
(1939) 04 MAD CK 0028
In the Madras High Court

Nayar Modern Bank Ltd.

APPELLANT

Vs

Official Liquidator, Travancore National and Quilon Bank Ltd.

RESPONDENT

Date of Decision : 21-04-1939

Acts Referred:

Citation : AIR 1940 Mad 149 : (1939) 50 LW 944

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—This is an application by the Nayar Modern Bank Ltd., for payment of a sum of Rs. 23,950-3-4 in full and in preference to the ordinary creditors of the Travancore National and Quilon Bank Ltd. It is alleged in the affidavit filed in support of the application that under agreements with the Travancore National and Quilon Bank Ltd., the Nayar Modern Bank made fixed deposits at the various branches of the Travancore National and Quilon Bank at different times for the purpose of enabling the Nayar Modern Bank to open overdraft accounts on the security of such fixed deposits, that there were five such fixed deposits on the date when the Travancore National and Quilon Bank suspended payment and that after giving credit to the amounts drawn by it on overdraft account there remained a balance of Rs. 23,950-3-4 which is now claimed. A statement of account is given in para. 4 of the affidavit and its accuracy is not traversed by the Official Liquidators. The ground on which the claim for preferential payment is made is thus stated in para. 2 of the affidavit:

The fixed deposits were made and the overdraft accounts were opened at the same time and the deposits were made only for the specific purpose of obtaining accommodation by opening overdraft accounts.

2. The Official Liquidators traverse this allegation and state that the several deposits were made by the Nayar Modern Bank in the ordinary course of business, that an overdraft account was opened as per the terms of the agreement dated 11th November 1937, and that the amounts deposited by the applicant Bank were to be a security for the due payment of the amounts that

were from time to time paid to the applicant bank in the overdraft account and that that was nothing more than a usual and ordinary banking transaction of loan. The question therefore is what is the nature of the transaction between the Nayar Modern Bank and the Travancore National and Quilon Bank? The agreement above referred to is marked as Ex. A. It contains the terms on which the Nayar Modern Bank were given accommodation by way of overdrafts by the Travancore National and Quilon Bank. Paras. 2, 3 and 6 of the agreement are as follows:

2. That the accommodation will be as desired by the obligors an account current in their name with liberty to overdraw same to the extent of Rs. 12,000 only.

3. That the said accommodation will be operated upon by the obligors by the issue of cheques.

6. That the Bank will charge interest at 5 1/2 per cent, per annum on the daily overdrawn balance of the said account.

3. Paragraph 10 provides that the Nayar Modern Bank should pledge the deposit receipt in favour of the Travancore National Bank and Quilon Bank as security for the due repayment of any moneys that the Nayar Modern Bank may overdraw in the said account and that it shall always be open to the Travancore National and Quilon Bank to appropriate the same out of the amount of the said deposit without any reference to the Nayar Modern Bank. The Nayar Modern Bank originally commenced its dealings with the Quilon Bank and continued them after its amalgamation with the Travancore National and Quilon Bank. To understand the nature of the arrangement entered into at the inception of the dealings between the Nayar Modern Bank and the Quilon Bank, it may be necessary to refer to one or two letters that passed between them. On 24th May 1933 the Managing Director of the Nayar Modern Bank wrote to the Quilon Bank a letter, which runs as under:

In furtherance of our letter of the 5th instant, to you and your reply No. 1393 of 1933 dated 8th instant, we are herewith sending you two cheques on the Bank of Hindustan Ltd., each for Rs. 4000 in your favour on their Madras and Calicut branches. The proceeds may be placed with you as a fixed deposit for one year in our favour and we request you to allow us an overdraft account on the security of this deposit at your earliest convenience. Your fixed deposit form and the specimen signature form are also herewith enclosed duly filled up. Our certificate of incorporation is also herewith enclosed for reference and return.

4. In reply thereto the Quilon Bank wrote the following letter on 29th May 1933:

The two cheques received with your letter of the 24th instant amounting to Rs. 8000 have been realized to-day and the amount placed in fixed deposit for a period of one year at 5 1/2 per cent, per annum. As desired, we shall be pleased to open an overdraft account for you and earmark the same for an overdraft of Rs. 7600 on the security of the fixed deposit receipt. Interest will be charged

quarterly on the daily balance of this account at 7 1/2 per cent, per annum. Kindly return us the enclosed fixed deposit receipt duly discharged together with the other forms completed and the power of attorney, if any, granted to the officers, who will operate on the account for registration in our books.

5. No doubt these letters relate to a period before the amalgamation of the Quilon Bank with the Travancore National Bank but there has been no change in the nature of dealings had after the amalgamation. That it is so is clear from a letter dated 11th November 1937, by the Travancora National and Quilon Bank to the Nayar Modern Bank Ltd., which runs as follows:

As per sanction obtained from our central office, we have the pleasure to inform you that we shall, as a special case, reduce the rate of interest on the overdraft from 2 1/2 to 1 1/2 over the deposit rate, that is to say, a rate of 5 1/2 will be charged on the overdraft account on the security of the fixed deposits. We may in this connexion remind you that your deposit with us for Rs. 15,000 which you withdrew on the 4th instant has also to be re-deposited with us in terms of your agreement.

6. The five deposits referred to in the affidavit filed in this matter were placed in fixed deposit account for a period of one or two years carrying certain rates of interest. Prima facie such deposits are governed by the ordinary law which regulates a banker and a customer, that is, they are loans made to the Travancore National and Quilon Bank by the Nayar Modern Bank and once the said amounts were received by the former Bank they became its property to be dealt with by it in the course of its business without reference to the Nayar Modern Bank. The amounts advanced to the Nayar Modern Bank by way of overdraft in the overdraft accounts are nothing more than loans advanced by the Travancore National and Quilon Bank to the Nayar Modern Bank. An overdraft is prima facie a loan (vide Hart on Banking, Vol. II, p. 697), and there is nothing in Ex. A or in the correspondence that has been filed before me to take the transactions in question out of the category of an ordinary overdraft as understood in the law of banking. The substance of the arrangement is that the Travancore National and Quilon Bank should from time to time lend moneys to the Nayar Modern Bank and as security for the due repayment of the said sums the Nayar Modern Bank should deposit sums of money with the Travancore National and Quilon Bank according to the ordinary course of business and pledge the deposit receipts to secure the amounts payable under the overdraft account. In effect the Nayar Modern Bank will be creating a first charge on the amounts owed by the Travancore National and Quilon Bank to it in the fixed deposit account so that this amount may be available to the Travancore National and Quilon Bank in preference to the other creditors of the Nayar Modern Bank. The transactions therefore between the Nayar Modern Bank and the Travancore National and Quilon Bank did not constitute anything more than a relation of a debtor and creditor. In the case of the fixed deposit account the Travancore National and Quilon Bank is the debtor and the Nayar Bank is the creditor; while

in the case of the overdraft account the position is reversed, the Nayar Modern Bank being the the debtor and the Travancore National and Quilon Bank being the creditor. I am therefore unable to see how any question of trust arises in the case; nor can it be pretended that the amount which was paid by the Nayar Modern Bank to the Travaneore National and Quilon Bank by way of fixed deposit is money placed with the latter Bank for any specific purpose so as to clothe it with the relationship of a trustee. It will be seen that what was given as security is not the specific amount that was deposited but the debt as evidenced by the deposit receipt issued by the Travancore National and Quilon Bank. Mr. Kuttikrishna Menon relied upon my decision reported in *Gopalakrishnan v. Official Liquidator, Travancore, National and Quilon Bank Ltd.* AIR (1939) Mad. 337 but that was quite a different case because there the money was entrusted for a specific purpose that is, for the fulfilment of certain obligations of the employees to the Bank. The Bank received and accepted the money for that purpose and it was their duty to return the said money clothed with the said trust as soon as the purpose is fulfilled. The claim of the applicant must therefore be disallowed. The application is accordingly dismissed with costs.