

Ram Janki Devi and Another

Vs

M/S. Juggilal Kamlatpat

Civil Appeal No. 2151 of 1966

(G. K. Mitter, A. N. Ray JJ)

28.01.1971

JUDGMENT

RAY, J. -

1. This is an appeal by certificate from the Judgment and decree, dated August 3, 1965, of the High Court of Allahabad decreeing the respondent's suit for the sum of Rs. 4,11,367.92.
2. The respondent filed the suit on May 16, 1953, against the appellant for the recovery of Rs. 4,11,367.92 with interest and costs.
3. The respondent's case in short was that the respondent on September 30, 1942, deposited a sum of Rs. 4,00,000 with M/s. India Supplies whereof the appellants were the partners on the condition that interest would be payable @ 7/9 per cent. per month and that the respondent would be entitled to withdraw the deposit on demand.
4. The suit was filed in the Court of the First Civil Judge, Kanpur. The evidence was concluded before the Civil Judge, Kanpur. Thereafter by an order, dated May 12, 1964, of the High Court at Allahabad the suit was transferred to the High Court in its original civil jurisdiction. The High Court heard the suit and on August 3, 1965, decreed the suit in favour of the respondent.
5. At the trial the issues were first whether the respondent deposited the sum of Rs. 4,00,000 with the appellant and secondly whether the suit was barred by time.
6. The entire controversy in the suit is whether it was case where money was deposited under an agreement and that it was payable on demand or whether it was a case of an ordinary loan of Rs. 4,00,000. The respondent contended that Article 60 of the Indian Limitation Act, 1908 was the relevant Article because it was a case of money deposited under an agreement that it was payable on demand and therefore the limitation would commence from the date of demand and the suit was filed within three years from the demand. The rival contention of the appellant was that it was money lent under an agreement that it was payable on demand and the loan was made on December 30, 1942 and therefore the suit not having been filed within 3 years from the date of the loan under Article 59 was barred by limitation.
7. In the year 1942 Kailashpat Singhania and Pushpa Devi, wife of Lakshmiapat Singhania, were partners of India Supplies along with the defendants. Defendant Ram Janki Devi is the wife of Ratan Gupta and the other defendant Lal Ram Gopal Gupta is a brother of Ram Ratan Gupta and married Padampat Singhania's sister's daughter. The Singhania group and the Gupta group were the

partners of India Supplies. The Singhanias and the Gupta groups were also both interested in the business of Lakshmi Ratan Cotton Mills. The evidence on behalf of the respondent is that Lakshmi Ratan Cotton Mills a limited Company acted as financiers and bankers of India Supplies. In the year 1942, Lakshmi Ratan Cotton Mills was the creditor of M/s. India Supplies for the approximate sum of Rs. 4,00,000. Lakshmi Ratan Cotton Mills was a debtor to the respondent for the approximate sum of Rs. 4,00,000. Lakshmi Ratan Cotton Mills demanded the sum of Rs. 4,00,000 from India Supplies. India Supplies could not repay Lakshmi Ratan Cotton Mills. Thereafter India Supplies proposed that the respondent should deposit a sum of Rs. 4,00,000 with India Supplies to wipe out the indebtedness of India Supplies to Lakshmi Ratan Cotton Mills. The respondent accepted the said proposal and thereafter a letter, dated September 29, 1942, was written by Ram Ratan Gupta head of the Gupta group on behalf of India Supplies to the respondent recording the agreement that "a sum of Rs. 4,00,000 should be debited to India Supplies as deposit at the usual rate of interest as agreed upon". The respondent was to place to the credit of Lakshmi Ratan Cotton Mills a sum of Rs. 4,00,000 in its account with the respondent thus reducing the indebtedness of Lakshmi Ratan Cotton Mills from Rs. 9,00,000 to Rs. 5,00,000. Disputes and differences arose between the two groups thereafter. In 1944 there was an arbitration award. The Singhanias went out of both India Supplies and Lakshmi Ratan Cotton Mills and the Gupta group carried on both the businesses.

8. One of the books of account of the respondent, namely, the Roznamcha (daily book) under the Entry 30, September, 1942, shows that according to the letter of India Supplies the sum of Rs. 4,00,000 was deposited in the name of India Supplies. The other books of account of the plaintiff are Khata (ledger) and Nakalbahi (journal). The respondent also relied on the pass book entry being Ex. A-4 which shows that a sum of Rs. 4,00,000 was withdrawn on September 30, 1942, by the appellant from the respondent as a banker and along with the interest from time to time the amount of Rs. 4,00,000 stood with the appellant in the deposit account. The balance-sheet of the appellant as on June 30, 1943, being Ex. A-4 showed that a sum of Rs. 4,00,000 was unsecured loan from the respondent.

9. Counsel on behalf of the appellant contended that the use of the word 'deposit' by itself occurring either in the Roznamcha or in the letter, dated September 29, 1942, written by Ram Ratan Gupta would not be decisive of the question whether it was a case of deposit of the sum of Rs. 4,00,000 by the respondent with the appellant under an agreement that the same would be paid on demand. At one stage in the proceedings there was a controversy as to whether Ram Ratan Gupta had authority to bind the appellant by the letter, dated September 29, 1942. There is evidence that Ram Ratan Gupta looked after the business of the appellant and acted on behalf of the firm of the appellant in ordinary mercantile transaction. Counsel for the appellant in all fairness did not question the authority of Ram Ratan Gupta to bind the firm of the appellant.

10. It was said by counsel for the appellant that there were six principal reasons to indicate that it was a case of an ordinary loan of Rs. 4,00,000 and not an instance of the sum of Rs. 4,00,000 being deposited by the respondent with the appellant under an agreement that the same would be paid on demand. The primary and pre-eminent point emphasized by the appellant was the background of the transaction between M/s. India Supplies on the hand and Lakshmi Ratan Cotton Mills on the other, that moneys were lent and advanced by Lakshmi Ratan Cotton Mills to India Supplies from time to time and all that happened was that in place of Lakshmi Ratan Cotton Mills the respondent became the creditor of the firm of the appellants. There was just a substitution of the credit-debtor relationship by substituting the respondent in place of Lakshmi Ratan Cotton Mills as the creditor. Secondly, it was said that there was never any payment of money in cash and adjustment entries were made in the books of the respondent. Thirdly, monies were not given notionally for the

convenience of the respondent banker. Fourthly, monies were required by the appellant for his own business because Lakshmi Ratan Cotton Mills refused to help the appellant any more. Fifthly, Ex. A-4 the pass book would show that it was a case of advance of Rs. 4,00,000 by the respondent to the appellant, and finally, the appellants were not bankers and therefore it was improbable that the respondents who were bankers would deposit with the traders the sum of Rs. 4,00,000.

11. Counsel for the appellant relied on the decision of this Court in V. K. A. Annamalai Chettiar and Another v. S. V. V. S. Veerappa Chettiar (AIR 1965 SC 12.) in support of the proposition that the answer to the question as to whether it was a loan or deposit would not depend merely on the terms of the document but had to be judged from the intention of the parties and the circumstances of the case. That is manifestly the correct approach.

12. The case of a deposit is something more than a mere loan of money. It will depend on the facts of each case whether the transaction is clothed with the character of a deposit of money. The surrounding circumstances, the relationship and character of the transaction and the manner in which parties treated the transaction will throw light on the true form of the transaction.

13. The Judicial Committee in Nawab Major Sir Mohammad Akbar Khan v. Attar Singh and Others (63 IA 279.) spoke of the distinction between the deposit and loan to be that the two terms were not mutually exclusive but that a deposit not for a fixed term did not seem to impose an immediate obligation on the depositor to seek out the depositor and repay him.

14. Though documents by themselves are not conclusive of the question they have the evidentiary value and if they corroborate the oral evidence the importance of the documents is magnified. The letter Ex. A-5 bears the date September 29, 1942 and is contemporaneous with the entire transaction between the appellant and the respondent. The letter was as follows :

"Messrs. Juggilal Kamlapat Kothl, Cawnpore,

Dear Sirs,

As per my talk with Sir Padampat I shall thank you to credit a sum of Rs. 4 lacs (Rupees four lacs only) to the account of Messrs. Lakshmi Ratan Cotton Mills Co., Ltd., and debit the same to the account of India Supplies as deposit at the usual rate of interest as agreed upon by the partners of the said firm.

Thanking you,

Yours faithfully, (Sd.) R. Ratan Gupta.###

The intrinsic evidence in the letter is that the sum of Rs. 4,00,000 was debited to India Supplies as deposit. The words "debited as deposit" were criticised by counsel for the appellant to be meaningless. Too much precision cannot always be expected in regard to use of foreign language by merchants and traders in their short memorandum. The character of deposit is an inherent impression in the writing. The Roznamcha refers to the letter and is therefore corroborative of the letter and the terms thereof. The letter further shows that the terms were agreed to by the partners of the firm, namely, the partners of India Supplies and of the respondent. The respondent's partner Padampat Singhania gave oral evidence and substantiated the terms of the letter and the respondent's case. Padampat Singhania was the person on behalf of the respondent who carried on the negotiations. His evidence was therefore important. The appellants did not examine themselves and

did not give any evidence challenging the oral testimony of the respondent's partner. On the contrary, the correctness of the letter Ex. A-5 was accepted by the appellant's witness Ram Ratan Gupta the author of the letter.

The Roznamcha entry was proved by Gopi Kishan Saraugi a Munim of the plaintiff. The Roznamcha entry was as follows :

"4,00,000 India Supply Ke Nam Asoj Badi Chhatt : 30-9-42 Lakshmi Ratan Cotton Mill Ki Chithi se apke nam bada deposit karyapanna 2486."

His evidence was that the books were systematically kept on 'mahajani' system in connection with the business. The witness proved the Khata, the Roznamcha and the nakalbahi entries. In cross-examination of Gopi Kishan Saraugi it was suggested that the entry under the date September 30, 1942, in the roznamcha was not written at the same time. The suggestion was that there was interpolation of the words "deposit karaya" in the Roznamcha entry. In cross-examination of Padampat Singhania questions were asked about the Rokar, Khata, Nakalbahi and Roznamcha entries. Padampat Singhania said that the entry of Rs. 4,00,000 was not recorded in the daily cash book but was recorded in the roznamcha. He also said that credit and debit entries were made in the roznamcha. Padampat Singhania said that the entries were made by Gopi Kishan Jaipuria who was in a dying condition at the time the witness gave evidence.

15. It was suggested to Padampat Singhania that the words "deposit karaya" in the Roznamcha entry were not written at the same sitting. Padampat Singhania denied that. Counsel for the appellant contended that in the absence of Gopi Kishan Jaipuria the account books were not proved. This is unacceptable for two reasons. First, the account books were shown in cross-examination of Padampat Singhania and questions were asked on the same. It is not open to the appellant to complain of lack of proof of account books when the documents are shown to the witness in cross-examination. Secondly, both Padampat Singhania and Gopi Kishan Saraugi spoke of the proper maintenance and keeping of books of account and that it was not possible to arrange the presence of the writer of the entry. Suggestion of tampering is a serious one. The original entries were called for from the High Court. We had occasion to look into the originals. We are in agreement with the High Court that the suggestion of fabrication is utterly unmeritorious. The words 'deposit karaya' appear without any doubt to have been written at the same time as the rest of the writing. It is in evidence that the reference to the page of the Panna under that entry was written later inasmuch as the page of the Panna was put on when the Panna book was written.

16. The most important documentary evidence of the appellant namely, their book of account was not produced. These books of the appellant would have shown how they treated the transaction, namely, whether it was a case of deposit or loan. The irresistible inference from the non-production of the books of the appellant would arise that they would have supported the respondent's case and that is why they were not produced. The appellant's contention that the background of the transaction was mercantile loan, would be a mere conjecture than a conclusion to be arrived at. The financial transactions between the respondent and Lakshmi Ratan Cotton Mills were running accounts. It would be more consistent to hold that by allowing India Supplies a deposit of Rs. 4,00,000 India Supplies would be relieved of the situation of repaying the money immediately. It is precisely because of the then inability of India Supplies to repay Lakshmi Ratan Cotton Mills that the parties resorted to the mode of having the use of the money by way of deposit. The transaction was between the appellant, the respondent and Lakshmi Ratan Cotton Mills. All figured in the transaction. A mere loan of Rs. 4,00,000 would not have sufficed the needs of the appellant who

were then unable to pay the dues of Lakshmi Ratan Cotton Mills.

17. Some of the partners of the appellant and the respondent in the year 1942 were common. It would be more explicable and natural course of events that monies would be kept in deposit with the appellant in order to enable them to have financial accommodation without immediate worry of repayment. The mere fact that money in specie was not paid would not be destructive of the case of deposit. The respondent acted as bankers. The way in which the respondent made entries in the pass book of the appellant is consistent with their Roznamcha, Khata and Nakalbahi books. It was not a case of the respondent giving loan to the appellant for the obvious reason that the history of the transactions between the appellant and Lakshmi Ratan Cotton Mills shows that the appellant had to be put on a footing of financial stability by giving the appellant the use of the sum of Rs. 4,00,000 for a long time. The absence of any negotiable instrument is significant. A Hundi or a promissory note would have been consistent with the case of a loan. The relationship between the parties, the surrounding circumstances at the time of the transaction, the pecuniary position of the appellant are all overwhelming features to corroborate the oral as well as the documentary evidence of the respondent that the amount was deposited with the appellant.

18. The award, dated January 18, 1944, has also a tale to tell. There were disputes between the partners of the various businesses in which the Singhanian and Gupta groups were interested. These disputes were before the arbitrators. One of the terms in the award was that the award in respect of Lakshmi Ratan Cotton Mills and India Supplies "do not cover the advances which either party or their separate firms may have made to all or any of them or their moneys which may be in deposit with them and they shall be payable and paid in their usual course". This direction in the award shows that there were advances which were in the nature of deposit and were not covered by the award. The award would have evidentiary value to show as to how the parties treated and understood their financial dealings.

19. It is also significant that when the respondent demanded the money by a letter, dated April 27, 1953 (Ex. 7) the appellant in their reply, dated May 5/6, 1953 (Ex. 6) totally denied the claim. The respondent set out all the facts of deposit of the money with the appellant. The appellant never said that it was a case of advancing loan. The non-production of the appellant's accounts coupled with the appellants staying away from the witness box indicates the inherent infirmities in the appellant's case.

20. Counsel for the appellant contended that there was a demand for a part of the amount in the year 1943 because Padampat Singhanian said that there was demand in the month of October, 1943 and therefore limitation would start from that date. The view of Calcutta, Bombay and Madras High Courts is that there must be an unqualified demand for the whole sum before the limitation can start. In case of demand for return of the amount deposited. (See *Jagendrannath Chakerbutty v. Dinkar Ram*, (AIR 1921 Cal 644.) *Motigouri v. Naranji* (AIR 1927 Bom 362.) and *Subbaih Chetty and Others v. Visalkshi Achi* (AIR 1932 Mad 685.). That is the correct position in law. Counsel for the appellant did not contend to the contrary in view of the consensus of opinion of the different High Courts. It is also important to bear in mind that a demand in the year 1943 for a part of the amount would not be effective because there were common partners in the firms of the respondent and the appellant.

21. For these reasons we are of opinion that the High Court was correct in decreeing the suit. The appeal therefore fails and is dismissed with costs.

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