(1939) 04 MAD CK 0001

In the Madras High Court

**In Re: Travancore National and Quilon Bank Ltd. (In Liquidation)
Nayar Modern Bank Ltd.**

Date of Decision : 21-04-1939

Acts Referred:
Companies Act, 1956 — Section 282B

Citation : AIR 1940 Mad 178

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—This is an application by the Nayar Modern Bank for payment of a sum of Rs. 6500 standing to its credit in the

Travancore National and Quilon Bank under three fixed deposits for Rs. 1000, Rs. 5000 and Rs. 500 respectively in preference to the ordinary

creditors of the Bank. The basis of the claim is thus put in para. 2 of the affidavit of the Managing Director:

Under the mandatory provisions of Section 282-B, Companies Act, the Nayar Modern Bank Ltd. has deposited with the Travancore National

and Quilon Bank Ltd. a total amount of Rs. 6500 under three deposits (R. No. 96, dated 30th July 1937 for Rs. 1000, R. No. 6 of 1938 for Rs.

5000, date 15th January 1938 and R. No. 24-38 for Rs. 500, dated 21st February 1938) and in a separate account earmarked as Employees''

Cash Security. The Travancore National and Quilon Bank Ltd. has-accepted the deposit as the Nayar Modern Bank Ltd., Employee''s Gash

Security Deposit and such, acceptance is evidenced by the endorsements on the receipts themselves in red ink and the correspondence in relation

to the transactions.

2. One of the Official Liquidators of the Travancore Bank in his counter-affidavit stated that the said amount of Rs. 6500'' was deposited with the

Bank for the purpose of earning interest thereon and that the Bank was requested to earmark the-said deposit as Employees'' Cash Security

which clearly meant (and could only mean) that the deposit receipts, were to be headed ""Employees'' Cash Security"" to distinguish them from the

other several deposits or loans made by the same Bank against which the depositor arranged to obtain overdrafts."" In para. 3 of his affidavit he

further submitted as follows:

The depositee Bank appears to have accepted all the said deposits as loans merely as banker for its customer in the ordinary course of its banking.

business and issued the usual and ordinary customer''s deposit receipts showing the sums therein acknowledged were debts due and payable to its

customer twelve months after the respective dates-of deposit, carrying ordinary deposit interest at the rate of 4 per cent, per annum in the

meanwhile. It does not appear that the depositee Bank, was asked to accept and it does not appear to have accepted the said sums or any of

them as a trustee and none, of the three transactions are impressed with any trust.

3. The letters written by the Nayar Modern Bank at the time of the several deposits merely indicate that it was sending the moneys for a deposit

and that they should be earmarked as Employees Cash Security. It is enough if I refer only to one such letter. On 30th July 1937 the Nayar

Modern Bank sent a sum of Rs. 1000 for being placed as a fixed deposit and the letter which accompanied it ran thus:

We are sending herewith the sum of Rs. 1000 which is to be placed as a fixed deposit for one year in our name and we request you to kindly grant

us your usual receipt. The deposit is to be treated as one earmarked as our Employees'' Gash Security Deposit as per Section 282-B, Companies

Act.

4. The contention now advanced on behalf of the Nayar Modern Bank is that as the amount representing the Employees'' Cash Security was held

by the Nayar Modern Bank, as trustees in trust for its employees and the said money having been received by the Travancore National and Quilon

Bank with notice of the said trust the latter Bank must be held to be trustees and held the said property also as trustees for the employees of the

Nayar Modern Bank. It seems to me that this contention s untenable. The fact that the depositor is a trustee and that the money deposited is trust

money does not affect the relation which the law creates between a bank and an ordinary customer, namely the relation of a debtor and creditor.

The legal effect of a notice to the Bank that the money deposited is trust money is only to cast a duty on the bank not to participate in a breach of

trust by the trustee. The principle applicable is stated by Hart on ""Law of Banking"" at page 199 thus:

A banker who received into his possession moneys of which his customer has, to his knowledge, become the owner in a fiduciary character

contracts the duty not to part with them even at the mandate of his customer, for purposes which he knows are inconsistent with the customer''s

fiduciary character and duty.

5. He must not be a party to an appropriation of these funds which is inconsistent with the character in which the customer holds them; for

example, he must not allow those moneys to be applied in payment of his own overdrawn private accounts. u/s 282-B, Companies Act, the Nayar

Modern Bank is entitled to keep or deposit the said moneys deposited with it by its employees in pursuance of their contracts of service in any

scheduled Bank as defined in Clause (e) of Section 2, Reserve Bank of India Act, 1934. The Travancore National and Quilon Bank is a scheduled

Bank within the meaning of the said Section. The Nayar Modern Bank was within its rights and not acting improperly when it deposited the

moneys in the Travancore National and Quilon Bank with a request to earmark them as Employees'' Cash Security. The disability which the statute

imposes on the Nayar Modern Bank is that no portion of the said moneys shall be utilized by it except for purposes agreed to under the contract of

service. When the Travancore National and Quilon Bank accepted the deposits with notice of the fact that the said moneys represented cash

security on the employees of the Nayar Modern Bank, the Travancore National and Quilon Bank must also be deemed to have been aware on the

limitation or the powers of the Nayai; Modern Bank in regard to the said moneys and it should not permit any dealing by the Nayar Modern Bank

with those moneys in violation of the duty which the statute imposes. It is not suggested that the Travancore National and Quilon Bank has been a

party to the misapplication of the said moneys by the Nayar Modern Bank in violation of the said duty imposed by the statute. The claim for

preferential payment cannot therefore be sustained and the application is therefore dismissed with costs of the Official Liquidators, Rs. 35.

