
(1949) 11 AHC CK 0026

In the Allahabad High Court

Case No : Letters Patent Appeal No. 41 of 1949

The Jwala Bank Ltd.

APPELLANT

Vs

Shitla Parshad Singh

RESPONDENT

Date of Decision : 21-11-1949

Acts Referred:

Banking Companies Act, 1949 — Section 5(1)

Citation : AIR 1950 All 309 : (1950) 20 CompCas 238

Hon'ble Judges : Malik, C.J;Raghubar Dayal, J

Bench : Division Bench

Advocate : A. Sanyal, for the Appellant; H. Kapoor, for the Respondent

Final Decision : Dismissed

Judgement

Malik, C.J.—This purports to be an appeal u/s 10 of our Letters Patent read with the United Provinces High Courts (Amalgamation) Order 1948. There was a private Bank in Agra known as the Jwala Bank carrying on banking business. In 1938 it was incorporated as a limited liability company under the name of the Jwala Bank Limited. The Memorandum and Articles of Association show that the primary object of the company was to carry on banking business in India and outside. In the year 1946 an Ordinance known as the Banking Companies (Inspection) Ordinance, 1946, (NO. IV of 1946) was issued by the Government of India in which a banking company was defined as meaning a banking company as defined in Section 277-F, Companies Act, 1913. Section 3 of the Ordinance provided for inspection and was as follows:

"Notwithstanding anything to the contrary contained in Section 138, Companies Act 1913 (VII of 1913), the Central Government may at any time direct the Reserve Bank to cause an inspection to be made of any banking company and its books and accounts, and to make a report thereon to the Central Government." Under the power given u/s 3, an enquiry was held in the affairs of the Jwala Bank Limited in the year 1947 and a report was made to the Government of India. Acting under the powers given u/s 5 of the Ordinance, the Government of India

prohibited the Jwala Bank Ltd., from receiving fresh deposits. The relevant portion of the order No. F. 7/94-F. 1/46, Government of India, Ministry of Finance, New Delhi, 6th April 1948, is as follows:

"Now, therefore, in exercise of the powers conferred by Clause (a) of Sub-section (1) of Section 5 of the said Ordinance the Central Government is pleased with effect from Monday the 12th April 1948, to prohibit the said bank from receiving fresh deposits at any of its offices, branches or agencies."

We are informed by learned counsel that after the said order was published there was a rush on the bank and a large number of depositors, who were willing to take 75 per cent in full satisfaction of their claims, were paid off. On 1st August 1949, one of the creditors, Shitala Pd. Singh, who claimed that a sum of Rs. 10,000/- odd was due to him, gave notice u/s 163, Companies Act, and not having received payment, filed an application for compulsory winding up of the Jwala Bank Limited. On 16th September 1949, Mr. Sanyal, on behalf of the Jwala Bank, filed an application u/s 153, Companies Act proposing a composition scheme and praying for a meeting to be called of the creditors of the Bank. This application was opposed by Mr. Hazari Lal Kapoor appearing for Shitala Parsad Singh on the ground that the Jwala Bank Limited being a bank, the Banking Companies Act of 1949 (X [10] of 1949) applied and u/s 45 (a) of this Act no Court could sanction a compromise or arrangement between a banking company and its creditors or any class them, or between such company and its members or any class of them, unless the compromise or arrangement was certified by the Reserve Bank as not being detrimental to the interests of the depositors of such company. Mr. Sanyal, however, claimed that the Banking Companies Act of 1949 did not apply to the Jwala Bank as after the order issued by the Government of India, dated 6th April 1948, prohibiting receipt of fresh deposits, the Jwala Bank Limited had ceased to be a banking company. Reliance is placed by Mr. Sanyal on the definition of the words "banking company" in the Banking Companies Act of 1949, which is as follows : " "banking company" means any company which transacts the business of banking in any Province of India." Banking has been defined as meaning the accepting, for the purpose of lending or investment, of deposits of money from the Public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise. Mr. Sanyal has urged that as the Jwala Bank Limited cannot accept any fresh deposits it has ceased to be a banking company within the meaning of the Banking Companies Act of 1949.

2. The learned Company Judge did not agree with this contention and he was of the opinion that the Jwala Bank Limited had not ceased to be a banking company because of the issue of the order by the Government of India, dated 6th April 1948, prohibiting receipt of fresh deposits. It is against the order passed by the learned Company Judge that Mr. Sanyal has filed this appeal.

3. A preliminary objection was taken by Mr. Hazari Lal Kapoor that no appeal lies. Under the Letters Patent, Section 10, an appeal lies only against a judgment passed by a learned single Judge. A judgment has been defined in various

decisions of this Court as meaning an adjudication which conclusively determines the rights of the parties. We have not allowed appeals to be filed against mere interlocutory orders during the pendency of a case. All that the learned Company Judge has decided is that the Banking Companies Act is applicable and the opinion of the Reserve Bank of India might, therefore, have to be obtained. We do not think that it is a judgment against which an appeal would lie.

4. We would, however, like also to express our opinion on the merits. The argument of learned counsel, that by reason of the order issued by the Government of India on 6th April 1948, the Jwala Bank Limited has ceased to be a banking company, does not appeal to us. The Jwala Bank Limited was started with the primary object of carrying on banking business. That is clear from its Memorandum and Articles of Association. It received deposits to the extent of Rs. 1,09,00,000/-, the figure given to us by Mr. Sanyal on behalf of his client. Those depositors, or at least some of them, are still there and their names are entered in the books of the Jwala Bank Limited and the Jwala Bank has not been prohibited to make payments to them or to deal with those deposits in accordance with the rules laid down in the Companies Act and the Banking Companies Act. All that has been prohibited under the order, dated 6th April 1948, is that the Bank should not receive fresh deposits, and even this order cannot be deemed to have been intended to be a permanent order as under the proviso to Sub-section (1) of Section 5, Banking Companies (Inspection) Ordinance 1946, the Central Government has the power to cancel or modify any order passed under this sub-section upon such terms and conditions as it may think fit to impose. Sub-section (2) of Section 5 makes the position still clearer. It says that

"If any deposits are received by a banking company in contravention of an order under Clause (a) of Sub-section (i) every director or other officer of the banking company, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent it, shall be deemed to be guilty of such, contravention and shall be punishable with a fine which may extend to twice the amount of the deposits so received. "

If learned counsel's contention is to be accepted then the Jwala Bank Limited having ceased to be a banking company by reason of the order under Sub-section (1) of Section 5 the directors or officers cannot be held liable to the penalty mentioned in Sub-section (2) of Section 5, even if they contravene the order under Sub-section (1). This clearly was not the intention of the Legislature when enacting Sub-section (2) of Section 5.

5. The definition of a banking company in the Banking Companies Act does not mean that the company must, at the time in question, be able to accept deposits of money from the public repayable on demand or on such terms on which the money might have been deposited. It must mean that banking should be the primary business of the company even if, by reason of certain supervening causes, it is not able for the time being to carry on the work of receiving deposits

and of making payments. The learned Company Judge has pointed out that, in some cases, if the contention of learned counsel is accepted, certain absurd results would follow. It is not necessary for us to multiply instances, but there can be many such other reasons given for holding that a banking company does not cease to be a banking company merely because, by reason of certain supervening causes, it is not able to receive fresh deposits for the time being.

6. There is no force in this appeal and we dismiss it with costs. Since the valuation is not given in the Memorandum of Appeal, Mr. Hazari Lal Kapoor prays that the certificate for Rs. 100/-, which he has filed, may be accepted and the whole amount taxed. We see no objection to that being done. The stay application is discharged. The papers may immediately be sent to the learned Company Judge as we understand that certain proceedings are pending before him.