

PRIVY COUNCIL

State Aided Bank of Travancore, Ltd.

Vs.

Dhrit Ram

P.C.A.No.5 of 1941

(Lords Atkin, Thankerton, Romer, Sir George Rankin and Sir Sidney Abraham JJ.)

06.11.1941

JUDGMENT

LORD ATKIN J.

1. This is an appeal by the defendants from a decree of the Appellate Division of the High Court of Bombay affirming a decree of Wadia J. in the High Court in favour of the plaintiff. The dispute involves a relatively simple question arising in the business of banking. The defendants, who will be called hereafter the bank, are a company incorporated according to the laws of the State of Travancore and apart from a branch office in the State of Cochin have their head and only office at Alleppey in that State. They have no branches elsewhere. In September 1936, the plaintiff, who resided and was in permanent employment in Bombay, wrote to the bank at Alleppey asking for the rate of interest allowed on fixed deposit. On 5th September 1936, the Bank wrote back stating that their present rates of interest for deposits of six months, one year, and two or more years were 4 per cent., 5 per cent., and 5? per cent., respectively. Remittance may be made towards credit of our account with the National City Bank of New York, Bombay, and the same will be accepted by us at par. and interest allowed from the date on which credit will be afforded to our account at that end. Enclosed please find the necessary opening forms for fixed deposit account which please return duly completed and signed on remittance being made." On 1st October 1936, the plaintiff paid Rs. 11,000 to the account of the bank in the National City Bank of New York, Bombay, filled up the Bank's opening form, and wrote to the bank at Alleppey enclosing the executed form and also the specimen signature card and requesting the issue of a fixed deposit receipt for two years in his name. The opening form is in the following term :

Place: Bombay.

Dated 1.10.1936.

The Manager.

The State Aided Bank of Travancore Ltd.,

Alleppey.

Dear Sir,

Please receive the sum of Rupees Eleven thousand only sent herewith as per detail below :

Cash.

Notes.

Cheque, Bills, etc. 11,000 credited to your

account in the National City

Bank of New York, Bombay.

Total Rs. 11,000

as a fixed deposit repayable 24 months after, bearing interest at the rate of 5% per cent. per annum as per your rules and issue a receipt in the name of Mr. Dhrit Ram, Senior Auditor's Chief Auditor office, G. I. P. Railway, Bombay V. T. The specimen signatures are also attached.

Your? faithfully,

Signature:-Dhrit Ram.

Full Address as given above.

If the deposit is in more than one name, please say if it is a joint or either survivor deposit. Specimen Signature:

1. Dhrit Ram.

2. Dhrit Ram.

3. Dhrit Ram.

On 6th October the bank wrote enclosing the deposit receipt "with effect from the 1st inst." The deposit receipt is in the following form :

THE STATE AIDED BANK OF TRAVANCORE, LIMITED.

RECEIVED from Mr. Dhrit Ram. Bombay Rupees Eleven thousand only as a Deposit repayable two years after date with interest at the rate of five and half per cent. per annum.

FOR THE STATE AIDED BANK OF TRAVANCORE LTD.

Sd.

MANAGER.

Ented, Sd.

Accountant.

"Interest will cease at the expiration of two years when this receipt must be sent in for payment or renewal endorsed by the depositor. No notice will be issued by the Bank.

2. There was a difference of opinion in Bombay as to the documents constituting the contract, the trial Judge holding that the Bank's letter of 5th September was an offer accepted by the plaintiff by paying the money to the New York Bank and sending the opening form. The Chief Justice quite rightly thought that the letter of 5th September was merely a quotation of business terms and that the contract was made by the offer by the plaintiff in the opening form accepted by the Bank by the issue of the deposit receipt. He therefore held, and their Lordships have no doubt rightly held, that the contract of deposit was made at Travancore. A similar transaction took place in March 1937, when similar documents passed: the deposit in this case was for Rs. 4000 for one year at 5% per cent. Interest was paid by the Bank to the depositor on four occasions at the fixed terms by sending him a cheque on a bank in Bombay, only in one case on the New York Bank. In March 1938, when the second deposit of Rs. 4000 became due the bank was in difficulties, and a correspondence followed, the plaintiff asking for payment, the bank putting him off. Later, in 1938, creditors' petitions were presented to the Travancore Court for winding up the bank, while the bank obtained time from the Court for the purpose of getting its approval to a scheme of arrangement: all proceedings against the bank were stayed meanwhile. On 3rd March 1939, the Court at Alleppey having before it proof of duly advertised meetings of creditors and that the scheme of arrangement had been approved by a majority of more than three-fourths in value of the creditors present in person or by proxy, approved the scheme and declared it binding on the Bank and all its creditors. In substance the creditors were given fully paid preference shares of 50 rupees nominal value on the full amount due to them with an option to take 25 per cent. in cash and a charge on all the then assets of the bank to secure the repayment of their debts.

3. If the plaintiff is bound by this arrangement it would afford, as pleaded, a good defense to the present action, which was commenced in Bombay on 15th December 1938, to recover the two sums of Rs. 11,000 and Rs. 4000. There appears to have been no evidence before the Court as to the terms of the bank's constitution as a company, as to the meaning of the State aid referred to in its title or as to the provisions of the company law in Travancore. It is however conceded that by the law of Travancore the order of the Court makes the scheme of arrangement binding on all creditors wherever situate : and -apart from the question of jurisdiction of the Bombay High Court which

will be mentioned later -the only question argued in the Courts in India and before us was whether the contract between the parties was governed by Travancore law. Their Lordships therefore proceed to determine the case on this footing, and express no opinion on any question that might arise as to the effect of a scheme of arrangement valid by the law of the domicile of such a company as this. The law which governs a contract depends upon the intention of the parties express or implied. There is no intention expressed in these documents and the Courts are left to infer the intention by reference to considerations where the contract was made and how and where it was to be performed. The learned Chief Justice, though he came to the conclusion that the contract was made at Travancore, was of opinion that it was to be performed, i. e., discharged, at Bombay. Their Lordships cannot agree. With the greatest respect to the Chief Justice he does not appear to have given sufficient weight to the fact that this is a banking transaction entered into at the only office of the bank where in ordinary matters banking business of this kind has to be completed.

4. The decisions in *Rex v. Lovitt* and (*Com. Cas. Joachimson v. Swiss Bank Corporation*) establish in the case of fixed deposit and current account, respectively, where payment is to be made. In the present case the terms of the deposit receipt which plainly form part of the contractual documents providing that the receipt must be sent in for payment, i. e., to Travancore, point strongly to payment at Travancore where, it must be remembered, the books of the bank are and where the signature card is kept, and where any cross-claims by the bank would be known. The Chief Justice appeared to think that because payment of the deposit was made to the Bank's agents in Bombay it was reasonable to hold that repayment was to be made by the same means as the original payment. But in the meantime the depositor might have changed his residence to other parts of India or abroad and the Bank might have changed its agents in Bombay or ceased to have any. It would seem remarkable that as a matter of legal right the bank could refuse to repay the depositor at Travancore, or the depositor, if at Travancore, insist on being paid in Bombay. The initial quotation of business terms in the letter of 5th September 1936, that remittance might be made to credit of the defendant bank at the National City Bank of New York, and "will be accepted by us at par", can presumably only mean that the payment will be treated as a payment to us at Travancore. The fact that the interest payments were made by a cheque on Bombay appears to have very little bearing. No doubt as a matter of banking facilities such payments would so be made, just as it is highly probable that if the bank had continued a prosperous existence it would have paid off the deposits in a similar manner. But this throws no appreciable light on the strict legal position. When

consideration is being given to the question, what law did the parties intend to govern the contract ? it seems proper to bear in mind that the promisor is a bank incorporated under Travancore law with apparently some connexion with the State of Travancore, and governed as to its business by any law of Travancore that may affect banking, including laws, if any, as to interest, limitations on borrowing legal tender and the like. It seems highly improbable that such an institution would contemplate making contracts part of which would be governed by the law of Travancore and part by the law of the place of residence of its customers or debtors. But whatever importance should be attached to this, their Lordships come to the conclusion that not only the place where the contract was made but also the place where the contract was to be performed was Travancore and that the law of that State governs the transaction. The defendants, therefore, were protected by the terms of the e scheme of arrangement. It has become unnecessary on this view to discuss the question of jurisdiction. It is indeed possible that the controversy between the parties might be resolved by reference to the bank's rules, referred to in the opening form, and apparently therefore incorporated in the contractual terms whether the plaintiff saw them or not. But, on the rules being tendered in evidence, the trial Judge rejected them, but whether because the plaintiff- had not received them, or on the ground that they were not formally proved by any Bank witness to be the rules referred to, is not clear. No objection was taken to the Judge's decision and the rules were not referred to in argument before the Appellate Division or this Board. Their Lordships will humbly advise His Majesty that the appeal be allowed, the decrees in the High Court be set aside, with costs, and that the suit be dismissed. The respondent must pay the costs of this appeal.

Appeal allowed.

Cases Referred.

((1912) 1912 AC 212 : 81 LJ PC 140 : 105 LT 650 : 28 TLR 41,

1921) 3 KB 110 : 90 LJ KB 973 : 125 LT 338 : 26

196 : 65 SJ 434 : 37 TLR 534,