APPELLATE CIVIL

Before Bishan Narain, J.

DIWAN HARI KISHAN,—*Plaintiff-Appellant*

v.

BHARAT NIDHI LTD., AND OTHERS,—*Defendants-Respondents*

First Appeal from Order No. 41 of 1955.

1956

Dec. 20th

Banker and Customer—Deposit made at a branch of the bank—Whether payment can be demanded at the Head Office or at another branch of the bank without a contract to this effect—Partition of Country—Branch in which deposit made becoming part of a foreign country—Effect of.

Held, that in the ordinary course money deposited with a branch of a bank is only repayable at the branch where it was deposited and in the currency of the country in which that branch is situated and that also on demand by the customer. To hold that the customer of one branch, keeping his cash and account there, has the right to have his cheque paid at all or any of the branches, is to suppose a state of circumstances so inconsistent with any safe dealing on the part of the banker, that it cannot be presumed without direct evidence of such an agreement. The liability is limited to the branch where the deposit is made and it applies with greater force from the time that the branch becomes a branch in a foreign country. The amount deposited is consequently payable only in accordance with the law prevailing where the branch is situate.

First appeal from the decree of the Court of Shri G. S. Bedi, Tribunal Panipat, dated the 3rd day of December, 1954, awarding the applicant a decree for Rs. 6,700 against the Bharat Bank and leaving the parties to bear their own costs.

D. D. KHANNA, for Appellant.

PARTAP SINGH, for Respondents.

BISHAN NARAIN, J.—Five persons entered into partnership under the name of Hafizabad Cinema Company on certain terms given in the partnership agreement, dated the 13th June, 1946. The names of the partners are, (1) Diwan Mulkh Raj, (2) Diwan Milkhi Ram, (3) Diwan Hari Kishan, (4) Krishan Chandra, and (5) Nur Hussain. The partnership carried on business in Hafizabad which now forms part of Pakistan. It opened current account with the Hafizabad Branch of the Bharat Bank, Limited, on the 15th August, 1946. Just before partition in August, 1947, there was a credit balance of Rs. 22,109 with the Bank. On account of partition all the partners excepting Nur Hussain migrated to India. Certain correspondence took place between the Bank and the partners regarding payment of this amount. Nur Hussain by letter dated the 3rd February, 1949, demanded from the District Manager of the Western Pakistan Branches of this Bank his share in this amount. He also stated in this letter that the shares of other partners might be paid to them at any place indicated by them. Diwan Mulkh Raj filed a suit in the court of Subordinate Judge, First Class Panipat, for accounts against his other partners and on the 18th May, 1950, the Court passed a final decree declaring the share of each partner in the partnership. The Bank, however, was not impleaded in this suit nor any relief was sought against it. After obtaining this decree Diwan Hari Kishan on the 1st August, 1950, demanded payment of his amount from the Head Office of the Bank and in reply the Bank offered to make the payment on certain conditions. The claimants, however, did not accept these conditions at that time. Thereafter certain correspondence passed between the parties and ultimately Krishan Chander, one of

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the partners, informed the Bank on the 25th November, 1950, that no payment should be made to the partners of the concern. On the 5th June, 1952, Diwan Hari Kishan filed an application under section 13 of the Displaced Persons (Debts Adjustment) Act, 1951, for recovery of his amount from the Bank, but it was dismissed in November, 1952. Thereafter Diwan Mulkh Raj on the 2nd December, 1952, and Diwan Hari Kishan and Diwan Milkhi Ram on the 6th December, 1952, filed separate applications for recovering the amounts of their shares from the Bank under section 13 of the Debts Adjustment Act before the Tribunal, constituted under the Act, at Panipat. The Bank admitted that Rs. 22,109 were due to the partnership from the Hafizabad Branch but *inter alia* pleaded that as the Pakistan Governmet had stopped transfer of this amount to India, the Bank should be asked to pay the amount only on its release by the Pakistan Government. The Tribunal acceded to this request and while passing decrees for the amounts claimed by the applicants it ordered that the decrees should not be executed till the Pakistan Government released these amounts and permitted their transfer to India. The claimants are dissatisfied with this order and have filed First Appeal from Order No. 41 of 1955, Civil Revision No. 72 of 1955 and Civil Revision No. 73 of 1955 in this Court against the condition imposed by the Tribunal. It will be convenient to decide all these three cases by this judgment. I may state here that Diwan Mulkh Raj and Diwan Milkhi Ram have filed revision petitions because their claims are below Rs. 5,000.

The only question that requires determination in these cases is whether or not the condition imposed by the Tribunal is in accordance

with law or is justified in the circumstances of the present case.

Now, all the applicants are displaced persons as they migrated to India on account of the disturbances in Pakistan. As far as Pakistan is concerned they are evacuees. The partnership has admittedly been not dissolved. The Bharat Bank Limited has its Head Office in Delhi. It is also admitted that the Bank owes Rs. 22,109 to the partnership. It is further admitted that neither the partnership nor any individual partner demanded return of this amount in full or according to the share of each partner from the Hafizabad Branch, before the 15th August, 1947. It is alleged that the Hafizabad Branch ceased to function from the 22nd September, 1947. The question that arises is whether in these circumstances the Head Office of the Bank, which now is situated in India, is liable to pay this amount. For the purposes of this case, I am assuming that each partner is entitled to claim his share in the amount due to the partnership although the partnership was never registered nor has it ever been dissolved and in spite of one of the partners' objection that the payment should not be made.

The argument of the learned counsel for the applicants is that the relationship between the banker and the partnership is that of a debtor and a creditor. The Bank as a whole is liable to pay this amount particularly when the Hafizabad Branch has ceased to function without making any payment to the partnership. To decide this matter it is necessary to determine the exact nature of the relationship between a banker and its customers. Chorley's Law of Banking describes this relationship in these words: "It is

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usual to refer to the branches as agents of the Head Office, but this is true only to some extent. It has been said that for certain purposes, the branches may be regarded as distinct trading bodies, but this is, from legal point of view, an inaccurate use of language, the truth being that it is an implied term of the contract between banker and customer that certain transactions e.g., the payment of the customer's cheques shall only be effected at a particular branch, but this, of course, does not constitute that branch a distinct trading body. It is a term of the contract implied from the relationship of banker and customer that the latter will carry out certain of the transactions relating to his account only at a particular branch where he keeps it." It follows that in the ordinary course money deposited with a branch of a bank is only repayable at the branch where it was deposited and in the currency of the country in which that branch is situated and that also on demand by the customer. To hold that the customer of one branch, keeping his cash and account there, has a right to have his cheque paid at all or any of the branches, is to suppose a state of circumstances so inconsistent with any safe dealing on the part of the banker, that it cannot be presumed without direct evidence of such an agreement [*vide Woodland* v. *Fear* (1)]. The position has indeed been authoritatively described by their Lordships of the Supreme Court in *Delhi Cloth and General Mills Co., Ltd.*, v. *Harnam Singh and others* (2), in these words:—

> "In banking transactions the following rules are now settled: (1) the obligation of a bank to pay the cheques of a customer rests 'primarily' on the branch at which he keeps his account

(1) 119 E.R. 1339
(2) A.I.R. 1955 S.C. 590

and the bank can rightly refuse to cash a cheque at any other branch: *The King* v. *Irvine A. Lovitt and others* (1), *State-aided Bank of Travancore, Ltd.*, v. *Dhrit Ram* (2), *and New York Life Insurance Co.* v. *Public Trustee* (3), a customer must make a demand for payment at the branch where his current account is kept before he has a cause of action against the bank:— '*Joachimson* v. *Swiss Bank Corporation* (4), quoted with approval by Lord Reid in '*Arab Bank Ltd.*, v. *Barclays Bank* (5).

The rule is the same whether the account is a current account or whether it is a case of deposit. The last two cases refer to a current account; the Privy Council *case, State-aided Bank of Travancore Ltd.*, v. *Dhint Ram* (2), was a case of deposit. Either way, there must be a demand by the customer at the branch where the current account is kept, are where the deposit is made and kept, before the bank need pay, and for these reasons the English Courts hold that the 'situs' of the debt is at the place where the current account is kept and where the demand must be made".

It may be stated here that it is nobody's case that there was any agreement between the parties express or implied under which the Bank would be under an obligation to pay this amount at any place other than Hafizabad. Thus the Bank's

(1) 1912 A.C. 212 at page 219
(2) A.I.R. 1942 P.C. 6 at pp. 7-8
(3) (1924) Ch. 101 at page 117
(4) (1921) 3 K.B. 110
(5) 1954 A.C. 495 at p. 531

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liability as a debtor is only to make the payment to the creditors at Hafizabad. This liability limited to Hafizabad applies with greater force in the present case from the time that this Branch became a branch in a foreign or another country. Therefore, it appears to me that the law applicable to Hafizabad applies to the demand for payment of this money as has been laid down by their Lordships of the Supreme Court in the case mentioned above. It is, however, argued that the closing of the Hafizabad Branch makes a difference to the legal position. It is admitted that at the time of partition of the country this Branch was functioning. Sohan Lal as claimant's witness has stated that he was Head Cashier of this Branch till the 22nd September, 1947. Even if it be assumed, for which there is no warrant on this record, that according to this witness the Hafizabad Branch functioned only till the 22nd September, 1947, it is clear that from the 15th August, 1947, onwards the amount was payable only in accordance with law prevailing at Hafizabad. Now, admittedly in the present case no demand was ever made at Hafizabad for the payment of this amount before the partition of the country nor till the 22nd September, 1947, when, it is alleged, that the Branch ceased to function. Further it is clear from the evidence that no demand for payment was made by the claimants before August, 1950 to the Bank either at Hafizabad or in India. It is true that Nur Hussain, one of the partners in Pakistan, wrote to the District Manager of the Western Pakistan Branches of this Bank demanding his share in this amount from Lahore and stated that the other partners might be paid their shares at any place where they resided, but this cannot be said to constitute a demand by the partnership or by the present applicants for the payment of this

amount. Diwan Mulkh Raj did file a suit in Panipat, but he did not care to implead the Bank and obtain a decree against it. For the first time the demand was made by Diwan Hari Kishan on the 1st August, 1950, and in reply to this demand the Bank offered to make the payment on certain conditions. It is unfortunate that the claimants did not accept these conditions at that time. Later on they made applications out of which the present appeal and revisions have arisen. It is clear from the narration of these facts that there was no demand for payment of this amount by these claimants from the Bank till August, 1950. In the meanwhile, however, Ordinance 15 of 1949, was enforced in Pakistan and under section 6 of that Ordinance all properties of evacuees vested in the Custodian with effect from the 1st March, 1947. This amount vests under this Ordinance in the Custodian as admittedly the present claimants were evacuees at the time the Pakistan Ordinance came into force and the amount due to them is a property as defined in that Ordinance. The Pakistan Ordinance, therefore, divested the claimants of any right in this amount and this right vested in the Custodian. Therefore the claimants are now not in a position to demand any payment of this amount. Moreover, the Pakistan Government has prohibited to transfer this amount outside Pakistan (*vide* the West Punjab Government's letter dated the 26th July, 1949, (Exhibit R. D.) and a similar order was passed by the Custodian in 1953 (*vide* Exhibit R. E.). It is argued that these letters have not been properly proved on the record. There is no force in this argument as it appears that the original of Exhibit R. E. was in Court when Bhasin, the Accountant of the Bank, was being examined. In any case there is no reason to reject his statement to the effect that this amount

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had been frozen by the Pakistan Government. It was then half-heartedly suggested on the basis of the statement of Sohan Lal that he had brought a draft of Rs. 17,000 from the Hafizabad Branch and had handed over this draft to the Manager at Amritsar Branch of the Bank. There is no corroboration of this statement and in any case the witness does not know if the Accountant of the Amritsar Branch was able to cash the draft. In any case this amount represented cash that was lying with the Hafizabad Branch and it was never earmarked as money belonging to the partnership. In these circumstances even if this amount was transferred to India I fail to see its effect on the present dispute. For all these reasons I am of the opinion that the Bank is under no obligation now to pay this amount to the applicants in India in the circumstances of the case and the condition imposed by the Tribunal goes as far as it could go to assist these creditors of the Bank.

In view of this matter it is not necessary to discuss the other points argued before me.

The result is that the appeal as well as the revisions fail. I accordingly dismiss them with costs.

REVISIONAL CRIMINAL

Before Mehar Singh, J.

JOGESHAR SINGH,—*Petitioner*

v.

BACHAN SINGH, 2. KULWANT SINGH,—*Respondents*

Criminal Revision No. 759 of 1956.

1956

Dec. 21st

Code of Criminal Procedure (Act V of 1898)—Sections 173, 251 and 251-A—Report of offence made against six persons to the police—Police sent up only four persons for trial