(1998) 11 OHC CK 0028

In the Orissa High Court

Case No : Original Jurisdiction Case No. 702 of 1997

Pawan Traders — APPELLANT

Vs

Branch Manager, State Bank of India and Another — RESPONDENT

Date of Decision : 30-11-1998

Acts Referred:
State Bank of India Act, 1955 — Section 49

Citation : AIR 1999 Ori 74 : (1999) 98 CompCas 98

Hon'ble Judges : Susanta Chatterji, J;D.M. Patnaik, J

Bench : Division Bench

Advocate : B.S. Tripathy, for the Appellant; P.V. Ramdas, for the Respondent

Final Decision : Dismissed

Judgement

Susanta Chatterji, J.—M/s. Pawan Traders, represented by its sole proprietor Shri Pawan Kumar Bansal has filed the present writ

application against the State Bank of India, Kesinga Branch in the district of Kalahandi and M/s. Pyarelal Ram Bhagat, seeking the following

reliefs:--

(i) To hold and declare the impugned notice/ letter issued by the opp. party No. 1 as at Annexure 8 as bad, illegal and thereby quash the same;

(ii) Direct/order/command the opp. party No. not to close the Current Account of the petitioner bearing No. SIB-296 pending disposal of the

aforesaid writ application and thereby allow the petitioner to operate its aforesaid Current Account which will be subject to the final decision of the

aforesaid writ application; and

(iii) Pass such other order(s) as may be deemed fit and proper in the bona fide interest of justice.

There is a specific prayer to quash Annexure 8 besides other prayers as indicated above.

2. Annexure 8 refers to a communication by the Branch Manager, State Bank of India, Kesinga Branch to the petitioner as follows :--

M/s. Pawan Traders, Gen. Letter No. 22/96 C. A. No. SIB 296. Date: 4-1 -97.

We are to advise that we have financed to M/ s. Pyarelal Rambhagat a partnership firm which is running a rice mill in the style ''M/s. Ganesh Rice

Mill''. All the plant, machinery and stock of the mill are hypothecated to the bank. We came to know that you are running the mill (M/s. Ganesh

Rice Mill) and the sale proceeds of the mill are being credited to your above Current Account. You are also the son of Sri Kisanlal Agrawal, a

Guarantor of the above firm and as such you also owe your liability to the bank. The above firm defaulted in payment of our dues for which we

have instituted legal action against the above firm to realise our dues. In view of the above we are not in a position to allow operation of your

above Current Account. However, to clear off any cheques issued by you, we have allowed you upto 15th of this month to operate the account.

You are therefore advised to close your account by 15th January, 1997 failing which we will close the account at our end. Further, we are to

advise that this is without any prejudice to bank''s right to set-off the balance lying in your Current Account to the loan account of M/s. Ganesh

Rice Mill, in your C/Account on which we have absolute right:

Yours faithfully,

Sd/-

Branch Manager.

3. The petitioner questions the legality, validity and propriety of the stand taken by the bank. There is a threat that in case the petitioner does not

close its Current Account, the same would be closed by the bank. The said communication of the bank dated 4-1-1997 is alleged to be mala fide

and in arbitrary exercise of power for oblique and improper purpose.

4. It is contended that the petitioner is a proprietorship firm carrying on the business of running a rice mill at Kesinga in the district of Kalahandi. Its

proprietor Shri P. K. Bansal has a Current Account in the opposite party Bank. Certain facts have been placed on record which are as follows :--

The petitioner firm has been running a rice mill in the name and style ''Ganesh Rice Mill at Kesinga in the district of Kalahandi since October, 1992.

It has taken lease of the said Ganesh Rice Mill from M/s. Pyarelal Ram Bhagat, opposite party No. 2, by an agreement to that effect, for a certain

period. The petitioner has been running and operating the said Ganesh Mill on the basis of the aforesaid lease agreement and has opened a Current

Account bearing No. SIB-296 at the State Bank of India, Kesinga Branch since 1992. The said Current Account is the only Account through

which the petitioner firm has been transacting its business. Prior to execution of the lease agreement, Ganesh Rice Mill was hypothecated to the

State Bank of India, Kesinga Branch for obtaining certain cash credit. The facility was, however, withdrawn and the Mill became defunct for which

opposite party No. 2 was compelled to close down the said rice mill. Notwithstanding closure of the rice mill, opposite party No. I instituted a

Money Suit bearing T.M.S. No. 13/93 in the Court of the learned Civil Judge (Sr. Dvn.), Bhawanipatna for recovery of Bank''s dues from

opposite party No. 2 and its, partners.

5. After closure of the said Ganesh Rice Mill in the hands of opposite party No. 2 firm, the petitioner firm took the said rice mill on lease basis

since 1992 and has been running the rice mill and has opened its Current Account in the opposite party No. 1 Bank. The petitioner has not

obtained any loan from the Bank nor was it a party to the suit brought by the Bank against opposite party No. 2. The stand taken by the Bank as

per Annexure 8 is alleged to be wholly unwarranted and uncalled for. It is not permissible for the Bank to close the Account of the petitioner and it

is stated that it will be difficult for the petitioner to open any Current Account in any Bank unless No Objection Certificate is given.

6. The writ application is opposed by the Bank, opposite party No. 1, by filing a comprehensive counter-affidavit. It is disclosed inter alia that M/s.

Pawan Traders has a Current Account bearing No. SIB 296 at the State Bank of India, Kesinga Branch. The main activities of the firm are as

Commission Agent of Branch, Cattle-feed and prior supplier. Shri Bansal never informed the Bank that he had taken M/s. Ganesh Rice Mill on

lease from M/s. Pyarelal Rambhagat, a partnership firm which is the sole owner of M/ s. Ganesh Rice Mill. When the Bank came to know about the lease, it issued the letter as per Annexure 8. The reasons for doing so are indicated as follows :--

The firm Pyarelal Rambhagal had taken a loan of Rs. 3,00,000.00 from the State Bank of India, Kesinga Branch as working capital for running the

Ganesh Rice Mill. The loan was sanctioned on 18-12-1985. Two of the partners of the firm Pyarelal Ram Bhagat, namely, Ram Avtar Agarwal

and Bijoy Kumar Agarwal, are the two brothers and they are related to Sri Pawari Kumar Bansal. Further, the power-of-attorney holder of M/s.

Pawan Traders is one of the partners of the firm Pyarelal Ram Bhagat, the owner of Ganesh Rice Mill. In other words, Shri Ganesh Kumar Bansal

is closely related to some of the partners of the, firm Pyarelal Ram Bhagat, the owner of Ganesh Rice Mill. In other words, Shri Pawan Kumar

Bansal is closely related to some of the partners of the firm Pyarelal Ram Bhagat. The father of Shri Pawan Kumar Bansal, namely, Shri Kishanlal

Agarwal, was the guarantor for the loan amount. The firm M/s. Pyarelal Ram Bhagat having failed to discharge the loan, T.M.S. No. 13 of 1993

as aforesaid was filed before the Court at Bhawanipatna for recovery of Rs. 6,39,737.91 which has been decreed ex parte.

It is also placed on record that the firm Pyarelal Ram Bhagat had pledged with the Bank its stock of rice and paddy in the mill and had also

executed a letter of undertaking not to create charge in respect of the said properties pledged with the Bank. Besides, it had also executed an

equitable mortgage in favour of the Bank relating to the properties, such as lands and structures raised on the premises of M/s. Ganesh Rice Mill.

7. It is thus manifest that the proprietor of the petitioner firm and his relations have entered into an unholy alliance to defeat the interest of the Bank.

Shri Bansal maintains an Account in the U. Co. Bank at Kosinga in the name of the firm M/ s. Pawan Traders. It is submitted that it is not

permissible for a person to open two Current Accounts at one place as per the prevalent banking practice.

8. The major transactions of Ganesh Rice Mill are with the Food Corporation of India which has an Account with the State Bank of India, Kesinga

Branch. The power-of-attorney holder of M/s. Pawan Traders, namely, Shri Shiv Kumar Bansal, operates the Current Account No. SIB 296.

Shri Shiv Kumar Bansal is also one of the partners of M/s. Pyarelal Ram Bhagat. Hence, it is evident that the petitioner is the instrument in diverting the money earned out of Bank''s security and thereby the loan advanced became irregular.

9. Stating all those facts in greater details, the Bank has asserted that the impugned letter Annexure 8 is justified and the writ petition being

misconceived is to be dismissed.

10. Mr. B. S. Tripathy, learned counsel for the petitioner, has submitted that the relationship of banker and customer is primarily that of debtor and

creditor. In Velji Lakhamsey and Co. v. Dr. Banaji (1955) 25 Com Gas 395, the Bombay High Court has thrown further light on the point by

holding that the relation between a banker and its customer is that of 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 direction to the bank and constitute the bank his agent. If the bank acts as an agent and not as a debtor, then the agency brings about a

fiduciary relationship which lasts until the agency is terminated. Therefore, if the customer was to give directions to the bank that a certain amount

must be paid to a certain person, till that amount is paid pursuant to the 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.

11. Regarding bank''s right to close an Account, it is highlighted that on the following grounds bank can close an Account:---

(1) Notice given by the customer to the banker of his intention to close the account.

(2) Death of the customer.

(3) Customer''s insanity.

(4) Customer''s insolvency.

(5) Order of the Court, e.g. a garnishee order.

(6) Notice received by the banker of an assignment made by the customer of his credit balance.

It is also submitted that just as a customer has the right to discontinue his dealings and close his Account with a particular banker, the latter also has

the right to say whether or not it would like to continue to have a particular person as its customer. A customer may close his Account if he is not agreeable to the terms such as the rate of interest and the bank charges; if he cannot get such facilities as are offered to him by some other banker;

or when his confidence in the bank is shaken. The bank may be unwilling to continue to act as banker of a particular person if it finds that the

person is no longer a desirable customer, e.g. when he is convicted of forging cheques or bills, or if he is in the habit of drawing cheques without

providing the necessary funds for meeting them, or that his account is not a paying one. Reference has been made to the Banking Law and Practice

in India.

12. It is also highlighted that when a customer fails to close his account even after the expiry of the reasonable notice given to him, the banker can

close his account by returning the amount at his credit and asking him to return the unused cheque forms supplied to him. However, to avoid

chances of litigation, he should refuse to accept more credits for the account of that customer and await the exhaustion of the cheque forms already

supplied to him. It was hold in The Champion Automobiles Ltd. Vs. The Travancore National Bank Ltd., that any rule giving the bank the right to

close an account without reference to the depositor is invalid as it is opposed to the ordinary code of banking business. But so long as it is not a

statutory obligation, the parties may contract in any manner they choose. It was not immoral nor opposed to public policy. A banker ordinarily will

not be justified in closing an Account and dishonouring cheques drawn against it without giving reasonable notice and the notice must be sufficient

to enable the customer, having regard to outstanding cheques or bills, to make such arrangements as will obviate injury to his credit.

13. An argument has been made regarding set-off. It is submitted that a set-off must be in the form of cross-claim for a liquidated amount and it

can be pleaded only in respect of a liquidated claim. But the claim and the set-off must be mutual debts, due from and to the same parties under the

same right.

14. Attention of the Court has been drawn to the decision reported in Firm Jaikishen Dass Jinda Ram and Others Vs. Central Bank of India,

where two partnership firms with same set of partners had two separate Accounts with the Bank. The Punjab High Court held that two rights flow

out of the relationship of debtor and creditor, namely, (1) the right of the customer to demand repayment of the amounts due to him if and when he

so desires, and (2) the right of the bank to appropriate the monies, funds and securities of the customer coming into its possession in the course of

their dealings for repayment of the customer''s indebtedness. This latter right is known as Banker''s lien. A bank can enforce its lien if mutual

demands exist between itself and the customer, i.e. when they mutually exist between the same parties and between them in the same capacity,

15. Attention of the Court is also drawn to the decision reported in AIR 1941 Mad 622 G. Samuel v. Cyril and John Stanley Goodwin where the

claim for setting-off a loan amount due to the bank by the plaintiff on the security of a fixed deposit held with the same bank by the applicant''s

mother-in-law against her fixed deposit was disallowed by the Madras High Court in spite of the fact that the bank had obtained a letter of

authority at the time of granting the loan to the plaintiff from his mother-in-law empowering the bank to set-off at any time the whole or any portion

of the said deposit and interest accrued towards the said loan. The principle established in this case is that when a banker lends money to a person

on the security of a fixed deposit of a third person, the debtor is not entitled on liquidation of the bank to set-off the fixed deposit in full against his

liability for the loan since the transactions are not mutual dealings and in the same right between the parties.

16. There is another decision of the Patna High Court, reported in Radha Raman Choudhary and Another Vs. Chota Nagpur Banking Association

Ltd. and Others, wherein it has been held that the bankers have a right to combine one or more accounts of the same customer, but a banker

cannot combine a customer''s personal account with a joint account of the customer and another person.

17. Regarding opening of new account, the banker is under law required to cause enquiries not only from the introducer as per the Reserve Bank

directives, but also from the fellow bankers to find out whether the new constituent/customer is a genuine party or an imposter or a fraudulent

rogue but for which the banker may be deprived of the statutory protection given u/s 131 of the Negotiable Instruments Act, 1881.

18. Mr. Tripathy has eloquently quoted a passage from the Banking Law and Practice in India under the heading ""Opening of a New Account"" at

pages 2 to 8 thereof. It is submitted that acts done and/or caused to have been done by the Bank in issuing the letter Annexure 8 are not proper

and justified.

19. Mr. Ramdas, Senior Advocate appearing for the Bank opposite party has referred to a number of decisions highlighting the point that strictly

on the facts of this case there is no direct decision, but regard being had to the mala fide acts of the petitioner firm, the Bank is justified to protect

its own interest and ask the petitioner to close its Account.

20. Attention of the Court has been drawn to Hart''s Law of Banking, Vol. I, page 294; Paget''s Law of Banking, Fifth Edition, page 53; and

Tannan''s Banking Law and Practice in India, 18th Edition (Reprint 1994) page 346. He has also referred to the decisions reported in The

Champion Automobiles Ltd. Vs. The Travancore National Bank Ltd., and Purewal and Associates and another Vs. Punjab National Bank and

others,

21. Considering all these aspects, we find that the petitioner firm if found liable for the debts of opposite party No. 2, it was open to the Bank to

proceed either impleading it in the suit or in any proceeding before the appropriate forum. If the petitioner has its independent Account, Bank

cannot take exception and ask its customer to close the Account in the manner as done. It is true that the banker has the discretion to stop

operation of the Account or request the customer to close the Account if he is found to be a persona non grata. But there must be reasons obvious

to indicate the same and sufficient notice is to be given. We do not find that in case the Account of the petitioner is asked to be closed, the

petitioner cannot open any other Account without the No Objection Certificate issued by the concerned bank. We do not find any authority that a

good conduct certificate has to be given by the banker. However, there is a pleading that the petitioner has a separate Current Account in the U.

Co. Bank at Kesinga itself. In case the petitioner after closure of its Account with the State Bank of India, Kesinga Branch intends to open a

Current Account in any other Bank and the same is refused for any objection by the State Bank of India, the petitioner may take such exception as

law permits and may take such steps as per law to protect its interest. In the instant case, we find that the bank has given notice to the petitioner.

The Bank has the grievance that in a circuitous process the petitioner is running its business without squaring up the debts of the Bank. Under such

circumstances, if opposite party No. 1 Bank has asked for closure of the account of the petitioner, there is nothing wrong and we find that the

steps taken by the Bank are well justified. We are not inclined to interfere in the matter.

22. The writ petition fails and is dismissed accordingly. We make no order as to costs.

D.M. Patnaik, J.

23. I agree.

