(1914) 05 AHC CK 0040

In the Allahabad High Court

The Gorakhpur Bank Limited — APPELLANT

Vs

Gur Prasad and Another and Majid Husain Khan and Another — RESPONDENT

Date of Decision : 27-05-1914

Acts Referred:

Citation : (1914) ILR (All) 507

Hon'ble Judges : Muhammad Rafiq, J;Chamier, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Chamier and Muhammad Rafiq, JJ.—This appeal arises out of a suit brought by the first respondent, the Gorakhpur Bank, Limited, for a declaration that it has a charge on the amount of a fixed deposit standing to the credit of the second respondent Majid Husain Khan in the Kayastha Trading and Banking Corporation, Limited. The facts are that in May, 1910, Majid Husain. Khan deposited Rs. 8,700 with the Kayastha Trading and Banking Corporation for three years to bear interest at the rate of 7 per cent per annum. A receipt in the ordinary form was issued to him containing in the margin the words "Not transferable." Majid Husain Khan in 1911 borrowed Rs. 4,650 from the Gorakhpur Bank, Limited, and on that occasion wrote to the Manager of that Bank a letter which is sot out in the judgment of the lower appellate court. It purports to authorize the Bank, in case the loan was not repaid, to recover the amount from the sum for the time being standing in Majid Husain Khan''s name in fixed deposit account with the Kayastha Trading and Banking Corporation, Limited.

2. The letter sets out the date and number of the fixed deposit receipt and it is found as a fact that Majid Husain Khan made over the receipt to the Gorakhpur Bank. On the same day the Gorakhpur Bank wrote to the Manager of the Kayastha Trading and Banking Corporation a letter giving notice that they had a charge on the fixed deposit. The Manager of the latter replied by a letter of the same date as follows: "Dear sir, with reference to your (letter) of the 8th instant we beg to let you know that Majid Husain Khan of Begpur has got only Rs. 5,877

out of his deposit with us. So we have noted your lien on that amount only." From this it appears that a portion of the sum deposited had been withdrawn. In May, 1912, that is, a year later, defendants appellants obtained a decree against Majid Husain Khan, in the execution of which they caused the balance of the fixed deposit to be attached. The Gorakhpur Bank having come to know of this filed objections. The objections were summarily disallowed and the present suit was then instituted. The court of first instance held that the Gorakhpur Bank had no charge upon the amount under attachment. The Subordinate Judge was apparently of opinion that no one could have a charge on such a deposit unless he was in possession of it. On appeal the Additional Judge, Gorakhpur, reversed this decision and held that a valid charge on the fixed deposit had been created in favour of the Gorakhpur Bank. In second appeal it is again contended that it was impossible for the Gorakhpur Bank to have a charge on this fixed deposit as it was not in possession of the money, and we were referred to the decision of the Privy Council in Aga Mahomed Jaffer Bindanim v. Koolsom Beebee (1) I. L. R. (1897) Cal. 19. It appears to us that that case has no bearing whatever on the present case. In than case some fixed deposit receipts had been handed over by a man to his wife shortly before he died. After his death she claimed to be entitled to the amounts mentioned in the receipts. It was held that it was a case of an incomplete gift, that the effect of handing over the receipts was not to transfer the debts to the wife, that she bad acquired no title to them, and that at most the evidence showed that the testator had intended to make a formal transfer of the deposits to his wife but had died before he was able to do so. lathe present ease we can see no reason why it should not be held that there was what would be called in England an equitable assignment by way of charge of the amount of the fixed deposit to the Gorakhpur Bank. The circumstance that the fixed deposit receipt bears the words "Not transferable" is immaterial, because it is not suggested that any charge on the money is claimed by the Kayastha Trading and Banking Corporation, and the latter distinctly recognized the right of the Gorakhpur Bank to a charge on the balance of the deposit. It has been held in many eases that the form of an assignment of this description is of no importance so long as the intention to assign or to make a charge is clear. An agreement between a debtor and a creditor that the debt shall be paid out of a specific fund coming to the debtor is a good equitable assignment. For example, in the case of Witticism Brandt''s Sons and Company v Dunlop Rubber Company, Limited (2) I. L. R. (1905) A. C. 454 some merchants had agreed with a Bank by whom they were financed that all goods sold by the merchants should be paid for by a remittance direct from the purchasers to the Bank. Goods having been sold by the merchants, the Bank forwarded to the purchasers notice in writing that that the merchants had made over to the Bank the right to receive the purchase money and requested the purchasers to sign an undertaking to remit the purchase money to the Bank, It was held that there was a good equitable assignment of the debt to the Bank. It is unnecessary to consider whether the assignment would have been valid if the Kayastha Trading and Banking Corporation had refused to recognize the assignment, for it expressly recognized the assignment. It is quite clear that, with consent of the Banking Corporation, if not without it, Majid Husain Khan was entitled to assign to any person whom he pleased either absolutely or by way of n charge the debt due or about to become due to him, from the Banking Corporation. It seems to us quite clear that in the present case there was an effective transfer of the debt duo to Majid Husain Khan in favour of the Gorakhpur Bank by way of a charge. Therefore the Gorakhpur Bank were entitled to a charge on the fixed deposit as against the attaching creditors. The appeal fails and is dismissed with coats.

