Recent Judgements Relevant to Bankers

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I. Shri Vishin N. Khanchandani & Another vs. Vidya Lachmandas Khanchandani and Another, [JT 2000 (9) SC 321].

Government Savings Certificates Act, 1959 —Sections 6,7 and 8 — National Savings Certificates — Nomination-Effect — Whether the nominee after the death of the holder becomes entitled to the sum due under the certificate to the exclusion of all other persons — Whether the amounts due under the certificate is to be retained by the nominee for the benefit of the legal heirs of the deceased holder.

Facts

The dispute relates to savings certificates, the holder of which was Lachmandas Naraindas Khanchandani. The deceased who was working in the Income Tax Dept: left behind debts consisting of National Savings Certificates, amounts in Compulsory Deposit Scheme, Post Office Cumulative Time Deposit Scheme and Pass Book Post Office Savings Bank. Respondent No. 1 who is the widow filed a petition under Section 370 of Indian Succession Act, 1925 before the Court of Civil Judge, Senior Division Thane for grant of succession certificate in respect of the debts and securities left by the deceased. Appellant Nos. 1 & 2 who are the brother and step brother of the deceased contested the claim with respect to such National Savings certificates in which they had been mentioned as nominees of the deceased. The court held that the respondents/plaintiffs were entitled to the grant of succession certificate in respect of the said debts excluding the National Savings Certificates and deposits under the Compulsory Deposit Scheme. It was further held that the appellants were not entitled to the delivery from the respondents of the National Savings Certificates and Pass Book Post Office Savings Bank in respect of which they had been nominated by the deceased. Not satisfied with the orders of the Civil Judge, the respondents filed first appeal No. 849 of 1982 before the High Court of Mumbai praying for setting aside that portion of the order of the Civil Jugde by which their claim with regard to the National Savings Certificates, in respect of which the appellants were the nominees, had been disallowed. The High Court allowed the appeal and directed the issuance of succession certificate in favour of the respondent. It was further directed that the respondents shall be entitled to equal share in the amounts which were due on securities on payment of necessary court fees. Being aggrieved, the appellants/nominees filed the present appeal contending that under Section 6 of the Govt. Saving Certificates Act, 1959, after the death of the holder they had become entitled to the payment on such Saving Certificates in which they were nominees, to the exclusion of all other persons including the respondents and entitled to utilise the aforesaid amount in the manner they like. According to them Section 6 provides another mode of succession, to the exclusion of testamentary and non-testamentary successions. Alternatively, it was urged that nominations itself amounted to testamentary succession.

Observations of the Court

Though the language and phraseology in Section 6 of the Act is different from the one used in Section 39 of the Insurance Act, yet the effect of both the provisions is the same. The Act only makes the provisions regarding avoiding delay and expense in making the payment of the amount of the certificate to the nominee of the holder, which has been considered to be beneficial both for the holder and also for the Post Office. Any amount paid to the nominee after valid deductions becomes the estate of the deceased. Such an estate devolves upon all persons who are entitled to succession under law, custom, or testament of the deceased holder. The nominee is entitled to the payment of the amount on account of the National Savings Certificates Under Section 6 read with 7 of the Act who in turn is liable to return the amount to those, in whose favour law creates beneficial interest, subject to the provisions of sub-section (2) of Section 8 of the Act.

Decision

In these premises appeal was allowed with the direction that the succession certificate shall be issued in favour of the respondents in respect of the debts stated in the application filed in the court of the Civil Judge, Senior Division Thane, subject to payment of court fee. The respondent would however not be entitled to directly receive the amounts payable on account of debts payable under National Savings Certificates. The amount on account of the National Savings Certificates in which they were nominee shall be received by them but the amount remaining after deduction of the amounts of debts or other demands lawfully paid or discharged if, any, shall be payable to the respondents.

II. Associated Timber Industries & Others vs. Central Bank of India [JT 2000 (9) SC 17] Constitution — Schedule VII — List I, Entry 45 and List II, Entry 30. Banking Regulation Act, 1949 Sections 3 & 5, Assam Money Lenders Act, 1934 — Sections 7.D, 2(1), 2(3) — Bank, governed by Banking Regulation Act, 1949 —Loan advanced by such Bank — If the Bank is a money lender and suit by it for recovery of money advanced is not maintainable —State law and Central law — Feild of operation different — whether the Central Bank of India is a money lender under the Assam Money Lenders Act, 1934 and therefore required to take a licence under the said Act to carry on its activities.

Facts

Central Bank of India, filed a suit before the Additional Dist. Judge, Dibrugarh for realisation of certain amounts from the Associated Timber Industries, Chubua and others towards the sum advanced to the defendant. The main objection raised by the defendant was regarding the maintainability of the suit on the ground of non-compliance with the provisions of Section7-D of the Assam Money Lenders Act. It was argued that the Bank being a money lender has not been registered under the said Act and in the absence of a registration certificate, the suit is not maintainable and therefore, cannot be proceeded with. The trial court dismissed the suit as not maintainable. On appeal, the High Court set aside the judgement of the trial court and directed disposal of the suit on merits in accordance with law, which was challenged in this appeal.

Submissions on Behalf of the Appellants

It was argued on behalf of the appellants that the High Court was not right in holding that the provisions of the Assam Act are not applicable to the respondent bank. The

advancement of loan by the respondent bank to the appellants makes the transaction between the parties a loan as defined in Section 2(3) of the Assam Act and the bank a 'money lender' as defined in Section 2(1) of the Assam Act. Further it was argued that in the absence of a notification by the State Govt. declaring the respondent to be a notified bank for the purpose of the Assam Act, the provisions of Section 2(3) is not attracted and in the absence of registration certificate the suit is not maintainable.

Submissions on Behalf of the Respondent

Supporting the impugned judgement it was argued on behalf of the respondent that the respondent is engaged in "banking activity" which is different from mere money lending activity and therefore the provisions of the Assam Act are not applicable. The activities of banks are governed by the Banking Regulation Act, 1949 which is a parliamentary enactment and the banks registered under the said Act are under the regulatory and supervisory control of the Reserve Bank of India. Lending money to customers is not the only activity of the respondent. The expression "money lender" as defined in Section 2(1) of the Act means a person whose sole activity is lending money to others charging interest. Hence the respondent does not come within the scope of the definition of the term "money lender" which is the *sine qua non* for application of the statute. As the Assam Act has no application to the respondent, the question of getting itself registered under the said Act does not arise.

Observations of the Court

The provisions in the two enactments bring forth the wide difference in the fields of operation of banks and activities of money lenders. Banks are financial institutions which are engaged in improving the flow of trade, movement of commerce and expansion of business and thereby improving the socio-economic condition of the people. Money-lenders are engaged in making personal profits. While banks are guided by policies and decisions of the Central Govt. and are controlled or regulated by Reserve Bank of India, there is no such regulatory policy in the case of money lenders. A banking company is expressly prohibited from carrying of any kind of incidential or allied business other than those enumerated in clauses(a) to (o) of sub-section (1) of Section 6 of the Banking Regulation Act, 1949. It is thus abundantly clear that the essence of banking is the relationship which is brought into existence at the time of the deposit. The business of banking covers every possible phase or combination of deposit, custody, investment, loan, exchange, issue and transmission of money, creation and transfer of credit and other kindred activities but if the essential characteristic of banking namely the power to receive deposits from the public which are repayable in the manner indicated in Section 5(1) (b) of the Banking Regulation Act is absent and merely the power of granting loans is retained and exercised, it does not make a banking company. Lending of money may be one phase of banking business but it is not the main phase or the distinguishing phase. The legislatures have taken caution to exclude banks from the operations of the statutes presumably with a view to avoid any conflict with the parliamentary enactment. Unfortunately, the Assam Money-Lenders, Act, 1934 does not incorporate any such provision in it. Further, 'banking' is covered under item No. 45 in List-I of the Union List in the VII Schedule of the Constitution, while 'money lending' and "money-lenders" come under item 30 of List II of the State list in the VIIth Schedule.

Decision

Banks do not come under the purview of the Assam Money/Lenders Act. Accordingly, the appeal was dismissed with costs.

III. Madhvi Amma Bhawani Amma and Others vs. Kunjikutty Pillai Meenakshi Pillai and Others (AIR 2000 SC 2301).

Civil Procedure Code 1908, Section 11 —Resjudicata — Scope as enshrined in Section 11 — Not exhaustive. It is ever growing —Decision on an issue operates only if that issue was raised and decided — Findings incidentally recorded do not operate as res-judicata — Decision in proceedings for grant of succession certificate, not being final adjudication of rights of parties, cannot operate as resjudicata in subsequent proceedings —Succession Act, 1925-Sections 373, 381 and 387.

Facts

The appellants were the defendents in suit No. 20 of 1974 which was filed by respondent No. 1, Shri Velu Pillai (since deceased) claiming to be the only legal heir as brother to the estate of one Kizhangumvilayil who died inte state. The suit was for declaration, partition and recovery of possession of the plaint schedule property. The respondent also filed suit No. 33 of 1974 in the same court for obtaining succession certificate for receiving money from LIC of India. Both the suit and the proceedings under Indian Succession Act were tried together and decided by a common judgement wherein it was decided that the plaintiff was the sole heir and was also allowed the application for granting succession certificate. However the appellate court set aside the judgement of the trial court and the grant of succession certificate. The High Court in the second appeal set aside the appellate courts judgement as the findings were not supported by pleadings in the case hence remanded the case back for consideration. After remand, the appellate court dismissed the appeal of the appellant by confirming the trial court judgement. Hence the appellant filed the second appeal. It was submitted on behalf of the respondent/plaintiff that since appeal was not preferred against the order of the appellate court arising out of the proceeding for the grant of the successions certificate, it became final and thus it operates as resjudicata. The High Court upheld this contention and dismissed the second appeal which was impugned before the Supreme Court.

Submissions of the Appellants

It was argued on behalf of the appellants that the grant of succession certificate is a summary proceeding and the same cannot operate as resjudicata. The grant of succession certificate U/ S 373 has only the effect that it is conclusive as against the person owing such debts or liability of such securities and it affords full indemnity to such debtor against all such future claimants, when the amount is paid to such person holding succession certificate.

Submissions of the Respondents

The main contention of the respondents, was that as both, the suit and the application for the grant of succession certificate were heard and decided by the same court both at the trial stage and the first appellate stage and when the appellant did not prefer any appeal against the order passed by the first appellate court in the connected proceeding arising out of the proceeding for the grant of succession certificate, the said decision becomes final and it would operate as resjudicata to the pending proceedings in the second appeal arising out of the suit. The respondent had also placed strong relience on Exp. VIII to

Section 11 of CPC.

Observations of the Court

The principle of resjudicata as enshrined in section 11 has evolved from the maximum "memo debet bis vexari pro una et eadem causa". This principle enunciates that no man should be vexed twice over for the same cause. With the passage of time this principle has gradually expanded. This shows that the sphere of resjudicata as enshrined in Section II of CPC is not exhaustive and it is ever growing. The grant of succession certificate to a person does not give him an absolute right to the debt nor does it bar a regular suit for adjustment of the claims of the heirs *inter se.* Any decision made in the proceedings under Section 372 for the grant of succession certificate under the Indian Succession Act would not bar any party to the said proceedings to raise the same issue in a subsequent suit. Hence, the High court fell into error in applying the principle of resjudicata to the second appeal. Thus even if no appeal is preferred by the appellant against the decision of the trial court arising out of the proceedings for the grant of succession certificate, the principle of resjudicata would still not apply. The Court accepted the contention of the appellant that the memorandum of second appeal itself reveals that he had preferred appeal against both the appellate orders. Hence, the High Court was not right in holding that no appeal was preferred. The respondents could not dispute this but submitted that no second appeal lies against the appellate order in the proceedings for the grant of the succession certificate and only a revision lies.

Decision

In view of the above findings, the Supreme Court set-aside the order of the High Court and remended the case for deciding afresh on merits, the second appeal in accordance with law. Accordingly the appeal was allowed.

IV. Writ Appeal No. 1973 of 1999 and C.M.P. No. 16592 of 1999 before the High Court of Judicature at Madras.

Reserve Bank of India vs. Shri P. Nadarajan, Director, Tamil Nadu Mercantile Bank Ltd., Tuticorin [(2000)II M.L.J. 380].

Civil services — Appointment of certain persons as Directors of a Bank — Another Director filing writ petition to direct Reserve Bank of India to produce the necessary files to show the reasons etc. — Nobody has got a right to have the reasons communicated —It is not necessary to communicate the reasons by which a conclusion had been arrived at —reasons already given cannot be added or supplemented at a later stage — What is necessary is that reasons should be available on the files so as to come to a conclusion —So far as supply of documents are concerned law is settled that even if no privilege is claimed, the court has to see whether the disclosure or the supply of the documents is within the public interest or not.

Facts

The writ petitioner has challenged the appointment of Shri S.V. Raghavan and two others as Directors of Tamil Nadu Mercantile Bank Ltd., Tuticorin. In a miscellaneous petition, the petitioner prayed that suitable directions may be issued to produce the files and they also may be permitted to pursue the files. The matter was taken to the Supreme Court in

SCP Nos. 15282 to 15284 of 1999 wherein it was directed that the writ petition may be disposed of expeditiously, if possible within one month. The court vide order dt. 21-9-1999 allowed the petitioners to peruse the documents. Reserve Bank of India being aggrieved by the said order of the single judge had filed this writ appeal.

Submissions of the Reserve Bank

It was submitted on behalf of the Reserve Bank of India (appellant) that the leaned single judge had erred is giving direction permitting the respondent/writ petitioner to peruse the documents. The direction in the public interest to supply the documents to substantiate the case and put the case effectively is against the public interest as the documents pertaining to confidential notes fall within the classification of privileged document. If the writ petitioner is to be supplied with the confidential note file of the Bank proceedings, it would amount to opening a pandora's box, which is certainly against the public interest. The appellant also relied upon the decision of the Supreme Court in R.K. Singh vs. Union of India [(1999) 9 SCC 501] and submitted that the petitioner cannot even ask the court to look into the confidential notes for verifying the bald allegations made by the writ petitioner.

Submissions of the Respondents

It was argued on behalf of the respondent/writ petitioner that the learned single judge considered all materials available on record and permitted the petitioner to peruse, so that the writ petitioner can put his case effectively as the appointments of respondents 3 to 5 as Directors of the second respondent Bank are bad and against the provisions of law.

Observations of the Court

It is not necessary to communicate the reasons by which a conclusion had been arrived at. Nobody has got the right to have the reasons communicated. What is necessary is that reasons should be available on the files so as to come to a conclusion. The court can see the records so far as the supply of the documents is concerned. Law is settled that even if no privilege is claimed, the court has to see whether the disclosure or the supply of the documents is within the public interest or not. The question is whether the disclosure of such documents is in the public interest or withholding the same is in public interest. Though the supply of the documents sought for do not involve national security or go against the state policy, they cannot be asked to be supplied or shown for perusal by the otherside as such disclosure will be against the public interest and therefore the findings of the single judge is not acceptable. The writ petitioner cannot ask for such documents.

Decision

The order of the single judge permitting the writ petitioner to peruse the documents will not be in public interest and is liable to be set aside. Accordingly the impugned order was set aside.

V. Civil Appeal No. 15701 of 1996 Vimal Chandra Grover vs. Bank of India (2000) 5 SCC 122.

Consumer Protection Act, 1986 — Sections 2(1) (o) and 2(1) (d) — "Service" — "Consumer" — Scope — Grant of overdraft facilities to its customer by a bank — Providing of service —Customer pledging shares with the bank to get overdraft facilities is a "consumer" and implementation of his request to the bank to sell part

of the pledged shares for clearing the overdraft, when agreed to by the bank becomes part of 'service'.

Reserve Bank of India Act, 1934 — Section 22 — Banking Regulation Act, 1949 — Sections 5(b),(c) & (cc), 6 and 34 "Banking", "Service", "Consumer" — Interpretation of statutes.

Consumer Protection Act, 1986 — Sections 2(1) (g) & (o), 14 and 18 — Deficiency in Service — Banking — Delay in acting upon pledger's request to sell the pledged articles resulting in loss.

Facts

Nagpur branch of the respondent bank sanctioned on 20-9-1990 an overdraft of Rs. 5,00,000 against pledge of shares of various companies including 1400 shares, worth Rs. 200 each. As per the terms of sanction of the overdraft, the shares were got transferred in the name of the bank. The bank received some bonus shares of the company also. In order to clear the overdraft, the appellant had requested the respondent Bank to sell *inter alia* 500 shares of the company, the prevailing price whereof at that time had arisen to Rs. 2400 per share. The appellant said that the shares were lying with the respondent bank's Head Office at Bombay. Twelve days after request Nagpur branch had writtent to the Head Office at Mumbai agreeing to the appellant's request. The Head Office denied that the shares were lying with them. The appellant was informed accordingly. However shares were found to be lying with the Nagpur branch itself. But by that time the price of shares fell to Rs. 700. Consequently the sale resulted in a comparative loss of Rs. 5,09,037.53 to the appellant. The National Consumer Disputes Redressal Commission dismissed the appellant's claim against the Bank for the said amount. Aggrieved by the decision of the National Commission the appellant has preferred the present appeal before the Supreme Court.

Submissions of the Appellant

The request for sale of a part of the pledged shares for getting over draft facilities and which is agreed to by the bank certainly from part of the service rendered by the bank. The appellant as a consumer was hiring the service of the bank for consideration by way of payment of interest. Pledged shares were to be transferred in the name of the bank and a sufficient number of blank transfer forms duly signed by him were submitted to the bank. The bonus shares were also received by the Bombay Head Office of the bank. That the appellant suffered loss because of the delay in disposing of his shares as agreed to by the bank cannot be disputed. Nagpur branch of the respondent took 12 days to transmit the request of the appellant to its Head Office. The Head Office of the respondent took 40 days to inform the appellant that shares were not lying with them. Nagpur branch found that the shares were lying with them and then it was too late. Though the bank is not expected to process the request of its customer immediately, but within a reasonable time and certainly promptness and deligence are required which is lacking in the present case. Hence one cannot agree with the views of the National Commission that there was no negligence on the part of the bank or that the bank was not bound to dispose of the shares. The appellant had claimed Rs. 5,09,037.47 with interest and other charges like damage for loss of longstanding business due to non-renewal of letter of credit, for non-releasing of securities undue and unjust harassment, thus a total of Rs. 29,56,264.76.

Submissions of the respondent

It was argued on behalf of the respondent bank that the relationship between the parties is governed by sections 172 to 174 of the Contract Act, 1872 and the bank was within its right to choose the time and place as to when it would like to dispose of the pledged good and that the only requirement is that before that notice is to be given to the pawnor/appellant. In support of this submission, the bank had relied upon the judgement of the Punjab High Court (Division Bench) in Bharat Bank Ltd. vs. Bodh Raj [AIR 1956 Punj 155 (DB)]. Accordingly, there was no deficiency in service on the part of the bank in dealing with the alleged securities and there was no negligence on the part of the bank. Further, it was contended that the alleged delay which was caused could not be attributed to the negligence of the bank as it was the appellant himself who misled the bank. The bank had lien over certain shares which the appellant had pledged as security for the overdraft facility of Rs. 5,00,000 provided by the bank. Prior to the agreement for grant of the overdraft the appellant had executed a letter of lien and set-off which entitled the bank to retain all the shares which were in their possession as collateral security for all the outstanding dues of the appellant apart from any specific facility provided to him. It was a well-settled principle of law that the banker's lien extended to all securities deposited with it in its character as a banker. Hence it was undisputed that the bank had every right to exercise lien over the pledged shares. Though the appellant had requested the bank to sell the shares through his broker who was not on the approved list of the bank and that it was the standard practice followed by the bank that they dealt with the pledged shares only through the brokers whose names featured in the approved list of the bank. Further, it was argued that the appellant was a regular defaulter and had failed to liquidate his dues and discharge his obligations. The bank was under no obligation whatsoever to release the shares which were in their possession and could not be compelled in law to sell any of the pledged shares. There was delay to process the request of the appellant to sell the shares held by the bank as security as the request needed to be carefully examined especially in view of the fact that he had several irregular accounts and was a habitual defaulter. Finally it was submitted that it could not be blamed for any fluctuations of the market price of the shares and by merely seeing the fluctuating market price of shares on the days when the value of the shares are particularly high one cannot calculate the gain or loss suffered.

Observations of the Court

Prima facie, it does not appear that the bank had failed to honour its commitment resulting in loss to the appellant. The question is whether the alleged default on the part of the bank could be termed as deficiency in service. The argument that the appellant is not a consumer or that the bank is not rendering service is an argument in desperation. The bank is rendering service by providing the overdraft facilities to a consumer, which is not without consideration. The Bank is charging interest and other charges as well in providing the service. The provision for overdraft facility is certainly a part of banking and its service within the meaning of clause (o) of Section 2 of the Consumer Protection Act, 1986. The appellant as a consumer was hiring the service of the bank for consideration by way of payment of interest. The court was unable to agree with the view of the National Commission that there was no negligence on the part of the bank or that

the bank was not bound to dispose of the shares.

Decision

The impugned judgement of the National Commission was set aside and the complaint of the appellant was allowed. The court awarded Rs. 5,09,037.47 with interest at the rate of 11% from 1-8-1992 in favour of the appellant and against the respondent, Bank of India.