

(1941) 02 AHC CK 0005
In the Allahabad High Court

Thakur Prasad Chaudhari

APPELLANT

Vs

Official Liquidator, Benares Bank Ltd. (in Liquidation)

RESPONDENT

Date of Decision : 14-02-1941

Acts Referred:

Citation : AIR 1941 All 278 : (1941) 11 AWR 133

Hon'ble Judges : Braund, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Braund, J.—This is an application by a creditor of the Benares Bank Limited by way of appeal from a decision of the Official Liquidator. The applicant was admittedly a person who on 3rd August 1939, the date of the commencement of this winding up, was a depositor with the Bank by way of fixed deposit to the extent of Rs. 190 odd. He, accordingly, in due course submitted a proof to the Official Liquidator claiming to be a creditor of the company in this amount. The Official Liquidator admitted that he was a creditor on fixed deposit to the extent he claimed, but went on to assert that the applicant was at the same time a guarantor of the overdraft account of another client of the Bank, which account stood in debit on 3rd August 1939 to the extent of over Rs. 2000. The Official Liquidator, therefore, claimed to appropriate the Rs. 190 owing by the Bank to the applicant in part satisfaction of the liability of upwards Rs. 2000 due from the applicant to the Bank on the guarantee. Although he did not say so in so many words, what the Official Liquidator did was to put into operation the mutual credit section of the Provincial Insolvency Act, and set off what was due from the company against what was due to the company. The applicant has taken two points. First he says that, inasmuch as the Official Liquidator had not exhausted all his remedies against the principal debtor on the overdraft account, there was nothing due from him and, accordingly, that there was nothing against which the company's debt to him could be set off. The applicant has, however, given up that point. The other point taken by the applicant is this. He says that the Official

Liquidator is about to sue him in a separate proceeding on the guarantee and that in that separate suit he (the applicant) proposes to rely on the Limitation Act, as his defence. IVom that he argues that, if he is successful in that defence, it will be found that there was nothing due on 3rd August 1939 from him to the company, and, again, that there was nothing against which the sum of Rs. 190 could be set off.

2. In my view even this argument bears little investigation. The effect of Section 3, Limitation Act, is to bring about the automatic dismissal of suits, appeals and applications founded upon debts or causes of action which, according to their various periods of limitation, are time-barred. What the Limitation Act does not do is to extinguish the debt. The debt remains, but the remedy is destroyed. Even, therefore, if it should turn out to be a fact and I have not the least idea whether it will or not that the present applicant is able to resist the Official Liquidator's suit on the ground that the debt is time-barred, the effect of that will not be to wipe the debt out of existence. The debt would continue to exist, although the Official Liquidator would be unable to institute a suit or to prefer an appeal or to make an application in respect of it. In exercising his rights under the mutual credit clause of the Insolvency Act, the Official Liquidator has purported to do none of those things. All that has happened is that he has said to the applicant, to whom he admits the company owes money that he proposes to appropriate so much of the sum that the applicant owes to the company in satisfaction of what the company owes to the applicant.

3. The applicant has, I cannot help feeling, been labouring under some slight difficulty in distinguishing between the right of set off which the Official Liquidator has exercised in this case and the right of set-off which a defendant in a suit governed by the CPC exercises under o. 8, E. 6 to Schedule 1 of that Code. Under the Civil Procedure Code, of course, the position is quite different. The Code governs the position of persons who are plaintiffs and defendants respectively in suits. If a defendant desires to avail himself of a set off in a suit, he must bring himself within the provisions of Order 8, Rule 6 and those provisions obviously are very different from the conditions which had to be fulfilled by the Official Liquidator in this case. One has only to point to the circumstance that, under the Civil Procedure Code, it is required as a condition precedent to a set-off that the money should be "legally recoverable" by the defendant from the plaintiff. That is a very different thing from anything we have here because the set-off which the Official Liquidator has purported to exercise is a set-off under the powers conferred on him by the Companies Act, and not under any power conferred on him by the Civil Procedure Code. In *Narhndrala Lal Khan Vs. Tarubala Dasi*, , Sir George Bankin expresses the point in another connexion by saying:

Thus, if the attorney has any form of lien upon property in respect of his bills of costs, he can exercise that lien notwithstanding that by the terms of the Limitation Act, he could not bring a suit....

4. The point there was, I think, in principle the same as the point here. For these reasons this appeal must be dismissed.