(1950) 05 CAL CK 0013

In the Calcutta High Court

Case No : Suit No. 4406 of 1949

Pioneer Bank, Ltd. (in Liquidation) APPELLANT

Vs

Bamandev Banekji RESPONDENT

Date of Decision : 08-05-1950

Acts Referred:

Banking Companies Ordinance, 1949 — Section 45F
Limitation Act, 1908 — Section 13, 14, 15, 16

Citation : (1950) 1 CALLT 270 : 54 CWN 710 : (1951) 1 ILR (Cal) 676

Hon'ble Judges : Benerjee, J

Bench : Single Bench

Advocate : K.K. Basu and N.K. Dey, for the Appellant;S.M. Bose, General (Amicus Curiae), for the Respondent

Final Decision : Allowed

Judgement

Benerjee, J.—This is an undefended suit. But it is necessary to deliver a judgment, as an important question of limitation has arisen, which is not covered by any direct authority of this Court.

2. The Plaintiff bank is in liquidation. The order for winding-up was made on July 12, 1949.

3. It appears that the Defendant had an overdraft account with the bank, which began on or about July 20, 1942. It also appears from a copy of the account annexed to the plaint that the last credit entry is dated November 20, 1945 and the last debit entry is dated November 22, 1945. Thereafter, interest was added and on December 30, 1946, the account showed a debit balance of Rs. 976 against the Defendant.

4. On October 12, 1945, the Defendant executed a promissory note in favour of the bank and also a letter dated the same date saying that the promissory note was given to the bank as security for the repayment of any overdraft "which is at "present outstanding in my name and also for the repayment of "any overdraft to

the extent of Rs. 1,000."

5. In the plaint, it is stated that, on November 12, 1945, the Plaintiff lent to the Defendant Rs. 1,000, on interest at 6 per cent, per annum, and in consideration of the loan, the Defendant executed the promissory note for the said amount.

6. The Plaintiff further states that the Defendant deposited with the Plaintiff a life-insurance policy with intent to create'' security for the loan. The plaint refers to the statement of" account, I have already referred to and asks for a decree for Rs. 1,393-1, a declaration of charge on the insurance policy and for costs.

7. It is not stated in the plaint when the winding-up order was made. In the body of the plaint no grounds have been stated for exemption of limitation law. I am unaware if a security on a life-insurance policy can be created by deposit. I know that such security can be created on immovable property or by pledge of movable property. But life-insurance policy is neither immovable nor movable property.

8. The plaint has been verified by the liquidator himself as true to his information obtained from the records. If the liquidator had consulted the records, he would not have verified paras. 1 and 2 of the plaint as he has done, for the promissory note was not executed in November, 1945, but in October, 1945. It is to be regretted that the plaint has not been drawn or verified with due care.

9. The suit was filed on November 23, 1949, more than three years after the execution of the note. It came on the undefended list for hearing and counsel proved the overdraft account. When I asked counsel how the limitation was saved, as three years had elapsed from the date of the note, he referred me to Section 45F of the Banking Companies Ordinance, 1949. The Ordinance has been replaced by the Banking Companies (Amendment) Act, 1950, which was assented to by the President on March 18, 1950 and published in the Extraordinary Gazette of India on the same day. Therefore, the rule of limitation applicable must be the rule prescribed in the Banking Companies (Amendment) Act, 1950.

10. Section 45F of the Act is as follows:

Special period of limitation--Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (IX of 1908), or in any other law for the time being in force, in computing the period of limitation prescribed for any suit or application by a banking company, the period of one year immediately preceding the date of the order for the winding-up of the banking company shall be excluded.

11. I was not satisfied with the answers given by counsel to my questions on the point of limitation. I do not blame counsel, for I myself felt difficulty in construing the section. So I adjourned the suit for a week for further consideration by counsel. I consulted my brother Judges as to the true meaning of the section and at one time I thought I would refer the matter under Chap. V, Rule 3 of the

Original Side Rules to the Chief Justice for constituting a Bench to decide the point. On further consideration, however, I was able to come to a satisfactory solution as to the meaning of the section and I thought I would not be justified to make the report under Chap. V, Rule 3.

12. To confirm whether the view I took on an important question like this was right, I invited the learned Advocate-General to assist me with his submission. The Advocate-General readily accepted the offer and has rendered me assistance for which I express my gratefulness to him. I was glad to find that the view I took was in accord with the submission the Advocate-General made which he supported by authorities.

13. This section may be compared with Sections 13 to 16 of the Limitation Act. The material words of the section are:

The period of one year immediately preceding the date of the order for the winding-up of the Banking Company shall be excluded.

14. This year, I shall, for convenience, refer to in my judgment as the liquidator''s year.

15. This is a case of suspension of limitation. Limitation is suspended when certain durations of time are allowed to be deducted in the computation of the period. There is a distinction between suspension of limitation and its interruption. In cases of a suspension, the period which has already elapsed is not invalidated, but is added to the period which follows the suspension. Limitation is interrupted when a fresh period is allowed after it has run for some time. In cases of interruption the already elapsed portion of the period of limitation is cancelled and a fresh period of limitation is computed from the date of interruption. See Mitra''s Law of Limitation and Prescription, 6th Ed., pp. 329 and 300. This section says that, notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908, the liquidator s year should be excluded, in other words, there would be a suspension of limitation for this period. The word "suspension" suggests that there is something to suspend. It follows, therefore, that if the time had already run out before the liquidator''s year, there cannot be any question of suspension. The question of suspension arises when the period expires within or after the liquidator''s year.

16. The only difficulty I felt then was as to cases where the time had already run out before the liquidator''s year and the suit was barred : was there any revival of the cause of action by reason of the Act? The Advocate-General said that the Act had retrospective operation and cited two cases in support of his argument: The'' King v. Chandra Dharma (1905) 2 K.B. 335. Lord Alverstone C.J., at p. 338, observed:

It has been held that a statute shortening the time within which proceedings-can be taken is retrospective and it seems to me that it is impossible to give any-good reason why a statute extending the time within which proceedings may be taken should not also be held to be retrospective.

17. See also Welby v. Parker (1916) 2 Ch. 5 and Khondkar v. Chandra (1928) ILR 56 Cal. 1117. In the first mentioned case, Channell J. observed:

I agree; but I wish to say that in my view a statute dealing only with procedure applies to past events as well as to future events and to hold this is not to make the statute retrospective. The object of the statute is only to affect the procedure and it matters net whether the events in respect of which the proceedings are taken happened before or after the passing of the Act.

18. With very great respect and humility, I would prefer the statement of the reason of the rule as given by Channell J''. It is more logical and accurate. It is not retrospective operation of an Act. It is, as Channell J. said, a statute dealing with procedure applying to past events. But, however the matter is expressed, the result is the same, namely, that, if time expired within or after the liquidator''s year, that year should be excluded in computing the period of limitation. But in suits or proceedings, in which time has already run out before the liquidator''s year, there is no revival of the cause of action.

19. In this case the period expired on October 12, 1948, (the promissory note and the letter both having been executed on October 12 1945), a date which is well within the liquidator''s year. The suit, therefore, is not out of time.

20. There will be a decree for the amount claimed and costs but in order to record my disapproval of the way in which the plaint has been drawn and verified, I direct that the costs of and incidental to the drawing of the plaint should not be allowed in taxation.