

(1941) 12 MAD CK 0026

In the Madras High Court

**In Re: Travancore National and Quilon Bank Ltd. (in liquidation)
Modern Automobiles**

Date of Decision : 16-12-1941

Acts Referred:

Citation : AIR 1942 Mad 377

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—This is an application by one Mr. Patel the proprietor of Modern Automobiles carrying on business at Bombay for payment of two sums, Rs. 1500 and Rs. 433-2-0. The case for the applicant is that he was a customer of the Bombay branch of the Travancore National and Quilon Bank Ltd. and had a current account with them, that he delivered on 16th June 1938 a cheque bearing the said date for Rs. 1500, drawn in his favour on the Anderson branch of the bank at Madras and another cheque for a sum of Rs. 433-2-0 drawn in his favour on the same branch for realisation and credit in his current account, that according to the course of dealings he had with the bank he could draw on the said bank only after the said amounts were realised and intimation thereof had been given to him, that before he received any such intimation the bank suspended payment and therefore the said moneys realised by the bank must be held to be moneys held in trust for him and he is therefore entitled to rank as a preferential creditor in respect thereof. The receipt of the cheques by the Bombay branch of the bank and the realisation of the said cheques by the Anderson branch of the bank are admitted by the Officials Liquidators. The sum of Rs. 1500 in respect of the cheque dated 16th June 1938 was realised by the Anderson branch on 18th June 1938 and the sum of Rs. 438-2-0 in respect of the second cheque was realised on 20th June 1938 before the bank suspended payment. There are two paying in slips Exs A and A-1 evidencing the payment of cheques to the Bombay branch of the bank. They indicate that the said cheques were paid in to the credit of the Modern Automobiles in current account. There are certain rules framed by the bank in regard to the current account and two rules appear to be relevant in regard to the cheques in question. Rule 10 runs

thus:

Cheques, drafts, etc., (either local or mofussil) on other banks received after 1 P.M. (on Saturdays 11-30 A.M.) will not be sent for collection until the following business day and should accordingly be drawn against only after they are realised.

2. Rule 12 says:

It must be distinctly understood that though entries may have been made to the credit of an account and initialled for in the pass-book, should such credits be made up of cheques which have to be collected, they are not available for drawing against until it has been ascertained that the proceeds have been realised by the bank.

3. Mr. Gopalaratnam appearing for the applicant examined Mr. Patel. He deposed that he was receiving advice notes in regard to the amounts realised in respect of cheques delivered to the bank from time to time. He also filed his pass-book which contains the rules on which the relationship between him and bank in regard to these cheques was regulated. The question that arises is whether in respect of moneys realised by the Anderson branch in respect of these cheques the relationship of debtor and creditor was established between the bank and the applicant. From the paying in slips it is clear that the moneys were intended to be credited into the current account and therefore, the relationship intended to be established between the applicant and the bank was that of a debtor and creditor. On the date on which the applicant paid the cheques into the bank it cannot be said that such a relationship arose because he was not allowed to draw on those cheques except according to the provisions contained in Rr: 10 and 12. It does not appear from the evidence when the cheques were delivered at the Bombay branch, that is, whether it was after 1 P.M. or before that hour. But it appears that those cheques were despatched on the very day to the Anderson branch at Madras and realised by them immediately in the ordinary course of business. u/s 12 those cheques were not available for drawing until it was ascertained that the proceeds had been realised by the bank. The question is, can it be said that it has been ascertained that the proceeds have been realised by the bank? The receipt by the Anderson branch at Madras of these sums on the respective dates must be held to be receipts by the bank and the proceeds must be said to have been realized by the Bombay branch of the bank on the respective dates. In *Maekersy v. Ramsays* 57 R.R. 183 one Maekersy had an account with the firm of Ramsays. He delivered a draft dated 10th February 1832 drawn in his favour on a firm in Calcutta requesting the firm of Ramsays to realize the proceeds of the cheque and place them to his credit. Ramsays delivered this bill to Coutts & Co. requesting them to forward it to their agents at Calcutta for realisation. Coutts & Co. sent that bill to their correspondents Alexander & Co. at Calcutta who realized the proceeds of the bill but failed to remit the amount to Coutts & Co. and subsequently became bankrupt. The question that arose in that case was whether Maekersy was entitled to have

credit for the amount realized by Alexander & Co. in spite of their bankruptcy and when it could be said that the proceeds should be deemed to have been realized to the credit of Maekersy.

4. The House of Lords held that in spite of the bankruptcy Maekersy would be entitled to have credit for the said amount and the amount must be deemed to have been realized by Ramsays when Alexander & Co. collected the amount in Calcutta. Lord Ordinary who tried the case took the view that at the moment when Alexander & Co. realized the amount, at that moment the law placed it to the credit of Mackersy (page 191), This view was affirmed by the House of Lords. Lord Campbell at p. 203 observed: "I approve of the expression of the Lord Ordinary, when speaking of the receipt of the money by Coutts" correspondents at Calcutta, that at that moment the law placed it to the credit of the defender." Lord Cottenham also took the same view. From this decision it is clear that the realisation of the cheques by the Anderson branch must be held to be realisation by the Bombay branch. Mr. Gopalaratnam placed considerable reliance on *In re Farrow's Bank Ltd.*(1923) 1 Ch. 41 The facts in that case were as follows: One V on 16th December 1920 paid into his credit at Farrow's Bank, Birmingham branch, a cheque drawn in his favour on the London Joint City and Midland Bank, West Bromwich branch. The Farrows Bank remitted the cheque to Barclays Bank for realisation. On 17th December Barclays Bank presented the cheque at the clearing house to the London Joint City and Midland Bank who remitted it to their West Bromwich branch. On 18th December the West Bromwich branch advised the Head Office that the cheque was cleared. On 20th December the London Joint City and Midland Bank settled with Barclays Bank through the clearing house at 12-30 P.M. so that it may be taken that Barclays Bank must be deemed to have realized the amount at that hour on that date. Barclays Bank immediately advised Farrow's Bank that the cheque was cleared but on the early morning at 8-30 A.M. Farrow's Bank had suspended payment. The relations between V and Farrow's Bank in regard to the cheques paid to his current account were regulated by Rule 4, namely, "The bank will not be responsible for any cheques, bills, notes, coupons, or securities forwarded by post for collection or acceptance, nor for any delay which may arise. Proceeds of remittances will only be available after receipt of the same by the bank." Astbury J. took the view that the proceeds of the cheque could not be said to have been received by the Farrow's Bank till after suspension on the ground that it must have been received only at 12-30 P. M. the hour at which Barclays Bank must be deemed to have realized the amount when they settled the account with the London Joint City and Midland Bank. I refer to the following observation of Astbury J. which makes the point clear:

Now, in the present case, it is common ground that the time at which this cheque was cleared in fact and the moneys made available for Barclays Bank as agent for Farrow's Bank was 12-30 on Monday, 20th December. Farrow's Bank, however, had stopped payment, if not on Saturday or Sunday certainly in the early hours of Monday morning and long before 12-30 in the day. That being so it

seems to me that after ceasing to act as a going concern and stating their intention no longer to act as a going concern they had no longer any authority from Voyce to take what was in fact his money received after the stoppage and convert it into money forming part of their assets, in respect of which they would be entitled to assume the position of debtors instead of agents. On that short ground I am of opinion that these moneys never were in fact collected by Farrow's Bank at a time when they were entitled to claim them as part of their assets.

5. From these observations it is clear that the receipt by the Barclays Bank was held to be receipt by the Farrow's Bank but as that receipt was only after 12-30 P.M. it was held that the amount was received after the suspension of payment by the Farrow's Bank. This view was affirmed by the Court of Appeal. I therefore hold that the proceeds of the cheque must be deemed to have been realized by the Bombay branch on the respective dates on which they were realized by the Anderson branch. The question is, can it be said that it has been ascertained within the meaning of Rule 12 because until then the proceeds will not be available for drawing. It seems to me that so far as the proceeds of the cheque for Rs. 1500 are concerned it must be held that there was ascertainment. The amount was realized on 18th June and certainly it would have been open to the applicant to draw upon the bank and he could have easily ascertained that the amount was realized by the bank. But in regard to the second cheque, namely for Rs. 433-2-0, I find it difficult to hold that there has been ascertainment within the meaning of the said rule. I therefore hold that the applicant is entitled to rank as an ordinary creditor for the sum of Rs. 1500 and as a preferential creditor in regard to the sum of Rs. 433-2-0. The applicant will have Rs. 35 for his costs and the Official Liquidators will have Rs. 35 for their costs, both out of the assets of the bank.