

APPELLATE CIVIL.

Before Guha and Bartley JJ.

BANK OF DACCA, LIMITED (IN LIQUIDATION)

1936
Mar. 20;
April 7.

v.

GOUR GOPAL SHAHA.*

Pledgor and Pledgee—Overdraft or advance by bank—Deposit of securities for advance, if pledge or loan—Use of securities by bank, if conversion—Sale of securities—Property in balance of sale-proceeds after payment of advances—Execution—Code of Civil Procedure (Act V of 1908), s. 47; O. XXI, r. 19.

Where a customer deposits securities in a bank for advances or overdraft, he is not merely a creditor of the bank but the transaction is a pledge and if the bank uses the securities for its own purposes, it is liable for their value as for conversion subject to the payment of the advances.

Neckram Dobay v. Bank of Bengal (1) relied on.

The Bank of Dacca, in liquidation, obtained a money-decree against a shareholder of the bank in respect of unpaid calls for shares allotted to him. The shareholder had an overdraft account in the bank and as security for the advances made to him had deposited certain G. P. Notes with the bank. These notes were, in turn, deposited by the bank, for its own purposes, with the receiver of the Bengal National Bank who sold them and sent the sale-proceeds to the liquidator of the Bank of Dacca. On an application by the liquidator for execution of its decree, the customer objected under s. 47 of the Code of Civil Procedure.

Held that the balance of the sale-proceeds after payment of the advances was the property of the customer and the decree should be satisfied out of this sum.

Krishnachandra Bhowmik v. Pabna Dhanabhandar Co., Ltd. (in liquidation) (2) relied on.

APPEALS FROM APPELLATE ORDERS by the decreeholder.

*Appeals from Appellate Orders, Nos. 2 and 3 of 1936, with Rule No. 206 (M) of 1936, against the orders of E. H. B. Baker, District Judge of Dacca, dated Sept. 6, 1935, affirming and reversing respectively the orders of Pratap Chandra Sen Gupta, Munsif of Dacca Central Court, dated July 24, 1935.

(1) (1891) I. L. R. 19 Cal. 322; (2) (1934) I. L. R. 62 Cal. 298.
L. R. 19 I. A. 60.

1936

Bank of Dacca,
Limited (in
liquidation)
v.
Gour Gopal
Shaha.

The facts of the case and arguments in the appeals appear sufficiently from the judgment.

Beereshwar Bagchi, Prakash Chandra Pakrasi, Jitendra Mohan Banerji and Nirmal Kumar Sen for the appellant.

Naresh Chandra Sen Gupta, Binayendra Prasad Bagchi and Radhika Ranjan Guha for the respondents.

Cur. adv. vult.

The judgment of the Court was as follows :—

Appeal No. 2 of 1936.

This appeal has arisen out of an application under s. 47 of the Code of Civil Procedure made by a person in the position of a judgment-debtor, against whom there were orders for recovery of money passed in favour of the Bank of Dacca (*in liquidation*) in respect of unpaid calls for shares allotted to him. The applicant raising objections under s. 47 of the Code is the respondent in this appeal. He had an account with the Bank of Dacca, and as security against overdraft, had deposited G. P. Notes. These notes were deposited by the Bank of Dacca with the Bengal National Bank and were sold by the receiver appointed by the Court for the Bengal National Bank, and the sale-proceeds after certain deductions made therefrom on account of dues of the Bank of Dacca to the Bengal National Bank, were sent to the liquidator of the Bank of Dacca. The amount received by the liquidator exceeded the sum realisable from the respondent under the balance order put into execution. The objections to execution raised by the respondent related to the position that the liquidator of the Bank of Dacca seeking to execute the balance order should meet the decretal dues out of the amount recovered from the receiver of the Bengal National Bank, which was the objector's property, being trust money which could not be applied for any purpose

other than that for which the G. P. Notes were deposited. The contention of the debtor under the balance order was that money in the hands of the liquidator would fully satisfy their liability under the balance order and the execution should not therefore be allowed to proceed. The liquidator of the Bank of Dacca, on the other hand, asserted that the applicant under s. 47 of the Code of Civil Procedure was only a creditor of the bank, and his objection by way of set-off was not maintainable.

1936
*Bank of Dacca,
Limited (in
liquidation)*
v.
*Gour Gopal
Shaha.*

The learned District Judge in the Court of appeal below, in affirming the order passed by the Court of execution, held that, on the facts and in the circumstances of the case, the Bank of Dacca was trustee in respect of G. P. Notes deposited by way of security for advances; that the debt of the bank could be squared without taking the matter into Court at all, that the case was not one of set-off or of a contributory claiming a deduction before a share out among the creditors. The respondent was not, according to the Judge, in the position of a creditor, but was entitled to enforce his ownership of the Government Promissory Notes deposited with the bank.

It appears that on August 13, 1931, the respondent addressed a letter to the liquidator of the Bank of Dacca mentioning the G. P. Notes deposited by him as security for advances, and claiming the amount covered by the same with interest up to date. There is a note on the letter showing that Rs. 5,601-7-10 was the amount the respondent was entitled to get from the bank.

It may be noticed that in view of the use of the word "trustee" in the judgment of the Courts below, which appears to us to have been used in a very general way, a great deal of time was taken by the learned advocates representing the parties to this appeal for explaining the position created by the

1936
 Bank of Dacca,
 Limited (in
 liquidation)
 v.
 Gour Gopal
 Shaha.

deposit of G. P. Notes as security for advances or overdrafts. The position was debated before us, with reference to some decisions of Courts in England, practically without reference to the facts of the case before us, and without consideration for a position which may be taken to be well-established now. The relationship of banker and customer is generally that of agent and principal, of debtor and creditor or of pledgor and pledgee; there are, however, cases where the banker stands in the relation of trustee as well as agent for his customer, as for example in the case of securities lodged for safe custody; the banker is not entitled to sell or pledge them, and must be prepared to hand back the identical securities deposited; should he convert them to his own use, he becomes criminally liable. See Sykes on Banking, 6th Ed. pp. 126-127. As has been mentioned in Paget's Law of Banking, the relation of banker is primarily that of debtor and creditor, and observations of Jessel M. R. in *Re Hallett's Estate*. *Knatchbull v. Hallett* (1) do not affect the general rule. The banker is not a trustee for the customer in respect of money paid in or responsible to him for the use he makes of it; but the position is not the same where, as in the case before us, the banker uses the securities deposited with him for his own use, and where it is conversion of the securities for the purposes of the bank, and not for the purpose of the customer. In the circumstances of the case before us, where securities were deposited as cover for advances, and for the purpose of securing overdrafts or advances, the transaction was strictly of the nature of a pledge (Paget, pp. 241-242), and this rule must be taken to be the rule guiding the relationship of a banker and a customer in the position of the respondent in this appeal, in view of the decision of their Lordships of the Judicial Committee in the case of *Neckram Dobay v. Bank of Bengal* (2). On the principles adopted in that case, and on the facts and

(1) (1880) 13 Ch. D. 696, 728. (2) (1891) I. L. R. 19 Cal. 322 (333);
 L. R. 19 I. A. 60 (67).

circumstances of the case before us, the Bank became liable for the value of the G. P. Notes, as for conversion. The Bank had converted the G. P. Notes to its own use, and was liable for the value of them, including interest on them. The customer was of course bound to pay the loans for which the G. P. Notes were security. The position taken up by the respondent in his letter to the bank in liquidation, dated August 13, 1931, mentioned above, was justifiable on principle and authority to which reference has been made, and the Judge in the Court below is right in holding that the respondent was entitled to enforce his ownership to the amount in the hands of the liquidator, after the sale of the G. P. Notes deposited in the Bank of Dacca as security to cover overdrafts or advances, after payment of loans from the bank for which they were security.

1936
 Bank of Dacca,
 Limited (in
 liquidation)
 v.
 Gour Gopal
 Shaha.

The question for consideration next is whether the respondent against whom execution was levied for realisation on unpaid share call-monies, in pursuance of a balance order made under the Indian Companies Act, was entitled to take up the position that the liquidator applying for execution should meet the decretal dues out of the amount in his hands, representing the sale-proceeds of the G. P. Notes, which is the respondent's own property. The Court of execution expressed the opinion that as soon as the respondent asserted, as he did, that the money in the hands of the liquidator was to be applied to the satisfaction of the decretal debt, the liquidator should have entered satisfaction of the decree, as the money in the hands of the liquidator was far in excess of the decretal amount. There was no question of set-off in the case. The Judge in the Court of appeal below agreed with the Court of execution in the above view of the case, and observed that the respondent simply sought to utilise his own property in the hands of the liquidator for the purpose of meeting the dues decreed against

1936
 Bank of Dacca,
 Limited (in
 liquidation)
 v.
 Gour Gopal
 Shaha.

him as a contributor. It was urged before us in support of the appeal by the liquidator that the question of set-off not having been raised in the liquidation proceedings, the respondent was not entitled to raise the question in the proceedings in execution started by the liquidator. There is no question that the provisions contained in O. XXI, r. 19 of the Code, relating to cross-claims, have no application to the case before us; but in our judgment those provisions cannot and should not be taken to be exhaustive in regard to questions arising for consideration under s. 47 of the Code of Civil Procedure, relating to execution, discharge or satisfaction of decrees. Their Lordships of the Judicial Committee of the Privy Council in the case of *Prosunno Kumar Sanyal v. Kali Das Sanyal* (1) prohibited placing a narrow construction on the language of the statute, and expressed the opinion that an enactment, the scope of which was to provide an expeditious procedure for trial of questions without recourse to a separate suit, should be used for the beneficent purpose of checking needless litigation and disposing of objection to execution as speedily as possible. In this connection we desire to express our entire agreement with the position indicated by this Court in the case of *Krishnachandra Bhowmik v. Pabna Dhanabhandar Co., Ltd.* (in liquidation) (2) that, on general principles and in the exercise of its inherent power, an executing Court can entertain and give effect to a claim to set-off, even in cases which do not come strictly under O. XXI, r. 19, C. P. C.

The result of the conclusion we have arrived at, as mentioned above, is that the order passed by the Courts below, against which this appeal is directed is affirmed; and this appeal is dismissed with costs. The hearing fee in this Court is assessed at two gold mohurs.

(1) (1892) I. L. R. 19 Cal. 683; (2) (1934) I. L. R. 62 Cal. 298.
 L. R. 19 I. A. 166.

The connected Rule, Rule No. 206(M) of 1936, is discharged. There is no order as to costs in this Rule.

1936
Bank of Dacca,
Limited (in
liquidation)
 v.
Gour Gopal
Shaha.

Appeal No. 3 of 1936.

The questions arising for consideration in this case is similar to those decided by us in Appeal from Appellate Order No. 2 of 1936. The point of difference as between this case and the other is that, in a letter to the liquidator, Bank of Dacca (in liquidation), the respondent mentioned that he was laying his claim to G. P. Notes deposited by him with the bank as security against overdraft, as creditor. There was also an endorsement on the letter showing that the respondent's claim was admitted.

The G. P. Notes deposited by the respondent as security were made over to the Bengal National Bank by the Bank of Dacca. The National Bank sold these notes, and after deduction of the major portion of the sale-proceeds in respect of the dues of the Bank of Dacca, the receiver of the National Bank sent the remainder of the sale-proceeds to the liquidator of the Bank of Dacca. The respondent, raising objection to the proceedings in execution for realisation of amounts due from the respondent in respect of unpaid share call-monies, sought to use the amount in the hands of the liquidator, towards the payment of the decretal dues, as shown in a balance order made in liquidation proceedings.

The questions arising for consideration in this appeal have been decided in our judgment in the other appeal No. 2 of 1936, and for the reasons stated in that judgment, this appeal must be dismissed, as in our opinion, the learned District Judge in the Court of appeal below, is right in holding that the mere use of the words "as creditor" in the letter referred to above, could not reasonably be taken to mean that the respondent abandoned his right of ownership in respect of property held by the Bank of

1936

*Bank of Dacca,
Limited (in
Liquidation)
v.
Gour Gopal
Shaha.*

Dacca for him. The word "trust" used by the Judge in this connection may not be strictly accurate, in view of the legal position created by the deposit of G. P. Notes as security for advances or overdrafts, and by the sale of the notes at the instance of the bank. It may also be noticed, as has been mentioned by the District Judge, in his judgment, the words "claim admitted" appearing on the letter addressed to the bank proves nothing, and could not result in the respondent's surrendering his rights of ownership in the amount recovered in respect of his G. P. Notes from the receiver of the National Bank by the liquidator of the Bank of Dacca or that the respondent had chosen to rank as a creditor. The respondent was not, on the facts and circumstances of the case, and on the decision given by us in Appeal No. 2 of 1936, mentioned above, entitled to enforce his right of ownership, and defeat the liquidator's claim in the proceedings in execution giving rise to this appeal.

The appeal is dismissed with costs; the hearing fee in this Court is assessed at two gold mohurs.

Appeals dismissed.

G.K.D.