M. Mohd Ishaq
v.
The Commissioner of Income-tax, Delhi, Ajmer-Merwara

Bhandari, C. J.

For these reasons I am of the opinion that the Appellate Tribunal was not justified in holding that the question which the assessee wanted to be referred to this Court was not a question of law. I would ask the Appellate Tribunal to refer the following question to this Court under section 66(2) of the Act, namely:—

> "Was the assessee in the present case afforded a reasonable opportunity to produce his books of account, to produce his evidence in support of the returns and to rebut the case set out by the Income-tax Department? If the answer is in the negative, are the assessments for the years 1947-48, 1948-49 and 1949-50, liable to be set aside?"

FALSHAW, J. I agree.

APPELLATE CIVIL

Before Falshaw, J.

THE PUNJAB NATIONAL BANK, LTD.,—*Appellant*

versus

KIRPA RAM AND OTHERS,—*Respondents*

Second Appeal from Order No. 1-D of 1952

1953

Dec. 10th

Banker and Customer—Accounts—Suit for when lies against a Bank—Extraordinary state of affairs created by partition of India in August, 1947, whether justifies such a suit.

Held, that there is no doubt that ordinarily a suit for recondition of accounts will not lie by a constituent against a bank, but at the same time there is equally no doubt that an extraordinary state of affairs came into existence with the partition in August 1947. There must indeed be a very large number of constituents and banks which find themselves in the position of the present parties, namely, that sums of monies were advanced to constituents in Pakistan on the security of goods pledged on the spot and now the constituents are displaced persons living in India, and the banks have also lost possession of their branches in Pakistan, and also consequently lost possession

of goods pledged with them as security for loans, the business between the parties having come abruptly to an end in or about August, 1947. There can be no doubt that generally speaking in such cases only the bank from its account books is in a position to state both how much is due from the constituents in their loan accounts and how matters stand as regards goods and other articles pledged as security, particularly with regard to such matters as what has become of the goods, how much has been debited in the constituent's accounts on account of such things as insurance policies, and what claims, if any, have been made or recovered from insurance companies regarding the pledged goods. In such a situation a suit for rendition of accounts against a bank by a constituent would lie.

Second Appeal from the Order of Shri D. R. Pahwa, II Additional District Judge, Delhi, dated the 11th February 1952, reversing that of Shri A. N. Bhanot, Sub-Judge, 1st Class, Delhi, dated the 6th November 1950, and remanding the case to the Trial Court for further proceedings in accordance with law.

H. R. SAWHNEY, for Appellant.

GURBACHAN SINGH, for Respondent.

JUDGMENT

Falshaw, J.

FALSHAW, J. This judgment will deal with two appeals in which a similar point of law arises. Two suits were instituted against the Punjab National Bank, Limited, of Delhi, the first by the members of a joint Hindu Family firm trading under the name of Kirpa Ram-Wishan Das, and the second by the members of a joint Hindu family firm trading under the name of Mehnga Ram-Jiwan Das. Both the suits were for rendition of accounts. In the case of the firm Kirpa Ram-Wishan Das the allegation was that the firm had been in business before the partition at Vihari in Multan District, and had a cash credit account which started in December, 1946, with the Vihari branch of the defendant bank, in which the bank advanced various sums to the firm, which in turn pledged goods of various kinds with the bank as security. The case of the firm was that in August, 1947, goods of various kinds valued at Rs. 8,79,030 were lying pledged with the bank, and while the plaintiff firm was of the opinion that the pledged

goods exceeded in value the amount due at that time from the plaintiff firm to the bank, it had no means of ascertaining what this sum was in the absence of its own account books and also of knowledge of how the pledged goods had been treated in the accounts of the bank, and therefore it was prayed that a decree for rendition of accounts should be granted, followed in due course by a decree for the amount found to be due to the plaintiff from the bank.

The second suit was of a similar type, the firm which worked at Mian Channu, also in Multan District, having opened a cash credit account with the branch of the bank there in 1945. No specific allegation was made by this plaintiff regarding the amount of the goods lying pledged with the bank, and the suit was filed for rendition of accounts after the bank had sent a demand for Rs. 46,000 to the plaintiff without making any mention of the pledged goods. In both the suits the defendant bank raised preliminary objections that a suit for accounts did not lie and that in each case the guarantee broker was a necessary party.

In the suit of Messrs. Kirpa Ram-Wishan Das the trial Judge, Mr. A. N. Bhanot, overruled the defendant's objection that the guarantee broker was a necessary party, but, holding that a suit for accounts did not lie, dismissed the suit. The plaintiffs appealed, and by his order, dated the 11th of February 1952, the learned second Additional District Judge reversed the finding of the trial Court that a suit for accounts did not lie, and remanded the suit for decision on the merits.

In the second suit a different Subordinate Judge, Mr. Mehar Singh Chaddah, overruled both the preliminary objections of the defendant and proceeded forthwith to grant the plaintiffs a preliminary decree for renditon of accounts, and also appointed a local commissioner to go into the accounts. The defendant bank appealed, and by his order dated the 9th of February 1952, the same learned Additional District Judge, while upholding

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the decision of the trial Court on the point that the suit for accounts lay, held that a preliminary decree should not have been granted immediately, as there were still disputed questions of liability to be determined between the parties which could only be decided by the Court and not by the local commisioner, who could only go into figures. The bank's appeal was accordingly accepted to the extent that the preliminary decree was set aside, and the suit remanded for issues on the contested facts between the parties to be framed and decided after the recording of evidence. The bank has filed these second appeals against both these orders, contending that it should be held that no suit for rendition of accounts lies and that the suits should be dismissed.

There is no doubt that ordinarily a suit for rendition of accounts will not lie by a constituent against a bank, but at the same time there is equally no doubt that an extraordinary state of affairs came into existence with the partition in August, 1947. There must indeed be a very large number of constituents and banks which find themselves in the position of the present parties, namely, that sums of monies were advanced to constituents in Pakistan on the security of goods pledged on the spot, and now the constituents are displaced persons living in India, and the banks have also lost possession of their branches in Pakistan and also consequently lost possession of goods pledged with them as security for loans, the business between the parties having come abruptly to an end in or about August 1947. There can be no doubt that generally speaking in such cases only the bank from its account books is in a position to state both how much is due from the constituents in their loan accounts, and how matters stand as regards goods and other articles pledged as security: particularly with regard to such matters as what has become of the goods, how much has been debited in the constituent's accounts on account of such things as insurance policies, and what claims, if any, have been made or recovered

from insurance companies regarding the pledged goods. *Prima facie* it would appear to me that in such a situation there is nothing in law to debar a suit against a bank by a constituent for rendition of accounts, and indeed the learned counsel for the bank has not been able to point out to me either any statutory bar, or any direct or even analogous decision to the contrary. It seems in fact to be clear from the authorities that to a great extent it depends on the circumstances whether a suit for accounts will lie. The earliest decision on point of this kind is *Gurditta* v. *Azam* (1). In that particular case it was held by Smyth and Brandreth, JJ., that a suit for accounts did not lie, the plaintiff having executed a bond in favour of a money-lender and made some payments upon it and alleging that he was entitled to sue for rendition of accounts because the creditor had not carried out the stipulations of the bond in regard to the mode in which the consideration was to have been paid and had not credited all payments. The following observation occurs in the judgment of Smyth, J. :—

> "In my opinion there must be something more than the mere relation of debtor and creditor before one party can be held entitled to sue the other for an account, the defendant must stand in some other relation to the plaintiff, as, for instance, that of agent, or bailee, or receiver, or trustee, or partner, or mortgagor. Where the parties are merchants with mutual dealings or where the account is intricate, it may be that one of them is entitled to call upon the other for an account. And there may be other cases in which the suit will lie."

In *Panna Lal, etc.*, v. *Ram Richhpal, etc.*, (2), it was held that a right to claim a statement of accounts is an unusual form of relief only granted

(1) 122 P.R. 1881
(2) A.I.R. 1940 Lah. 120

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in certain specific cases and is only to be claimed when the relationship between the parties is such that this is the only relief which will enable the claimant to satisfactorily assert his rights. A suit for accounts was held to lie in the case of a lease with a proviso that in case of subletting, a certain proportion of the rents recovered from sub-tenants in excess of fixed amount was to be paid to the landlord. A suit for accounts was held by Teja Singh, J., to lie in Messrs. *Diwan Chand—Sant Ram* v. *Bhagat Ram, etc.* (1), in a case where there was an agreement between certain proprietors of brick-kilns not to sell more than a fixed quota of bricks, and any profits realised by any party to the agreement through the sale of bricks in excess of the quota was to be shared among the parties to the agreement. The learned Judge held that in such a case the plaintiff's only remedy was by way of suit for accounts. In *Firm Ram Dev-Jai Dev* v. *Seth Kaku* (2), a suit for accounts was held, by a Full Bench consisting of S. R. Das, C. J., and Khosla and Kapur, JJ., to lie by a client against a *pucca arhtia* in respect of a number of contracts, and the general proposition was laid down by the learned Chief Justice that a suit for account is not necessarily confined between a principal and agent, and wherever it is necessary, in order to ascertain the amount of money due to the plaintiff, he may ask the Court to pass a preliminary decree for accounts to be taken by or under the supervision of the Court.

It seems to me that in the course of his arguments the learned counsel for the appellant bank rather confused two aspects of the matter, which ought to be considered separately, and which in fact have clearly been separated by the learned Additional District Judge. The two matters which must be kept separate are the simple question whether the suit lies in the present form, and whether, even if the suit does lie in this form, the

(1) A.I.R. 1946 Lah. 82
(2) A.I.R. 1950 East Punjab 92

bank can be automatically held liable to pay to the plaintiffs any sums by which the value of their security as it stood in August 1947, may be found to exceed the sums due from the plaintiffs to the bank by way of advances. It will be noted that in the case of the firm Kirpa Ram-Wishan Das the lower appellate Court on finding that a suit for accounts lay and setting aside the order of the trial Court dismissing the suit did not proceed forthwith to pass a preliminary decree for accounts but remanded the case to the lower Court for further proceedings in accordance with law, and in the other case he actually set aside the preliminary decree passed by the lower Court, and more specifically held that there were certain disputed matters of liability involving questions of fact which would have to be decided by the Court before a preliminary decree could be passed and a local commissioner appointed to go into the figures. There seems to be little doubt that although he did not make it quite as clear in the order dealing with the case of Messrs. Kirpa Ram-Wishan Dass as he had done in the case of the other firm decided two days earlier, it was his intention that the same sort of matters were to be decided by the lower Court before passing a preliminary dacree. This position has been clearly accepted by the plaintiff firm Mehnga Ram-Jiwan Das, which did not file any cross appeal against the order setting aside the preliminary decree and remanding the suit.

In my opinion the circumstances in these suits are such as to justify the conclusion that a suit for accounts would lie, since both sets of plaintiffs were claiming that something was due to them from the bank on account of the fact that the goods pledged by them as security for their loans exceeded the amount of the loans as they stood in August 1947, but they are in no position, and only the bank is in a position, to show from its accounts what the balances in favour of the plaintiffs ought to be. At the same time I consider that the lower appellate Court is clearly right in taking the view that even

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if in the figures shown in the bank's account books the value of the securities is found to be greater than the amounts advanced as loans, at the time when dealings ceased, it does not necessarily follow that the plaintiffs will be entitled to recover the difference. Obviously before the differences are calculated, the Court will have to decide such questions as what is bank's liability under the contract between the parties, and in the light of other circumstances, even if the goods pledged by the plaintiffs have been destroyed or looted during the rioting of 1947, or merely seized as evacuee property by the Pakistan authorities. In these circumstances I am somewhat surprised that the bank attaches such importance to upsetting the bare finding that suits lie in the present form. I accordingly dismiss both the appeals and leave the parties to bear their own costs in this Court.

CIVIL WRIT

Before Falshaw, J.

MESSRS. KALYAN SINGH NAND KUMAR,—*Petitioner*

versus

THE DIRECTOR, CIVIL SUPPLIES (GENERAL),—*Respondent*

Civil Writ No. 82-D of 1953

1953

Dec. 11th

Constitution of India—Article 226—Disputed questions of fact—High Court whether will investigate—Licence—Cancellation—Whether can only be cancelled for good and proved reasons—Rule whether also applies to licences to deal in scarce and controlled commodities.

Held, that in a petition under article 226 of the Constitution it is obviously impossible for the Court to investigate disputed questions of fact.

Held also, that totally different considerations arise in the case of licences to deal in scarce and controlled commodities from those which arise to the routine licensing of vehicles for public conveyance. For one thing licences regarding such vehicles are no more than certificates of fitness issued regarding the vehicles themselves, which may be driven or pulled by different persons from time to time, and some care is taken in choosing persons to whom licences