

Privy Council Appeal No. 73 of 1934

Firm Nannhe Mal-Janki Das - - - - - *Appellants*

v.

The Punjab National Bank, Limited, Delhi - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 5TH MARCH, 1936

Present at the Hearing:

LORD BLANESBURGH.

LORD ATKIN.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD BLANESBURGH.]

Their Lordships do not think it necessary in this case to hear learned counsel for the respondent Bank. It has been made clear to them by the statement of Mr. Wallach that he can, on behalf of the appellant, effectively raise one question only for their Lordships' consideration: namely, the effect of paragraph 7 of the agreement of the 22nd December, 1926, to which reference will presently be made. If he fails in view of that clause which he has ably presented to the Board, it is manifest, in their Lordships' judgment, and he agrees that the appeal cannot succeed.

And the question is a short one. All the facts are stated clearly in the judgments under review. Their Lordships can indicate very briefly such of them as should be stated in order to explain how it is that the one question arises which remains for their determination.

There was in 1926 a joint undivided Hindu family possessed of *inter alia* a joint family business with the firm name of "Firm Nannhe Mal-Janki Das"—to be referred to as the firm. It is convenient to describe the appellant, Benarsi Das, as representing one branch of the joint family: and his nephew, Nanak Chand, as representing the other. Benarsi Das was the manager of the firm and the malik of the joint family. On the 17th April, 1926, Benarsi Das, as such manager and in the name of the firm deposited with the respondent Bank a lakh of rupees to carry interest at the rate of 6 per cent. per annum, Notice to that effect having been given the deposit was repayable in six months—that is to say,

on the 17th of October, 1926. From the date fixed for repayment, as was stated on the face of the receipt, interest ceased.

By paragraph 3 of a memorandum endorsed on the receipt it was provided that the document must be produced before any payment could be made thereon and that deposit receipts intended to be renewed should be sent in at the due date to prevent loss of interest.

Before the 17th October, 1926, the date of the maturity of the receipt, differences had broken out between the appellant, Benarsi Das, and his nephew, Nanak Chand, and a partition of the joint family property was resolved upon between them, including a reference to arbitration to settle details. This arrangement was ultimately embodied in the formal agreement already referred to dated the 22nd December, 1926. That agreement was expressed to be made between Benarsi Das for himself and as guardian of his minor sons, etc., first party: and Nanak Chand, for himself and others of his immediate relatives named, second party. After reciting that owing to the differences already referred to the parties were desirous of having partition effected of the businesses, and moveable and immoveable property of the joint family and that resort to arbitration was necessary to settle differences, the appointment was agreed of Lala Hazari Mal, as sole arbitrator, with a direction to have due regard to certain points on which agreement had been reached.

Their Lordships refer to four of these :—

1. The first party and the second party were to have one equal half share each.
2. Out of the joint moneys one lakh of rupees was to be assigned to Benarsi Das, first party, for purposes of charity.
4. The arbitrator was to partition the entire moveable and immoveable property in equal half shares and award possession thereof.

Clause 7, on which the appellant Benarsi Das pointedly relies, is as follows :—

“7. It has been settled between the parties that up to the decision and partition the business and dealings of the family of whatever nature they may be would continue in the present condition. But till the completion of the partition the arbitrator shall be authorised to make suitable arrangements temporarily in the business if it requires alterations or pass an order which he deems proper.”

Now it is not disputed on behalf of the appellant Benarsi Das that clause 4 of that agreement effectually precluded either himself or Nanak Chand, pending the final award, from claiming or taking possession of the entirety of any of the joint family property, and if, what the appellant afterwards did, in effect amounted to the assertion by him of such a claim to the lakh of rupees deposited with the Bank as above stated, it is clear on that ground alone that this appeal must fail.

What happened was this: The deposit being due on the 17th October, 1926, on the 2nd October, 1926, a notice was

given to the Bank on behalf of Nanak Chand stating in effect that he was one of the proprietors of the firm and that no moneys on deposit in the firm name were to be paid to anyone on its behalf without reference to him.

This notice was repeated in terms more explicit on the 31st December, 1926, and the 9th of March, 1927. In the notice of the 31st December, Nanak Chand himself states that he was an equal partner in the firm with Benarsi Das: he makes reference to the then pending arbitration and he encloses what he describes as an extract from the agreement of the 22nd December, 1926. It was conceded on behalf of the appellant that the Bank had as from that date full notice of the agreement and of all its relevant contents: clause 4 no less than clause 7.

On the 9th October, 1926, the Bank in usual form gave notice to the firm that the deposit would fall due for repayment on the 17th and it asked if the firm desired to withdraw or renew the deposit. Whether any verbal reply to that notice was returned by Benarsi Das may be doubted, but certainly no written response was made by him until the 11th March, 1927, when he wrote to the Bank intimating that the deposit was to be renewed, but not returning the receipt. This the Bank, by a reply of the same day, declined to do *on interest*. It pointed out that no renewal request had previously been made even by Benarsi Das, and it stated further that it was prohibited by Nanak Chand from dealing with the deposit without his consent.

No attempt was made by Benarsi Das to come to any agreement on the subject with Nanak Chand nor did he make any application to the arbitrator to make any order under clause 7 or otherwise. Only on the 27th February, 1929, nearly two years later, the suit out of which this appeal arises was commenced. By it the firm claiming by Benarsi Das as manager and Karta of the undivided Hindu family claimed from the Bank Rs.1,16,875, being the amount of the deposit with accrued interest thereon.

In the course of the proceedings, with the concurrence of Nanak Chand, who was brought before the Court for the purpose of recording his assent, the lakh of rupees with interest to the 16th October, 1926, was on the joint signatures of Nanak Chand and Benarsi Das paid by the Bank: and an issue was thereupon directed to ascertain whether the firm was entitled to claim from the Bank interest after that date.

On that issue the Senior Subordinate Judge at Delhi found in favour of the firm, but the High Court at Lahore on appeal by the Bank recalled the decree of the learned Subordinate Judge and by decree of the 15th March, 1933, dismissed the suit with costs. Hence this appeal.

It is unnecessary to go into the grounds of decision below, because it was finally conceded on behalf of the

appellant, Benarsi Das, as already indicated, that unless he could affirmatively show that the Bank was in default when it refused to accede to his demand of the 11th March, 1927, it was impossible for the appellant to maintain any claims against the Bank either for further interest or damages.

It was contended for Benarsi Das that under clause 7 of the agreement of the 22nd December, 1926, he, Benarsi Das, pending the result of the arbitration was left in management of the firm as before and that the Bank was bound by his direction to deal with any deposit with it on the firm's account.

Their Lordships are quite unable to draw that conclusion from the vague words of that clause of the agreement especially in their connection with the final reference to the arbitrator. Moreover Benarsi Das has made no attempt to establish that the demand was made by him as manager of the firm or for any purpose of the firm's business. Rather are their Lordships driven to conclude that the demand was made by the appellant in his own interest, and in anticipation of the lakh for charity which he was ultimately to receive.

But apart from all that it was impossible for the Bank, in face of the protest of Nanak Chand and with the agreement of the 22nd December, 1926, before it, to deal with the appellant's demand otherwise than it did. It appears to their Lordships, indeed, that the action of the Bank throughout has been entirely correct. The Bank has never been in default in any particular. It has paid all interest which it was by its contract bound to pay—and that in due time. It is a misfortune to the joint family for which the appellant, Benarsi Das, is entirely responsible that by a prompt arrangement made with Nanak Chand on the terms reached in the suit he did not secure for the family the interest on a lakh of rupees which has for so long been lost.

In their Lordships' judgment the suit of the appellant's has throughout been entirely misconceived, and they will humbly advise His Majesty that this appeal be dismissed and with costs.

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In the Privy Council.

FIRM NANNHE MAL-JANKI DAS

THE PUNJAB NATIONAL BANK,
LIMITED, DELHI

DELIVERED BY LORD BLANESBURGH.

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