
(1964) 12 KL CK 0018

In the High Court Of Kerala

Case No : Appeal No's. 338, 344, 374, 379, 383, 384, 385, 438 and 557 of 1963

Lakshmi Chit Funds Private Ltd.

APPELLANT

Vs

Official Liquidator, Palai Central Bank Ltd.

RESPONDENT

Date of Decision : 08-12-1964

Acts Referred:

Travancore Chitties Act, 1120 — Section 17(1), 19(2)

Citation : (1965) KLJ 60

Hon'ble Judges : M.S. Menon, C.J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : C. Viswanatha Iyer, P.N. Sankaranarayana Pillai, K.N. Parameswara Pillai, C.J. Antony and S. Boothalinga Iyer, for the Appellant; K.V. Surianarayana Iyer, C.M. Devan and K. John Mathew, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Menon, C.J.—These are appeals from the decision of Raman Nayar J. in Trivandrum Chit Fund Ltd. and Others Vs. Official Liquidator, Palai Central Bank Ltd., . The sole question for determination is whether the appellants concerned are entitled to priority as regards the deposits they made in the Palai Central Bank Limited, now in liquidation, in pursuance of Sections 17(1) and 19(2) of the Travancore Chitties Act, 1120.

2. Section 17 of the Travancore Chitties Act, 1120, deals with the security to be given by the foreman of a chitty. Sub-section (1) of that section provides that every foreman shall, before the first drawing of the chitty, execute a bond in favour of or in trust for the other subscribers for the proper conduct of the chitty charging property sufficient to the satisfaction of the Registrar or any officer empowered by the Government in that behalf for the realisation of twice the chitty amount or depositing cash in any approved bank of not less than the chitty amount.

3. There are two provisos to the sub-section. The first proviso says that if the

property charged by way of security be movable property, the same shall be deposited in such manner as may be provided for in the variola or with such authority as the Government may appoint in that behalf. The second proviso is to the effect that cash security of not less than 50 per cent. of the chitty amount may be deposited before the registration of the chitty and the balance within seven days after the receipt by the foreman of his prize-money under Clause (9) of Section 9, in cases where the foreman himself is a subscriber to a full ticket in the chitty. There is another sub-section in Section 17. That sub-section provides that any foreman contravening the provisions of Sub-section (1) shall be liable to a fine not exceeding five hundred rupees.

4. Section 19 of the Travancore Chitties Act, 1120, deals with the duties of a foreman. Sub-section (1) thereof provides that the foreman shall, on the prized subscriber furnishing sufficient security for the payment of future subscriptions, be bound to pay him the prize amount and shall be entitled to get an acknowledgment in writing from him evidencing such payment. Sub-section (2) of that section is to the effect that if, owing to the default of the prize winner, the prize amount due in respect of any drawing remains unpaid before the date of the next succeeding installment, the foreman shall invest the same forthwith in any approved bank mentioned in the variola and intimate in writing the fact of such investment to the prize winner.

5. There are two more sub-sections in Section 19. Sub-section (3) says that payment of the prize under Sub-section (1) or the investment of the same under Sub-section (2) shall be intimated to the subscribers at the next succeeding installment and such payment or investment entered in the minute of proceedings of that installment; and Sub-section (4), that if the prize amount has not been invested in accordance with the provisions of Sub-section (2) or if the amount so invested has been withdrawn for purposes other than those for which the same has been held in deposit, the foreman shall be liable to a fine which may extend to five hundred rupees. According to Section 3(1) of the Travancore Chitties Act, 1120, an " approved bank " means a bank approved by the Government from time to time for the purposes of that Act. Rule 8 of the Travancore Chitties Rules specifies the "approved banks" for the purposes of the Act as defined in Section 3(1) thereof. It is not disputed that the Palai Central Bank limited is an " approved bank " within the meaning of that expression as used in the Travancore Chitties Act, 1120, and the Travancore Chitties Rules framed thereunder in pursuance of Section 72 of that enactment.

6. According to counsel for the appellants, Rule 44 of the Travancore Chitties Rules is also a material provision. That rule reads as follows :

" In case of cash deposit in any approved bank, the pass book shall be pledged with the Registrar. The Registrar shall thereupon intimate to the bank concerned that the security amount shall not be disbursed except with the written sanction of the Registrar or of a competent court. A foreman who makes a chitty deposit in a scheduled bank, registered in India shall also obtain and produce for being

filed with the variola a written undertaking from the bank concerned to the effect that the bank shall pay the amount covered by the deposit, offered as security u/s 17(1) of the Act, only when such payment is sanctioned by the Registrar."

7. The relationship between banker and customer is a contractual one; and normally it is one of debtor and creditor, with no right to any preferential payment. As stated in the old and well-known decision, *Foley v. Hill* (1848) 2 H. L. Cas. 28:

" The money placed in the custody of a banker is, to all intents and purposes, the money of the banker, to do with it as he pleases ; he is guilty of no breach of trust in employing it; he is not answerable to the principal if he puts it into jeopardy, if he engages in a hazardous speculation; he is not bound to keep it or deal with it as the property of his principal."

8. The banker is of course answerable for the amount. That is because in the words of the decision--" he has contracted, having received that money, to repay to the principal when demanded, a sum equivalent to that paid into his hands".

9. It is settled law that in order to sustain a claim for preferential payment and an abrogation of the healthy rule that equality is equity, it has to be established that the relationship was not that of a debtor and creditor. It has to be established that the bank, in a given case, was something else, for example, a bailee or a trustee and not a mere debtor to its customer.

10. The deposits under Sections 17 and 19 of the Travancore Chitties Act, 1120, are no doubt deposits for a special purpose. But that by itself will not sustain a claim for preferential payment. As stated in *Scott on Trusts*: "The mere fact that a deposit is made for a special purpose is not a sufficient reason, unless there is an understanding that the money deposited should not be used as a part of the general assets of the bank " (volume IV, page 3360). Scott goes on to say that " the presumption is that when a bank receives money it is intended that the bank should use the money; and the burden is on the depositor to show that the understanding was different. " There is nothing on record to show that the money deposited was not intended to be used as a part of the general assets of the bank; and we cannot but hold that the deposits, though for a special purpose, were general deposits creating only the relationship of debtor and creditor and thus not entitled to any preferential payment as claimed by the appellants.

11. If the bank was a bailee or a trustee and not a debtor the position would certainly have been different. The appeals fail because we find it impossible to hold that the bank was either a bailee or a trustee, and not a debtor, in these cases.

12. The difference between debt, bailment and trust is clearly brought out by Scott in the following extract from volume IV, page 3345 :

" If the relation is one of bailment or trust and the banker appropriates to his

own purposes the thing or money deposited, he may be guilty of the crime of embezzlement; if the relation is one of debt, the banker may properly use it for his own purposes and is of course guilty of no crime in so doing. If the relation is one of bailment or trust and the bank fails, the depositor is entitled to the return of the thing deposited; or if it has been exchanged by the bank for something else, or has been mingled with other things then to its product so long as it is traceable into a product. If, on the other hand, the relation is one of debt and the bank fails, the depositor is not ordinarily entitled to priority over the general creditors of the bank, even though the bank still holds the thing deposited or its traceable product."

13. It is contended that the foreman is a trustee. But a general deposit even by a trustee in his name as trustee does not stand on a different footing. As pointed out by Scott:

" If a general deposit is properly made by a trustee in his name as trustee, the bank does not become a trustee of the money, but a debtor to the trustee. The trustee becomes a creditor of the bank and holds his claim against the bank in trust for the beneficiaries of the trust. The bank is as free to use the money deposited by a trustee as it is to use any other funds which are placed on general deposit with it. If the bank fails, the trustee or the beneficiaries are not entitled to priority over other creditors of the bank even though the money deposited is traceable " (volume IV, page 3347).

14. It is not disputed that the bank undertook to pay interest on all the deposits with which we are concerned. An undertaking to pay interest is of significance in deciding whether the relationship created was that of debtor and creditor or that of bailee or trustee. Scott deals with the matter as follows;

" Where the bank undertakes to pay interest on the deposit, it is clearly the intention of the parties that the bank should have the use of the money, and that it becomes a debtor and not a trustee. Interest is paid for the use of the money, and the bank would hardly undertake to pay interest unless it were to have the use of the money " (volume IV, page 3360).

15. All the relevant aspects of the case have been dealt with at length in the judgment under appeal and it is unnecessary to go over the ground afresh. It will suffice to say that the appellants have not discharged the burden of proving that the normal relationship of debtor and creditor is not the relationship obtaining in these cases; and that we find nothing in the documents discussed in the judgment under appeal or in the provisions of the Travancore Chitties Act, 1120 (M.E.), and the Rules framed thereunder, which will establish that the bank was a bailee or a trustee as contended by the appellants.

16. The appeals fail and are hereby dismissed, but without any order as to costs.