

(1950) 07 CAL CK 0022**Calcutta High Court****Case No:** None

Calcutta Commercial Bank, Ltd.
(in liqdn)

APPELLANT

Vs

Angus Keith and Co. and Others

RESPONDENT**Date of Decision:** July 20, 1950**Acts Referred:**

- Partnership Act, 1932 - Section 25

Citation: 55 CWN 302**Hon'ble Judges:** Banerjee, J**Bench:** Single Bench**Advocate:** Ranadeb Chaudhuri for the Petitioner Bank, for the Appellant; Subimal Roy, for the Respondent

Judgement

Banerjee, J.

In this application the Petitioner bank which is in liquidation claims to recover a sum of Rs. 76,146-10 from the Respondents. The first Respondent is a firm of which Respondents Nos. 2, 3 and 4 are partners. The Respondent No. 5 is the wife of Respondent No. 2, who guaranteed payment of the firm's liability.

2. The Petitioner further claims a declaration that certain shares mentioned in the petition" were charged for payment of the amount due to the Petitioner.

3. The Bank was incorporated under the Indian Companies Act and had its registered office at No. 15, Netaji Subhas Road. By an order of the 12th September, 1949, the Bank was wound up and Mr. Sudhindra Nath Bose, Barrister-at-Law, appointed the official liquidator. By another order, dated 23rd November, 1949, the liquidator was given power to institute suits and proceedings on behalf of the company.

4. At all material times for the purpose of business Respondent No. 1 had an account with the bank. That account is said to be a mutual, open and current account.

5. On or about 3rd July, 1946, there was an agreement between the parties that in that account Respondent No. 1 would be allowed an overdraft up to the limit of Rs. 70,000 and that for that amount a promissory note would be executed by the partners of the firm and the Respondents would deliver certain shares to and assign certain fixed deposits in favour of the bank which Respondents Nos. 2 and 3 had in the bank, to secure the overdraft account. It was further agreed that the overdraft would be repayable on demand with interest at the rate of 4 per cent, per annum with monthly rests in the account and the usual banking charges.

6. On the same day the partners of Respondent No. 1 executed the promissory note in suit for Rs. 70,000 and deposited the shares mentioned in the petition with and assigned the fixed deposits to the bank to secure the amount due on the overdraft account. The Petitioner claims that the sum due in the account is Rs. 76,146-10 and for this sum the bank claims a decree.

7. The application is under sec. 45B of the Banking Companies Act, 1949, as amended by the Act of 1950. The application is opposed by the Respondents. Respondent No. 2 has affirmed an affidavit, dated 23rd June, 1950, which is relied on by all the Respondents. In this affidavit it is alleged that it had been agreed between the Bank and the Respondents Nos. 2 and 3 that on the maturity of the said fixed deposits, the amount due on them would be credited in the overdraft account and appropriated by the bank in reduction of the Respondents" liability. It is further alleged in the affidavit that the fixed deposits matured on 7th March, 1948, and the bank wrongfully failed to appropriate the same towards the amount due on the overdraft.

8. The Respondents, however, made no attempt to prove the agreement.

9. It is not disputed that the fixed deposits have matured. Respondents" Counsel contend as a matter of law that they are entitled to set off the amount of the fixed deposits against the bank"s claim.

10. The matter has been argued as a pure point of law. Counsel for the Petitioner referred to certain authorities in support of his contention that no such set off is permissible. On the other hand Respondents" Counsel referred to a recent decision of the East Punjab High Court. New Bank of India x. Banwari Lal A. I. R. (1949) E. P. 887. In that case it has been held that a debt due to joint creditors cannot be set off against separate debt due from one of the joint creditors but debt due to one of two or more persons can be set off against the sum due from them where their liability is joint as well as several In re: Pemington and Owen, Ltd. (1925) 1 Ch 825 was relied on. In that case [In re: Pemington and Owen, Ltd. (1925) 1 Ch 825] in the winding up of a company the liquidator sought to set off against a debt due by the company to

a creditor a debt alleged to be due to the company by a partnership firm of which the creditor was a member. It was held that the alleged debt of the partnership firm being a joint and not a joint and several debt could not be set off against the separate debt due by the company to the partner.

11. The ratio of the decision is that a joint debt cannot be set off but a joint and several debt can. It is well settled that a debt due to joint creditors cannot be set off against a separate debt due from one of the joint creditors. In *Middleton v. Pollock* (1875) 20 Eq, 515, Sir George Jessel, M. R., said:

12. I do not know of any right of the joint creditors to set off as against the joint owner the several debt of one of the joint creditors". But this case has no application to the case of a joint and several debt. The case before me is not a case of joint debt. It is a joint and several debt of the partners.

13. According to sec. 25 of the Partnership Act, every partner is liable jointly with all the other partners, and also severally. It follows that any sum due to one of the partners in a firm from a company in liquidation can be set off against the debt due to such company from the firm. This view has been taken by Gentle, J., in *D. Sundera-vardan v. Narasimhachari A. I. R.* (1940) Med 266 and by Ven-kataraman Rao, J., in *Inre: Travancore National and Quilon Bank. Ltd. A. I. R* (1941) MEd 651.

14. I respectfully adopt the views expressed by these learned Judges of the Madras High Court and the East Punjab High Court.

15. I therefore, allow the set-off. It has been agreed by Counsel that after giving the set-off the amount due to the bank is Rs. 41,640 including interest up to 20th July, 1950.

16. There will be a decree for that amount with interest at 6 per cent, per annum. The Petitioner is entitled to the costs of this application. I also make a declaration and order for sale in terms of prayers in the petition.