

PETITIONER:
UNITED COMMERCIAL BANK LTD.

Vs.

RESPONDENT:
OKARA GRAIN BUYERS SYNDICATE LTD. & ANR.

DATE OF JUDGMENT:
04/03/1968

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
BACHAWAT, R.S.
MITTER, G.K.

CITATION:
1968 AIR 1115 1968 SCR (3) 396

ACT:

Banking-Deposit Receipt-Syndicate opening account in Bank-Deposit receipt in the name of Syndicate account District Magistrate if constitutes him owner of deposit-Condition of deposit that on due date deposit receipt should be discharged by depositor-Non production of deposit receipt-Equitable jurisdiction of High Court.

HEADNOTE:

The respondent a syndicate with its registered office in Montgomery in undivided Punjab, had deposited certain amount with the appellant-Bank and obtained a Fixed Deposit Receipt. The deposit was required to be made for due performance of the conditions of a scheme for Procurement devised by the Government of Punjab in 1946. The receipt was made out in the name of the, Syndicate Account District Magistrate, Montgomery. No account was opened in the bank's books in the name of the District Magistrate and under the conditions of deposit it was repayable to the respondent on demand on due date. The respondent served a notice of withdrawal upon the Bank. An endorsement in that behalf was made on the receipt which was handed over to the District Magistrate, Montgomery. Following the communal riots in 1947 the staff of the respondent migrated to India and the respondent set UP a new business at Amritsar. The respondent demanded the money to which the appellant replied that the amount could not be returned until the respondent obtains a discharge from the District Magistrate, Montgomery (in Pakistan) of his lien on the fixed deposit receipt. The respondent filed a Petition before the Debt Adjustment Tribunal, Amritsar, for an order directing the appellant to pay the amount with interest, and impleaded the District Magistrate, Montgomery as a respondent. The District Magistrate filed no claim before the Tribunal. The Tribunal dismissed the petition holding that the amount stood forfeited by order of the District Magistrate, Montgomery. In appeal, the High Court made an order in terms of the prayers in the petition, subject to the condition that the respondent shall give an indemnity for restitution of the amount in case the bank had to pay the amount to the District Magistrate, Montgomery.

In appeal to this Court.

HELD : The deposit receipt gave rise to no contractual obligation in favour of the District Magistrate, Montgomery nor was the bank a trustee for that officer. By an express condition the receipt was not transferable. The name in which the receipt was made out was by itself not sufficient to create an interest in the amount in favour of the District Magistrate. The District Magistrate was not in law constituted owner of the money deposited by the respondent with the appellant by virtue of the delivery of the receipt. In the books of the appellant the fund stood to the credit of the respondent : the respondent was the owner thereof and it was the respondent alone which was entitled to demand payment of the fund. In the absence of any obligation-contractual or fiduciary-undertaken by the appellant in favour of the District Magistrate, the appellant could not withhold payment of money deposited after the expiry of the period of notice. [399 D-H]

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Even if the condition in the terms of deposit that on due date the deposit receipt should be discharged by the depositor was to be considered a condition precedent to the enforcement of the obligation of the Banking favour of the respondent, the High Court was right in the exercise of its equitable jurisdiction to direct that the money be paid to the respondent without production of the receipt. It might reasonably be inferred that the receipt was lost or was destroyed and in such cases the court's equitable jurisdiction could appropriately be exercised. the direction of the High Court that an indemnity be given by the respondent to the Bank for restitution if the Bank was to, pay the amount to the District Magistrate, Montgomery has fully protected the Bank against any possible loss and this eminently reasonable direction was not liable to be set side. [400 F-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 449 of 1965. Appeal from the judgment and order dated August 29, 1960 of the Punjab High Court in F.A.O. No. 14 of 1954.

Bishan Narain and Hans Rai Dhawan, for the appellant.

S. V. Glipte, B. K. Maheshwari and B. P. Maheshwari, for respondent No. 1.

The Judgment of the Court was delivered by Shah, J. This appeal is filed with certificate granted by the High Court of Punjab.

The Okara Grain Buyers Syndicate Ltd.-hereinafter called 'the Syndicate' was incorporated under the Indian Companies Act, 1913, with its registered office at Okara, District Montgomery in the undivided Punjab. In 1946 the Government of undivided Punjab devised a scheme for procurement of food grains and appointed the Syndicate to buy food grains on its behalf." For due performance of the conditions of the scheme, the Syndicate was required to make a deposit with a recognized Bank. The Syndicate deposited an amount of Rs. 40,000/- on March 29, 1947, with the United Commercial Bank Ltd.-hereinafter called 'the Bank'-and obtained a Fixed Deposit Receipt dated March 29, 1947. The terms of the receipt were these :

"The United Commercial Bank Limited.

No. Misc. 9872-4/18 Okara (Punjab) 29th March, 1947.

Received from the Okara Grain Buyers Syndicate

Limited, Okara A/c District Magistrate, Montgomery Rs. Forty thousand only as a deposit at the rate of 2 per cent per annum to remain till notice of twelve months for its withdrawal by either side expires. For the United Commercial Bank Ltd.

(Sd.)

Accountant Manager.

Rs. 40,000/-

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Terms for the Deposit Receipt

This deposit receipt is issued subject to the following terms and conditions.

1. This receipt is not transferable.
2. This deposit cannot 'be withdrawn before due date.
3. Interest on this deposit ceases on the due date.
4. The amount of this deposit cannot be withdrawn in part or by cheque or draft.
5. On due date this deposit receipt should be discharged by the depositors on one anna stamp if it is required to be repaid, otherwise an endorsement as to its renewal should be made in the space provided thereof.
6. Receipts will when so required, be issued in the names of two or more persons and will be made payable to any one or more of them or to the survivors."

The Syndicate served a notice of withdrawal on March 29, 1947 upon the Bank and an endorsement in that behalf was made on the receipt. The receipt was then handed over to the District Magistrate, Montgomery. On account of widespread communal riots in the month of August 1947, non-muslim residents of the area found it unsafe to continue to reside at Okara, and the staff and Managing Director of the Syndicate migrated to India leaving all the property, goods etc. of the Syndicate at Okara. The Syndicate set up a new place of business at Amritsar and registered itself in the State of Punjab.

In reply to a demand made on October 26, 1951, by the Syndicate the Bank replied that the amount deposited will not be returned until the Syndicate obtains a discharge from the District Magistrate, Montgomery, of his lien on the fixed deposit receipt and an intimation in that behalf was given by the District Magistrate relinquishing his lien' on the fixed deposit receipt. The Syndicate then filed a petition before the Debt Adjustment Tribunal, Amritsar, under s. 13 of the Displaced Persons (Debt Adjustment) Act 70 of 1951, for an order against the Bank for payment of Rs. 40,000/- as principal and Rs. 3,200/- as interest @ 2% per annum upto March 3, 1952, and future interest at 6% per annum till realization. To this petition, the District Magistrate, Montgomery, was also impleaded as party-respondent. The Tribunal dismissed the petition holding that the amount of Rs. 40,000/- deposited by the Syndicate stood forfeited by order of the District Magistrate, Montgomery, and the petition was

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on that account not maintainable. In appeal, the High Court of Punjab made an order in terms of the prayer in the petition, subject to the condition that the respondent shall give an indemnity for restitution of the amount in the event of the Bank having to pay the amount to the District Magistrate, Montgomery. The High Court held that the

deposit was subject to conditions expressly mentioned in the receipt and no others and that the District Magistrate was not given any dominion over the amount of Rs. 40,000/- deposited by the Syndicate.

In this appeal, counsel for the Bank urged that the terms of the receipt created no obligation enforceable against the Bank at the instance of the syndicate, and that in any event the liability could be enforced only if the District Magistrate discharged the receipt and handed it over to the Bank acknowledging that he had no claim against the Syndicate.

The deposit receipt is made out in the name of the Syndicate. It is acknowledged by the receipt that an amount of Rs. 40,000/- was received from the Syndicate and the amount was to remain with the Bank till notice of twelve months for its withdrawal by either side expired. The deposit receipt gave rise to no contractual obligation in favour of the District Magistrate, Montgomery, nor was the Bank a trustee for that officer. It is common ground that no account was opened in the Bank's books in the name of the District Magistrate, Montgomery. Condition No. 5 of the Conditions of Deposit also clearly indicates that payment of the amount on the due date was to be made to the Syndicate, for it expressly provides that on due date the deposit receipt shall be discharged by the depositors if it is required to be repaid, otherwise an endorsement as to its renewal shall be made in the space provided in that behalf. It is not the case of the Bank that the receipt was transferred to the District Magistrate, Montgomery. By an express condition the receipt is, not transferable. The name which the receipt was made out is by itself not sufficient to create an interest in the amount in favour of the District Magistrate. The District Magistrate was not in law constituted an owner of the money deposited by the Syndicate with the Bank by virtue of the delivery of the receipt. In the books of the Bank the fund stood to the credit of the Syndicate: the Syndicate was the owner thereof and it was the Syndicate alone which was entitled to demand payment of the fund. In the absence of any obligation, contractual or fiduciary undertaken by the Bank in favour of the District Magistrate, the Bank could not withhold payment money deposited after the expiry of the period of notice.

It was urged by counsel for the Bank that unless the receipt is produced duly discharged, the Bank was not under an obligation to repay the money. Reliance, was placed upon the 400

following observations in Sheldon's Practice and Law of Banking, 8th Edn., at p. 163 :

"If the deposit receipt merely acknowledges the deposit of the money, the banker cannot demand its production before paying over the money. But if the form of the receipt is such that the signing of, the receipt is a condition precedent to the withdrawal of the money, then the deposit receipt must be returned when the money is handed over. But the banker is not entitled to withhold payment of the money should the receipt be lost or destroyed. All that he can do is to ask the depositor for an indemnity. Whether he is legally entitled to demand such an indemnity, the receipt not being a negotiable instrument, is another question."

and upon the statement at p. 174, Art. 327 Vol. 2 of Halsbury's Laws of England, 3rd Edn.

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"The receipt of money on deposit account constitutes the banker a debtor to the depositor, but not a trustee thereof for him. The debt is repayable either on demand or on condition agreed with the depositor. Specified notice may be stipulated for, and the return of the deposit book (or receipt) made a condition of repayment, or the deposit may be for a fixed period. If the return of the deposit book is a condition precedent, no actual debt arises until its return. In case of the loss of the book, however, a court would exercise its equitable jurisdiction, and not allow the absence of the receipt to stand in the way of the depositor reclaiming his money."

In the proceeding before the Tribunal, the District Magistrate, Montgomery filed no claim. We are of the view, even if Condition No. 5 of the terms of deposit receipt is a condition precedent to the enforcement of the obligation of the Bank in favour of the Syndicate, that the High Court was right in exercise of its equitable jurisdiction to direct that the money be paid to the Syndicate without production of the receipt. It may reasonably be inferred that the receipt is lost or destroyed and the Court's equitable jurisdiction may appropriately be exercised in this case. Whether the District Magistrate has the receipt is on the evidence problematic. Again the High Court has fully protected the Bank against any possible loss by directing that an indemnity be given by the Syndicate to the Bank for restitution if the Bank is to pay the amount to the District Magistrate, Montgomery, and this eminently reasonable direction is not liable to be set aside.

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It was urged that the Government of Pakistan have forfeited the amount standing to the credit of the Syndicate in the Bank's books of account at Okara, and the validity of that act cannot be questioned in the Indian Courts. But there is no evidence on the record that any order was passed by the Pakistan Government forfeiting, in exercise of any authority-statutory or sovereign-, the amount deposited by the Syndicate with the Bank. The only document on the record on which reliance is placed is a sheet of paper entitled "A list of securities of non-muslims forfeited to Government of Pakistan deposited in the United Commercial Bank Ltd." tendered in evidence by Shamim Yazdani an employee of the Bank in Pakistan. The witness was examined on interrogatories and he identified the list of securities of non-muslims which, it was claimed, were forfeited by the Government of Pakistan and in the list produced by him, Item No. 14 is the amount of Rs. 40,000/- deposited by the Syndicate on March 29, 1947 at Okara. The list does not purport to bear the signature of any officer of the Government of Pakistan, nor does it purport to specify the authority in exercise in which it is claimed that the amount was forfeited. A copy of a letter dated March 4, 1949, from N. A. Haroon, Officer on Special Duty, West Pakistan Government, Finance Department, Lahore, addressed to the Manager, United Commercial Bank Ltd. was also produced by Shamim Yazdani. It is recited in the letter that he was directed to enclose a list of securities of non-muslims deposited with the Branch Office and forfeited at Lyallpur, Okara and the Bank was requested to make arrangements for early realization of the amount for payment to the District

Food Controllers concerned. Neither the original letter nor its authenticated copy has been produced. There is no reference to the source of the authority of the officer who purported to forfeit the amount. The letter even does not recite that the order of forfeiture was made by him acting on behalf of the Government of Pakistan.

It is common ground that the, money deposited had not been paid by the Bank to the Government of Pakistan till the High Court decided the appeal. Counsel for the Bank urged that once an order was passed forfeiting the amount, the Bank held the amount on behalf of the Government of Pakistan'. But underlies that argument the assumption that such an order was in fact passed by the Government of Pakistan. In the absence of any evidence to that effect, we are unable to hold that any such order of forfeiture was passed. We do not feel called upon in this case to consider whether an order passed by the Government of a foreign country forfeiting the property of an Indian national must be recognized by the Courts in this country as a complete discharge of the obligation in circumstances similar, to those in this case, when the question is raised in the Courts here.

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It was faintly suggested that the amount of Rs. 40,000/- had vested in the Custodian, Evacuee Property in Pakistan. But the question was never mooted at any, stage of this litigation, and we cannot permit counsel for the Bank to make out that case for the first time in this Court.

Finally it was contended, relying upon the judgment of this Court in *The Delhi Cloth and General Mills Co. Ltd. v. Harnam Singh and Others*(¹) that the dispute must be determined by the law of Pakistan and not by the law in India. In that case, the plaintiffs were residents of Lyallpur and were appointed by the Government of undivided Punjab to administer a scheme for rationing of cloth. The Cloth Mills through its branch office at Lyallpur supplied those persons with cloth from time to time, and maintained a running account of the transactions. On partition in 1947, Lyallpur was allotted to Pakistan and the plaintiffs migrated to, India as refugees. The Pakistan Government issued an Ordinance vesting all evacuee-property in Pakistan in the Custodian of Evacuee Property in Pakistan, and prohibited payment of money to evacuees in Pakistan and ordered that all moneys payable to, or claimable by evacuees, be paid to the Deputy Custodian of Evacuee Property in Pakistan. Payments so made were to operate as a discharge-from further liability to the extent of the payment. Breach of this law was punishable-as an offence. The Deputy Custodian of Evacuee Property demanded of the Mills the money payable to the plaintiffs and in satisfaction of IF, the payment the Mills paid the amount. In defence to a suit filed by the plaintiffs in the Court of the Subordinate Judge, Delhi, the Mills pleaded that they had discharged their liability by payment made to the Deputy Custodian of Evacuee Property in Pakistan. The Court held that Lyallpur was the. place of primary obligation, that the elements out of which the contract to pay arose were most densely grouped at Lyallpur, and Lyallpur was the natural seat of the contract and the place with which it had its closest and most real connection. Accordingly the proper law of the contract was the law of Pakistan, and that even under the English doctrine the situs of the debt was Lyallpur and therefore either way the law of Pakistan applied.

Assuming that it was the law of Pakistan which applied to

the repayment of the debt due -under the receipt, the Bank- has failed to Prove its defence that they are not liable to pay the money due under the deposit receipt. To recapitulate the facts, the amount was deposited by the Synqicate; it was repayable to the Syndicate when demanded; the notice of repayment of the amount was served at the date when the deposit was made. The District Magistrate, Montgomery had no contractual relationship with

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the Bank, nor was the Bank constituted a trustee for the District Magistrate. The Bank has failed to prove that in exercise of any statutory or sovereign authority the Government of Pakistan have forfeited the amount. Nothing has been placed which may support the plea that under the law of Pakistan the Bank is not liable to repay the amount due under a deposit receipt on the due date, because an officer of the State is- said to have the custody of the receipt evidencing the deposit.

The order for payment of interest at a rate exceeding 2% per annum was also challenged by the Bank. But the rate of interest was stipulated only for the period of the deposit receipt. The Syndicate claimed interest at rate of 6% per annum from the date on which the petition was filed before the Tribunal under the Displaced Persons (Debt Adjustment) Act 70 of 1951. Interest from the date of the petition was within the discretion of the High Court, and the High Court has awarded interest at the rate claimed. We do not see any reason to interfere with the rate of interest awarded by the High Court.

The appeal therefore fails and is dismissed with costs.

Y.P.

Appeal dismissed.

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