
(1964) 11 BOM CK 0009

In the Bombay High Court

Case No : Company Appeal No. 2 of 1963 (Company Petition No. 14 of 1960)

Madhya Pradesh State Co-operative Bank Ltd., Jabalpur

APPELLANT

Vs

P.D. Dalal

RESPONDENT

Date of Decision : 30-11-1964

Acts Referred:

Contract Act, 1872 — Section 201

Citation : AIR 1967 Bom 279 : (1966) 68 BOMLR 500

Hon'ble Judges : N.A. Modi, J

Bench : Single Bench

Advocate : G.N. Vaidya, for the Appellant; S. Sorabji, instructed by Crawford Bayley and Co., for the Respondent

Judgement

(1) This is an appeal by way of a Judges' Summons taken out by Madhya Pradesh State Co-operative Bank Ltd. (Hereinafter referred to as "the Co-operative Bank") against the Official Liquidator as Liquidator of the Laxmi Bank Ltd. (in Liquidation), praying that the Co-operative Bank be declared as a preferential creditor with a trust claim of Rs. 11,031.87" against the Laxmi Bank and that the decision of the Official Liquidator disallowing the claim as a trust claim be modified.

(2) The Co-operative Bank had at all material times a Pay Office at Harda and a branch at Betulganj but no office or Branch in Bombay. The Laxmi Bank at all material times had Branches at Yeotmal, Khandwa, Chhindwara and Bombay.

(3) On the 17th May 1960 the Co-operative Bank's Pay Office at Harda sent to the Laxmi Bank's Branch at Yeotmal a Bill for Rs. 5,000/- for collection at Yeotmal with instructions inter alia, "to remit the proceeds by Demand Draft on Bombay". The Laxmi Bank's Yeotmal Branch collected the proceeds and according to the said instructions sent its Demand Draft, dated 24th May 1960, for Rs. 5,001.23 on the Laxmi Bank's Bombay Branch to the Co-operative Bank's Pay Office at Harda.

(4) On the 21st May 1960 the Co-operative bank's Pay Office at Harda sent to the Laxmi Bank's Branch at Yeotmal a Bill for Rs. 3,000/- for collection at Yeotmal with instructions to remit the proceeds by a Demand Draft on Bombay. The Laxmi Bank's Yeotmal Branch collected the proceeds and according to the said instructions sent its Demand Draft, dated 28th May 1960, for Rs. 2,999.78 on the Laxmi Bank's Bombay Branch to the Co-operative Bank's Pay Office at Harda.

(5) On the 25th May 1960 the Co-operative Bank's Pay Office at Harda sent to the Laxmi Bank's Branch at Khandwa a Bill for Rs. 3,000/- for collection at Khandwa with instructions to remit the proceeds by a Demand Draft on Bombay. The Laxmi Bank's Khandwa Branch collected the proceeds and according to the said instructions sent its Demand Draft, dated 26th May 1960, for Rs. 2,998/- on the Laxmi Bank's Bombay Branch to the Co-operative Bank's Pay Office at Harda.

(6) On the 12th May 1960 the Co-operative bank's Branch at Betul Ganj sent to the Laxmi Bank's Branch at Chhindwara a Bill for Rs. 279.60 for collection at Chhindwara with instructions to remit the proceeds by a Demand Draft on Betul. The Laxmi Bank's Chhindwara Branch collected the proceeds and according to the said instructions sent its Demand Draft, dated 27th May 1960, for Rs. 281.60 on the Laxmi Bank's Branch at Betul Ganj.

(7) On 30th May 1960 a petition was filed for an order for winding up the Laxmi Bank and such an order was made on 28th June 1960.

(8) It is the case of the Co-operative Bank, as made out in their affidavits of claim, that all the said four drafts "were returned unhonoured as by that time the Laxmi Bank had stopped all payments and had been placed under liquidation."

(9) In respect of all the said 4 Demand Drafts the Co-operative Bank Lodged a claim for an aggregate sum of Rs. 11,280.56 and claimed further that the Laxmi Bank had been constituted and acted as an Agent of the Co-operative bank and having collected the amounts held them in trust for the special purpose of paying the same to the Co-operative Bank and that, as it was a trust claim, the same should be allowed as a preferential claim. The Official Liquidator investigated the claim. He upheld the Co-operative Bank's said claim for Rs. 11,280.56 but further held that the same was liable to a set off for the sum of Rupees 248.69 so that the net claim was reduced to Rupees 11,031.87. Co-operative Bank does not dispute the said set off or the correctness of the said amount of Rs. 11,031.87 arrived at after the set off. The Official Liquidator allowed that claim only as an ordinary claim, but not as a preferential claim. It is to dispute this latter finding that the Co-operative Bank has filed this Appeal by taking out this Judge's Summons.

(10) The essential facts relating to all the said 4 Demand Drafts are common. The Co-operative Bank sent to the Laxmi Bank Bills for collection with specific instructions to remit the amounts collected by Demand Drafts drawn by the

Laxmi Bank from its said Branches at Yeotmal, Khandwa and chhindwara on the Laxmi Bank's Branches at Bombay and Betul. The Demand Drafts were to be sent, as aforesaid, to the Co-operative bank's Pay Office at Harda and its Branch at Betulganj. There is no dispute that in each of the four cases the Laxmi Bank's relevant Branches collected the Bills and remitted the amounts by Demand Drafts, drawn on their Bombay and Betul Branches, and sent the Demand Drafts to the appropriate pay office and Branch of the Co-operative Bank. The Co-operative bank's present claim is based on Demand Drafts which were dishonoured or remained to be honoured. The general principles of law to determine whether in such circumstances the claim is an ordinary claim or a trust claim and therefore, a preferential claim are quite clear. A number of authorities have been cited, but before referring to them it is better to bear in mind these general principles.

(11) When Bills are handed over to a Bank for collection, the Bank is constituted an agent for their collection. After their collection relationship between the customer and the banker as regards the moneys so collected by the banker will depend on other circumstances. If the customer has given any specific instructions to the banker in respect of the disposal of the amount so collected, it is those instructions which will determine the nature of the relationship. If no such specific instructions have however been given to the banker, the relationship will have to be determined from other circumstances, such as whether the customer is a regular customer of the Bank having an account with the bank or not, etc. The latter aspect need not be considered in the present case because in the present case specific instructions had in fact been given by the co-operative Bank to the Laxmi Bank as to the disposal of the amounts collected by the latter. Instructions in respect of all the said four transactions were identical, the same being "to remit the proceeds by Demand Draft" drawn in the first three cases on Bombay and in the last case on Betul. It will, therefore, have to be considered, applying the above general principles, as to what is the effect of those further specific instructions. The effect of the instructions is that the Laxmi Bank was constituted an Agent of the Co-operative Bank for collecting the amounts of the Bills and further for remitting the same by Demand Drafts. In view of these instructions the agency of the Laxmi Bank would continue till the work of the agency continued and the work of the agency was to collect the amounts of the Bills and to send the Demand Drafts to the Co-operative Bank. No sooner the Demand Drafts were sent in accordance with the said instructions the work of the agency came to an end. Thereafter the only relationship between the two would be that of a creditor and a debtor and the only obligation of the Laxmi Bank would be to honour the Demand Drafts and to pay the amounts thereof. So long as the agency subsisted the Laxmi Bank was in a position of trust holding a fiduciary capacity, but that position ended when the agency itself ended. If the claim arose before the termination of the agency, the claim would be in the nature of a trust claim and would be in the nature of a trust claim payable preferentially. If the claim arose after the termination of the

agency however, such a claim would arise only out of the relationship between a creditor and debtor and it would be merely an ordinary claim and not a trust or preferential claim. That this is the position in law is shown and amply borne out by several decided cases which were referred to at the Bar.

(12) The earliest case relied upon was that of *Alliance Bank of Simla Ltd. v. Amritsar bank*. AIR 1915 Lah. 214. In that case certain Bills were sent to a bank for collection with instructions to remit the proceeds by a Demand Draft and a Division Bench of the Lahore High Court held that when specific directions are given to a Bank and those directions fully carried out, the business of the agency is terminated within the meaning of section 201 of the Indian Contract Act and the fiduciary relationship comes to an end and the relationship of debtor and creditor supervenes. It was held that as the specific instructions were to collect and to remit the proceeds by a Demand Draft the fiduciary relationship came to an end no sooner the Demand Drafts were sent and thereafter the relationship was merely the ordinary relationship of creditor and debtor.

(13) My attention was drawn to the unreported Judgment dated 20th September 1950 of a Division Bench of this High Court constituted of Chagla C. J. and Bhagwati J. in Appeal NO., 21 of 1950 (Bom). *Jodhpur Commercial Bank Ltd. v. R. Mathalone*. In that case certain cheques and Hundis were sent by the Jodhpur Commercial Bank to the A. B. C. Bank for collection and specific instructions were given by the Jodhpur Bank to the A. B. C. Bank to collect the cheques and the Hundis and to remit to the Jodhpur Bank the proceeds of realisation by the A. B. C. Bank's Pay Slip. The A. B. C. Bank collected the proceeds of the cheques and Hundis and pursuant to the said instructions of the Jodhpur Bank sent 4 Pay Slips. The amounts of the Pay Slips could not be collected as the A. B. C. Bank went in liquidation. The Jodhpur Bank claimed the amounts of the 4 Pay Slips as a preferential claim in the liquidation of the A. B. C. Bank. It was held that the Jodhpur Bank constituted the A. B. C. Bank its agent for a specific purpose and that cheques and the Hundis and to remit the proceeds in the mode indicated by the Jodhpur Bank, the mode indicated being remission by Pay Slips. It was held that as the A. B. C. Bank was constituted an Agent for that purpose, a fiduciary relation did arise. It was further held that the fiduciary relation came to an end with the termination of the agency and that the agency would terminate when the business of the agency would come to an end and further that in view of the Jodhpur Bank's specific instructions to remit the realisation by Pay Slips, the agency came to an end when such Pay Slips were sent. It was further held that the obligation of the A. B. C. Bank after it sent such Pay Slips was only in the nature of a debt which would not involve any fiduciary relation. The Judgment makes it clear that the confidence and trust reposed in the A. B. C. Bank was merely with regard to the realisation of the proceeds of the three cheques and the Hundis and the remission of these proceeds in the mode indicated by the Jodhpur Bank, but once that was done, the debtor was entitled to use the funds realised and the only obligation was to repay the funds on demand.

(14) Another case cited before me was that of *The Bank of India Ltd. Vs. The Official Liquidator*, . The Judgment in that case is that of a single Judge of this Court and one of the principles on which the Judgment rests has been held not to be good in law in a subsequent Judgment of a Division Bench of our High Court in *Valaja Govinda Saravanabavananthan Vs. The Exchange Bank of India and Africa (in liquidation) Ltd.*, . I do not therefore propose to analyse that judgment. It should however, be noted that although the claim in the said case of *The Bank of India Ltd. Vs. The Official Liquidator*, , was held to be a trust claim, it appears, with due respect, to have gone unnoticed that on the specific instructions in that case the agency was to collect the amount of the cheques and to remit the amount by a cheques, that such a cheque for remitting the amount had not been sent, that therefore, the agency never terminated and that it was because of that reason that the claim could be held to be a trust claim.

(15) In the said case of *Valaja Govinda Saravanabavananthan Vs. The Exchange Bank of India and Africa (in liquidation) Ltd.*, certain Bills of exchange were delivered by the claimant to the Exchange Bank for collection. No specific instructions were given, nor was anything said as to what was to be done with the money so collected. The claimant, however, already had a Current Account with the Exchange Bank and the bank credited the amount so collected in that Current Account of the claimant. It was held in that case that under the circumstances the claimant's claim was not entitled to be paid in priority to the other ordinary creditors. Now, on the facts of that case, so far as the specific instruction are concerned, the agency was for the only purpose of collecting the amount. There were no specific instructions given as to what was to be done with the amount after it was collected. However, as there already existed a Current account of the customer with the Bank it would lead to an implication that the amount collected was to be credited in the Current account, which the Bank had in fact done. It was held that in the absence of such instructions the Bank became entitled to use those proceeds for its ordinary business and they became the ordinary assets of the Bank and were not impressed with any trust.

(16) Another case relied upon is that of *Veliji Lakhamsey and Co. v. Dr. Banaji* (1955) is contained in the following passage appearing on pages 997-998.

"Now, the principle of law, briefly stated, is this. The relationship between a banker and its customer is that of a debtor and creditor and any amount due by the banker to the customer in that relationship cannot be claimed by the customer from the bank as a preferential creditor if the bank is wound up. But a customer may give certain specific directions to the bank and constitute the bank its agent. If the bank acts as an agent and not as a debtor, then the agency brings about a fiduciary relationship between the customer and the bank and the fiduciary relationship lasts until the agency is terminated. Therefore, if the customer were to give directions to the bank that a certain amount must be paid to a certain person, then till that amount is paid pursuant to directions of the customer, the agency would continue and the bank would hold the amount not as

a debtor of the customer but in the capacity of a trustee and the amount would be impressed with a trust. The matter may be looked at from a different point of view. If a certain amount of a customer is lying with the bank, the safe test which may be applied in order to determine whether that amount is impressed with any trust is to find out whether the bank is entitled to use that amount in the ordinary course of its business, whether it belongs to its general funds, or whether it is specially appropriated for a particular purpose and cannot be utilised by the bank for its normal ordinary business."

(17) Mr. Vaidya, the learned Counsel for the appellant, however, contended that the general principles of law laid down in the above cases are no longer good law in view of a later decision of the Supreme Court in *New Bank of India Ltd. Vs. Pearey Lal*, . This contention of Mr. Vaidya is not correct. In that case the plaintiff delivered certain amounts of money to the bank of Lahore for transmission to the Bank's Branch at Calcutta with instruction to await the directions of the plaintiff regarding the opening of accounts for keeping the same in fixed deposit or otherwise in the Calcutta Branch, but the plaintiff never gave any such instructions for opening any account fixed deposit or otherwise, in regard to the amount after they reached Calcutta. The question that arose for determination in that case was whether the Bank was a trustee for that amount or whether the relationship was that of merely creditor and debtor. The Supreme Court held as follows:

"The transaction, as evidenced by the two receipts was primarily one of entrustment of the amount to the Bank for transmission to Calcutta. After the purpose for which the moneys were entrusted was carried out, in the absence of further instructions the defendant did not cease to be a trustee. So long as instructions were not given by the plaintiff for appropriation of the amounts the Bank continued to hold the amounts transmitted for and on behalf of the plaintiff and there is no evidence that the plaintiff gave instructions or acquiesced in the opening of a fixed deposit account after the same reached Calcutta. It is immaterial that the Bank purported to open fixed deposit account in the name of the plaintiff with the amounts received at its head office at Lahore. That course of action was adopted without the consent of the plaintiff and it should not bind the plaintiff. The High Court was, therefore, right in holding that the amount delivered by the plaintiff to the Bank at Lahore remained in trust even after it reached Calcutta, and it was not held by the Bank, in deposit, for the plaintiff within the meaning of the scheme sanctioned by the High Court of East Punjab."

It is clear that the principle laid down by the Supreme Court in this passage is the same as and in no way conflicts with that laid down in the said other judgments. In that case the customer's instructions were that the Bank was to hold the amounts till the customer gave further instructions as to what was to be done with the amounts after they reached Calcutta. It is clear that till such instructions were given the Bank was to hold the amounts only as an agent of the customer with an obligation to deal with them in accordance with such

instructions as were received. Till the time such instructions were received and carried out the relationship was not the ordinary relationship of creditor and debtor, but it was the fiduciary relationship of a trustee, In that cas the customer had not, from the outset, given to the Bank all his instructions as to what was to be done with the moneys. But he did, from the very outset, specifically instruct the Bank to hold the moneys after they reached Calcutta and to deal with the same in accordance with his further instructions which he specifically stated he would give after the moneys reached Calcutta. By reason of such initial instructions the agency would not terminate and the fiduciary relationship would continue till the further instructions were received and were complied with. It is for that reason that the Supreme Court held that relationship to be a fiduciary relationship. The principle on which it reached its conclusion is, therefore, the same as that laid down by the said other cases. As a matter of fact the Supreme Court in so many words observes: "When a person dealing with a bank delivers money to the bank an intention to create a relation of creditor and debtor between him and the bank is presumed, it being the normal course of the business of the Bank to accept deposits from its customers. Bu this presumption is one of fact arising from the nature of the business carried on by the Bank and is rebutted by proof of special instructions, or circumstances attending the transaction." If, of course, there are special instruction, the nature of the instruction and to what extent they are fulfilled will determine the nature of the relationship between the customer and the Bank.

(18) In the present case before me special instructions were in fact given which were that the amount should be remitted by Demand Drafts. The agency and the fiduciary relationship would therefore continue that such Demand Drafts were sent. These instructions were thereafter carried out. On the carrying out of those instructions the agency terminated. On such termination the fiduciary relationship came to an end and the only relationship that subsisted thereafter was the ordinary relationship between a debtor and a creditor. Under the circumstances, the present claim has rightly been held to be only a ordinary claim.

The appeal, therefore, fails. I therefore dismiss the Summons with costs.

(19) Appeal dismissed.