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(1967) 01 OHC CK 0001

In the Orissa High Court

Case No : Money Suit No. 1 of 1964

Official Liquidator, Puri Bank Ltd. — APPELLANT

Vs

Ramaniklal Joshi and Others — RESPONDENT

Date of Decision : 20-01-1967

Acts Referred:
Banking Companies Act, 1949 — Section 38, 45, 5(1)
Civil Procedure Code, 1908 (CPC) — Order 34 Rule 2, 34
Evidence Act, 1872 — Section 114, 34

Citation : AIR 1967 Ori 169 : (1968) 34 CLT 231

Hon'ble Judges : Barman, J

Bench : Single Bench

Advocate : U.N. Rath, for the Appellant; M.S. Roy and D.P. Mohapatra, for the Respondent

Judgement

Barman, J.—This is a suit filed by the Puri Bank Ltd. in liquidation against the defendants for Rs. 732.70 Ps. including interest at the rate of 12 per cent, per annum on a mutual, open, current account with the bank. The transactions relate to the period from April 10, 1941, to July 26, 1944. As appears from the schedule of the claim as stated in the plaint the principal amount due from the defendants is Rs. 271.87 Ps. The suit was filed on February 20, 1964.

2. The defendants, while denying altogether the liability of the alleged claim, pleaded that instead of any amount being payable by the defendants to the plaintiff bank there was a credit balance of Rs. 42-6-3 on account of deposit made on June 15, 1943, of a hundi for a sum of Rs. 260-4-0. The defendants'' point is that if credit is given for the said deposit the said sum of Rs. 42-6-3 will be payable by the bank to the defendants. The defendants also deny the correctness of the accounts on which the bank relied in support of the claim. Apart from merits, the defendants also pleaded that the suit is barred by limitation.

3. In course of the hearing of the suit the issues pressed were as to the liability

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of the defendants to the plaintiff bank and the point of limitation. In support of the bank''s claim the ex-secretary of the Balasore branch of the Puri Bank, Hajaniballav Bhattacharya, was examined as P.W. 3. On behalf of the defendants, defendant No. 2, Monilal Joshi, was examined as D.W. 1.

4. On the point of limitation, the defendants'' case is that the bank having gone into liquidation in 1944, Section 45-O of the Banking Companies Act, 1949, providing for a special period of limitation has no application ; accordingly, the defendants are not liable to pay the alleged claim. In support of this contention the learned counsel for the defendants relied on a decision of the Allahabad High Court in Jwala Prasad Vs. Official Liquidator Jwala Bank Ltd., where it was held that under the definition of the word " banking " given in Section 5, clause (b), of the Banking Companies Act, 1949, acceptance of deposits of money from the public for the purpose of lending and investment was one of the essential features of a banking company. In the Allahabad case the bank in question had ceased to accept deposits from April 12, 1948, under the directions of the Central Government. It was therefore held that it was not a banking company on the date on which the Banking Companies Act came into force ; that Act or the subsequent amendments in that Act could not consequently affect the company and the liquidator could not get any advantage from their provisions.

5. A contrary view was taken by the Calcutta and Travancore-Cochin High Courts. The Calcutta High Court held that when a banking company was formed for the purpose of accepting deposits and was actually accepting deposits from the public, but it was not permitted to accept deposits with effect from the date of the order of the court sanctioning a scheme of arrangement such a company is still a banking company, even though on account of a subsequent event it is prevented from accepting deposits from the public. The reasoning on which the Calcutta High Court took this view is that the definition of a banking company in the Banking Companies Act does not mean that the company must, at the time in question, be able to accept deposits of money from the public repayable on demand or on such terms on which the money might have been deposited ; it must mean that banking should be the primary business of the company even if, by reason of certain supervening causes, it is not able for the time being to carry on the work of receiving deposits and of making payments. The same view was also expressed by the Travancore-Cochin High Court holding that notwithstanding the fact that a banking company may not be transacting the business of banking at a particular point of time on account of a supervening cause (for instance, by the starting of liquidation proceeding), it will not cease to be a banking company within the meaning of the definition contained in Section 5(1)(c) of the Act-- Kalipada Sinha v. Mahaluxmi Bank Ltd. [1962] 32 Comp. Cas. 503 and K.V.S. Vassan Bros, v. Official Liquidator, Associated Hanking Corporation of India, Lid. (in liquidation) AIR 1952 Trav.Coch. 170.

6. In my opinion, the view holding that the Banking Companies Act has application to cases of pre-Act liquidation of banking companies is correct. In

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fact, this court has been following this view in deciding the claims of the bank in liquidation in other cases. With great respect, 1 am not convinced with the reasoning of the Allahabad decision holding the view to the effect that by reason of the liquidation proceeding the bank has ceased to be a banking company within the meaning of the Act.

7. In this view of the position in law which this court has followed, there is no merit in the defendants'' contention that the suit is barred by limitation. The plaintiff bank is entitled to the special period of limitation as provided in Section 45-0 of the Act. Accordingly, the bank''s claim against the defendants is not barred by limitation as contended.

8. Then, as regards merits, the question is : Did the defendants deposit with the bank a hundi of the sum of Rs. 260-4-0 as alleged by the defendants ? On this point, the evidence of P.W. 1., ex-secretary of the Balasore branch of the Puri Bank, is that there is no entry of such alleged deposit in the books of account of the bank. The defendants failed to prove the alleged deposit of the said hundi amount with the bank. The evidence of D.W. 1 Monilal Joshi is that there was a deposit of Rs. 260-4-0 in the form of hundi in the name of one Abdul Mohammad Latif, in connection with the despatch of tamarind to Puri, with the Balasore branch of the bank on June 15, 1943. In answer to question No. 7 he said that he took from the bank a receipt for the hundi dated June 15, 1943, which he gave to the bank but the said receipt is not now available. Admittedly, the bank gave a pass book to the defendants ; the defendants however did not produce the pass book nor could they produce the counter-foil of the paying-in or cheque book. In fact there is nothing to show that the defendants made the deposit with the bank of the said hundi amount as alleged. There is no satisfactory explanation for the defendants not producing any papers in support of the said deposit. In answer to questions Nos. 28 and 29, D.W. 1 Monilal Joshi stated that there was no use of keeping the papers; it is 23 years now ; he destroyed them 6 or 7 years ago. It is also significant that there was no demand in writing on the bank about the alleged credit balance of Rs. 42-6-3 which the defendants did never claim until in the written statement. Thus, the defendants failed to prove the alleged deposit of the hundi amount on the basis of which they claim credit balance of Rs. 42-6-3.

9. As regards the plaintiff''s claim, the defendants challenge their liability on the ground that the plaintiff bank failed to prove liability of the defendants by any independent evidence ; that the suit cannot be decreed against the defendants only on the basis of the entry in the ledger ; further, that the ledger on the basis of which the suit was filed has not been proved ; that on evidence an adverse inference should be drawn for non-production of the cash book, short credit register. In support of their contention the defendants relied on a decision of the Supreme Court in Chandradhar Goswami and Others Vs. The Gauhati Bank Ltd., where it was held that where the entries are not admitted, it is the duty of the bank if it relies on such entries to charge any person with liability, to produce

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evidence in support of the entries to show that the money was advanced as indicated therein and thereafter the entries would be of use as corroborative evidence.

10. In my opinion, none of these contentions urged on behalf of the defendants have any force in view of the evidence of P.W. 1, ex-secretary of the Balasore branch of the Puri Bank, who proved the entries in the books of account of the bank on which the bank relied in support of its claim against the defendants. The books of account on which the bank relied are all kept in the usual course of business. In his evidence P.W. 1 explained, by reference to the entries in the current account ledger standing in the ''name of the defendants, that the bank allowed overdraft to the defendants. In support of his evidence he referred to entry at page 29 of the current account ledger marked exhibit 3 and page 22 of the short credit register Vol. II of the bank (exhibit 2).

11. It is clear from the books of account proved by P.W. 1, ex-secretary of the Balasore branch of the Puri Bank, that the principal amount due by the defendants to the plaintiff bank is Rs. 217.87 Ps.

12. Under the law, the plaintiff is not entitled to claim more than double the principal amount, that is to say Rs. 435.74 Ps. In the result, therefore, the plaintiff''s suit is decreed against the defendants for a sum of Rs. 435.74 Ps. with interest at the rate of 6 per cent. per annum from the date of the decree until realisation.

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