

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Zafar Ali.

ALLIANCE BANK OF SIMLA IN LIQUIDATION
(PLAINTIFF), Appellant

versus

MOHAN LAL (DEFENDANT), Respondent.

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Oct. 19.

Civil Appeal No. 1653 of 1924.

Civil Procedure Code, Act V of 1908, Order VIII rule 6—Set-off—for money not “legally recoverable” by defendant and in respect of which he does not “fill the same character” as that in which sued—Indian Companies Act, VII of 1913, section 229—Provincial Insolvency Act, III of 1907, section 30—“Mutual dealings”—Different accounts—operated upon by the same person—but in different capacities—whether “mutual dealings”.

In a suit by the liquidators of an insolvent Bank against one of its constituents for the recovery of money due on his overdrawn personal account, the defendant claimed a set-off in respect of money standing to the credit of a different account, which had also been operated upon solely by him, but stood in the name of a partnership.

Held, that as the amount claimed by the defendant, even if ascertained, was not “legally recoverable” by him in the personal capacity in which he was sued, and as the parties did not “fill the same character” in the set-off as they did in the suit, the set-off could not be entertained under Order VIII, rule 6 of the Civil Procedure Code.

Held also, that under section 30 of the Provincial Insolvency Act, 1907, read with section 229 of the Indian Companies Act, the debt due by the Bank to the defendant’s firm and the debt to the Bank by the defendant personally, were not “mutual dealings”, and that the set-off claimed could not be allowed either in law or equity.

Mehr Chand v. Amritsar Bank (1), and *Gokhale v. Ramchandra Trimbak* (2), followed.

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Bishan Chand v. Babu Audh Bihari Lal (1), Raghavendra Raoji v. Yalgurad Ramchandra Padki and Co. (2), Maiden v. Bhodu (3), and Annapurnamma v. Akkayya (4), distinguished.

First appeal from the decree of S. L. Sale, Esquire, Senior Subordinate Judge, Simla, dated the 18th March 1924, directing the defendant to pay to the plaintiffs the sum of Rs. 389-0-10.

AZIZ AHMAD, OBEDULLA AND MOHAMMAD AMIN KHAN, for Appellant.

MEHR CHAND, MAHAJAN, for Respondent.

JUDGMENT.

BROADWAY J.

BROADWAY J.—The Alliance Bank of Simla, Limited suspended payment on the 28th April 1923, and on the 9th of May following went into voluntary liquidation. On the date of the suspension of payment Mohan Lal, Vakil, of Simla, was one of the said Bank's constituents having an overdraft with the Bank. He was also interested in an account with the Bank in connection with a business he was carrying on in partnership with R. B. Sultan Singh of Delhi under the name and style of "Sultan Singh and Co." This account was in the name of the firm or partnership and it would seem that *Lala* Mohan Lal and Sultan Singh held equal shares. *Lala* Mohan Lal carried on the business and alone operated on the account, the specimen signature of the firm, *i.e.*, "Sultan Singh & Co." having been written, and supplied to the Bank, by him. On the 28th April 1923 this account was in credit to the amount of about Rs. 23,000, while his own personal account was in debit to the extent of some Rs. 18,000.

(1) (1917) 40 I. C. 350, 352.

(3) 77 P. R. 1910.

(2) (1916) I. L. R. 41 Bom. 163.

(4) (1912) I. L. R. 36 Mad. 544 (F.B.).

By an arrangement entered into by the Liquidators of the Alliance Bank with the Imperial Bank of India, Limited, the latter Bank undertook to pay the creditors of the Alliance Bank to the extent of 50 *per cent.* of their claims on certain conditions. When the liquidators called on *Lala* Mohan Lal to pay the amount due by him in his personal account he entered into correspondence with them. I do not deem it necessary to discuss this correspondence in detail as it is sufficient to say that *Lala* Mohan Lal asked them to arrange to pay (through the Imperial Bank of India, Limited) Sultan Singh 50 *per cent.* of the amount due to "Sultan Singh and Co." and to give him (*Lala* Mohan Lal) credit for the remaining 50 *per cent.*, he undertaking to reduce the debt due by him to that figure by paying up the balance.

The Liquidators being unable to agree to the proposal so far as it related to the set-off claimed intimated this fact to him and called on him to pay up the whole amount due by him. He paid certain sums and as he had not paid up in full by the 28th August 1923 the Liquidators instituted a suit for the amount due which they stated to be Rs. 12,113-13-10. They prayed for a decree for this amount with costs and future interest at the agreed rate, which was a minimum rate of 8 *per cent.* from the date of institution to the date of realization. *Lala* Mohan Lal contested the suit and claimed a set-off of Rs. 11,500, the amount (approximately) still payable to Sultan Singh & Co.

The following issues were settled :—

- (1) Is the defendant entitled to make the set-off claimed by him ?
- (2) In what respects, if any, are the plaintiffs' accounts incorrect ?

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(3) What amount, if any, is due by defendant to plaintiffs, or by plaintiffs to defendant?

The learned Senior Subordinate Judge held "that a legal set-off as embodied in Order VIII, rule 6, Civil Procedure Code" was not permissible as, although the amount claimed was an ascertained sum of money which was legally recoverable, the defendant did not fill the same character in relation to the two accounts. He, however, held that justice, equity, and good conscience required that the set-off should be allowed and decreed it to the extent of Rs. 11,448-12-0 with costs. He then went into the accounts and, after giving the defendant credit for the amount decreed by way of set-off, granted the plaintiffs a decree for the balance due, amounting to Rs. 389-0-10, with future interest at 8 *per cent.* from the date of the decree to the date of payment, and directed the parties to pay their own costs. Against this decree the plaintiffs have preferred this appeal and the only point argued at the Bar is as to the decision on the first issue.

For the respondent it was urged that the set-off was permissible under Order VIII, rule 6, Civil Procedure Code, and that in any event it was permissible on equitable grounds. As to the applicability of Order VIII, rule 6, Civil Procedure Code, I am in agreement with the trial Court. Before a set-off can be allowed the parties must "fill the same character as they fill in the plaintiffs' suit" and in the present case it seems to me that they do not. The defendant-respondent was being sued in his personal capacity for a loan for which he alone was responsible. The set-off claimed by him was on quite another account and the amount, even if ascertained, was not "legally recoverable by him" in his personal capacity but

as one of the partners in "Sultan Singh & Co." It is true that it was *Lala Mohan Lal* who alone operated on "Sultan Singh & Co.'s" account, but he did so as the partner who was controlling and carrying on the business of that firm. It was stated that he had withdrawn a sum of Rs. 40,000 on that account on the 27th April 1923 and had drawn a cheque for the balance which was not presented in time. This only means that *Lala Mohan Lal* had become aware of the impending failure of the Alliance Bank and was taking steps to withdraw the firm's money before payment was suspended. His ability to do this before suspension does not give him the right to do so after the Bank had failed. Section 229 of the Indian Companies Act makes the Bankruptcy rules applicable and it is perfectly clear that *Lala Mohan Lal* could not claim to set-off a debt due by the Bank to the firm of Sultan Singh & Co. against a debt due to the Bank by him alone. This has been clearly laid down in *Mehr Chand vs. Amritsar Bank* (1). The case of *Bishan Chand vs. Babu Audh Bihari Lal* (2) relied on by the trial Court has no real bearing on the point and did not deal with the situation that exists in the present case.

Mr. Mehr Chand referred to three decisions which do not however assist him. In the first, *Raghavendra Raoji vs. Yalgurad Ramchandra Padki and Co.* (3), the plaintiff sued for the price of goods supplied: the defendant admitted the claim but urged by way of set-off the amount of pay due to him by the plaintiff. In *Maiden vs. Bhoodu* (4) it was merely held that the provisions of Order VIII, rule 6, Civil Procedure Code, were not exhaustive and that the de-

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fendant could set-off the value of sheets lost by the plaintiff—a washerman against a claim for wages.

In *Annapurnamma vs. V. Akkuyya* (1) the question now before the Court was not raised and all that was held was that “one of several payees of a negotiable instrument could give a valid discharge of the entire debt without the concurrence of the other payees.”

On the other hand *Gokhale vs. Ramchandra Trimbal* (2) is an authority that supports the appellant. In this case a Bank in liquidation sued two defendants on a joint promissory note. One of the defendants sought to set-off an amount admittedly due to him from the Bank on his own separate deposit account, it was held that under section 229 of the Indian Companies Act (1913) the provisions of section 30 of the Provincial Insolvency Act (1907) applied and as the dealings in question were not “mutual dealings” within the meaning of that section the set-off claimed could not be allowed.

In my judgment, the dealings in question in the present suit were not “mutual dealings” within the meaning of section 30 of Act III of 1907 and the set-off claimed by *Lala Mohan Lal* cannot be allowed either in law or equity.

As no other question was argued I accept the appeal and grant the plaintiffs a decree for the full amount claimed with interest from date of suit till date of payment at the rate of 8 per cent per annum (the rate agreed on) and costs throughout.

ZAFAR ALI J.

ZAFAR ALI J.—I agree.

N. F. E.

Appeal accepted.

(1) (1912) I. L. R. 36 Mad. 544 (F.B.) (2) (1921) I. L. R. 45 Bom. 1219.