

BOMBAY HIGH COURT

Motigavri

Vs

Naranji Dwarkadas

(Kemp, J.)

25.03.1926

JUDGMENT

Kemp, J.

1. The defendant was the agent of the Jivraj Baloo Mills. The plaintiff and her deceased husband were creditors of that Mill to the extent of Rs. 20,000. On January 19, 1910, the defendant passed a havala for the debt due by the Jivraj Baloo Mills to the plaintiff and her deceased husband. The defendant passed a receipt on that day which is in these terms;-

Received from Manecklal Amritlal Dave Esq. and his wife Bai Motibai the sum of rupees twenty thousand only being the amount in current account.

2. There is a balance of Rs. 8,000 odd due on that account at the date of the suit.

3. The plaintiff's husband died on or about April 13, 1910, and thereafter moneys were drawn against and payments made from the amount. The defence is that the suit is barred by limitation. The defendant contends that the amount was a loan under Article 59 whereas the plaintiff contends that it was a deposit under Article 60 of the Indian Limitation Act, and that in any case the defendant was, as regards the plaintiff, in the position of a banker.

4. The first point for determination is whether this transaction was a loan or a deposit, and in deciding this question I think the terms of the receipt and the manner in which the parties treated the transaction clearly show that it was not intended to be a loan. In the first place, it was a havala the amount of which was to remain in the defendant's firm. In the next place, the receipt describes the amount as "in current account", and if the transaction had been, as the defendant's learned counsel contends, a loan, we would not find any stipulation that it was to be drawn against as is suggested by the words "in current account." The ordinary stipulation one would expect to find would be that the whole amount was repayable either on demand or after a certain time or that it was repayable by installments. That is not the case here. Again the correspondence

shows that although the plaintiff had first demanded the whole amount, subsequently she was content with demanding smaller amounts and the defendant either paid the amounts so demanded or what he was able to pay or asked for time. Under the circumstances, I hold that the transaction was a deposit. Here some remarks are perhaps apposite as to the relation between a banker and his customer. The word "deposit" loosely used in my opinion in Article 60 covers all payments of the customer's moneys made to the banker which make up the credit balance in favour of a customer in the banker's hands. Strictly speaking, and in the language of bankers, a 'deposit' has a more limited meaning than the wide construction which I have given to the word in Article 60. Really a "deposit" and moneys paid in current account alike create the relationship of lender and borrower between the customer and his banker, but a deposit is money which remains either at call or for a fixed period or repayable on notice and the customer cannot operate upon the deposit. Nevertheless, in my opinion, Article 60 gives to the word 'deposit' the wider meaning which would include moneys paid to a banker in the current account. The period of limitation for such moneys is three years from the date when they are demanded. Whereas so far as an overdraft in the hands of a banker is concerned that would be merely a loan and not money deposited with the customer, and apparently the three years' period provided for in Article 59 would apply to such overdraft.

5. The next point is whether the defendant was, with regard to this plaintiff, in the relation of banker to his customer and, as is pointed out in *Bhimanna v. Venichand*¹, there is no necessity that the defendant should carry on only the trade of a banker. It suffices if, with regard to the particular transaction in suit, he was a banker as regards the particular plaintiff suing him. I think the receipt points to the fact that the defendant intended to treat these moneys as moneys which could be operated upon by the plaintiff which would create the relationship of banker and customer between the parties.

6. The third point is whether, having regard to my finding, the suit is barred by limitation? Now the plaintiff at first made demands for the whole amount. At least such demands seem to be implied from the defendant's letters of April 26, 1910, and July 22, 1910. But, subsequently, when the defendant was unable to repay the whole amount at once and adopted the procedure of making part payments and in some cases as, for example, in the orders referred to in the letters of March 27, 1911, and August 11, 1911, of paying the amount that was asked which was an amount less than the balance due on the account, that was a position which the plaintiff seems to have accepted and, therefore, the account really did become moneys in current account. It does not follow that because some of the requests which the plaintiff made for payment of part of the amount were not complied with or smaller amounts were paid under them the account ceased to have the character of a current account. The statements of account furnished by the defendant to the plaintiff from time to time further give the transaction the character of a transaction between a

banker and his customer. That being so, the date from which the period of limitation would run would be the date from which a demand for the balance due on the current account would be made, and that was from the plaintiff's solicitors' letter of April 4, 1925, the moneys being moneys which were deposited with the defendant, who in his relation to the plaintiff was a banker. Under the circumstances I hold that the suit is not barred.

7. There will be a decree as prayed.

Cases Referred.

1(1925) 28 Bom. L.R. 73