

## CIVIL ORIGINAL SIDE.

*Before Falshaw, J.*

THE FEDERAL BANK OF INDIA (PB.) LTD., HAVING  
ITS REGISTERED OFFICE AT HOSHIARPUR NOW  
UNDER LIQUIDATION THROUGH SHRI ALAKH  
PARSHAD, LIQUIDATOR,—Petitioner.

*versus*

SHRI SOM DEV GROVER AND TWO OTHERS.—Respondents.

Civil Original No. 126 of 1950

1955

April, 11th

*Banking Companies (Amendment) Ordinance (XXIII of 1949)—Banking Companies Act (X of 1949)—Section 45-O—Limitation for filing suit expiring before Ordinance coming into force—Ordinance extending the ordinary period of Limitation—Benefit of the extended period of limitation—Whether available to the Bank in liquidation—Limitation Act (IX of 1908)—Section 20—Acknowledgment of payment by principal debtor—Whether extends limitation against surety—Principal and Surety.*

Held, that the ordinary period of limitation for the institution of the suit having expired before the Banking Companies (Amendment) Ordinance came into force, the plaintiff Bank in liquidation could not claim the benefit of the extended period of limitation under the Ordinance.

Held also, that unless it appears otherwise in the terms of surety contract an acknowledgment of payment by a debtor does not extend limitation against surety.

*The Punjab Commerce Bank Ltd. (In Liquidation), v. Brij Lal Mahandiratta (1), Gopal Daji Sathe v. Gopal Bin Sonu Bait (2), Brojendro Kissore Roy Chowdhury v. Hindustan Co-operative Insurance Society Ltd., (3), Kothandaraman Chetty and others v. Shunmugam Chetty and others (4), Vaiyapuri Pandaram, v. S<sup>q</sup>etharama Chettiar (5), Suwala Vamichand v. Fazle Hussain Rajabali Bohra and another (6), and Dialu Mal v. Nandu Shah Jai Lal and others (7), relied upon; Ram Chand v. Mewa Ram and others (8), Harbans Lal v. Nathu and another (9), Ranjit*

(1) 57 P. L. R. 99

(2) I. L. R. 28 Bom. 243

(3) I. L. R. 44 Cal. 978.

(4) A. I. R. 1947 Mad. 895

(5) A. I. R. 1934 Mad. 639.

(6) A. I. R. 1939 Nag. 31.

(7) I. L. R. 13 Lah. 240.

(8) A. I. R. 1918 Lah. 310.

(9) A. I. R. 1919 Lah. 374.

*Ray v. Kishori Mohan Gupta* (1), and *Gana Nath Sen v. Ranjit Ray* (2), referred to and not followed.

K. L. GOSAIN, for Petitioner.

B. R. TULI and A. N. GROVER, for Respondents.

#### ORDER

Falshaw, J. FALSHAW, J. The Federal Bank of India Limited (in liquidation) instituted this suit in the Court of the Senior Sub-Judge at Amritsar on the 28th of January, 1949 for the recovery of Rs. 18,496-9-0 from the three defendants, Som Dev Grover, his wife Chandar Prabha and the firm Tansukh Das-Nanak Chand through its proprietor Durga Das Kapur, on the allegations that the first two defendants had opened an account with the Amritsar branch of the Bank in which they borrowed Rs 15,000 on the 26th of March, 1945, with an agreement to pay interest at 6 per cent per annum. The loan was secured by the execution of a pronote and also by the deposit of the title deeds of a house at Amritsar, which constituted an equitable mortgage. The third defendant was impleaded as surety for the debt as being under a general contract with the Amritsar branch of the Bank a guarantee broker, and also as having specifically guaranteed the account in suit. It was, however, admitted by the liquidator in the plaint that the documents relating to this account including the pronote, the title deeds the deposit of which constituted the equitable mortgage and the broker's letter of guarantee had been taken away from the Manager of the Amritsar Branch by a trick, and in the circumstances the claim was brought merely for a simple money decree against the defendants.

As a result of the enactment of Ordinance No. 23 of 1949 which came into force after the institution of the suit and the effect of which was to make the High Court generally the forum for

(1) I. L. R. (1940) 2 Cal. 362.

(2) I. L. R. (1942) 1 Cal. 11.

deciding disputes between a bank in liquidation and other parties, the suit was transferred to this Court early in 1950.

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The defendants denied liability on various grounds giving rise to the following issues—

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- (1) Whether defendants Nos. 1 and 2 executed the pronote in suit in favour of the plaintiff?
- (2) If so, whether the pronote is without consideration?
- (3) What was the agreement with regard to the payment of interest and what is the rate of interest to which the plaintiff is entitled?
- (4) Whether the suit is within limitation?
- (5) Whether the plaintiff has a cause of action against defendant No. 3 as surety?
- (6) Relief.
- (7) Whether the suit cannot proceed in the present form?

Although the suit has taken a long time to become ripe for decision, actually very little evidence was led by the parties. Two witnesses were examined on commission on behalf of the Bank, Jagdish Chandar, the former Accountant, and Ram Chand Sehgal, the former Manager of the Amritsar Branch. The former proved the statement of the account, the receipt C.P.W. 1/A acknowledging the loan of Rs. 15,000 in the pronote account, dated the 26th of March, 1945, and pay-in-slip signed by Som Dev Grover, dated the 28th of January, 1946, relating to a payment of Rs. 806-6-3 which in fact appears to be the only item on the credit side of the account. The former Manager Ram Chand Sehgal deposed to the liability of the guarantee broker and stated that apart from being liable under his contract as Treasurer and guarantee broker for debts in all accounts with

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the Amritsar Branch, Durga Das Kapur defendant No. 3 had written a letter in the usual form guaranteeing this particular account. His version of how the documents relating to this and another account in which Som Dev Grover was the principal debtor were taken away from him is as follows. Sometime in January, 1948 a man who described himself as H. L. Mathur came to the Bank with Durga Das Kapur defendant and bearing a letter which purported to be from the Managing Director of the Bank at Lahore, Mr. H. C. Mathur, asking the Manager to hand over to the bearer of the letter all the documents relating to the accounts of Som Dev Grover. He accordingly handed over the documents including the pronote, letter of guarantee, letter of continuity and title deeds of the house to the man introduced by Durga Das Kapur as H. L. Mathur. Later when he had consulted the Managing Director he found that he had been deceived and reported the matter to the Police.

On behalf of the defendants only Durga Das Kapur and Som Dev Grover gave evidence as their own witnesses. The former stated that he was only a cashier of the bank and not under any contract as general guarantee broker, though he used to guarantee some accounts of clients whom he introduced to the Bank and regarding every account he guaranteed he gave the Bank a special letter. He denied that he had guaranteed the account in suit of Som Dev Grover and his wife. While he admitted that about March 1948 the Police questioned him regarding some documents taken from the Bank, he denied that he ever went with any H.L. Mathur or identified him before the Manager and he denied all knowledge of how the documents had disappeared. In cross-examination he denied that he had ever executed any written contract regarding being

guarantee broker of the Bank and said that he only guaranteed four or five loans. Asked about his correspondence with the Bank he said that his correspondence file must have been destroyed. Som Dev Grover while admitting that he opened an account with the Bank in the name of himself and his wife denied that any pronote was executed or title deeds deposited. He alleged in a rather vague way that in consequence of the letter D. A. his two accounts with the Bank including the other one on which he had been sued were amalgamated. He admitted in cross-examination that he had borrowed Rs. 15,000 on the 26th of March, 1945, and signed the voucher C.P.W. 1/A. This voucher mentions the pronote but Som Dev Grover said that when he signed it there was no reference in it to any pronote. The rest of his cross-examination produced some unsatisfactory replies regarding his pass-books and his own account books, which he alleged had been destroyed in the disturbances.

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It may be stated at once that although in the letter D.A. relied on by Som Dev Grover there was some suggestion that his separate accounts should be consolidated, there is no evidence whatever to suggest that this was actually done and since Som Dev Grover has admitted having borrowed Rs. 15,000 in this account and does not claim to have made any payments other than that of Rs. 800 on the 28th of January 1946, of which he has been given credit in the statement of account, there does not appear to be any reason whatever for not holding him liable for the amount in suit. His evidence is altogether silent regarding the rate of interest although he had in his written statement denied having agreed to pay interest at 6 per cent per annum.

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The main questions are whether the suit is within time against the other defendants and whether defendant No. 3 is liable at all as guarantee broker. As regards the latter point the Bank was unable to produce the original contract by which defendant No. 3 admitted that he became the Treasurer of the Bank which, if it is still in existence, must, according to Ram Chand Sehgal, be still lying at Lahore. I find it difficult to accept the evidence of Durga Das Kapur that there was no written agreement regarding the terms on which he was to guarantee accounts with the Amritsar Branch and I also find it impossible to believe that he has not got a copy of the contract which he has suppressed for his own purposes. His own written statement clearly appears to indicate that he had a copy of the contract, since one of his objections to his liability is based specifically on clauses 18 and 19 of the agreement. The relevant passage occurring in paragraph 4 of the written statement is as follows—:

“The answering defendant was not paid his commission in respect of the loan in suit or other loans guaranteed by him and thus the plaintiff committed breach of the terms of clauses No. 18 and 19 of the agreement which the answering defendant entered into with the plaintiff bank as Treasurer-cum-Guarantee-Broker”.

Incidentally the last words of this passage indicate clearly that he had a contract as guarantee broker as well as Treasurer, and clearly show that he told a lie on this point in the witness-box. In the circumstances I do not see sufficient reason for not believing the statement of the former Manager Ram Chand Sehgal that Durga Das Kapur had a general contract with the Bank guaranteeing all

overdrafts and also that he had written a letter relating to this particular account which was removed from the Bank along with the other documents relating to Som Dev Grover's accounts in January 1948, and by whatever trick these documents were removed from the custody of the Bank I do not find it possible to believe that it was not done at the instance of or with the complicity of the persons who were to benefit by their removal, namely the defendants. This takes the force out of the plea of defendant No. 3 that the Bank could not pursue its remedy against him without first proceeding against Som Dev Grover on the basis of the equitable mortgage, and that he was exempted from liability as the Bank had voluntarily surrendered its security.

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As regards limitation generally the plaintiff sought to take advantage of the provisions of the Ordinance and the subsequent Act of 1949, which in the case of a bank in liquidation excluded a period of one year preceding the bank's going into liquidation from the ordinary period of limitation, or in other words extended the period of limitation for the institution of suits by such banks by one year. It is, however, clear that in the present case the only thing that extends the ordinary period of limitation is the payment made by Som Dev Grover on the 28th of January 1946 and thus the ordinary period of limitation expired on the 28th January 1949 some months before the Ordinance came into force and it has been held by my Lord the Chief Justice and Bishan Narain J. in *The Punjab Commerce Bank Ltd. (In Liquidation) v. Brij Lal Mahandiratta* (1), that statutes of this kind are not retrospective and cannot affect claims which had become time-barred before the Act came into force. I, therefore, hold that the Bank cannot claim the benefit of the Ordinance of 1949.

(1) 57 P.L.R. 99

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In the circumstances the suit is clearly barred by time against defendant No. 2, the wife of Som Dev Grover, since the payment made by Som Dev Grover in January, 1946, cannot extend limitation against her in view of the provisions of section 21(2) of the Limitation Act. The question whether this payment extends the time against the surety is more difficult and in fact there is a conflict of authority on this point, which seems largely to turn on the question whether within the meaning of section 20(1), where the principal debtor makes a payment, he is acting as the agent of the surety and *vice versa*. There seems to be preponderance of authority in favour of the view that when either a principal debtor or a surety makes a payment towards the debt he thereby starts a fresh period of limitation only for himself and not the other. The first case on this point is *Gopal Daji Sathe v. Gopal Bin Sonu Bait* (1), in which Jenkins C. J. and Aston J. held that the payment of interest by the debtor within limitation does not give fresh starting point for limitation against the surety under section 20 of the Limitation Act, even in the absence of a prohibition by the surety against the payment of interest by the debtor on his account. Similarly in *Brojendro Kissore Roy Chowdhury v. Hindustan Co-operative Insurance Society Ltd.*, (2). Sanderson, C. J. and Mookerjee J. have held that the payment of interest by the principal debtor with the knowledge and consent of the surety, and even at his request, does not under section 20 extend limitation as against the surety, unless the circumstances are such as to render the payment one on behalf of the surety and for purposes of the application of section 20 the debt of the surety is distinct from the debt of the principal debtor though both of them arise out of

(1) I.L.R. 28 Bom. 248

(2) I.L.R. 44 Cal. 978



the same transaction, and section 128 of the Contract Act, which makes the liability of the surety co-extensive with that of the principal debtor, has reference only to the quantum of the liability and is not intended to affect the application of the statute of limitation. A similar view has been expressed by Seshagiri Aiyar J. in *Kothandaraman Chetty and others v. Shunmugam Chetty and others* (1), and by a Division Bench of the same Court, Beasley C. J. and Bardswell J. in *Vaiyapuri Pandaram v. V. Seetharama Chettiar* (2), Gruver J. has also followed the same view in *Suwala Vemichand v. Fazle Hussain Rajabali Bohra and another* (3), where the principle was held to apply in the case of a continuing guarantee.

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Coming nearer home, in *Dialu Mal v. Nandu Shah-Jai Lal and others* (4), Jai Lal and Abdul Qadir JJ. held that payments by a principal debtor did not save limitation against the surety in the absence of proof that the latter allowed himself to be represented by the person who made the payments. It must be stated that a different view was also expressed by the other Judges of the Lahore High Court. In *Ram Chand v. Mewa Ram and others* (5), Scott-Smith and Lesli Jones JJ. held that a sub-mortgagor stood in relation to a sub-mortgagee as a surety and that if a mortgagor makes a payment to a sub-mortgagee it operates to save limitation also as against the sub-mortgagor. Also in *Harbans Lal v. Nathu and another* (6), Martineau J. held that the liability of a

(1) A.I.R. 1917 Mad. 895

(2) A.I.R. 1934 Mad. 639

(3) A.I.R. 1939 Nag. 31

(4) I.L.R. 13 Lah. 240

(5) A.J.R. 1918 Lah. 310

(6) A.I.R. 1919 Lah. 374

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surety being co-extensive with that of the principal debtor, the benefit accruing to a creditor under section 20 is not restricted against the payer alone but is enforceable against any one liable for it. This, however, appears to ignore the distinction drawn in the Calcutta case cited above regarding the effect of section 128 of the Contract Act, as being confined only to the quantum of the liability and not in any way affecting the provisions of the law of limitation. A learned Judge of the Calcutta High Court Lort-Williams J. has also gone against the earlier decision of the Division Bench of that Court in *Ranjit Ray v. Kisori Mohan Gupta* (1) and has held that payments of principal or interest by either principal or surety and acknowledgments in accordance with the provisions of section 20 (1) of the Indian Limitation Act, create a fresh period of limitation in respect of the common debt as against either the principal or the surety.

The defendant's appeal against the decision of Lort-Williams J., in this case was dismissed by Derbyshire C.J. and McNair J., in *Gana Nath Sen v. Ranjit Ray* (2). It is, however, clear from the separate judgments delivered by the learned Chief Justice and his colleague in this case that so far from re-enforcing the decision of the learned Single Judge as an authority on the point now in issue their decision actually diminishes the value of the pronouncement of the learned Single Judge as a proposition of law, since it is quite clear that they dismissed the appeal and upheld the decree of the learned Single Judge simply on account of the extremely comprehensive terms in which the

(1) I.L.R. (1940) 2 Cal. 362

(2) I.L.R. (1942) 1 Cal. 11

contract of guarantee of the surety had been drafted. The contract contained the term—

“This guarantee will remain in force until the debt due is fully and finally adjusted and will not be affected by any forbearance or arrangement for giving time or other facilities to the principal debtor.”

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Neither Derbyshire C.J. nor McNair J., in their brief judgments made any attempt to quote from the numerous authorities which had been referred to in his judgment by Lort-Williams, J. In fact Derbyshire, C.J., had this to say on the point—

“I do want to say something about the course this case has taken. A great deal of law was cited in the lower Court and a great deal of law was cited before us. This was a suit upon a contract which had to be decided with reference to its terms. As I have said, those terms as expressed, in my view, are quite plain. It was unnecessary to cite a vast number of cases.

It is rather startling to note that this suit was brought to recover a sum of Rs. 1,000. It has taken the best part of two days in this Court and apparently took a day before Lort-Williams, J., in the Court below. The costs involved must be out of all proportion to the amount in dispute and it does not appear to me that any principle of law is involved.”

In these circumstances it is clear that the proposition of law stated by Lort-Williams, J., as a reason for deciding against the surety cannot be

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On the general grounds I cannot see any reason for not placing the surety in the same position as a co-debtor in this matter and, adopting the view of the majority of the High Courts, I hold that unless it appears otherwise in the terms of the surety's contract an acknowledgment of payment by a debtor does not extend limitation against the surety.

The result is that I dismiss the suit against defendants 2 and 3 and grant the Bank a decree for Rs. 18,496-9-0 with costs against Som Dev Grover defendant No. 1, Defendants 2 and 3 will bear their own costs.