(1952) 07 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 53 of 1951

Jugal Kishore Roop Chand — APPELLANT

Vs

The Ambala Commercial Bank Ltd. — RESPONDENT

Date of Decision : 18-07-1952

Acts Referred:
Companies Act, 1913 — Section 183, 234
Trusts Act, 1882 — Section 77

Citation : AIR 1953 P&H 98 : (1953) 23 CompCas 98

Hon'ble Judges : Kapur, J;Falshaw, J

Bench : Division Bench

Advocate : K.S. Thapar, for the Appellant; K.L. Gosain, for the Respondent

Final Decision : Dismissed

Judgement

Kapur, J.—This is an appeal against a decision of Harnam Singh J. holding that the petitioners were not preferential creditors of the Bank.

2. The petitioner firm on 2nd February 1949 deposited two sums of money, namely Rs. 1500/- and Rs. 700/- with the Ambala Commercial Bank, Limited. Two receipts were issued -- Exs. C. 1 and C. 2 -- which are identical In wording, ana one of them may be given ''In extenso''.

"Received the sum of rupees one thousand and five hundred only for credit to D. A. D. S. & T. H. Q. H. Q. Sub-Area Ambala Cantt. account of Earnest money from M/s Jugal Kishore Rup Chand."

3. On 14th February 1949 the Bank suspended payment. On the 7th April the military officer in charge of these contracts wrote the following to the petitioners:

"The following Bank receipts tendered by you as Earnest monies with the tenders of Limo Quick (sic) and charcoal, are returned herewith duly released for payment."

This is Ex. C. 3. The Bank passed a resolution sending the Bank into voluntary liquidation on 1st May 1949, and we may therefore take it that the Bank went into voluntary liquidation on that date. On 12th December 1949 the petitioners applied under Sections 183 and 234, Companies Act for being accepted as preferential claimants to the extent of these two sums of money. Harnam Singh J. by his judgment dated 4th May 1951 held against the petitioners and they have come up in appeal under the Letters Patent.

4. Mr. Thapar for the appellants submits that he is entitled to claim priority on the ground that the money was deposited for a specific purpose. He relies on Godefroi''s on Trust at page 104 and on -- ''Peckham v. Taylor (1862) 31 Beav 250 and on -- ''Listel v. Hodgson (1867) L. R. 4 Eq. 30 (34) but I do not think any one of these cases; or the principles laid down therein would apply to the facts of this case. Whether it was trust money or not the fact remains that on 7th April 1949 the object for which this money had been, deposited, i.e., as earnest money for a tender for supply of material had been achieved, and therefore the case would fall u/s 77(a), Trusts Act the relevant provision of which is:

"77(a). A trust is extinguished when its purpose is completely fulfilled;"

In this case the purpose had been fulfilled and therefore at the time when the Bank went into liquidation on 1st May 1949 there was no longer any existing trust. I am therefore of the opinion that the petitioners are not preferential creditors, and this appeal must therefore be dismissed and the judgment of the learned Judge affirmed, but there will be no order as to costs in this court.

Falshaw, J.

5. I agree.

