(1956) 05 CAL CK 0013

Calcutta High Court

Case No: Appeal from Original Order No. 67 of 1953

Ghanasyam Saha		APPELLANT
	Vs	
Pioneer Bank Ltd., (In liquidation)		RESPONDENT

Date of Decision: May 3, 1956

Citation: 60 CWN 999

Hon'ble Judges: Chakravartti, C.J; Sarkar, J

Bench: Division Bench

Advocate: Asoke Chandra Sen, for the Appellant;S.K. Hazra, for the Respondent

Final Decision: Allowed

Judgement

Chakravartti, C.J.

The appellant, Ghanasyam Saha. was a customer of the Pioneer Bark Limited, now in liquidation, and appears to have become so by opening an overdraft account in the Burra Bazar Branch of the bank on the 2nd day of December 1944. One of the terms on which the account was opened was that the appellant would be able to draw money to the limit of Rs. 25,000 and he hypothecated some pulses and grains in the bank''s godown as security for the loan on the same day the account was opened. The appellant also executed a Hundi for Rs. 25,000 by way, it would seem, of a further collateral security. What happened subsequently is somewhat obscure. On the 26th of August, 1948, the appellant admittedly executed two fresh Hundies, one for Rs. 20,000 and another for Rs. 5,000 in favour of the Pioneer Bank, but accepted the Hundies as payable at the Reserve Bank of India. The Hundies were endorsed by the Pioneer Bank in favour of the Reserve Bank. The appellant''s case is that the Pioneer Bank repledged the securities he had given to the Reserve Bank of India and that he was told of the transaction when, on the 13th of September, 1948, he went to the Pioneer Bank and offered to pay up the whole debt at once. On the next day, that is to say, on the 14th of November, 1948, the Pioneer Bank obtained an order for a moratorium. The appellant claims to have gone to the Reserve Bank on

the same date and offered to have his goods released on payment of the sum due from him, but his case is that as the Hundies were for Rs. 25,000, he was required by the Reserve Bank to) pay that amount. He did pay it on the 18th September, 1948, and obtained a release of his goods as also the cancellation of the Hundies. On the 25th of June, 1949, the Reserve Bank appears to have intimated to the Pioneer Bank that it had received from the appellant a sum of Rs. 24.825-5-6 and that the Pioneer Bank had been credited with that amount. The period of the moratorium expired on the 10th of July, 1949, but on the next day, a winding up older was made. The Pioneer Bank thus received advice of the credit that had been given to it by the Reserve Bank for Rs. 24,825-5-6 before the order for winding up. It is admitted on behalf of the bank that on the amount being applied to the satisfaction of the appellant''s debt, there was a surplus of Rs. 3.112-14-3 which stood to the appellant''s credit.

2. In the liquidation of the respondent bank, the appellant claimed for the payment of the whole of this; amount of Rs. 3.112-14-3 on the footing that he was entitled to be treated as the preferential creditor, Inasmuch as the security which had yielded the amount had been given for a specific purpose and, therefore, any surplus out of the proceeds of the security could not become a part of the general assets of the company, liable to distribution among the ordinary creditors. The application was resisted by the liquidator and Banerjee J. admitted the appellant only as an ordinary creditor of the Bank. Thereupon, the present appeal was preferred.

3. One of the difficulties of dealing with the case has been the obscure and confused way in which the facts have been presented in the petition. The liquidator who might be expected to give full and accurate details of the original transaction elected not to do so, but concentrated on the subsequent transaction of repledge as between the Pioneer. Bank and the Reserve Bank of India There was some argument before us as to whether or not the Pioneer Bank was at all entitled to repledge the securities given by the appellant to the Reserve Bank of India, but it seems to us that in the facts of the present case, it is not necessary to consider whether the Pioneer Bank had acted in excess of its rights. Whether or not the Pioneer Bank had a right to repledge the securities to the Reserve Bank of India, the appellant appears to have acquiesced in the transaction and, in fact, himself went to the Reserve Bank of India and, according to the statements in his petition, redeemed the pledge by paying off the Reserve Bank as the sub-pledge. The real question being the character of the surplus which the respondent bank now holds in its hands and which has admittedly come out of the release or realisation of the securities which be-longed to the appellant, it is not necessary to consider by what process the conversion of the securities into money took place or whether the process was warranted by either law or the rights of the two banks.

4. There can be no question that the sum of Rs. 3,112-14-3. which is now lying in the hands of the Liquidator of the respondent bank, has come out of the security which

the appellant furnished in connection with the overdraft account opened by him. The property out of which it has arisen was, therefore, originally his property. The terms on which that property had been given as security are set out in the appellant''s petition and have not been controverted by anything in the affidavit-in-opposition filed on behalf of the bank. It would appear that there was only an overdraft account and that the respondent bank agreed to grant the appellant advances up to the limit of Rs. 25,000 on the security of grains and pulses deposited in the bank''s godown and the further security of a Hundi for Rs 25,000. The meaning of the transaction, therefore, was that the respondent bank had been put into possession of the security in order that it might realise its debt out of the security, if necessary, and, conversely, that the only purpose for which security was given was to secure the debt under the overdraft account so that if there was ever any surplus after the security had been realised and applied to the satisfaction of the debt, it would be repayable to the appellant. There is no evidence that there was any other subsidiary term or condition.

5. The appellant''s case is that the respondent bank was placed in possession of the security for the specific purpose and, therefore, so much of the proceeds of the security, as had not been required for that specific purpose, is repayable either to him in specie or in the form of an amount of equivalent value and that in respect of the surplus, he is in the position of a preferential creditor. The proceeds of the security, he contends, cannot, in view of the terms on which the security had been furnished, ever become a part of the general assets of the company.

6. Mr. Hazra who appears on be-half of the Liquidator and is naturally anxious to have the amount for distribution among the general body of the creditors, if the law permits the same, relied upon certain passages in ''Paget''s Law of Banking.'' His contention, as far as I could understand him. was. first, that where securities were taken by a bank and there was a margin of value in excess of the liability to be covered, the nature of the security changed its character after realisation and, in respect of it, no fiduciary relation as might have existed in respect of the security itself subsisted after realisation. The reason for that rule, he contended, was that even when security was given for the purpose of securing a specific loan, a bank had a general lien on such security in respect of the debts owing by the same customer and, therefore, after realising a security given in respect of a specific loan, it would be entitled to retain the surplus or a sufficient part thereof in order to cover such further indebtedness. Mr. Hazra contended that if a bank had, under the Banking Law, a general lien on the surplus emerging after the realisation of a security given in connection with a specific loan, it could not be said that such security was given for a specific purpose or that in respect of such security, there was any relationship of a trust between the bank and the customer. In support of his argument Mr. Hazra cited before us, in addition to the passages from ''Paget''s; Law of Banking'' two decisions of the English Courts.

7. I would deal with the decisions first, because they do not seem to me to have any bearing on the question we have before us. The first case cited by Mr. Hazra was the case of Jones v. Peppercorne (1) [(1858) John. 430.= 70 ER, 490]. The facts in that case were that the owners of certain Dutch bonds deposited them with a banking company, for safe custody and the banking company, in fraud of the depositors, obtained a loan from certain brokers on the security of the bonds. The bank being unable to pay the brokers, the latter sole the bonds and the sale proceeds ware found to be larger than the amount of the debt in respect of which the bonds had been given as security. The "question which the Court had to decide in a suit by the owners of the bonds was whether, as between the banking company and the brokers, the latter were entitled to retain the surplus of the sale proceeds on the basis of a general lien in respect of whatever else might be due to them and whether the fact that the real owners of the bonds were the plaintiffs in the suit, made any difference. It appears that before the suit had been brought, the banking company had gone into liquidation. It was held by Vice-Chancellor Wood that the general lien would not be excluded by the special contract under which the bonds had been given as security, unless there was some term in the special contract inconsistent with the general lien of which there was none. It was accordingly held that the brokers were entitled to retain the surplus of the sale proceeds in their hands on the basis of their geneal lien and that in spite of the fact that the real owners'' of the bonds were not their debtors but certain third parties. I am entirely unable to see what use Mr. Hazra could hope to make of this decision. He pointed out to us that the banking company had gone into liquidation. So, it had, but the banking company in the case cited was not the party who was holding the security as in the case before us, but was, on the other hand, the party which had given the security. The true meaning of this decision was explained in the second case which Mr. Hazra cited, namely, In re London and Globe Finance Corporation (2) [(1902) 2 Ch. 416]. Buckley, J., as he then was, referred to the case of Jones v. Peppercorne (1) (supra) and observed that it had for long been regarded as having settled the law to the effect that brokers and bankers had a general lien on securities in their hands, as between themselves and the customer, for the balance due from the customer to the broker. Nothing else and nothing further was decided in either case. It is true that in ''Paget''s Law of Banking'' the learned author speaks of the termination of the fiduciary relation after the realisation of the security, but it must be remembered that the learned author is concerned with the Law of Banking and not with the effect of the winding-up of a bank upon moneys held by it on different accounts. Since the author was dealing with the broker''s lien to retain moneys belonging to a customer and not with any other subject, he was using the expression ''fiduciary relation'' only in the sense that when securities were given to cover a particular advance, the bank''s right to utilise the security might be limited to utilising for the purpose of realising that particular debt, so long as it remained a security, but subsequently, if the security was realised and a surplus emerged, it became liable to be retained in the hands of the bank because of the lien it had. The principle, it appears to me, can

be paraphrased by saying that although there may be a special contract by which a certain security may be given in connection with a certain loan, the Law of Banking will read into such a contract a larger contract and construe it as conferring a general lien on the bank to apply the security, if necessary, not only to the satisfaction of the particular debt in connection with which it was given, but also to the satisfaction of other debts, if there were any. That principle, to my mind, has no application and no relevance when the question is not whether the bank was entitled to retain the surplus on the basis of a general lien but the question simply is whether the bank having gone into liquidation and there being no evidence or even any case made that the customer owes any other debt to the bank, the surplus should be repaid to the customer or should be distributed among the general body of the creditors of the bank. Indeed, the principles referred to in ''Paget''s Law of Banking'', on which Mr. Hazra relied, themselves contain a refutation of his argument. All that the principle amounts to is that the banker may instead of paying over the surplus to the customer hold it at his disposal or retain it in, order to cover further indebtedness. It is perfectly clear that if the surplus is to be held at the disposal of the customer, it can only be the customer''s money and so again, if the money can be retained in order to cover further indebtedness of the customer, it must be retained as his money and kept available for satisfying his future indebtedness. The money is obviously even under the principle relied on by Mr. Hazra not the bank''s money, for there can be no meaning in saying that the bank would retain its own money or that it would cover with it the indebtedness of a customer. I am of opinion that no assistance in deciding the point in the present case can be derived from the principle of the general lien of the banker on which Mr. Hazra relied.

8. The position in this case appears to me to be plain. The security was given for the specific purpose which I have already stated. Either the security has since been realised, as the respondent bank contends or the debtor has redeemed the pledge from the sub-pledgee, as contended by the appellant. In either event the security has yielded a surplus which is now lying in the hands of the respondent bank. If the Reserve Bank had not given the respondent bank credit for the sum of Rs. 24,825-5-6 a different question might arise. But credit for that amount has been given to the respondent bank and the respondent bank must, therefore, be treated as having received the sum out of the securities deposited by the appellant. There is nothing to show and it is not even pleased that the account was a current account or that the terms under which the security was given included a term that if on realisation of the security it was found that there was a surplus after the payment of the debt, it would be credited to the appellant in his current account. Indeed, there is nothing to show that there was any current account at all. The statement in the petition is that the appellant opened an overdraft account and there is no reason to think that it was not merely a loan account. In any event, the bank has not even pleaded that there was any term authorising it to credit the surplus to the appellant

in his current account with the bank. I am referring to this matter, because Mr. Hazra wanted to place before us certain propositions of law regarding current accounts with banks. A current account being out of the way the surplus is being held by the respondent bank with no authority from the appellant to retain it, nor any right flowing from any general lien to retain it for application to other debts, since there is no evidence of any other debt. The securities, out of which this amount has arisen were given to the bank for a specific purpose and the money into which the securities were converted and now represents them is stamped with the same purpose. Nothing has been shown which affects that character of the money and that being so, it is impossible to see how it could become the property of the bank or a part of its general assets liable to distribution among the general body of ordinary creditors. In my opinion, in the facts of this case, the appellant is entitled to claim that he must be ranked as a preferential creditor in respect of the surplus of Rs 3,112-14-3.

9. For the reasons given above, this appeal is allowed. We set aside the order of Banerjee, J. appealed from and hold that the petitioner must be treated as a preferential creditor in respect of the sum of Rs. 3,112-14-3 and he is entitled to receive the said amount from the Liquidator on the aforesaid basis. The petitioner''s application will, therefore, be allowed in terms of prayer (a) subject to the modification that instead of Rs. 4,000 it will be Rs. 3,112-14-3 and the appellant will be entitled to be paid his dues'' pari passu with other preferential creditors.

10. The appellant will be entitled to his costs of this appeal and before the learned trial Judge. The Liquidator will be entitled to retain his costs of this appeal as also of the trial Court as between attorney and client out of the assets of the bank in liquidation in his hands.

Sarkar, J.

I agree