

(1921) 01 BOM CK 0012
In the Bombay High Court
Case No : Second Appeal No. 475 of 1920

Trimbak Gangadhar Gokhale	Vs	APPELLANT
Ramchandra Trimbak Kirtane		RESPONDENT

Date of Decision : 28-01-1921

Acts Referred:

Companies Act, 1956 — Section 299
Provincial Insolvency Act, 1907 — Section 30

Citation : AIR 1921 Bom 66 : (1921) 23 BOMLR 537

Hon'ble Judges : Shah, J; Norman Macleod, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Norman Macleod, Kt., C.J.—The question in this appeal is whether the second defendant who was sued together with the first defendant on a joint promissory note for Rs. 1800 can seek to set off against the Bank's claim on the promissory note the amount admittedly due to him from the Bank on his deposit account. u/ s 229 of the Indian Companies Act?

In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of insolvency with respect to the estates of persona adjudged insolvent.

2. We have, therefore, to refer to Section 30 of the Provincial Insolvency Act which says:

Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or

paid on either side respectively.

3. The question, therefore, is whether, the dealings in respect of the joint promissory note, and the dealings between the Bank and the second defendant in respect of his deposit account, were mutual dealings. That question arose in Civil Extra ordinary Application No. 146 of 1908 between the liquidators of the Deccan Bank, who are now before us, and the then two defendants who had together borrowed money on a promissory note, and made themselves jointly and severally responsible for the debt. It was held by Mr. Justice Heaton that there were no mutual dealings. It is undisputed that a joint debt cannot be set off against a separate debt either under the English Bankruptcy Act or under the Indian Insolvency Acts. But it has been argued that there is this difference, that under the Indian Contract Act joint promissors are jointly and severally liable, so that a suit could be filed against one without joining the other, and, therefore, it could be deduced, that since defendant No. 2 could have been sued separately on this promissory note by the liquidators therefore he could have set off the amount due on his deposit account. I do not think that the mere fact that a suit could lie against one of two joint promissors could alter the fact that the original liability of defendant No. 2 was incurred, not on his own account only, but jointly with another, and so result in the nature of the dealings taken as a whole being altered. I think, therefore, that since the dealings on the deposit account and on the promissory note were of a different character, they cannot come within the term " mutual dealings". Therefore the judgment of the lower appellate Court was right. The appeal must be dismissed with costs.

Shah, J.

4. I agree.