

(1955) 05 GAU CK 0004
In the Gauhati High Court
Case No : Original Case No. 21 of 1954

Shillong Banking Corporation Ltd.

APPELLANT

Vs

Dhansiri Saw Mills Ltd.

RESPONDENT

Date of Decision : 02-05-1955

Acts Referred:

Banking Companies Act, 1949 — Section 45D(4), 45D(4), 450, 450

Citation : AIR 1955 Guw 246 : (1955) 7 ILR 280

Hon'ble Judges : H.Deka, J

Bench : Single Bench

Advocate : F.P.Sharma, K.P.Bhattacharjee, N.M.Dam, Advocates appearing for Parties

Judgement

1. The Shillong Banking Corporation (hereinafter called the Bank or the Shillong Bank), under orders of winding up, prays for settlement of a list of debtors as provided under Section 45D, Banking Companies (Amendment) Act, 1953 and the application for the purpose was made on 28654 with die leave of the Court, though the bank went into liquidation on 26553 and the application for the purpose was made on 26253.

(2) The claim of the Bank against defendant 3 (described as Opposite Party No. 3 in the petition), Messrs. Keshri Chand Jaisukhlal of Paltan Bazar, Shillong, is assessed at Rs. 10,150/5/9 consisting of two parts the sum of Rs. 5965/5/9 representing the sum due to the Bank with interest at the rate of 9 p. c. per annum calculated up to 3061947, and a sum of Rs. 4185/ representing the interest due up to date from 171947, for which period the interest had been claimed but not calculated earlier. The copy of the statement of account filed (marked Ex. 1) supports the plaintiff's claim for Rs. 5965/5/9 with interest up to 3061947.

(3) The defendant contested the suit, inter alia, on the ground that the petitioner Bank had not credited the account of the defendants with a sum of Rs. 8,800/ for which the Bank had received two cheques from the defendants on the Bharati

Central Bank, Shillong Branch (now under liquidation) for collection on 9121946. They admit that the money had not been collected by the Bank, but ascribe it to the fact that the petitioner had not been diligent and had acted inadvertently or for personal gain in the matter of receiving a cheque from die Bharati Central Bank on "the Nath Bank Ltd., or the Demand Draft on the Head Office of the Bharati Central Bank in Calcutta covering the above amount. The second contention is that the claim has been barred and the third defence raised in the course of the argument was that since the liability of the defendant is shown to be Rs. 596559 on 211954, as per statement of account filed by the Bank, the Bank is not competent to claim any extra amount as due as interest for the interim period.

(4) The main contention centres on the amount of Rs. 8800/ and, therefore, a specific issue (Issue No. 4) was raised on this point before the hearing, since die issues framed earlier did not bring out this point very clearly, but there was only a suggestion in Issue No. 2. The first issue related to limitation, and the third one was confined to as to what relief the petitioner was entitled to.

(5) The Bank examined one of its employees who produced and proved the statement of account between the parties and certain correspondence relating to the facts in issue. The defendant did not examine any witness nor produce any documents or accounts which they claimed to have been burnt. After the case was closed, the defendant applied for examining one Dungarmal Sethia, which application I had to refuse.

(6) Let me consider Issue No. 4, which is very material, as I have already indicated. It appears from the evidence that the defendants made over cheques Nos. C/D 0887 & C/D 0888 for Rs. 600/ & Rs. 8200/ respectively (making a total of Rs. 8800/) on the Bharati Central Bank Ltd., Shillong Branch, on 9121946 for collection for the purpose of crediting the amount to the defendant's Overdraft Account, which they had with the plaintiff Bank.

The cheques were sent for collection by the Shillong Bank to the Bharati Central Bank on the same day, that is, on 9121946, and the Bharati Central Bank issued a crossed cheque for the entire amount covered by the two cheques, i.e., Rs. 8800/, on the Shillong Branch of the Nath Bank Ltd., and the Shillong Bank presented the cheques to the Nath Bank Ltd., on 10121946 for collection, but the same was returned 011 the same day with Ex. 2, the Bank slip, indicating that the full cover was not received.

The cheque was again presented to the Nath Bank on the next day and, with the same result. The Shillong Bank, it appears, asked for cash payment and returned the cheque to the Bharati Central Bank (Shillong Branch) on the 11th December ? that means the same day only to be favoured with a letter (marked Ex. 4) on 13121946, wherein, the Manager of the Shillong Branch of the Bharati Central Bank stated that instead of cash the Bank might kindly accept a D. D. No. 47830 For a sum of Rs. 8800/ to cover the cheques of Messrs. Keshrichand

Jaisukhlal.

This Demand Draft was on the Head Office of the Bharati Central Bank, in Calcutta. This Demand Draft was immediately sent to Calcutta for collection through the local Branch of the Shillong Bank. That Demand Draft came dishonoured after repeated presentations, though, at the request of the Bharati Central Bank, who in the meantime obtained moratorium under S. 153, Indian Companies Act, and finally on 21/12/47 they returned the Demand Draft with the note "payment stopped under reconstruction scheme admitted by the High Court this day". The Calcutta branch of the Shillong Bank had no other alternative but to return the Demand Draft to the Head Office at Shillong. The petitioner's case is that they made every attempt to collect the money covered by the cheques issued by the defendant on the Bharati Central Bank on 9/12/1946, and every step was taken, in consultation with the defendant orally or by phone, the defendant being a local party, and there was no lack of care or due diligence in the matter. The Bank had credited the amount on the 9th December to the Defendant's Overdraft Account but debited the amount of Rs. 8800/ when they found that Nath Bank Ltd., did not honour the cheque, nor did the Bharati Central Bank, Shillong, pay the amount in cash, as requested.

(7) Mr. Ghose's contention for the defendants is that since it is admitted by the witness for the plaintiff that the cheque on the Nath Bank Ltd., for Rs. 8800/ was taken by the Shillong Bank on 9/12/1946 at its own responsibility, further failure to collect the cash could not affect the case of the defendant adversely since their cheques were honoured by the Bharati Bank by issue of a cheque for equal value. I do not consider this contention to be correct. The witness for the Bank says that it was customary for the bank to collect an amount either by cash or by cheque from any other bank in lieu of a cheque and they did not take recourse to an unusual practice in asking for or accepting a cheque for Rs. 8800/ in payment of the cheques issued by the defendants.

The further fact remains that when the cheque was not honoured by the Nath Bank Ltd., the Shillong Bank asked for payment in cash of the Bharati Central Bank Ltd., as will appear from Ex. 4. The Bharati Central Bank was undoubtedly then working under a difficulty, as will appear from Ex. 4 and Ex. 5, a letter from the Head Office of the Bharati Central Bank, dated 16/12/1946, addressed to the Shillong Bank. The various steps taken by the Shillong Banking Corporation for realisation of the amount covered by these two cheques are very clearly indicated in the Bank's letter to the Defendant, dated 11/1/1947 (marked Ex. 6), and I fully believe that the Bank did for its constituent all that was humanly possible and without the least delay or negligence on their part.

I further accept the plaintiff's version that the Defendants were kept informed at every stage as to what development had taken place in regard to these two cheques issued by the Defendants on the Bharati Central Bank and had acted in concert. Mr. Ghose had drawn my attention to an extract at pp. 179-180 of Tannan's "Banking Law and Practice in India", (6th Edn.) dealing with the

collecting Banker's duties which runs as follows:

".....As his customer's agent, the collecting banker is bound to show due care and diligence in the collection of cheques given to him. If he fails in his duty, or neglects to use the recognised channels for the purpose and, as a direct consequence of his negligence, his customer suffers a loss, the collecting banker will be required to make good that loss. For instance, if a banker to whom cheques have been given for collection, fails to present them within a reasonable time, by which term is meant at the latest the next working day after receipt of the cheque by the collecting banker, and in the meantime if the banker on whom the cheques are drawn fails, his customer will hold the collecting banker liable for any loss the customer may suffer as a result of the failure of the drawee bank".

Here, I find no negligence on the part of the collecting Bank. It has not further been shown that the Shillong Banking Corporation had any good reason to accommodate the Bharati Central Bank in preference to their customer, Defendant 3, as was suggested during the course of argument. Mr. Ghose" had further built his argument on the assumption that Defendant 3 had a deposit account with the petitioner Bank, and no sooner the cheques were found to be dishonoured, they ought to have been returned to the Defendant, rather than they should take upon themselves the duty of collecting the amount, by various means, as indicated.

That assumption is not correct. The Defendant had an overdraft account, as deposed to by the Bank's witness, and it is abundantly clear from Ex. 1, the statement of account filed. It appears that in November, 1946, the Defendant had" overdrawn to the tune of Rs. 83,701/10/6, in October, the liability of the Defendant to the Bank amounted to Rs. 64,497/10. From these circumstances, I am convinced that the Defendants were on best of terms with the Bank authorities in December, 1946, and all attempts were made on their behalf by the petitioner Bank to draw the amount of Rs. 8,800/ from the Bharati" Central Bank, which must have been known to fall on evil days and the Defendants defence, as set out in their letter of 11/11/1947, shifting the responsibility to the collecting Bank, was clearly a result of after thought fraught with unscrupulousness.

The Defendants were admittedly a local party and they must have always been kept informed as to what happened to the fate of their cheques in question. That there was no intimation in writing, earlier to the finishing of the episode, is not of much consequence. The cheques issued on the Bharati Central Bank lie unrecovered since their doors are closed and the Shillong Bank had intimated by Ex. 6 that the Demand Draft and the Cheque on Nath Bank Ltd., lay with them awaiting further instruction from the constituent.

Under these circumstances, I justify the Bank's action in debiting the amount of Rs. 8,800/ from the Defendant's account on 11/12/1946, and decide Issue No. 4 in favour of the Plaintiff. If and when any money would be realised from the

Official Liquidator on the basis of the Demand Draft issued against the cheques in question, the Bank will have to credit that amount to the Defendant's overdraft account with them. If the Bank is wound up earlier, the Defendants may register their claim with an authority from the Official Liquidator with the Official Liquidator of the Bharati Central Bank Ltd.

(8) Issue No. 1 relates to limitation. According to the Statement of Account filed, the last amount received by the bank from the Defendants was on 29121950, and the amount credited is Rs. 299780 by transfer. The witness for the Plaintiff tries to explain that it was by collection of some cheque delivered by the Defendants to the plaintiff, but he can give no particulars thereof. The learned advocate for the Defendants contends that when on earlier occasions any amount was collected on cheques, it was entered as "by cheque", in Ex. 1, and it not having been so done, it must be presumed that the witness was deposing falsely, and this was a faked entry.

The genuineness of this entry was not challenged in the Written Statement filed by the Defendants, and as such, I take this entry to be prima facie correct as an evidence of a transaction between the parties in the absence of any evidence in rebuttal. This view will be justified by the provisions of S. 4, Bankers Book Evidence Act read with S. 45F (1), Banking Companies (Amendment) Act, 1953. Mr. Ghose has further contended that even if this entry of 29121950 is correct, the debt is barred.

He concedes that S. 45O, Banking Companies (Amendment) Act applies to the facts of the case, but contends that what the section means is that limitation will start from the date of last transaction, i.e., 29121950, and stop for the period the application for winding up was pending, that is, from 2621953 to 2651953, when the winding up order was passed. Thus the plaintiff will get a reduction of three months and this application under S. 45D being made to this Court on 2861954, three years had already elapsed according to this calculation, and the claim was barred.

(9) I am not prepared to accept this construction of S. 45O as correct, whereas to my mind it implies that the claim would be alive if it be not timebarred at the date the application for winding up was submitted. The subsequent proceeding under S. 45D is only a continuance of the winding up proceeding subject to the provisions of S. 45D (1) and (2). This application being permitted to be made, and three years not having elapsed on the day the application for winding up was made, I decide the point of limitation against the defendants and hold that the debt is not barred by limitation.

(10) Issues Nos. 2 and 3 may be taken up together, they relating to what amount is recoverable from the Defendant (No. 3). It is true that on 211954, or by the end of the year 1953, the liability of the Defendant is shown to be Rs. 5965/5/9 per statement of account, no interest being charged or calculated after 3061947, that is, for a period of five years and a half. There can be no question

of estoppel in asking for interest accrued, and the Court is at liberty to decree such interest for the interim period and at such rate as it considers reasonable. More than seven years have elapsed since July, 1947, and I consider that interest at the rate of 6 per cent, per annum on the outstanding amount would be reasonable.

I, however, put it at a slightly reduced rate and decree Rs. 2,000/ as interest for the interim period, and Rs. 300/ (three hundred) as cost or hearing fee. The decretal amount will carry 6 per cent, interest per annum, till realisation. Issue certificate accordingly.

Certificate issued.