

Bhowanipur Banking Corporation, Ltd. Vs. Bejoy Kumar Addy and ors.

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Court : Kolkata

Decided On : Jul-15-1942

Reported in : AIR1942Cal556

Appellant : Bhowanipur Banking Corporation, Ltd.

Respondent : Bejoy Kumar Addy and ors.

Judgement :

B.K. Mukherjea, J.

1. This rule was obtained by the Bhowanipur Banking Corporation against two orders of the Subordinate Judge, First Court, Alipur directing the petitioner to deposit in Court the entire amount held by it in its current account as receiver to the estate of the opposite parties. The material facts are not in controversy and may be shortly stated as follows : The opposite parties are all members of the Addy family of Chetla. One of them, viz., opposite party No. 1 instituted a suit for partition in the Court of the First Subordinate Judge at Alipur against his other co-sharers and this suit was registered as T.S. No. 55 of 1937 of that Court. On 18th September 1937, the petitioner who was and is a creditor to the Addys for a considerable sum of money was appointed a receiver to the joint estate of the Addys pending the hearing of the partition suit. By an order of the Court dated 17th April 1939 it was directed that all realisations made by the receiver from the estate of the Addys, with the exception of certain sums of money that were necessary to

meet the immediate expenses, were to be kept in the current account of the bank and disbursements were to be made in accordance with the directions which the Court might give from time to time. The balance lying in the said account to the credit of the Addys' estate on 6th May 1942 was Rs. 69,926-7-6. On the afternoon of 6th May 1942 the bank which was in financial difficulties from sometime past temporarily suspended payment to its depositors until further orders. On 8th May following, the opposite party No. 2 made an application to the Court for a direction on the receiver to deposit all monies, belonging to the Addys' estate which was held by it, either in the Government Treasury or in some other safe place. The Court called for a report from the receiver which was submitted on 11th May 1942. On the same date the petitioner Bank filed an application in the original side of this Court under Section 153, Companies Act, with a proposal for composition with its creditors. That application was admitted on that very date and orders were passed for holding the meetings of the share-holders and depositors for the purpose of approval of the scheme. On 13th May 1942 the Bank reported to the Court that as it had already made an application under Section 153, Companies Act, and the matter was fixed for hearing on 26th June next it was not possible for it to bring into Court the money lying in its current account to the credit of the Addys' estate. The Court on hearing all the parties made an order on 18th May 1942 directing the petitioner to deposit all monies belonging to the Addys' estate either in some Government Treasury by challan or in the Reserve Bank of India, Calcutta, within a week from that date. It is said that after this order was passed the Supervisor who was managing the estate under the receiver and who was also one of the directors of the Bank, wrote a formal letter to the Bank requesting it to pay the sum of Rs. 69,926 and annas odd mentioned above. To this the Accountant of the Bank replied by saying that till the final determination of the proceedings under Section 153, Companies Act, the Bank was not legally competent to make any preferential payment to any of its creditors. This matter was reported to the Court and the Subordinate Judge by his order dated 22nd May 1942, confirmed the previous order made by him on 18th May 1942. The receiver was directed to deposit the money either in the Government Treasury or in the Imperial or Central Bank of India within the time already fixed failing which the premises where the Bank holds its office was directed to be attached and sold. It is the propriety of this

order that has been challenged before us in this rule.

2. Mr. Sushil Ch. Sen who appears in support of the rule has contended before us that although the monies realised by the Bank as receiver, from the estate of the Addys, and held by it would ordinarily remain the monies of the Addys, yet under orders of the Court it opened a current account with itself, in its capacity as receiver the legal position was that the Bank qua receiver became its own creditor. The money deposited in the current account no longer remained the money of the Addys and it became the Bank's money which the Bank was only bound to repay in accordance with the usual terms under which it held the depositor's money. If therefore the Bank embarked upon a scheme of composition with its creditors under Section 153, Companies Act, and the scheme was approved by this Court the receiver to the Addys' estate would be in the same position as any other creditor to the Bank and would be bound by the scheme. It is true that at the date when the Subordinate Judge made the order, the meeting of the depositors was not yet held but as the Bank had already started a proceeding under Section 153, Companies Act, it could not very well frustrate the scheme by giving preference to one of the creditors. It is contended that in these circumstances the receiver is legally incompetent to withdraw any money from the Bank and it can only recover the money in terms of the scheme as might be finally sanctioned.

3. Dr. Basak who appears for the opposite party has argued on the other hand that whatever the position might have been if the Bank as receiver had opened a current account with another Bank and that Bank had entered into a composition with its creditors under the Companies Act, the position was quite different when the Bank opened an account with itself. It is said that as monies were obtained by the Bank in its capacity as a receiver to the Addys' estate, then so long as they were retained by it they would remain the money of the Addys' estate in its hand and it was immaterial whether it was kept in its current account or not or in any other manner. Dr. Basak's contention substantially is that the money would not become the assets of the Bank and would not be divisible among its creditors in the event of a winding up proceedings. If the Bank wants to enter into a composition with its creditors it should frame a scheme on the footing that this sum of money does not form part of its assets.

4. The controversy thus centres round the short point whether the money deposited by the Bank qua receiver in its current account still remains the money of the Addys held by the receiver on behalf of the latter or it belonged absolutely to the Bank and the Bank qua receiver occupied the position of a creditor or depositor in respect to this amount. It is not disputed on the petitioner's side that if the Bank had kept the money in its own vault without opening any current account it would undoubtedly retain its character as a trust money. But the position is said to have been altered as soon as the current account was opened. Then the Bank qua receiver became its own creditor and as a creditor it could not have preferential rights over the other creditors. In support of this contention, Mr. Sen has placed reliance on the well known decision in *Folley v. Hill* (1844-48) 2 H.L.C. 28. The proposition enunciated in that case cannot possibly be disputed. It is perfectly well settled that the receipt of money by a Banker from or on account of its customer constitutes him merely a debtor to the customer, he is not in any sense a trustee for the latter. But the primary question that arises for determination in the present case is whether the Bank as receiver did and could become in law its own creditor by going through the formality of opening a current account with itself. It is an elementary proposition of law that there must be two persons to make a contract. No person either an individual or a body corporate can be his own creditor. In the old English case in *Faulkner v. Richard Lowe* 154 E. Rule 6282 there was an action on a covenant by C to pay money to A, B, and himself. A plea of demurrer was raised that no action lay on the covenant which was in effect a contract by the defendant to pay money to himself. This plea was allowed and it was observed by Pollock C. B. that the contract was senseless. The same principle was applied in *Ellis v. Kerr* (1910) 1 Ch. 529 and *Napier v. Williams* (1911) 1 Ch. 361 and it was held that when the covenantor and the covenantee were the same person the contract was void and the action must be dismissed.

5. Mr. Sen has argued that a person in one character might enter into a contract with himself in another character and he has cited in support of his contention the cases in *In re Bushell*; *Ex parte Izard* (1883) 23 Ch. D. 75 and *Crosskill v. Bower* 55 E. Rule 34 at p 38. In the first of these cases the receiver of a business had advanced money of his own to the business. Jessel, M. R. pointed out that the practice in the Chancery Division was that the receiver should apply to the Court

for sanction before advancing any money and if he had obtained such sanction interest could be allowed to him at the rate of 5 per. cent upon his advance. This case in my opinion, has got no application to the facts of the present one. The position of a receiver may be taken to be that of a trustee. He may occupy a fiduciary position in relation to the estate of which he is appointed a receiver but the trustee and the cestui que trust are not the same person in law and there is nothing in law which prevents the trustee from lending money to the cestui que trust. The only disability as recognised by Equity Courts is that he must not make any profit as a trustee. In the other case three trustees two of whom were Bankers were empowered to carry on a business and to 'borrow money from any Bank or other persons for that purpose'. The bankers made advances of money to the trust on compound interest. It was held that having regard to the fiduciary position occupied by them they must not make profit out of these advances but were entitled to simple interest only. This decision also does not help the petitioner in the least. One person who is appointed a receiver or trustee in his individual capacity may in another capacity hold the position of a banker. As a Banker he might advance money to the estate in respect of which he was appointed a trustee and such transaction might be quite legal and effective subject to the rule that the person occupying a fiduciary position would not be entitled to make any profit by taking advantage of his position as a trustee. In the pre sent case however the Bank in its capacity as a Bank was appointed a receiver to the estate of the Addys and made realisations from the properties of which it was put into possession. There was no splitting up of the personality and it was not a case where one person who in his individual capacity has been appointed a receiver holds in another capacity the position of a banker. The receiver and the Bank were in our opinion the same person both in fact and in law and the Bank for the purpose of facilitating the realisation of its dues became a receiver of the debtors' estate.

6. We hold therefore that in these circumstances in whatever form the money of the Addys might have been kept by the Bank it did not become the Bank's money but remained the money of the Addys in the hands of the Bank as receiver. Stress is laid by Mr. Sen upon the order of the Court dated 17th April 1939 which sanctioned the opening of a current account in the Bank. It appears from the order sheet that a complaint was made by some of the Addys to the effect that all the

realisations from their estate were being appropriated by the receiver in payment of the interest due to the Bank and in fact the receiver was taking interest in excess of what was legally due. The direction of the Court was that all monies that might be realised from the estate should in the first instance be put in the current account of the Bank and then spent in such manner as the Court would from time to time direct. In our opinion, it was a convenient form of keeping accounts and nothing more and if in law the bank could not become its own creditor the order of the Court could not possibly alter this position. Another thing that has been pointed out to us is that the Court below had actually sanctioned the execution of certain conveyances by the bank qua receiver in favour of the bank itself. As a matter of fact, no conveyance had yet been executed and the legality and propriety of these transactions have not been decided as yet. In our opinion, however, that fact does not present any difficulty. The receiver as such has not title to the property which is the subject-matter of the litigation. The title remains vested in the parties and if the parties had got to execute a conveyance in favour of the bank for the purpose of liquidating their debts the bank qua receiver might be called upon to join in the conveyance because he is in possession of the property, but we do not think that this fact substantially alters the nature of the transaction. At any rate we are not called upon to say anything as to the legal effect of a transaction like that.

7. The last thing that has been pointed out is that interest was paid by the bank upon the credit balance in the current account opened by the receiver and in all other respects no distinction was made between the receiver's account and the account of any other depositor. But even if we construe the order of the Court dated 17th April 1939 as authorising the bank to invest the money of the Addys in its own business for which interest was payable from time to time we think that so long as the money is capable of being ascertained, it does not lose its character as a trust money. This proposition is supported by the pronouncement of the Judicial Committee in *Official Assignee, Madras v. Krishnaji Bhat*. We hold therefore that a sum of Rs. 69,926 and annas odd lying in the current account of the petitioner bank to the credit of the Addys' estate should be regarded not as the assets of the firm but as a money belonging to the Addys in the hands of the bank as receiver of their estate. The Court below was therefore right in directing the receiver to bring that money into Court and deposit in such way as it considers proper. It is

represented to us that the bank may not be in a position at the present moment to bring the entire money into Court and it is said that they might very well set off this amount as against the dues of the Addys to them on the mortgage. It is not disputed that the Addys owe a large sum of money to the bank but it is not disputed at the same time that the members of the family also want money for their maintenance expenses and for meeting other immediate demands. In these circumstances we leave it to the Court below to decide whether the entire amount should be brought into Court forthwith or not. The Court may give suitable directions in this matter as it thinks proper. The question of attachment and sale of the bank premises may be taken up after the Court has considered this matter. Subject to the observations made above the rule is discharged with costs, hearing fee being assessed at three gold mohurs.

Sen, J.

8. I agree.

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