(2022-4)208 PLR 768

PUNJAB AND HARYANA HIGH COURT

Before: Mrs. Justice Manjari Nehru Kaul.

BANK OF BARODA – Petitioner,

Versus

ANIRUDH JAIN and another – Respondents.

CR-3477-2022

Court Fees Act, 1879 (7 of 1870) Article 19 (as applicable to Punjab) – Under the provisions and scheme of the Act, it is abundantly clear that the expression "claims for money" in Article 19 refers to the claims of the creditors and depositors of the bank against the banking Company – Loan – Order whereby the petitioner was directed to affix the advalorem Court fee as per the amount claimed by it in the suit question – Upheld – Banking Regulation Act, 1949 (10 of 1949) Section 5(c). [Para 10]

Mr. Vishal Gupta, for the petitioner.

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Manjari Nehru Kaul , J. (Oral) – *(5th September, 2022)* – The instant revision petition has been filed under Article 227 of the Constitution of India for setting aside of the order dated 17.05.2022 (Annexure P-2) passed by learned Additional Civil Judge (Sr. Divn.), SAS Nagar, Mohali in Civil Suit titled as *'Bank of Baroda v. Anirudh Jain and another'* vide which the valuation of the Court fee as assessed by the petitioner/plaintiff was rejected and instead it was directed to pay advalorem Court fee as per the amount claimed in the suit.

2. Learned counsel for the petitioner has submitted that the impugned order is against the statutory provisions and thus is patently illegal. He has further contended that the Trial Court failed to appreciate that the petitioner was a banking company as defined under Section 5(c) of the Banking Regulation Act, 1949 (for short, 'the Act') and still further ignored that the loan advanced by the petitioner to the respondents was a "secured loan or advance" within the meaning of Section 5(n) of the Act. Therefore, since the loan was a claim under the provisions of the Act, the petitioner had affixed the right Court fee as per Article 19 of the Second Schedule to the Court Fees Act, 1870 (as applicable to the State of Punjab). Learned counsel still further submits that the Trial Court has erroneously relied upon Section 45B of the Act which pertains to the jurisdiction of the High Court in liquidation proceedings and not to recovery of debts by a banking company, hence, the Trial Court could not have directed the petitioner to make good the deficiency of Court fee by affixing the payable advalorem Court fee as per the amount claimed in the suit.

3. I have heard learned counsel and perused the relevant material placed on record.

4. The moot question which arises for consideration of this Court is as to what is the meaning or scope of the expression "claims for money" as appearing in Article 19 of Second Schedule to Court Fees Act, 1870 (as applicable to the State of Punjab).

5. Before proceeding further, it would be relevant to understand the object and purpose behind the Act.

6. The need for this Act was felt in the light of gross abuse of powers by persons controlling the banks. Since there were no measures in place to safeguard the interests of the depositors of banking companies, it resulted in erosion of faith of the general public in the banking institution. It was, thus, in this background, the Act was enacted to protect the interests of the depositors as well as to discipline and regulate the working/functioning of the banking companies.

7. On a meticulous perusal of the entire Act, the only provisions where 'claims' are talked about are contained under Part III (Suspension of business and winding up of Banking Companies), Part IIIA (Special provisions for speedy disposal of winding up proceedings) and Part IIIB (Provisions relating to certain operations of Banking Companies) of the Act.

8. It would also be apposite to reproduce certain relevant provisions of the Act to clarify the position, which read thus:-

"40. *Stay of proceedings.*—Notwithstanding anything to the contrary contained in Sec. 466

of the Companies Act, 1956 (1 of 1956), the High Court shall not make any order staying the proceedings in relation to the winding up of a banking company, unless the High Court is satisfied that an arrangement has been made whereby the company can pay its depositors in full as their claims accrue.

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4I-A. *Notice to preferential claimants and secured and unsecured creditors.*— (1) Within fifteen days from the date of the winding-up order of a banking company or where the winding-up order has been made before the commencement of the Banking Companies (Second Amendment) Act, 1960 (37 of 1960), within one month from such commencement liquidator shall, for the purpose of making an estimate of the debts and liabilities of the banking company (other than its liabilities and obligations. to its depositors), by notice served in such manner as the Reserve Bank may direct, call upon—

(a) every claimant entitled to preferential payment under Sec. 530 of the Companies Act, 1956 (1 of 1956), and (b) every secured and every unsecured creditor, to send to the official liquidator within one month from the date of the service of the notice a statement of the amount claimed by him.

(2) Every notice under sub-section (1) sent to a claimant having a claim under Sec. 530 of the Companies Act, 1956 (1 of 1956), shall state that if a statement of the claim is not sent to the official liquidator before the expiry of the period of one month from the date of the service, the claim shall not be treated as a claim entitled to be paid under Sec. 530 of the Companies Act, 1956 (1 of 1956), in priority to all other debts but shall be treated as an ordinary debt due by the banking company.

(3) Every notice under sub-section (1) sent to a secured creditor shall require him to value his security before the expiry of the period of one month from the date of the service of the notice and shall state that if a statement of the claim together with the valuation of the security is not sent to the official liquidator before the expiry of the said period, then the official liquidator shall himself value the security and such valuation shall be binding on the creditor.

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43. Booked depositors' credits to be deemed proved.—In any proceeding for the winding-up of a banking company, every depositor of the banking company shall be deemed to have filed his claim for the amount shown in the books of the banking company as standing to his credit and, notwithstanding anything to the contrary contained in Sec. 474 of the Companies Act, 1956 (1 of 1956), the High Court shall presume such claims to have been proved, unless the official liquidator shows that there is reason for doubting its correctness.

43 A. *Preferential payments to depositors.*—(1) In every proceeding for the winding up of a banking company where a winding-up order has been made, whether before or after the commencement of the Banking Companies (Second Amendment) Act, 1960 (37 of 1960), within three months from the date of the winding-up order or where the winding-up order has been made before such commencement, within three months therefrom, the preferential payments referred to in Sec. 530 of the Companies Act, 1956 (1 of 1956), in respect of which statements of claims have been sent within one month from the date of the service of the notice referred to in Sec. 41-A, shall be made by the official liquidator or adequate provision for such payments shall be made by him. (2) After the preferential payments as aforesaid have been made or adequate provision has been made in respect thereof, there shall be paid within the aforesaid period of three months–

(a) in the first place, to every depositor in the savings bank account of the banking company a sum of two hundred and fifty rupees or the balance at his credit, whichever is less; and thereafter,

(b) in the next place, to every other depositor of the banking company a sum of two hundred and fifty rupees or the balance at his credit whichever, is less, in priority to all other debts from out of the remaining assets of the banking company available for payment to

general creditors:

Provided that the sum total of the amounts paid under clause (a) and (b) to any one person who in his own name (and not jointly with any other person) is a depositor in the savings bank account of the banking company and also a depositor in any other account, shall not exceed the sum of two hundred and fifty rupees.

(3) Where within the aforesaid period of three months full payment cannot be made of the amounts required to be paid under clause (a) or clause (b) of sub-section (2) with the assets in cash the official liquidator shall pay within that period to every depositor under clause (a) or, as case may be, clause (b) of that sub-section on a pro rata basis so much of the amount due to the depositor under that clause as the official liquidator is able to pay with those assets; and shall pay the rest of that amount to every such depositor as and when sufficient assets are collected by the official liquidator in cash.

(4) After payments have been made first to depositors in the savings bank account and then to the other depositors n accordance with the foregoing provisions, the remaining assets of the banking company available for payment to general creditors shall be utilized for payment on a pro rata basis of the debts of the general creditors and of the further sums, if any, due to the depositors; and after making adequate provision for payment on a pro rata basis aforesaid of the debts of the general creditors, the official liquidator shall, as and when the assets of the company are collected in cash, make payment on a prorata basis as aforesaid of the further sums, if any, which may remain due to the depositors referred to in clause (a) and (b) of sub-section (2).

(5) In order to enable the official liquidator to have in his custody or under his control in cash as much of the assets of the banking company as possible, the securities given to secured creditor may be redeemed by the official liquidator—

(a) where the amount due to the creditor i5 more than the value of securities as assessed by him or, as the case may be, as assessed by the official liquidator, on payment of such value; and

(b) where the amount due to the creditor is equal to or less than the value of the securities as so assessed, on payment of the amount due:

Provided that where the official liquidator is not satisfied with the valuation made by the creditor, he may apply to the High Court for making a valuation.

(6) When any claimant, creditor or depositor to whom any payment is to be made in accordance with the provisions of this section, cannot be found or is not readily traceable, adequate provision shall be made by the official liquidator for such payment.

(7) For the purposes of this section the payments specified in each of the following clauses shall be treated as payments of a different class, namely:

(a) payments to preferential claimants under Sec. 530 of the Companies Act, 1956 (1 of 1956);

(b) payments under clause (a) of sub-section (2) to the depositors in the savings bank account;

(c) payments under clause (b) of sub-section (2) to the other depositors;

(d) payments to the general creditors and payments to the depositors in addition to those specified in clause (a) and

(b) of sub-section (2).

(8) The payments of each different class specified in subsection (7) shall rank equally among themselves and be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportion.

(9) Nothing contained in sub-sections (2), (3), (4), (7) and

(8) shall apply to a banking company in respect of the depositors of which the Deposit Insurance Corporation is liable under Sec. 16 of the Deposit Insurance Corporation Act, 1961 (47 of 1961).

(10) After preferential payments referred to in sub-section (1) have been made or adequate provision has been made in respect thereof, the remaining assets of the banking

company referred to in sub-section (9) available for payment to general creditors shall be utilized for payment on pro rata basis of the debts of the general creditors and of the sums due to the depositors:

Provided that where any amount in respect of any deposit is to be paid by the liquidator to the Deposit Insurance Corporation under Sec. 21 of the Deposit Insurance Corporation Act, 1961 (47 of 1961), only the balance, if any, left after making the said payment shall be payable to the depositor.

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45. *Power of Reserve Bank to apply to Central Government for suspension of business by a banking company and to prepare scheme of reconstitution or amalgamation.—*

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(g) the payment in cash or otherwise to depositors and other creditors in full satisfaction of their claim—

(i) in respect of their interest or rights in or against the banking company before its. reconstruction or amalgamation; or

(ii) where their interest or rights aforesaid in or against the banking company has or have been reduced under clause (f), in respect of such interest or rights as so reduced;"

9. A perusal of the above reproduced provisions leave no manner of doubt that the expression "claims" pertains to the claims of creditors and depositors of banking companies in liquidation and winding up proceedings of such banking companies under the Act. No doubt the petitioner bank is a Banking Company within the meaning of Section 5(c) of the Act, however, the scheme of the Act is to secure the interests of the depositors and creditors of the banking companies rather than to facilitate the banking companies to recover their debts from its debtors.

10. This Court has no hesitation in observing that in view of the above provisions and scheme of the Act, it is abundantly clear that the expression "claims for money" in Article 19 refers to the claims of the creditors and depositors of the bank against the banking company. This Court does not concur with the submissions made by learned counsel appearing for the petitioner that the loan advanced by the petitioner would fall under the expression "claims for money" under the Act. Further, learned counsel has failed to bring to the notice of this Court any provision which even remotely talks or deals with the banks' claims for money, against its debtors.

11.The Trial Court has rightly relied upon Section 45B of the Act as only the High Court has the exclusive jurisdiction to entertain and decide any claims made by or against the banking company under the Act which is being wound up. The claimant who is preferring his or her claim before the High Court will have to affix Court fee as per Article 19 of the Second Schedule to the Court Fees Act.

12. As a sequel to the above discussion, this Court does not find any error in the impugned order whereby the petitioner was directed by the Trial Court to affix the advalorem Court fee as per the amount claimed by it in the suit in question. The instant revision petition being devoid of merit is dismissed.

R.M.S. – Petition dismissed.