

UNITED BANK OF INDIA

v.

SMT. KANAN BALA DEVI & ORS.

APRIL 21, 1987

[V. KHALID AND G.L. OZA, JJ.]

Code of Civil Procedure, 1908: Order XXII, Rules 4 and 10-A—Abatement—Death of defendant—Notice given to one branch of plaintiff bank—Delay in making applications for impleading legal representatives and setting aside abatement—Whether notice to one branch of a bank notice to other branches.

The defendant had an overdraft account with a particular branch of the plaintiff bank in the city. A suit was instituted against him by that branch in 1952 for recovery of certain sums with interest. He died on 6th November 1960. The widow informed another branch of the bank of the death of her husband on 20th December, 1960.

The applications for impleading the legal representatives of the defendant and for setting aside abatement were made in 1968, about 8 years after the death of the defendant. The delay in making these applications was sought to be explained with the plea that the concerned branch of the bank had no knowledge of the death of the defendant till it was informed by the other branch.

The High Court rejected the applications on the ground that no sufficient cause was shown for setting aside abatement. It held that an intimation of the death of the defendant to the bank in the other branch could not be treated as no intimation to the branch which was the plaintiff in the suit.

Allowing the appeal by special leave, the Court,

HELD: The High Court was in error in rejecting the application to set aside abatement and to condone delay. [1095C]

All branches of a bank could not be imputed with constructive knowledge of the death of a customer simply because one of the branches had been informed of it, for notice to one branch of a bank is no notice to the other branches. [1092H; 1094H]

In the instant case, it is not stated or proved that the branch which had filed the suit had information earlier about the death of the defendant. It is evident from the record that even on 3rd June, 1968 the counsel for the defendant did not know about the death of the defendant. The fact that a particular branch of the plaintiff bank had knowledge of the death was not sufficient to impute the concerned branch with constructive notice. [1093A; 1094A, H; 1095A]

(1918) The Times Law Reports, Vol. XXXV, p. 142 referred to.

The provisions of O. 22, R. 10-A of the Civil Procedure Code requiring a pleader appearing for a party to the suit to inform the court when he comes to know of the death of that party, whereupon the court is enjoined to give notice of such death to the other party, casts a duty only on the pleader and is not absolutely mandatory. [1095B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1747 (N) of 1973.

From the Judgment and Order dated 16.6.1972 of the Calcutta High Court in Appeal No. 54 of 1969.

C.S. Vaidyanathan, Pravir Choudhary, K.V. Mohan, H.K. Dutt and S.R. Bhat for the Appellant.

G.S. Chatterjee for the Respondent.

The Judgment of the Court was delivered by

KHALID, J. This is an appeal by special leave filed by the plaintiff bank against the judgment of the Calcutta High Court, arising from suit no. 547 of 1952, filed for recovery of a sum of Rs. 17,091-0-1 with interest. The question involved in this appeal is a short one, but of general importance to banks in the country. We have made it clear to the appellant bank that we are interested only in laying down the law in this appeal and not in giving a decree to the bank for this small amount, the claim for which originated nearly 35 years ago. The learned counsel for the appellant bank has agreed to this suggestion.

The defendant in the suit was one Ramesh Chandra Roy Choudhury. The plaintiff was the United Bank of India Ltd. The defendant had an over-draft account with the bank. He died on the 6th November, 1960. On the 20th Dec., 1960 the widow of the defendant,

A Smt. Kananbala Devi informed the Deshapriya Park Branch of the bank of the death of the defendant. The bank had several branches in Calcutta. One of the branches was the Royal Exchange Branch. It was this branch that instituted the suit in question.

B The applications for impleading the legal representatives of the defendant and for setting aside abatement were made by a Chambers Summons on the 8th August, 1968 about 8 years after the death of the defendant. The delay in making these applications was attempted to be explained with the plea that the Royal Exchange Branch of the bank had no knowledge of the death of the defendant till the Deshapriya Park Branch was informed of the death. The High Court rejected the

C applications holding that "In our opinion it is no explanation to say that the Royal Exchange Branch of the plaintiff bank which had really instituted the suit could not and/or did not have knowledge of the death of Ramesh Chandra Roy Choudhury. An intimation of the death of Ramesh Chandra Roy Choudhury to the bank in the

D Deshapriya Park Branch could not be treated as no intimation to the bank which happens to be the plaintiff in this suit. In our view no sufficient cause was shown in the petition for setting aside the abatement and the learned Judge was right in dismissing the said application. The appeal, therefore, fails and is dismissed" Hence this appeal.

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The learned counsel for the appellant submits that it would be extremely dangerous for courts to impute knowledge of the death of a customer with all the branches of a bank, solely on the strength of information given to a particular branch of the bank. It is submitted that in these days when banking business has expanded by leaps and bounds with branches spread over large areas, it would not be possible for a particular branch to know the death of one of its customers if that branch had not been informed of the death. In the absence of highly technical modern methods or computerised information to all the branches, of their customers and their details, no branch of a bank can be presumed to know whether a particular customer is alive or not unless that bank is given necessary information.

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The submission that all branches of a bank should be imputed with constructive knowledge of the death of a customer simply because one of the branches had been informed of it would result in adverse consequences and would defeat actions by banks for recovery of dues

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and would work great loss to banks and would harm public interest. In this case, it is not stated or proved that the Royal Exchange Branch had information earlier about the death of the defendant. To prove this we have two letters produced by the appellant: (1) dated 3rd June, 1968 and the other dated 17th June, 1968. The two letters read as follows:

10 OLD POST OFFICE ST.,
CALCUTTA.

M/s. S.N. Sen & Co.

Dear Sir,

3rd June, 1968.

United Bank of India Ltd.

v.

Ramesh Chandra Roy Choudhury.

As I have not yet been able to make contact with my client uptil now in spite of my attempts on that behalf, please do not mention the suit tomorrow but mention the suit some time next week. The suit was part-heard about 9 or 10 years before and my client has not seen since then. I hope you will mention the suit next week on previous notice to me.

Yours faithfully,
sd/-K.P. Mustaphy.

M/s. S.N. Sen & Co.

Dear Sir,

17th June 1968.

Suit No. 547 of 1952
United Bank of India Ltd.

v.

Ramesh Chandra Roy Choudhury

Kindly note that when the above suit will be mentioned by you before his Lordship the Hon'ble Mr. Justice R.M. Dutt, I will submit his Lordship that as the defendant died in 1960, the suit has abated and cannot be proceeded with.

Yours faithfully,
Sd/-K.P. Mustaphy.

Both the letters are written by the counsel for the defendant to

- A** the bank. It is evident from the first letter that even on 3rd June, 1968, the counsel for the defendant did not know about the death of the defendant. It was only thereafter that he came to know of the same.

- B** This branch of law appears to be barren of authority. A question akin to this is reported in 1918, *The Times Law Reports*, Volume XXXV, page 142. The brief facts are as follows:

- C** The plaintiffs' claim in the suit was on a cheque for £ 100, dated February 5, 1918 drawn by the defendant and made payable to the order of a Mrs. N. Try, who endorsed it to the plaintiffs. The defendant obtained leave to defend. The bank had branch at Victoria-street, Westminster, of which the manager was Mr. Stephen Trott. Among their customers was Mrs. Try. The bank had a branch at the Oxford-street branch of the Bank and she asked the manager to cash it. The amount was paid. The manager had no notice that the cheque had been stopped. The cheque when presented by the Victoria-street Branch to the Oxford-street Branch was returned marked "Ordered not to pay". The cheque was stopped by a letter from the defendant to the Oxford-street Branch. That letter was undated.

- E** It was under these circumstances that the action was brought. The question was when the drawer of a cheque stops payment by a notice given only to that branch on which it is drawn and the payee afterwards endorses the cheque to another branch of the same bank and the manager of that other branch advances money on the cheque in good faith and without notice that the cheque had been stopped, whether the bank is entitled to recover against the drawer in an action on the cheque. Here it was clear that the cheque was stopped on the Oxford-street Branch and that there was no notice yet at the Victoria-street Branch when the cheque was presented. It was held that the bank was the holder of the cheque and the fact that the branch at Oxford-street had notice not to pay the cheque did not affect the bank and, therefore, the bank was entitled to relief. It was observed that there was a right to a separate notice of dishonour as between the different branches of a bank.

- H** Though this judgment is not on all fours with our case, we seek some assistance from it for our purpose and that limited purpose is that notice to one branch of a bank is no notice to the other branches. That being so the fact that the Deshapriya Park Branch had knowledge of

the death, will not be sufficient to impute Royal Exchange Branch with constructive notice and reject the applications to set aside abatement and to condone delay. A

Of course, the law under the present Civil Procedure Code obviates this difficulty to some extent under Order 22 Rule 10-A, Under the rule, when a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, whereupon the Court shall give notice of such death of the other party. However, this provision not being absolutely mandatory and cast a duty only on the pleader, we thought it necessary to answer the question of law involved in this appeal. B

For the foregoing reasons we hold that the High Court was in an error in rejecting the application to set aside abatement and to condone delay on the plea that notice to one branch will be notice to other branches. C

We set aside the judgment of the High Court and allow this appeal with no order as to costs. As indicated above, the matter will rest here and the bank will not be permitted to proceed against the defendant or his legal representatives to realize the amount involved in the suit. The amount will be deemed to have been fully discharged. We have only decided the question of law for the benefit of the banks and general public. D E

P.S.S.

Appeal allowed.