BANK OF CEYLON
v.
UPALI DIAS

COURT OF APPEAL
ATUKORALE, J., AND G.P.S. DE SILVA, J.
C.A. APPL. 932/81; D.C. PANADURA 1463/T
SEPTEMBER 1, 1982

Testamentary proceedings – Relationship between Bank and customer – Requirement of Probate before dealing with money in deceased's current account.

One Eugene Dias died on 25.11.78 leaving a Last Will appointing the respondent as her executor. At the time of her death she had to credit in her account with the Bank of Ceylon (City Office Branch) a sum of Rs. 14,520.90.

On 26.2.81 the lawyers for the respondent who were the applicants for Probate wrote to the Manager of the City Officer Branch requesting him to deposit the aforesaid sum of Rs. 14,520.90 to the credit of the testamentary case in accordance with an order made by the Judge on 11.2.81.

The Manager by his letter dated 3.3.81 addressed to the respondent's lawyers called for the Probate or Letters of Administration. The lawyers replied stating that the order of Court was sufficient. On 9.3.81 the Manager informed the lawyers that according to current banking regulations Probate or Letters of Administration were a pre-requisite.

On 15.5.81 the Judge noticed the Manager of the Bank to appear in Court and show cause on 7.7.81. On 7.7.81 the Judge made order directing the Manager to carry out his order of 11.2.81 and warned that failure to do so would result in his being dealt with for contempt of Court.

The petitioner Bank appealed against this order.

The question was whether the Court could compel the petitioner Bank to deposit money lying in current account with the Bank to the credit of the Testamentary case before Probate or Letters of Administration is granted.

Held –

That as the relationship between a Bank and a customer is one of debtor and creditor, it is only the creditor or the executor who has obtained probate who could call for the money and give a valid discharge.

Cases referred to:

(1) *The Imperial Bank of India Ltd. v. Perera (1928) 30 N.L.R. 59.*
(2) *R. V. Davenport (1954) 1A.E.R. 602.*

APPLICATION for revision of the Order of the District Court of Panadura

K. Kanag-Iswaran for the petitioner.
Nimal Senanayake, S.A., with *Miss S.M. Senaratne* for the respondent.

Cur.adv.vult.

November 4, 1982

ATUKORALE, J.

This is an application to revise the order of the learned acting District Judge of Panadura made on 7.7.1981 directing the Assistant Manager of the City Office branch of the petitioner (Bank of Ceylon) to deposit, in compliance with an order purported to have been made by court earlier, a sum of Rs. 14,520/90 cts. to the credit of the testamentary case in which the estate of the deceased Eugene Dias is being administered. She died on 25.11.1978 leaving a last will appointing the respondent as executor. At the time of her death this amount of money was lying to the credit of her current account with the petitioner at its City Office branch. On 26.2.1981 the attorneys-at-law for the respondent (who was the petitioner claiming probate in the testamentary case) wrote to the Manager of the City Office forwarding an order purported to have been made by court on 11.2.1981 that this amount should be deposited in court on 23.3.1981 and also a deposit note to enable the Manager to do so. The Manager by his reply of 3.3.1981 addressed to the respondent's attorneys-at-law requested them to forward without delay the probate or letters of administration to enable him to attend to the matter. By their letter of 5.3.1981 the attorneys informed the Manager that no question of probate would arise as they had forwarded to him the order of court to deposit the money. By his reply of 9.3.1981 the Manager brought to the notice of the attorneys that, according to the current banking regulations, probate or letters of administration had to be produced before the money could be released. On 15.5.1981 the Manager received a notice from court requiring him to appear in court on 7.7.1981 in connection with his failure to act in compliance with the letter of 11.2.1981 sent on the order of court and requiring him to show cause, if any, for such failure. On 7.7.1981 the acting

Manager appeared in court in response to this notice and explained the petitioner's position to the acting District Judge and referred court to the decision of *The Imperial Bank of India Ltd. v. Perera* (1). The learned acting District Judge, however, directed him to carry out the order of court and ordered him to deposit the money to the credit of the case before 8.8.1981 and also informed him that failure to do so would be regarded as contempt of Court. It is this order that is sought to be revised in the present application.

The main issue that was argued before us related to the question whether, probate admittedly not having at the time been granted to the respondent, the court could compel the petitioner to deposit the money lying to the credit of the deceased's current account to the credit of the testamentary case in which the deceased's estate is being administered. Our attention was drawn to the above decision of the Supreme Court which seems to me to be exactly in point. There too an application was made to the District Court for an order on the bank directing it to bring into the testamentary case the money lying to the credit of the deceased testator at the time of his death. The bank (apparently on being noticed of this application) resisted the same. The reason for resisting did not appear to be clear. After inquiry the learned District Judge made order directing the bank to deposit the money in court. The bank appealed from this order. The Supreme Court observed that the true relationship of the bank and its customer who had deposited money in a current account was that of a debtor and creditor respectively, the money in deposit being a common law debt owing from the bank to its customer. It was therefore held that it was not competent for the District Court to have made order directing the bank to deposit the money in court. Schneider J. in delivering judgment (with Garvin, J. agreeing) stated thus:

> "If the Bank had been an ordinary debtor and had refused payment of a debt, the proper procedure for recovering it would be a properly constituted action. I am not aware why the Bank has refused in this instance to bring the money into Court, but it is possible that it might have been advised that if it did bring money into Court upon an order of the District Judge, which was ultra vires, it might be regarded as a voluntary payment and not a payment made upon compulsion in pursuance of a valid order of Court. If that view were taken, then the defence would not be open to the bank, if sued by any person

lawfully entitled to the money, that it had paid the money into Court upon an order of Court. But whatever may have been the reason which actuated the Bank, in my opinion, the Bank was within its rights in objecting to deposit the money in Court upon an order made by the Judge in this testamentary action. If the executors of the deceased testator had perfected their title by obtaining probate the situation might have been different, but I express no opinion thereon."

The Supreme Court set aside the order of the learned District Judge.

The view that the banker and customer relationship in so far as money lying to the credit of the customer in a current account is concerned is that of a debtor and creditor appears to have been recongised in recent times too; vide *R.V. Davenport*, (2) where Lord Goddard, C.J. observed:

"If I pay money into my bank, either by paying cash or a cheque, that money at once becomes the money of the banker. The relationship between banker and customer is that of debtor and creditor. He does not hold my money as an agent or trustee. The leading case in *Feloy v. Kill* exploded that idea. When the banker is paying out, whether in cash over the counter or whether by crediting the bank account of somebody else, he is paying out his own money, not my money, but he is debiting me in my account with him."

Applying the law as set out in the above decisions to the facts of the present case, it is clear that the petitioner was in the position of a debtor of the testatrix Eugene Dias, the money lying to the credit of the latter in her account being money borrowed by and belonging to the petitioner. The petitioner does not deny the existence of this debt. Its obligation is to pay its creditor Eugene Dias and on her death, the person who is lawfully entitled to the debt. It is settled law that the person who is in law entitled to receive payment of a debt on the death of a creditor is his or her personal representative, namely the executor or administrator. Thus in this case it is the executor of the deceased testatrix who was in law entitled to call for and receive payment of the debt owing from the petitioner. It is the executor who could have given a valid discharge of the debt. The petitioner's obligation was to pay the executor and no one else. Admittedly the respondent, though nominated to be the executor in

the last will, had not at the relevant time obtained a grant of probate. He had thus no legal authority to claim the debt due to the estate. There is no legal provision which empowers a person claiming to be entitled to probate or letters of administration to make application to court to compel a debtor to make payment of the debt to the credit of the testamentary case in which the estate of the creditor is being administerd. I am therefore of the opinion that the claim of the respondent to the money standing to the credit of the deceased with the petitioner is not one which the court could have entertained. I hold that the order purported to have been made by court on 11.2.1981 and the subsequent order of the learned acting District Judge of 7.7.1981 are both fundamentally bad as having been made without jurisdiction and must be set aside.

There is another aspect of this case which requires consideration here. A perusal of the journal entries produced before us reveals that the impugned order of 7.7.1981 has been made in consequence of a proceeding initiated by way of a motion filed by the attorneys-at-law of the respondent in the lower court. The motion itself appears to have been one directed to the issue of a deposit note to the Manager of the City Office branch of the petitioner, to enable him to make payment of the money to court. The court has on this motion ordered the issue of the deposit order as requested. It is this order that has been communicated by the respondent's attorneys to the Manager. It appears to me that there has not been a proper application made to court for the purpose of determining whether the petitioner was liable to deposit the money to the credit of the testamentary case at the instance of the respondent who at the time had not been clothed with probate. If such an application had been made, the court no doubt would have granted the petitoner an opportunity of stating its objections. The order itself (made on 10.2.1981 and not on 11.2.1981) is not one which contains a specific direction to make payment. It does not have the effect of enjoining the petitioner or its Manager to make payment to court. It is one which has been made without affording the petitioner an opportunity of being heard. It is not one made after a judicial inquiry. On this view of the matter also it appears to me that the direction given by the learned acting District Judge to the Assistant Manager on 7.7.1981 that he should comply with the earlier order is untenable. On a consideration of the above matters I am of the opinion that the order purported to have been made on 10.2.1981 and the order of 7.7.1981 are both

bad in law and accordingly they are set aside. The respondent will pay the petitioner a sum of Rs. 315/- as costs of this application.

G.P.S. DE SILVA, J. – I agree.

Orders set aside.