
(1969) 10 CAL CK 0006

In the Calcutta High Court

Case No : Civil Revision Case No. 1548 of 1965

United Bank of India, Ltd.

APPELLANT

Vs

Narayan Chandra Ghose

RESPONDENT

Date of Decision : 10-10-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Presidency Small Cause Courts Act, 1882 — Section 38

Citation : 74 CWN 150

Hon'ble Judges : Bijayesh Mukherji, J

Bench : Single Bench

Advocate : Subrata Roy Chowdhury and Prasanta Kumar Ghosh, for the Appellant; Chittaranjan Das, for the Respondent

Final Decision : Dismissed

Judgement

Bijayesh Mukherji, J.—Denuded of detail, no longer in the realm of controversy, the single question, raised upon this revisional application, is: can a bank, a limited company, with its head office at Comilla, before partition of Bengal in August 1947, converted into the principal office in Pakistan, after Partition, the bank continuing at the same time, since then, as an Indian company with its head office at Calcutta, be made liable at law to repay, here in Calcutta, long after such partition, the money, on account of "service security deposit", put in, at Comilla, on February 7, 1946, by an assistant who, "due to communal disturbances in 1950, was forced to leave" the bank's service at Dacca where the security deposit was then lying? A longish question, no doubt. But it brings out all the features that call attention.

2. A learned judge, Small Causes Court, Calcutta, answers the question in the affirmative and mulcts the bank in a decree for Rs. 500, just the amount of the security deposit. An application by the bank u/s 38 of the Presidency Small Cause Courts Act, 15 of 1882, comes to little. The decree recorded by the trial judge stands, the Full Bench seeing no reason why it "should be interfered with."

Hence this rule u/s 115 of the Procedure Code, 5 of 1908.

3. The Bank is the Comilla Banking Corporation, Ltd., amalgamated in or about 1950 with the United Bank of India, Ltd. The mantle of the former has since fallen upon the latter. Necessarily, therefore, in the litigation launched on March 1, 1962, by the assistant concerned, Narayan Chandra Ghose, after fruitless correspondence to and fro, for recovery of his deposit money, the United Bank of India, Ltd., figures as the sole defendant. Necessarily, therefore, the said bank is the petitioner before me as well.

4. To get to know certain facts, undisputed and indisputable,-facts which the learned judges below either misread or pass by-, is to get really the key to the problem posed by this litigation, the importance of which is to be measured, not by Rs. 500 in dispute here, quite a small sum, but by the big question of private international law, which bulks so large, as indeed it must, the case being what it is. And, then, for all I see, there does not appear to be one solitary Narayan Ghose; there are, very probably, many Narayan Ghoses waiting round the corner and biding their time. Indeed, that cannot but be so; one has only to throw his mind back to the holocaust of 1950 on both sides of the border and the crossing thereof by the vast mass of humanity, uprooted from their hearth and home and occupation,-a notorious fact which I take judicial notice of, as I did, on the foot of well-known authorities, In (1) Prabodh Chandra Mukherjee v. Pasupati Mukherjee, (1966) 71 C.W.N. 649, if I may refer to my decision, without any impropriety. Taking a common-sense view, therefore, appearances are in favour of the stake not being Rs. 500, but many times that sum.

5. The facts, undisputed and indisputable, fall under two categories. Here are those in the first category:

A. Original deposit.

It was Rs. 2,000 put in by Narayan Ghose on February 7, 1936, with the Comilla Banking Corporation Ltd. at Comilla, then in undivided Bengal and now in East Pakistan.

B. How it dwindled to Rs. 500

At or about the time of partition of Bengal in August 1947, the registered office of the Comilla Banking Corporation, Ltd. was shifted to Calcutta wherein were brought all the records, security deposits, the provident fund money of the employees and the like. More, in or about March 1949, the security of those working in the cash and security department - Narayan Ghose was one such-was reduced to Rs. 500. And they, including Narayan, were given a refund of Rs. 1,500. This is how his deposit of Rs. 2,000 came down to Rs. 500. Thus, out of Rs. 2,000 deposited on February 7, 1936, Rs. 1,500 came back to the depositor (here Narayan) and Rs. 500 continued to remain in the bank and with the bank.

C. Venue of refund

Rs. 1,500 was refunded to him at Dacca by. the Comilla Banking Corporation, Ltd., Dacca, on the strength of a draft demand, as is borne out by the ledger, exhibit D, and as is the evidence of Narayan and the bank's employee and first witness, Jyotish Bhattacharjee, though Narayan, after admitting withdrawal by him of Rs. 1,500 from Dacca, seeks to run away from it, first by making contradictory statements, and then by taking refuge under amnesia, but in vain.

D. Fresh security bond for Rs. 500 to which the existing deposit was reduced.

On March 1, 1949. Narayan executed a fresh security bond, exhibit C on admission, for this new and reduced deposit of Rs. 500, the earlier security bond bearing date October 24, 1933, exhibit B on admission, effective from February 4, 1936, having presumably lapsed. And for this new security bond of March 1, 1949, typed by Dhiresh Chandra Roy of the Comilla Banking Corporation, Ltd., Dacca, were pressed into service Pakistani impressed stamp papers purchased from one Shri Nripendra Kumar, presumably a stamp-vendor, of Kalir Bazar, Narayanganj, Dacca. More, in such a bond as this, Narayan describes himself as-

I, Narayan Chandra Ghose,.... (of) Vill. Kolapara, P.S. Srinagar, in the District of Dacca, at present residing at 31 Hemendra Das Road, in consideration of my service in the post of Assistant to the Dacca Branch of the Comilla Banking Corporation, Ltd...

The execution of the bond is witnessed by two employees of the Dacca branch of the bank.

E. Receipt for Rs. 500

Marked exhibit 1 on admission, and issued from the Calcutta office of the bank, it bears, to reproduce only the material portion:

The Comilla Banking Corporation, Ltd.

Registered Office: 4, Clive Ghat Street, Calcutta.

Service Security Deposit Receipt. *** **

Amount of deposit *** Rs. 500 *** **

Particular - Cash

Name and address of the depositor. Sri Narayan Chandra Ghosh1

Narayan writes his surname as Ghose.

The Comilla Banking Corpn. Ltd., Dacca.

*** **

N.B. Out of his cash security of Rs. 2,000 deposited on 7.2.36, a sum of Rs. 1,500 is refunded, retaining Rs. 500 for which this receipt is issued.

Sd. S. Bhattacharya 10/3-

10/3 stands for March 10, 1949, going by the security bond of March 1, 1949, exhibit C. already noticed. At any rate, there is nothing like any controversy about it.

F. How the security deposit travels again.

How the deposit travelled from Comilla, its original abode from February 1936, to Calcutta, on the eve of the partition of Bengal in August 1947 been reviewed ante under heading B. On March 31, 1949, it was transferred to Comilla office again, as at that date, exhibit A(4), by the Chief Accountant of the Calcutta head office to the address of the Agent of the Bank, in all its branches in Pakistan, with a copy to the Chief Manager, Comilla, goes to show. So far then, that is, up to March 31, 1949, from Comilla to Calcutta and back to Comilla. But it did not stay there long, if it stayed at all. Because, as the account of Narayan's security deposit, exhibit E, shows, it was transferred to Dacca on April 5, 1949. And there it stayed all along, with the Comilla Banking Corporation, Ltd. After the said bank was amalgamated with the petitioning bank before me, Narayan's security deposit remained there at Dacca as a matter of course. The petitioning bank took pains to bring this home to Narayan by its letters-first by one dated December 30, 1959, exhibit A, in answer to Narayan's dated August 17 previous, exhibit A(3), and then by another dated February 13, 1961, exhibit A(2), in answer to Narayan's dated February 10 previous, exhibit A(1),-all such letters getting into evidence on admission.

6. Here ends my narration of the first category of facts, undisputed and indisputable. And that takes me up to April 5, 1949, 1950 came soon enough. The communal carnage, loot, and all that, shook both sides of the border leading to that now famous Nehru Liaquat Ali agreement. But Narayan fled his home and service, leaving behind him his security deposit of Rs. 500, the subject of this litigation. What happened to that? To answer it is to set out the second category facts-which I now proceed to do:

A. February 27, 1951.

On this date it was agreed between Pakistan and India that Rs. 100 in Pakistan currency would be equivalent to Rs. 144 in Indian currency, all because of the devaluation of the Indian rupee on September 18, 1949, prior to which the currencies of the two countries were at par: (2) Commissioner of Income Tax, Mysore Vs. The Canara Bank Ltd., , a case Mr. Chitta Ranjan Das, appearing for Narayan, the opposite party, refers me to.

B. July 28, 1952.

Narayan had left in 1950. The security deposit of Rs. 500 he had left behind was transferred this day (July 28, 1952) to "Matured Security Deposit A/C," as it had to be in the very nature of the thing: vide the relevant entry in Narayan's "Security Deposit" account, exhibit E.

C. March 7, 1956.

Faced with the problem of some employees of branches in Pakistan, since transferred to India, leaving their security deposits behind, in the absence of any agreement for "Capital transfer" between the two countries, the Agent of the petitioning bank at Dacca sought the advice this day (March 7, 1956) by a letter, exhibit A(5), of the Assistant Controller, Exchange Control Department, State Bank of Pakistan, Dacca whether or no such security deposit accounts should be treated "as non-resident accounts."

D. March 10, 1956.

By a letter of this date, exhibit A(6), the Assistant Controller, Exchange Control Department, State Bank of Pakistan, answered the letter just reviewed, and wanted information from the writer thereof, namely, the Agent, United Bank of India, Ltd., Dacca, on the following points:

1. How are such security deposits held-in the names of the employees or in the name of the bank?
2. Who is authorized to operate them? The bank or the employee concerned?

E. March 16, 1956.

By a letter bearing this date, exhibit A(7), the Agent replied-

1. Security deposits are held in the names of the employees concerned.
2. They are not authorized to operate the accounts, save that the amounts are payable to them, in accordance with service conditions, on retirement, termination of service and the like. (Narayan's is a case of termination of service).

F. April 2, 1956.

Now came the advice of the Assistant Controller, Exchange Control Department, State Bank of Pakistan, through a letter of this date (April 2, 1956), exhibit A(8), to the address of the Agent, United Bank of India, Ltd., Dacca:

1. Open non-resident accounts in the names of individual non-resident employees against their cash security deposits in Pakistan.
2. Note that the rules governing non-resident accounts will govern too the operation of such accounts.

A letter as this from the Assistant Controller, Exchange Control Department, State Bank of Pakistan, exhibit A(8), bears the number EC. DA. 349/3-56/1402 and is dated April 2, 1956.

G. April 5, 1956.

The Assistant Controller's advice dated April 2, 1956, was virtually an order. And in obedience thereto, only three days later, that is, on April 5, 1956, the security deposit of Rs. 500, to which was added the accrued interest of Rs. 12/8 annas,

lying in "Matured Security Deposit" account of Narayan since July 28, 1952, was transferred to non-resident account of Narayan, as evidenced by the relevant entries in the accounts, exhibits E(1) and H. (2), the very number and date of the Assistant Controller's letter having been quoted in the former, as the basis of such transfer.

7. Here ends my narration of the second category of facts,-facts which the learned Judges of the Small Causes Court pass by completely and thereby fall into a jurisdictional error.

8. It is time now to apply the law to the facts tabulated above. The relevant law is the Pakistan Foreign Exchange Regulation Act 1947. It is just the Foreign Exchange Regulation Act, 7 of 1947, of ours, come into force in India on March 25, 1947, when Pakistan had not come into existence, but adopted for Pakistan, after its creation, by the relevant Pakistan Adaptation Orders. By section 2, clause (j) thereof, it is provided that "State Bank" means the State Bank of Pakistan, unless there is anything repugnant in the subject or context. There is nothing, for the point I am on now. By section 2, clause (k) thereof, it is provided inter alia that "security" means deposit receipts in respect of deposits of securities, but does not include bills of exchange or promissory notes other than Government promissory notes, unless there is anything repugnant in the subject or context. There is nothing in the subject or context of Narayan's deposit receipt for Rs. 500. By subsection 1, section 5, thereof, a section imposing restrictions on payments, it is provided inter alia that subject to exemption granted by the State Bank, that is, State Bank of Pakistan, as the definition section is, no person in, or resident in, the Provinces-East Pakistan is one such province-shall

(a) make any payment to or for the credit of any person resident outside Pakistan;

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(c) make any payment to or for the credit of any person by order or on behalf of any person resident outside Pakistan.

9. Interrupting the examination of the Pakistan Foreign Exchange Regulation Act, 1947, let the reasoning of the learned trial judge be tested in the crucible of the Pakistani law. He sees no "procedural difficulty" hinted on behalf of the bank. More, he sees no reason why the bank should grudge "some pecuniary loss" and a little labour in giving Narayan, "its ex-employee", his money, much to his benefit. But it beats me how the bank can bring itself to do so, in the face of this sort of absolute prohibition enjoined by section 5. The bank, a limited company, is a person in, or resident in, the province of East Pakistan. No exemption, conditionally or unconditionally, has been granted by the State Bank of Pakistan. On the contrary, the directive has been: "Open a non-resident account in the name of Narayan, admittedly a non-resident", a quondam employee though. For the purpose of security deposit, a quondam employee is as much an employee as

an employee in harness. The deposit is attributable to his being or having been an employee. So, the bank, a person in, or resident in, the province of East Pakistan-as indeed it is, so far as the Dacca branch is concerned,-cannot make any payment to, or for the credit of, Narayan, a person resident outside Pakistan, without coming on the edge of section 5, subsection 1, clause (a), of the Pakistan Foreign Exchange Regulation Act 1947. Nor can it make any payment to, or for the credit of Narayan, by order or on behalf of its head office in Calcutta, certainly a person resident outside Pakistan, without coming on the edge of section 5, subsection 1, clause (c). So, much more than "procedural difficulty"-even that little the judge does not see-is there. What is there is a positive enactment containing an absolute prohibition, without breaking which no payment can be made to Narayan at this end.

10. Worse still, if the bank at Dacca does what it is so prohibited to do,-and u/s 20, subsection 1, clauses (d) and (e), of the Pakistan Foreign Exchange Regulation Act 1947, the branch at Dacca shall be treated in all respects as if it were a body corporate resident at Dacca, and the making of a book entry in favour of the Calcutta head office shall be treated as acknowledgment of a debt in favour of a person resident in Calcutta, it will commit an offence u/s 23, subsection 1, of the Act, punishable with imprisonment up to two years or fine or both. And since the bank at Dacca is deemed to be a body corporate (section 20, subsection 1, clause (d)), every director, manager, secretary and other officer thereof, having the requisite mens rea, shall also be guilty of the same offence and liable to the same punishment, as the mandate of section 23, subsection 4, is. It becomes thus impossible for the bank to make the payment, from this end, to Narayan, of his security money of Rs. 500 lying in his non-resident account at Dacca,-a fact which has been rightly pleaded in the bank's written statement, laconically though.

11. Mr. Subrata Roy Chowdhury, appearing for the petitioning bank, refers me to most of these provisions that go before, as also to section 6 of the Foreign Exchange Regulation Act 1947 which provides for blocked accounts. By subsection 1, clause (b), thereof, the crediting of a sum to the blocked account, the State Bank of Pakistan ordering so, as a pre-condition of exemption from section 5, touching payment to any person resident outside Pakistan, shall, to the extent of the sum credited, be a good discharge to the person making the payment (here the bank). So far Mr. Roy Chowdhury is right. But I miss any evidence that there is a blocked account here. What the evidence, reviewed above, discloses, is a non-resident account. But is a non-resident account the same thing as "blocked account"? Fortunately, section 6, by subsection 3, defines a blocked account to mean "an account opened as a blocked account at any office or branch in the Provinces of a bank authorized in this behalf by the State Bank (of Pakistan), or an account blocked, whether before or after the commencement of this Act, by order of the State Bank of Pakistan". Where is the evidence that a blocked account has been opened so? Indeed, there is not even a soupcon of evidence to that end. The evidence that is there is about a non-

resident account in the name of Narayan. But a non-resident account and a blocked account are not synonymous expressions, going by the very definition of "blocked account" in section 6, subsection 3. I, therefore, reject Mr. Roy Chowdhury's contention rested on section 6, sub-section 1, clause (b), in token of a good discharge to the bank making the payment thereunder.

12. But the validity of his contention rested on infraction of section 5, followed by penalty as prescribed in section 23, remains. And herein comes an important question of private international law.

13. "The financial troubles that beset the world during the inter-war years", says Cheshire in *Private International Law*, 6th edn., at p. 151, "have obliged most countries to introduce a system of foreign exchange control, under which dealings in the currencies of other countries are severely restricted". Again, Cheshire continues, on the basis of authorities: (3) *Rex v. International Trustee*, (1937) A.C. 500, (4) *Kahler v. Midland Bank*, (1950) A.C. 24, and (5) *In re claim by Helbert Wagg & Co. Ltd.* (1956) Ch. 323,—"In accordance with the principle which denies extra-territorial operation to legislation, it has been held that a transaction will not be affected by such a currency regulation unless it is subject to the law of the country in which the regulation has been issued. The proper law is decisive in this respect, since it may modify or dissolve the contractual bond." The proper law here is the Pakistan Foreign Exchange Regulation Act 1947 by virtue of which the bank cannot be made to pay Narayan at this end his security money put in and retained at the other end throughout, except for its brief sojourn to India, the human agency of the bank having got presumably panicky on the eve of the partition of Bengal. But that (such temporary abode) is neither here nor there, though Mr. Das, appearing for the opposite party Narayan, stresses it, as do the learned judges below. Mr. Roy Chowdhury contends, and rightly in my judgment, where security money will be kept is a matter of convenience for the employer, to which the employee has no say. More, you are serving the bank at Dacca, and it assists the convenience of all that your money will be kept there, as it was kept in fact. And what matters is where the money is (here at Dacca) when it becomes due to you on termination of your service. The fact that the Great Killings of 1950 on both sides of the border turned everything upside down is another matter. Even then, and for that, the bank has stretched in favour of Narayan who, under the security bond, ext. C, could have been forced to pay forfeit of the money. But the bank does not go that way at all.

14. True it is, as Mr. Das submits, that Narayan's contract of service was not that he was to serve exclusively in Pakistan. At the same time, the contract was not either, that wherever he would be serving, his security money would be payable in Calcutta. The contract was not either, that his security money could not be kept in Pakistan where he was serving in fact. The place of performance of the contract for paying back the security money is the place where Narayan serves. He does serve at the relevant time at Dacca. So, the place of performance of this contract is right there: at Dacca. The rules for employees' service security

deposit printed as part of the receipt for Rs. 500, ext. 1, emphasized so much by the learned judges and Mr. Das, do not negate it. Rule 2, for example, provides:

2. No withdrawal from this deposit will be allowed except with the sanction of the Board. The deposit money will be returned six months after the termination of the service of the employee, provided he is found to have no liability to the Bank at the time.

So what? It does not make Calcutta the place of performance of the contract. Dacca where Narayan serves and wherefrom he relinquishes his job is the place of performance. The security money lying there will be paid there. That being so, it is plain to be seen that the Pakistan Foreign Exchange Regulation Act 1947 is part of the law of the place of performance, namely, Dacca. So, Narayan cannot have his security money here in Calcutta, in defiance of the Pakistan Foreign Exchange Regulation Act 1947, part of the law of the place of performance, namely, Dacca, a law "with which the transaction has its closest and most real connection", as Dicey and Morris put it in *The Conflict of Laws*, 8th edition, p. 693.

15. Sure enough, the foreign exchange control legislation is not an instrument of oppression or discrimination. It is a legislation enacted with the object of protecting the economy of Pakistan. We too have a legislation here *pari materia*. Indeed, Pakistan and India have the same Foreign Exchange Regulation Act. The two Acts are different only in name. Other civilized countries have such legislations, such as England. See, for example, (6) *Pickett v. Fesq*, (1949) 2 All E.R. 705, Mr. Roy Chowdhury refers me to, where Lord Goddard C.J. speaking for the Court takes a grave view of the violation of the British Exchange Control Act 1947, "passed to protect sterling in the serious financial situation which exists in this country at the present time", and rules out any consideration of sympathy for infraction of "the stringent provisions of the Act."

16. Or take the case of (7) *Zivnostenska Banka National Corporation v. Frankman*, (1950) A.C. 57, where the Czechoslovakian State, in common with other nations, made periodic laws for the protection of its currency and for the control of foreign exchange, such law being the proper law of the contract. Result: the London branch of the Czechoslovakian bank could not legally deliver up the debentures in defiance of the foreign exchange control legislation of Czechoslovakia. And delivery up was not ordered by the English Court.

17. Again, courts in India cannot do anything which would encourage violation of the Pakistan Foreign Exchange Regulation Act 1947 or assist commission of a crime under sec. 23 thereof: (8) *Regazzoni v. K.C. Sethia*, (1958) A.C. 301, another case Mr. Roy Chowdhury refers me to. Here, export of jute from India to South Africa having been prohibited by our law, the parties to a contract sought to circumvent it by shifting jute from India to Geneva for resale in South Africa. In the English court, a contract as this could not stand, as its performance would mean doing an act in violation of the law of a foreign and friendly State and

would, therefore, militate against public policy and international comity. If the decree sought to be revised does stand, it would mean just so here.

18. Let this be not confused with the enforcing of a revenue or penal law of a foreign country. The distinction between enforcement and recognition of foreign law, revenue or penal, is fundamental. We do not sit here in our courts to enforce the penal or revenue law of Pakistan. That is one thing. And to the notice of such law in deference to public policy, as also international comity, is another. In (9) *Government of India v. Taylor*, (1955) A.C. 491, our Government was out to recover, by an action in England, a large sum of income tax for capital gain by sale of business in India. The action failed. That is enforcement of foreign revenue law, and by a foreign State too. That is what cannot be done under the private international law. At the same time, "on the ground that public policy demands the maintenance of harmonious relations with the nations, the courts will not countenance any transaction, such as a fraudulent tax evasion scheme, which is knowingly designed to violate a revenue law of a foreign and friendly State." (10) In *re Emery's Investment Trusts*, (1959) Ch. 410, and Cheshire: *Private International Law*, 6th edition, p. 158. In upsetting the decree, as I am going to do, I shall be doing no more.

19. In the case on hand, the bank is the debtor and Narayan is the creditor. Who seeks whom then? Generally speaking, no doubt, a debtor seeks his creditor. And the learned trial judge has gone by this. But when you open an account with a bank, the position is changed, and the creditor must seek the debtor. Narayan's security deposit account with the bank is a species of account too. So, a case as this forms an exception to the general rule stated above: (11) *The Delhi Cloth and General Mills Co. Ltd. Vs. Harnam Singh and Others*, still another case Mr. Roy Chowdhury cites.

20. And, going by the law laid down in the Supreme Court decision, no matter which test you go by-the *lex situs* or the proper law of the contract-the result come to is the same: that the bank cannot be made to pay Narayan his security money at this end.

21. "If a bank wrongly refuses to pay when a demand is made at the proper place and time, then it could be sued at its head office as well as its branch office, and, possibly, wherever it could be found." Bose J. observes so in paragraph 45 of his judgment in the (11) *Delhi Cloth Mills case* (*supra*). And Mr. Das relies on it. An approach as this merits two answers. First: Bose J., speaking for the Court, keeps it open:

"...though we do not decide that", as his Lordship says at the end of the Sentence quoted above. Second: upon evidence, I see no manner of a wrong refusal on the part of the bank. Theirs is an attitude above reproach throughout: "We admit, we owe the money to you. But it is impossible for us to pay the amount right here, because of the exchange control regulation. That, indeed, it is.

22. A jurisdictional error is, therefore, plain to be seen. The trial judge, in

recording a decree, has exercised a jurisdiction not vested in him by law. The Full Bench have blinked it too. In the result, the rule succeeds and be made absolute. The decree recorded by the trial judge and not interfered with by the Full Bench be set aside. The opposite party Narayan Ghose's suit be dismissed. In all circumstances here, each party do bear its costs throughout.