

United Bank of India

Vs

Smt. Kanan Bala Devi and Others

Civil Appeal No. 1747 (N) of 1973

(G. L. Oza, V. Khalid JJ)

21.04.1987

JUDGMENT

KHALID J. -

1. This is an appeal by special leave filed by the plaintiff bank against the judgment of the Calcutta High Court, arising from Suit No. 547 of 1952, filed for recovery of a sum of Rs. 17,091-0-1 with interest. The question involved in this appeal is a short one, but of general importance to banks in the country. We have made it clear to the appellant bank that we are interested only in laying down the law in this appeal and not in giving a decree to the bank for this small amount the claim for which originated nearly 35 years ago. Learned counsel for the appellant bank has agreed to this suggestion.

2. The defendant in the suit was one Romesh Chandra Roy Choudhury. The plaintiff was the United Bank of India Ltd. The defendant had an overdraft account with the bank. He died on November 6, 1960. On December 20, 1960 the widow of the defendant, Smt. Kanan Bala Devi informed the Deshapriya Park branch of the bank of the death of the defendant. The bank had several branches in Calcutta. One of the branches was the Royal Exchange branch. It was this branch that had instituted the suit in question.

3. The applications for impleading the legal representatives of the defendant and for setting aside abatement were made by a chamber summons on August 8, 1968, about 8 years after the death of the defendant. The delay in making these applications was attempted to be explained on the plea that the Royal Exchange branch of the bank had no knowledge of the death of the defendant till the Deshapriya Park branch was informed it about the death. The High Court rejected the applications holding that

... In our opinion, it is no explanation to say that the Royal Exchange branch of the plaintiff bank which had really instituted the suit could not and/or did not have knowledge of the death of Romesh Chandra Roy Choudhury. An intimation of the death of Romesh Chandra Roy Choudhury to the bank in its Deshapriya Park branch could not be treated as no intimation to the bank which happens to be the plaintiff in this suit. In our view, no sufficient cause was shown in the petition for setting aside the abatement and the learned judge was right in dismissing the said application.

The appeal, therefore, fails and is dismissed

Hence, this appeal.

4. The learned counsel for the appellant submits that it would be extremely dangerous for courts to impute knowledge of the death of a customer with all the branches of a bank, solely on the strength of information given to a particular branch of the bank. It is submitted that in these days when banking business has expanded by leaps and bounds with branches spread over large areas, it would not be possible for a particular branch to know the death of one of its customers if that branch had not been informed of the death. In the absence of highly technical modern methods of computerised information to all the branches about their customers and their details, no branch of a bank can be presumed to know whether a particular customer is alive or not unless the bank is given necessary information.

5. The submission that all branches of a bank should be imputed with constructive knowledge of the death of a customer simply because one of the branches had been informed of it would result in adverse consequences and would defeat actions by banks for recovery of dues and would work great loss to banks and would harm public interest. In this case, it is not stated or proved that the Royal Exchange branch had information earlier about the death of the defendant. To prove this, we have two letters produced by the appellant : (1) dated June 3, 1968, and the other dated June 17, 1968. The two letters read as follows :

10 Old Office St., CalcuttaM/s. S. N. Sen & Co. June 3, 1968. Dear Sir, United Bank of India Ltd. v. Romesh Chandra Roy Choudhury.##

As I have not yet been able to make contact with my client until now in spite of my attempts in that behalf, please do not mention the suit tomorrow but mention the suit some time next week. The suit was part heard about 9 or 10 years before and my client has not been seen since then. I hope you will mention the suit next week on previous notice to me.

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Yours faithfully,

Sd/- K. P. MystifyM/s. S. N. Sen & Co. June 17, 1968.

Dear Sir, Suit No. 547 of 1952 United Bank of India Ltd. v. Romesh Chandra Roy Choudhury

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Kindly note that when the above suit will be mentioned by you before his Lordship the Hon'ble Mr. Justice R. M. Dutt, I will submit before his Lordship that as the defendant died in 1960, the suit has abated and cannot be proceeded with.

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Yours faithfully,

Sd/- K. P. Mustaphy

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6. Both the letters are written by counsel for the defendant to the bank. It is evident from the first letter that even on June 3, 1968, counsel for the defendant did not know about the death of the

defendant. It was only thereafter that he came to know of the same.

7. This branch of the law appears to be barren of authority. A question akin to this is reported in 1989, *The Time Law Reports*, Volume 35, page 142. The brief facts are as follows :

The plaintiffs' claim in the suit was on a cheque for pound 100, dated February 5, 1918, drawn by the defendant and made payable to the order of a Mrs. N. Try, who endorsed it to the plaintiffs. The defendant obtained leave to defend. The bank had a branch at Victoria Street, Westminster, of which the manager was Mr. Stephen Trott. Among their customers was Mrs. Try. The bank had a branch at the Oxford Street and she asked the manager to cash it. The amount was paid. The manager had no notice that the cheque had been stopped. The cheque when presented by the Victoria Street Branch to the Oxford Street Branch was returned marked "Ordered not to pay". The cheque was stopped by a letter from the defendant to the Oxford Street Branch. That letter was undated.

8. It was under these circumstances that the action was brought. The question was when the drawer of a cheque stops payments by a notice given only to that branch on which it is drawn and the payee afterwards endorses the cheque to another branch of the same bank and the manager of that other branch advances money on the cheque in good faith and without notice that the cheque had been stopped, whether the bank is entitled to recover against the drawer in an action on the cheque. Here it was clear that the cheque was stopped on the Oxford Street branch and that there was no notice yet at the Victoria Street branch when the cheque was presented. It was held that the bank was the holder of the cheque and the fact that the branch at Oxford Street had notice not to pay the cheque did not affect the bank and, therefore, the bank was entitled to relief. It was observed that there was a right to a separate notice of dishonour as between the different branches of a bank.

9. Though this judgment is not on all fours with our case, we seek some assistance from it for our purpose and that limited purpose is that notice to one branch of a bank is no notice to the other branches. That being so, the fact that the Deshapriya Park branch had knowledge of the death, will not be sufficient to impute the Royal Exchange branch with constructive notice and reject the applications to set aside abatement and to condone delay.

10. Of course, the law under the present Civil Procedure Code obviates this difficulty to some extent under Order 22, Rule 10A. Under the rule, when a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the court about it, whereupon the court shall give notice of such death to the other party. However, this provision not being absolutely mandatory and casts a duty only on the pleader, we thought it necessary to answer the question of law involved in this appeal.

11. For the foregoing reasons, we hold that the High Court was in error in rejecting the application to set aside abatement and to condone delay on the plea that notice to one branch will be notice to other branches.

12. We set aside the judgment of the High Court and allow this appeal with no order as to costs. As indicated above, the matter will rest here and the bank will not be permitted to proceed against the defendant or his legal representatives to realize the amount involved in the suit. The amount will be deemed to have been fully discharged. We have decided the question of law only for the benefit of the banks and general public.

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