

(2002) 10 AP CK 0016
In the Andhra Pradesh High Court
Case No : Writ Petition No. 18187 of 2002

N. Santosh

APPELLANT

Vs

Indian Overseas Bank and Others

RESPONDENT

Date of Decision : 01-10-2002

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Negotiable Instruments Act, 1881 (NI) — Section 31

Citation : AIR 2003 AP 187 : (2003) 1 ALD 245 : (2003) 2 BC 637 : (2003) 115 CompCas 616

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P. Veera Reddy, for the Appellant; K. Viswandham, for Bala Rani, SC for IOB for Respondent Nos. 1 and 2 and K. Srinivasa Murthy, SC for RBI, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner, who holds a Savings Bank Account in the 1st respondent, seeks a writ of mandamus, declaring the action of the respondents (hereinafter referred to as "the bank"), in refusing to allow the petitioner to withdraw the amount in his account as illegal, arbitrary and unjustified and seeks a consequential direction to the bank to permit him to operate the same.

2. In the affidavit filed in support of the writ petition, it is stated that the petitioner is a B.Com (Hons.) Graduate. Having completed the same in early 2002, he has been making efforts to undertake higher studies abroad, particularly in Switzerland, Australia or New Zealand. He states that he has passed some of the tests needed for such studies, conducted by the University of Cambridge, British Council, etc., and that he received offers from various countries, one such being from Switzerland.

3. It is the case of the petitioner that since his studies abroad would need lot of

expenditure, himself and his mother mobilised funds to the tune of about Rs. 15,00,000/- and had opened a Savings Bank Account with the 1st respondent bank (A/c. No. 9879) with the introduction of his maternal uncle by name Mr. Venkateshwara Rao. He averred that an amount of Rs. 15,00,000/- was deposited on the day of opening of the account. Thereafter, in August 2002, an amount of Rs. 6,25,000/- was deposited in the said account. The petitioner had issued a cheque for Rs. 6,25,000/- to M/s. Maniraja Constructions, belonging to Mr. Venkateshwara Rao.

4. The petitioner states that he received a letter from an institution in Switzerland on 26-8-2002 in which it was indicated that he had to incur an expenditure of 50,600/- Swiss Francs, which is equivalent to Rs. 17,00,000/-. It was in this context that he approached the 1st respondent on 16-9-2002 to permit him to withdraw the amount. The petitioner complains that neither he was issued cheque book, nor a loose cheque, much less a withdrawal slip. The 1st respondent is said to have informed the petitioner that in no circumstances he will be permitted to withdraw the amount on the ground that M/s. Maniraja Constructions, belonging to his maternal uncle Mr. Venkateshwara Rao, owes certain amounts to the bank. It is in this context that the petitioner claims the relief referred to above.

5. Notice was ordered at the stage of admission. On receiving notices, the bank filed counter affidavit.

6. The bank has taken objection as to the maintainability of the writ petition. On merits, they submit that the maternal uncle of the petitioner by name Mr. Venkateshwara Rao, who is the Managing Director of M/s. Maniraja Constructions, owed substantial sum to them. It is stated that under one time settlement, the said Managing Director offered to pay Rs. 37,00,000/- in full and final settlement of the amount and it was in this context that he got opened the account in the name of the petitioner for depositing of the amount. They referred to a cheque issued by the petitioner in favour of Mr. M. Venkateshwara Rao, which in turn was deposited as part of settlement, to buttress their contention that the petitioner had only lent his name for the benefit of Mr. Venkateshwara Rao. Finally, they state that the petitioner is not entitled to be paid the amount deposited in his account.

7. It is not in dispute that the petitioner had opened a Savings Bank Account in the 1st respondent bank. The dispute is as to whether the bank is entitled to deny the payment to the petitioner. Before going into the merits of the matter, the contention as regards the maintainability of the writ petition needs to be dealt with.

8. Indian Overseas Bank (Respondents 1 and 2) is a nationalised bank. Its activities are governed by the provisions of the Banking Regulation Act, 1949 (for short "the BR Act") as well as the Negotiable Instruments Act (for short "the NI Act"). Having regard to the holding of the Government of India in the bank as

well as its pervasive control over it, the bank can safely be treated as "State" within the meaning of Article 12 of the Constitution of India. It is true that even in respect of activities of the "State", writ petitions are not maintainable in relation to reliefs, adjudication of which involve findings of disputed questions of fact. Where, however, the dispute relates to the statutory obligations flowing from the concerned statutes, the writ petitions are certainly maintainable. The reason is that what is undertaken in such cases is not adjudication of the contractual rights or mutual obligations, but judicial review of the acts and omissions of the States or its instrumentalities, with special reference to the relevant provisions.

Existence of contractual rights in such cases is rather incidental and that fact by itself cannot hinder the maintainability of the writ petition.

9. The petitioner stated that when he approached the bank with a view to withdraw the amount, he has been denied the cheque book, loose cheque or even a withdrawal slip. He further stated that the bank informed him that under no circumstances it would permit him to withdraw the amount. This part of the allegation contained in the affidavit not only remained uncontroverted, but a major portion of the counter affidavit filed by the respondents was devoted to substantiate their action,

10. The learned Standing Counsel for the bank was specifically asked as to whether there existed any contract between the bank and the petitioner, enabling the bank to deny payment to the petitioner. A further question was asked as to whether there was any arrangement among the petitioner, bank and the firm M/s. Maniraja Constructions or its Managing Director Mr. Venkateshwara Rao. It was also verified from the learned Counsel for the bank as to whether there exist any provisions of law in the form of statutory Rules or Circulars/Instructions from the Reserve Bank, to enable it to withhold the payments to the petitioner. To these questions, the answer was in negative. Therefore, it has to be assumed that the relationship between the petitioner and the bank is nothing more than an ordinary customer and a banker. It has to be seen as to whether such relationship permits the banker to withhold the amounts deposited with it by the customer.

11. The banking transactions have been in vogue in this country since last several decades. Before the term "banker" was defined under the Indian Companies (Amendment) Act, 1936 and the banking activities came to be regulated under the BR Act, the term "banker" was defined by Dr. H.L. Hari, in his Law of Banking Vol.1, in the year 1931, as under:

"A banker is one who in the ordinary course of his business, honours cheques drawn upon by him by persons from and for whom he receives money on current accounts,"

Section 5(b) of the BR Act, defines the activity of banking as under;

"5(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise;"

Sir John Paget in his Law of Banking observed that:

"The banking activities involves :

- (a) taking of deposit accounts;
- (b) taking of current accounts:
- (c) issue and pay cheques; and
- (d) collect cheques for his customers;"

Several authors and Courts unequivocally held that the legal relationship of customer and banker is that of creditor and debtor. Reference in this context may be made to the judgment of the Hon"ble Supreme Court in Shanti Prasad Jain Vs. The Director of Enforcement, . The Constitution Bench of the Supreme Court, speaking through Venkatarama Iyer, J., held as under:

"Now the law is well settled that when moneys are deposited in a bank, the relationship that is constituted between the banker and the customer is one of debtor and creditor and not trustee and beneficiary. The banker is entitled to use the monies without being called upon to account for such user, his only liability being to return the amount in accordance with the terms agreed between him and the customer. And it makes no difference in the jural relationship whether the deposits were made by the customer himself, or by some other persons, provided the customer accepts them. There might be special arrangement under which a banker might be constituted a trustee, but apart from such an arrangement, his position qua Banker is that of debtor, and not trustee. (Para 37)"

To the same effect is the judgment of the Hon"ble Supreme Court in Canara Bank Vs. Canara Sales Corporation and Others,

12. In Grants Law of Banking (6th edition, Volume 1, 1948), the relationship was described as under:

"The legal relation of a banker and a customer in their ordinary dealings in money is simply that of a debtor and creditor. If the bank makes advances or grants overdrafts the banker is the creditor; on the other hand if the customer opens an account and deposits money, the customer is the creditor. But neither of these relations has any fiduciary character, nor does either bear an analogy to the relation between principal and agent."

It is said that what really happens when a banker receives money from a customer is that the money is not deposited with him, but lent to it i.e., the banker and all that the banker engages to do is to discharge the debt by paying over an equal amount when called upon. (See Practice and Law of Banking by

H.P. Sheldon).

13. Way back in 1848, Lord Cottenham observed that when money is paid into bank, it ceases to be the money of the principal and it becomes the money of the banker, who is bound to return an equivalent by paying a similar sum with that deposited with him when he is asked for it. He has categorically ruled out there being any relationship of agent and principal in such cases and unequivocally said that what emerges between is the relationship of a debtor and creditor.

14. In Halsbury's Laws of England (Simonds Edn. Vol. 2, P. 166), it was noted as under:

"The receipt of money by a banker from or on account of his customer constitutes him the debtor of the customer."

In Bhashyam and Adiga's Negotiable Instruments Act, the relationship is described as under:

"The relationship of a banker and customer is that of a creditor and debtor with the superadded obligation of honouring customer's orders on the funds in his hands."

The money deposited with a banker is not given to it on trust, but the same is lent to him. (See Sunderly Davis Law and Practice of Banking).

15. Section 31 of the NI Act places unequivocal obligations on the banker to honour the cheques and pay the amounts, conferring corresponding right on the customer or depositor to recover compensation or damages, in the event of any breach of the obligation by the banker. Section 31 reads as under:

"31. Liability of maker of note and acceptor of bill:--In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default."

In Canara Bank case (supra), the Supreme Court held as under:

"There is always an element of trust between the bank and its customer. The bank's business depends upon this trust. Whenever a cheque purporting to be by a customer is presented before a bank it carries a mandate to the bank to pay."

16. When such is the preponderance of the authority as well as the mandate of the law, there just cannot exist any basis for the bank in denying the payments to the petitioner. In fact, in refusing to pay, the bank had not only violated its

contractual and statutory obligations, but had exposed itself to the damages or compensation as contemplated u/s 31 of the NI Act.

17. In the counter affidavit, the bank stated as under:--

"It is submitted that all these transactions would go to show that the petitioner has only lent his name and the money belongs to Sri Venkateswara Rao."

18. Even if this statement is to be taken on its face value, it falls squarely within the prohibition ordained by the Benami Transactions (Prohibition) Act, 1988. The said Act prohibits benami transactions and renders them unenforceable. If Mr. Venkateshwara Rao himself was incapacitated from enforcing his claim against the bank (taking the allegation of the bank to be true), the question of bank trying to enforce it on the basis of the existence of contract between it and Mr. Venkateshwara Rao does not arise.

19. Further, if the contention of the bank in this regard is to be accepted, it may lead to disastrous consequences. The reason is that the bank cannot withhold payment to any customer simply on the ground that it suspects that the money held by such customer is for and on behalf of a person who owes amount to it. What all the bank may require in such cases is existence of an instance of issuance of a cheque by one such customer to the person owing amount to the bank, just as they rely, upon the circumstance of the petitioner issuing cheque to Mr. Venkateshwara Rao. Neither Law of Contract nor Principles of Banking permit such a course of action. The whole edifice of the confidence of the customer, reposed in the banks and the banking system will collapse.

20. Therefore, viewed from any angle, the action of the bank cannot be sustained and it was not justified either in facts or in law in withholding the amount.

21. As observed earlier, the bank is a nationalised institution and it ought to have acted as a model banking agency. The stand adopted by it is not only unreasonable and arbitrary, but is in flagrant violation of the very basic principles of banking and provisions of Banking Regulations Act and the Negotiable Instruments Act.

22. The respondents are, therefore, directed to permit the petitioner to operate his Savings Bank A/c. No. 9879 duly issuing cheques or withdrawal slips, as the case may be, and honouring the same to the extent of the availability of the amounts to the credit of the petitioner as and when he approaches the bank in this regard. The relief granted herein is without prejudice to the right of the petitioner to work out his remedies as provided for in the relevant provisions of law.

23. The writ petition is accordingly allowed with costs quantified at Rs. 2,000/- (Rs. two thousand only).