He is not to be treated as a creditor here; he is not entitled to participate in the benefits conferred by the scheme which has been framed by this Court. Mr. Chaudhuri's contention is that in such cases the domicile of the bank is of no consequence and for that proposition he has referred me to several cases.

7. It is necessary to consider these cases. The most important one is -- "Joachimson v. Swiss Bank Corporation" (1921) 3 KB 110. In that case it was pointed out that a contract between banker and customer is different from the ordinary case of a loan of money. Lord Atkin observed at p, 127:

"I think that there is only one contract made between the bank and its customer. The terms of that contract involve obligations on both sides and require careful statement. They appear upon consideration to include the following provisions. The bank undertakes to receive money and to collect bills for its customer's account. The proceeds so received are not to be held in trust for the customer, but the bank borrows the proceeds and undertakes to repay them. The promise to repay is to repay at the branch of the bank where the account is kept, and during banking hours.

It includes a promise to repay any part of the amount due against the written order of the customer addressed to the bank at the branch, and as such written orders may be outstanding in the ordinary course of business for two or three days, it is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice. The customer on his part undertakes to exercise reasonable care in executing his written orders so as not to mislead the bank or to facilitate forgery. I think it is necessarily a term of such contract that the bank is not liable to pay the customer the full amount of his balance until he demands payment from the bank at the branch at which the

current account is kept."

This case is an authority for the proposition that a customer is only entitled to be repaid at the branch in which his account is.

8. In -- "Gibbs & Sons v. Societe Des Metaux" (1890) 25 QB 399 at page 405 (B), Lord Esher, M. R. said:

"It is clear that these were English contracts according to two rules of law; first, because they were made in England; secondly, because they were to be performed in England. The general rule as to the law which governs a contract is that the law of the country, either where the contract is made, or where it is to be so performed that it must be considered to be a contract of that country, is the law which governs such contract; not merely with regard to its construction, but also with regard to all the conditions applicable to it as a contract. I say, "applicable to it as a contract" to exclude mere matters of procedure, which do not affect the contract as such, but relate merely to the procedure of the Court in which litigation may take place upon the contract. The parties are taken to have agreed that the law of such country shall be the law which is applicable to the contract.

Therefore, if there be a bankruptcy law or any other law of such country, by which a person who would otherwise be liable under the contract would be discharged, and the facts be such as to bring that law into operation, such law would be a law affecting the contract, and would be applicable to it in the country where the action is brought. That, at any rate, is the law of England on the subject, so, where a contract is made or is to be performed in a foreign country, so as to be a contract of that country, and there is a bankruptcy law, or the equivalent of a bankruptcy law of that country, by which, under the circumstances that have occurred, a party to the contract is discharged from liability he will be discharged from liability in this country. But it is only in virtue of the principle which I have mentioned that such a discharge from a contract takes place."

The view taken in these two cases is supported by the decision of the Judicial Committee in --"State Aided Bank of Travancore, Ltd. v. Dhrit Ram" AIR 1942 PC 6 .

9. In that case the respondent, resident in Bombay, placed a sum of money on fixed deposit with the appellate bank, which was incorporated in, and according to the laws of, the State of Travancore, and, apart from a branch office in the State of Cochin had its head and only office in Travancore. The money, as stated in the opening form executed by the respondent, was paid to the credit of the appellant bank at their agent bankers in Bombay, and the deposit receipt, which was sent from the bank at Travancore, provided that it should "be sent in for payment or renewal" at the expiration of two years. Interest was paid by cheque on a bank in Bombay.

When the money had become due for repayment the appellant bank was in difficulties, and a scheme of arrangement was approved by the Court in Travancore and declared binding on the bank and all its creditors. The respondent having instituted proceedings to recover the amount of the fixed deposit, it was held by their Lordships, that the contract of deposit was made by the offer of the respondent in the opening form and the acceptance by the bank by the issue of the deposit receipt, and that it was not only made in Travancore but was also to be performed there. Accordingly, the law of Travancore, under which admittedly the order of the Court there made the scheme of arrangement binding on all creditors wherever situate, governed the transaction, and the appellant bank was therefore protected by the terms of the scheme of arrangement.

10. At pp. 7 & 8 it was said:

"The law which governs a contract depends on the intention of the parties, express or implied. There is no intention expressed in these documents, and the Courts are left to infer the intention by reference to consideration where the contract was made and how and where it was to be performed. The learned Chief Justice, though he came to the conclusion that the contract was made at Travancore was of opinion that it was to be performed," i. e., discharged, at Bombay. Their Lordships cannot agree. With the greatest respect to the Chief Justice, he does not appear to have given sufficient weight to the fact that this is a banking transaction entered into at the only office of the bank where in ordinary matters banking business of this kind has to be completed. The decisions in -- "Rex v. Lovitt" (1912) AC 212 (D) and -- "(1921) 3 KB 110 (A) establish in the case of fixed deposit and current account, respectively, where payment is to be made."

At p. 9, their Lordships say:

"But, whatever importance should be attached to this their Lordships came to the conclusion that not only the place where the contract was made but also the place where the contract was to be performed was Travancore, and that the law of that State governs the transaction."

These cases are clear authorities on the point which I have to decide. In this case the accounts were all opened at Bajbari. Subsequently the accounts were transferred to Narayangunge. That is clear from the evidence which the manager of the bank has given before me, and the discharge register which has been proved by the secretary of the bank. On this evidence I have no doubt that instructions were given by the Head Office at Calcutta to the Bajbari branch to close it and transfer the accounts and the books of account etc. to Narayangunge. Further, there is evidence before me that the furniture of the Rajbari branch was sold at Rajbart and the sale proceeds transferred to Narayangunge.

11. On the facts, therefore, I must find that the accounts were opened at Rajbari

and were subsequently transferred to Narayangunge. Both these places are within the Dominion of Pakistan. The Dacca High Court refused to recognise our scheme and has made a winding up order. That order binds the assets of this bank within the Dominion of Pakistan. The creditors of the bank at Pakistan are bound by the winding up order and are entitled to dividend which would be declared in the winding up proceeding there, just as the scheme passed by this High Court binds the assets of the bank within the Union of India and the creditors here. The Pakistan creditors are not entitled to get any benefit out of the scheme.

12. In this case on the authorities I have cited, there is no doubt that the contract was made within the Dominion of Pakistan and was to be performed within that Dominion and therefore the law which governs the matter is the law which is prevalent in Pakistan today. There is the winding up order made by the Dacca High Court, and the petitioner must have to go to Dacca for relief. He being a Pakistan creditor cannot get any benefit out of the scheme made by this Court. I am glad to note that having regard to the poverty of the petitioner, the authorities concerned are prepared, to pay "ex gratia" the money he has claimed.

13. The application for winding up is not pressed.

14. There is an application made on behalf of the bank for staying the winding up petition. I stay the petition.

15. No order as to costs.