(1951) 01 CAL CK 0025

In the Calcutta High Court

Case No : A.F.A.D. No. 1914 of 1947

Manna Lall Jhunjhunwalla APPELLANT

Vs

Sm. Manbhouti Debi RESPONDENT

Date of Decision : 24-01-1951

Acts Referred:

Citation : AIR 1951 Cal 417

Hon'ble Judges : R.P. Mookerjee, J

Bench : Single Bench

Advocate : Muktipada Chatterjee, for the Appellant;

Final Decision : Dismissed

Judgement

R.P. Mookerjee, J.—The question for determination in this appeal is as to whether the transaction in question is in substance a loan as u/s 2(12), Bengal Money lenders Act or a deposit of money as under Sub-clause ''a'' of Clause (12) of Section 2 of the same Act. The trial Ct. held in favour of the deft. treating the transaction as a loan. The learned Dist. J. interpreted the transaction as being a deposit.

2. The transaction in question is evidenced by Ex. 1 described as a deed indicating the terms of a certain amount deposited with the deft. It appears that the pltf.-resp. has deposited with the deft. certain items of ornaments. In the presence of common friends the value of those ornaments was fixed at Rs. 2150. The deft. was to pay Rs. 15 per month as interest for the said amount. The said amount of interest was the only source of maintenance of the pltf. If the payment of interest be in default for six consecutive months the pltf. would be entitled to file a suit for the recovery of the deposited amount of Rs. 2150 together with the amount of unrealised interest. On regular payment of interest the principal amount of Rs. 2150 is to remain in deposit with the deft. so long as the pltf. is alive. After her death a portion is to be spent for her sradh ceremony & the balance is to be handed over to the Bishnupur Goshala in the name of the

pltf. If such payment is not made the authorities of the Goshala would be entitled to sue the deft. for the same.

3. The learned Dist. J. had held that the transaction was in the nature of a deposit & even if it were a loan it was a commercial loan. According to him it was to be presumed that the deft. being a businessman he used the sale proceeds of the ornaments for the purpose of the business of the firm. It has been held that there is no such presumption in law & there being no evidence that the transaction was in the nature of a commercial loan the conclusion reached by the learned Dist. J., cannot be accepted.

4. The only question is whether it was a loan or a deposit.

5. The question whether this was a loan or a deposit would have to be decided on the particular facts & circumstances of the case. There is no satisfactory evidence that the deft. carried on the business of bankers but that by itself will not be conclusive. It should be remembered that the two terms ''loan'' & ''deposit'' are not mutually exclusive. As observed by the Judicial Committee in Mahomed Akbar Khan v. Attar Singh 40 C. W. N. 997 at p. 1003 : (A. I. R. 1936 P. C. 171):

"a deposit of money is to be a bailment of specific currency to be returned in specie. As in the case of a deposit with a banker it does not necessarily involve the creation of a trust but may involve only the creation of the relation of debtor & creditor of a loan under certain conditions. The distinction which is perhaps the most obvious is that the deposit is not for a fixed term does not seem to impose a minimum obligation on the depositee to seek out the depositor & repay him. He is to keep the money till asked for it. A demand by the depositor would, therefore, seem to be a normal condition of the obligation of the depositee to repay. It is unnecessary, however, in this case to decide any question as to implied condition, for the case of the pltf. rests on an express stipulation made in 1919."

6. Pacts in the present case, however, are different. From the terms of Ex. 1 referred to above it is clear that the ornaments in question were in deposit with the deft.; in lieu of the ornaments a certain value was fixed by certain intermediaries. That amouns was made a trust of subject to the life interest of the pltf. It was merely a certain amount being liable to be utilised in a particular manner after the death of the depositor. This was not a case in the nature of a loan where the debtor is taking money on promise to pay interest to the creditor. Payment of interest by a depositee to the depositor does not by itself convert a transaction into that of a loan. As has been repeatedly pointed out the real nature of the transaction has to be looked into for determining whether it is one in the nature of a loan transaction.

7. One of the essential conditions in the definition of ''loan'' in the Bengal Money-lenders Act is the condition of repayment with interest. There is no such condition in the agreement. On the other hand, on regular payment of the

interest the amount is not repayable during the lifetime of the depositor. Further, the clause gives the authorities of the Goshala the right to bring a suit against the deft. is consistent only with the view that a trust was being created in favour of the said Goshala which the trustee deft. was bound to fulfil.

8. This transaction has rightly been found to be a deposit not affected by the provisions of the Bengal Money-lenders Act. This appeal is accordingly dismissed. As there was no appearance on behalf of the deft. there would be no order for costs.

