(1950) 08 CAL CK 0015

In the Calcutta High Court

Sree Bank, Ltd. APPELLANT

Vs

P.C Mukherjee and Another RESPONDENT

Date of Decision : 24-08-1950

Acts Referred:
Banking Companies Act, 1949 — Section 45F

Citation : 55 CWN 400

Hon'ble Judges : Harries, C.J;Banerjee, J

Bench : Division Bench

Advocate : A.K. Sen, for the Appellant;Ranadeb Chaudhuri and Sudhamay Bose, for the Respondent

Final Decision : Dismissed

Judgement

Harries, C.J.—This is a matter referred under Ch. V, r. 3 of the Original Side Rules. The applicant is the liquidator of the Sree Bank, Limited, which is in liquidation. The Respondents were customers of the bank and it is alleged that when the bank went into liquidation the Respondents owed the bank on an overdraft account a sum of Rs. 32,459-12-9.

2. The liquidator of the bank made an application to the Court under the Banking Companies Act, 1949, as amended by the Banking Companies Ordinance, 1949, and the Banking Companies (Amendment) Act, 1950. That application was for an order on the Respondents to pay the liquidator the sum said to be due, namely, Us. 32, 459-12-9 or such other sum as the Court might find to be due. The matter came before my learned brother Banerjee, J., and he considered the case to be of great importance and referred it to me under Ch. V, r. 3 of the Rules of the Original Side. Under the Rule, I constituted the present Bench to hear the matter.

3. The question which was agitated before my learned brother was what was the period of limitation applicable to such an application and whether any application could fact be made.

4. There is a section in the Banking Companies Act as amended by the Banking Companies (Amendment) Act, 1950, deal-(sic) with the question of limitation govern-(sic) applications made by Banking Company (sic) liquidation. The section is sec. 45F which is in these terms:

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.

5. In the case of a suit this section creates no difficulty, but the difficulty arises in the case of an application such as was made in this case. If any application could be made to the Company Court winding up this bank for an order for the payment of the sum found due from the Respondents what period of limitation would govern such an application? The contention was that the Limitation Act would not apply at all to such an application as the Limitation Act applies to proceedings governed by the Civil Procedure Code. In my view, however, it is not necessary to consider this matter because no proceedings by way of an application to recover the sum due from the Respondents can be entertained.

6. If the bank''s case be true, then the Respondents owe a large sum of money and are debtors to the liquidator of the bank. There is nothing in the Companies Act or the Banking Companies Act which permits a liquidator to recover debts from debtors of a Banking Company by summary proceedings such as an application to the Company Judge.

7. The Companies Act, for example, to sec. 186 provides for the recovery of what is due from contributories and no suit is necessary. But there is no provision 111 these Acts entitling a liquidator to recover debts from debtors of the bank in any way other than the ordinary way, namely, by suit. It seems to me clear that the liquidator in the present case if he wishes to re-rover what is due to the bank from the Respondents must bring a suit and the period of limitation for such a suit is specifically provided for in sec. 45F. The period of limitation would be a period of three years from the date when the money became due after excluding the period mentioned in sec. 45F of the Banking Companies Act. There is nothing in sec. 45F which permits applications to be made for the recovery of debts and, therefore, the point that was urged in the Court below really does not arise. In the present case no application for the recovery of this money would lie and as a suit must be brought the period of limitation for such a suit will be governed by the appropriate Article in the Limitation Act read with sec. 45F of the Banking Companies Act.

9. Mr. Asoke Sen who appeared for the liquidator suggested that the Court if it does not possess the power already to permit such applications should make rules allowing for applications to be made in place of suits. Wide rule-making powers are given to this Court by the Banking Companies Act and it may be that

the Court could frame rules permitting the liquidator to recover debts due to a bank by way of applications and making suits unnecessary. Such rules are undoubtedly desirable, if they can be framed, because the costs incurred for filing suits in a multitude of small claims are extremely heavy and absorb all the money likely to be obtained as a result of such suits. However no rules have yet been framed and, therefore, no application such as the one made in this case is warranted and it was bound to be dismissed.

10. In the result, therefore, the application is dismissed. But in the circumstances I would make no order as to costs.

11. Certified for Counsel.

12. The liquidator may take his own costs out of the assets.

Banerjee, J.

I agree.

