IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1999] SGCA 57

CA 301/1998

Between

Damayanti Kantilal Doshi

… *Appellant*

And

Indian Bank

… *Respondent*

GROUNDS OF DECISION

Banking — Accounts; Banking — Branch bank; Banking — Lending and security

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Damayanti Kantilal Doshi v Indian Bank

[1999] SGCA 57

CA 301/1998
Lai Kew Chai J; L P Thean JA; Yong Pung How CJ
03 August 1999

1 (delivering the judgment of the court): This is an appeal from the decision of the High Court which, among other things, dismissed the appellant`s claim for an account and for losses suffered owing to the refusal of the respondents` branch in Singapore to pay her certain moneys which were placed on fixed deposits under the joint names of her late husband, Kantilal P Doshi, and herself.

2 ***The facts***

3

4 The facts that led to the appeal are these. The appellant, Madam Damayanti Kantilal Doshi, is the widow of the late Kantilal P Doshi (`KPD`), who was killed on 1 July 1991. KPD was a Malaysian, who operated his businesses in Johore Bahru and was a long standing customer of the Singapore branch of the respondents, Indian Bank. We shall refer to the Singapore branch of Indian Bank as `IBS`.

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5 Under the will of KPD, the appellant and her youngest son, Jogesh, were appointed the executors of KPD`s estate (`the estate`). The appellant has two other sons, the eldest being Jigarlal, and the second Tilaklal. After KPD`s death an unfortunate dispute arose in the family, with Jigarlal seeking to acquire control of KPD`s main business carried on through the company, Overseas Industries Sdn Bhd (`OISB`). Jigarlal obtained an injunction in the Johore Bahru High Court which prevented his mother and siblings from gaining access to KPD`s Johore office and documents kept there. These documents included fixed deposit receipts to the numerous fixed deposits (`FDs`) placed with various branches of the respondents in India, and some of these FDs were in the joint names of KPD and the appellant. These deposits were placed by KPD under a special scheme operating in India and are known as the Foreign Currency Non-Resident Deposits (`FCNRDs`). Under this scheme Indian nationals resident abroad or persons abroad of Indian origin were encouraged to place fixed deposits in certain specified foreign currencies with various authorised branches of the respondents in India at interest rates which were higher than the normal prevailing rates. The rate of interest payable on such deposits is determined by the Reserve Bank of India and is the same regardless of which bank or branch of a bank the deposits are placed. Such deposits and the interests accrued thereon may be freely repatriated out of India by the depositors. But a depositor cannot obtain payment of his deposit in cash over the counter at the bank or the branch of the bank where his deposit is placed. Payment of a deposit can only be effected by (i) an `overseas` branch, ie a branch in India specifically authorised to deal in foreign exchange, or (ii) a demand draft drawn on a foreign bank outside India or by way of telex transfer to a bank outside India.

6 In July 1991, soon after the death of their father, Jogesh and Tilaklal met up with officers of IBS to ask for an account of the various FDs placed by KPD

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with the respondents. Subsequently by a letter written to IBS dated 30 July 1991, the appellant asked for an `up to date and complete list of all assets, including fixed deposits and any other investments` held in the name of KPD singly or in the joint names of KPD and the appellant, both locally and overseas. IBS replied on 1 August 1991 informing the estate of the facilities granted to KPD and his associate firms, and some 15 FDs, which were charged to IBS to secure those facilities. Further, IBS requested the estate to advise them of the arrangements to settle their claims against KPD.

7 The 15 FDs referred to by IBS consisted of seven FDs in the name of OISB and eight in the joint names of KPD and the appellant. These eight FDs (the `eight charged FDs`) in the joint names of KPD and the appellant were as follows:

8 (1) FCNRD No 406019 dated 26 February 1991 (Richmond Circle Branch) principal sum of US$319,805.38 due on 26 August 1991 for US$331,798.08

9 (2) FCNRD No 003777 dated 6 December 1990 (Harbour Branch) principal sum of US$1,030,000 due on 6 December 1993 for US$1,370,468.86

10 (3) FCNRD No 433953 dated 6 December 1990 (Adyar Branch) principal sum of US$500,000 due on 6 December 1993 for US$646,250.00

11 (4) FCNRD No 585753 dated 20 December 1990 (Ballygunge Branch) principal sum of US$102,033.82 due on 20 December 1991 for US$111,216.86

12 (5) FCNRD No 585785 dated 9 January 1991 (Ballygunge Branch) principal sum of US$96,436.12 due on 9 January 1992 for US$105,115.37

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13 (6) FCNRD No 190216 dated 31 March 1991 (Ernakulam Branch) principal sum of US$203,194.67 due on 31 March 1994 for US$258,057.23

14 (7) FCNRD No 72113 dated 3 May 1991 (Rajkot Branch) principal sum of US$19,017.47 due on 3 May 1994 for US$24,152.19

15 (8) FCNRD No 115262 dated 14 November 1990 (Panaji Branch) principal sum of US$1,751,770.41 due on 14 November 1992 for US$2,093,365.60

16 Three of the eight charged FDs, namely, the FDs maintained at the Harbour, Adyar and Panaji branches of the respondents were originally in the name of KPD alone but subsequently in early 1991 the appellant`s name was added as a joint holder thereof. These three FDs gave rise to a separate point of dispute in this appeal, which we shall discuss and consider in a moment.

17 On the following day, the appellant replied by her letter dated 2 August 1991, stating, among other things, the following:

> *We would like the fixed deposits to be transferred to a bank overseas of our choice upon maturity.*
>
> *Please advise us of the procedure for doing so. Similarly we would like to transfer other fixed deposits as and when they mature.*

18 IBS did not appear to have responded to this letter specifically.

19 In the meanwhile, in July 1991 IBS received the following: (i) a demand from Lloyds Bank plc under the guarantee given by IBS for the account of KPD, and (ii) a demand from Pacific Bank Bhd under the standby letter of credit established by IBS also for the account of KPD. In view of such demands, IBS in August 1991 obtained the proceeds of a FD placed with the Panaji branch

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prior to the maturity of the deposit amounting to a sum of US$1,770,997.89. In the same month, IBS also received a total sum of US$1,427,351.37, being the proceeds of four FDs of OISB from different branches of the respondents in India. The total amount received from the FD with the Panaji branch and the four FDs of OISB was US$3,198,349.26. After meeting the claims of Lloyd Bank plc and Pacific Bank Bhd, there was a net excess of US$255,581.43, which was used to reduce a loan of US$1.53m which had been extended by IBS to KPD.

20 Following on what they had done, IBS wrote to the appellant and Jogesh on 27 August 1991, stating that they had utilised the proceeds from these five FDs to settle the claims of Lloyds Bank plc and Pacific Bank Bhd.

21 In September 1991 the appellant consulted her solicitors and on 10 September 1991 her solicitors wrote to IBS asking for a breakdown of all joint accounts which had been opened with the respondents by KPD and the appellant. This was followed by a reminder dated 17 October 1991. In response, the solicitors for the respondents replied on 22 October 1991 stating that the respondents would only provide information relating to the estate to the executors thereof. In consequence, the appellant and Jogesh as the executors of the estate on 25 October 1991 wrote to IBS requesting for `information on the estate` to be provided without further delay. This was followed by a further letter dated 31 October 1991, referring to a conversation Jogesh and Tilaklal had with the assistant manager of IBS, Mr Nachiappan, in which the latter said that the information sought would be released by 1 November 1991.

22 Eventually on 8 November 1991, IBS replied to the appellant`s earlier letters. They informed her that they were not able to give an exhaustive update of all of KPD`s FDs and that they were only able to confirm the deposits which

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were placed through IBS. These included US Dollar FDs placed in the joint names of KPD and the appellant, which were maintained in various branches in India. They informed the appellant that all the FDs listed by them had already been charged to them as security. The letter further said:

> *Please note that in our letter dated 27.8.91 we had also informed that we had utilised certain deposits favouring M/S Overseas Industries Sdn Bhd (OISB) towards adjustment of Mr KP Doshi`s liabilities. On scrutiny of Mr Doshi`s account we have noted that we are still holding additional pledged deposits in Mr KP Doshi`s name which should first have been exhausted prior to utilisation of the deposits pledged by the Company (OISB). In view of this we have rectified the same and reinstated the liabilities that were reversed with OISB deposits.*

23 Thus, IBS had reversed the offsetting of OISB`s deposits against the liabilities of KPD which was effected earlier in August 1991 and reinstated the liabilities of KPD.

24 The executors of the estate replied by a letter dated 13 November 1991. Besides raising further queries in relation to some of the answers given by the respondents in their letter dated 8 November 1991, the executors objected to the reversal of the offsetting, as well as all the adjustments made by the respondents. The appellant then made a complaint to the Monetary Authority of Singapore (`MAS`) in a letter dated 14 November 1991. The complaint to MAS was forwarded to IBS, who wrote to the appellant and Jogesh on 16 December 1991 explaining various matters brought up in the complaint. This was followed by a letter dated 21 February 1992, where IBS gave a detailed reply to the queries raised by the estate in their letter dated 13 November 1991.

25 On 29 June 1992 the appellant commenced an action against the respondents, seeking, in the main, an order for account and the payment of all deposits placed with the respondents to which she was entitled.

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26 In early 1992 or thereabouts, the appellant engaged the services of American Express Bank (`Amex`) to assist her to obtain information and payment of the deposits from the respondents. Apparently with the assistance of Amex an amount of US$536,411.57 from the FD placed with the Rajkot branch of the respondents was paid to the appellant in September 1992. According to the trial judge, this FD was not subject to any charge in favour of the respondents (see [para] 64 of the judgment). However, it is unclear when this deposit matured.

27 On 6 December 1993, there was a deposit of US$1.03m with the Harbour branch which matured, but the respondents did not pay the amount to the appellant. Their position was that this deposit was subject to a charge in their favour and relying on the authorisation provided by the letter of security dated 1 October 1987 they renewed the deposit till 8 February 1995, the amount payable on maturity being US$1,448.987.67.

28 About 14 months later, sometime in April or May 1995, after the appellant and Jogesh as the executors of the estate had obtained a default judgment declaring that the FDs of OISB belonged to KPD, they made a demand on IBS for payment of the four FDs of OISB. IBS then reverted to their original position taken in 27 August 1991, and utilised the four FDs of OISB and the eight charged FDs to offset the liabilities of KPD and his associate firms. This left a net balance of US$1,074,042.80, and the respondents paid this amount to the appellant. According to IBS computations, the surplus came from a charged FD placed with the Harbour branch of the respondents. Although the offset was made in 1995, it was treated by IBS as effective from August 1991 on the various dates on which the proceeds for the charged FDs were received by IBS after they had matured.

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29 ***Decision below***

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31 The trial judge held that it had not been shown that IBS had agreed to maintain a proper record of all FDs placed by KPD through IBS. Neither was there any special contractual arrangement which enabled KPD to demand payment of the FDs at IBS. The appellant`s claim for an order to account was accordingly denied. [See [1999] 2 SLR 306.]

32 The learned judge also held that IBS had a charge over the three FDs maintained at the respondents` branches in Harbour, Adyar and Panaji. The learned judge proceeded on the assumption that a new contract had come into existence when the appellant`s name was added as a joint account holder of these three FDs, and held that by allowing IBS to retain the receipts of these three FDs, KPD and the appellant had intended that IBS should have a mortgage or charge on these deposits as security for their continuing grant of facilities to KPD and his associate firms. This was further confirmed by the fact that the FD receipts continued to bear the endorsement `under lien to Indian Bank`, and that neither KPD nor the appellant had ever objected to such endorsement on the FD receipts, when copies of the FD receipts were given to them. The learned judge accordingly held that IBS were entitled to offset the liabilities of KPD and his associate firms against the three FDs.

33 The learned judge declined to award damages for wrongful retention of the moneys. He found that it was not unreasonable for IBS to utilise first the charged FDs belonging to KPD and the appellant jointly to discharge KPD`s liabilities before using the charged FDs belonging to OISB, especially when there was then a dispute within the family as to ownership of OISB.

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Furthermore, even though the payment was made only in 1995, IBS placed the appellant in exactly the same position as if the offset had in fact been made in August 1991. The delay in the offsetting and in paying out the excess had been put right and no loss was suffered by the appellant.

34 The learned judge also dealt with two subsidiary issues raised before him. First, he held that IBS were not entitled to offset the proceeds of the deposit maintained at the Harbour branch against the debts of Tino Industries (`Tino`), a partnership of KPD and his eldest son Jigarlal, as there was an agreement between IBS and KPD that the debts of Tino would be unsecured. Secondly, the learned judge held that IBS were not entitled to offset, against the proceeds of the deposit placed with the Harbour branch, the legal charges amounting to US$20,429.07 and telex charges amounting to US$481.59, both incurred by them in respect of the action, Suit No 2526 of 1992. In that action, the plaintiffs were the executors of the estate and Tilaklal, and the defendants were OISB, Jigarlal and his wife, Shobhana J Doshi. At the trial of the action the trial judge made various orders for disclosure against Jigarlal and Shobhana and in turn Jigarlal sought the information and documents from IBS. The learned judge held that the legal charges which IBS sought to recover from the appellant were not expenses arising from the granting of facilities or from the facilities as such. If the charges were reasonably incurred by a non-party to the proceedings as a witness or otherwise, they should be reimbursed by the party or parties to those proceedings or should be the subject of a court order in those proceedings. The learned judge also held that the respondents were not entitled to set off unilaterally their legal costs in the proceedings before him against moneys owing to the appellant; they must await an order as to costs to be made by him.

35 Arising from the learned judge`s determination on these two subsidiary issues, IBS recomputed the amount due to the appellant, and two further sums

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of US$125,426.50 and US$20,910.66 were found to be due to her and these sums were subsequently paid to her. In a supplemental judgment, the learned judge awarded to the appellant interest on these sums at the rate of 6[half]% per annum from the dates they should have been paid to them.

36 The respondents were awarded two-thirds of the costs, taking into account the fact that the appellant succeeded on two minor issues and that some of the arguments raised by the respondents were not accepted by the court.

37 ***The appeal***

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39 The appellant now appeals against the decision of the learned judge, and raises the following main issues: first, whether the respondents, upon the appellant giving her instructions to IBS with reference to those deposits placed in the joint names of KPD and the appellant with the various branches in India, were under an obligation to cause and procure the branches to give effect to those instructions; secondly, whether the respondents had wrongfully retained the sum of US$1,074,042.80 for the period from August 1991 to 29 May 1995; and thirdly, whether the respondents were entitled to offset the liabilities of KPD and his associate firms against the deposits maintained at the Harbour, Adyar and Panaji branches.

40 ***Obligations of IBS***

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42 On the first issue, it is necessary to consider, as was considered by the learned judge, the question whether IBS assumed any obligations when they

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accepted moneys from KPD and placed them on his behalf with the various branches in India, such as the obligations to keep record and render an account with respect to those deposits. The learned judge came to the conclusion that IBS was under no such obligations. He said at [para] 23 and 24:

> 23 … It was really a case of mutual help. But KPD, being an experienced businessman that he was, would have known that the control in relation to each deposit would be with the branch in question. He knew this special scheme was an Indian scheme in operation in India. He could not have been under any misimpression that IBS could effect the payment or renewal. He would have known how the special scheme worked. IBS were willing to be a post-box and I find KPD knew full well that that was the extent of the role of IBS. Indeed, KPD could have placed the deposits with any branch of IB in India through any bank in Singapore. Presumably, he chose IBS because he thought that might speed things up a little, IBS being of the same bank as the branch which received and maintained each deposit. If KPD had thought that he was only dealing with IBS, though a deposit was placed in a branch in India, he would have dealt wholly with IBS and would not have had on occasions taken matters directly with the branch concerned.
>
> 24 Furthermore, I do not find anything which suggests that IBS agreed to keep, on KPD`s behalf, a proper recording of all deposits placed through them. KPD would have kept his own records, as he was holding the free FD receipts, and I find he did keep such records. I see that in many of KPD`s letters to IBS, KPD mentioned of his files. Each time he needed something he would approach IBS who would assist wherever possible. KPD would tell IBS what he wanted be done. And if he had wanted payment on a FD which had matured, he would produce the FD receipt. IBS would oblige in forwarding the receipt to the relevant branch. That would be promoting good customer relationship. If IBS had refused, KPD could take his money and place it with another Indian bank and deal through another Singapore bank.

43 It seems to us that the basis of the learned judge`s conclusion was mainly that a customer has no cause of action against the bank in respect of any money in current or fixed deposit account until a demand for payment has been made at the branch where the account is maintained: **Joachimson v Swiss Bank**

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Corporation [1921] 3 KB 110, and that for that purpose, branches of a bank are treated as separate entities: **R v Lovitt** [1912] AC 212, 219 and **Clare & Co v Dresdner Bank** [1915] 2 KB 576, and further that there was nothing to show that there was any agreement made with IBS whereby they would undertake such obligations. The appellant challenges this conclusion and suggests that those decisions cannot stand in present day banking practice.

44 We turn to the three cases. In ***Joachimson*** , the plaintiffs were N Joachimson, a firm comprised of three partners, two Germans, S Joachimson and J Joachimson, and a British resident, L E Marckx. The firm operated an account with the defendant bank in London. On 1 August 1914, S Joachimson died and the partnership was dissolved. On that date, there was Â£2321 standing to the credit of the partnership`s current account. Three days later, on 4 August 1914, the First World War broke out and J Joachimson became an alien enemy, and operations on the account became prohibited. After the war, Marckx sought to wind up the affairs of the partnership and commenced an action to recover the Â£2,321 from the bank without first making a demand. The Court of Appeal held that the action was premature as a demand for payment had not been made. That was the only point decided; however, a certain portion of Atkin LJ`s judgment at pp 126-127 has since been often cited and relied upon:

> *This case raises the question whether the customer of a bank may sue the banker for the balance standing to the credit of his current account without making a previous demand upon the banker for payment ...*
>
> *The question seems to turn upon the terms of the contract made between the banker and customer in ordinary course of business when a current account is opened by the bank ... The bank undertakes to receive money and to collect bills for its customer`s account. The proceeds so received are not to be held in trust for the customer, but the bank borrows the proceeds and undertakes to repay them. The promise to repay is to repay at the branch of the bank where the account is kept, and during banking hours.*

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45 In ***Clare*** , the plaintiff had an account with the branch of the defendant bank in Berlin, and he wrote to the London branch of the defendants asking for payment of the credit balance of Â£261 at the Berlin branch. The London branch refused to make payment and the plaintiff took out a writ against the defendants. It was held by Rowlatt J that the plaintiff was not entitled to demand payment of the credit balance at the London branch. He said, at p 578:

> *[I]f a man who has money to his credit at a bank at one end of the world can demand it at another end of the world without paying anything for that advantage, that would put upon his debtor the expense which might be involved in having the money at the one place instead of the other.*
>
> *I come to the conclusion, therefore, that, although the question seems never to have been raised before, probably because such a thing has never been dreamt of, there is no obligation on a bank to pay in one country a debt due to a customer on current account in another country.*

46 ***Lovitt*** was an appeal to the Privy Council from the Supreme Court of Canada and concerned the locality of moneys placed with a branch of the bank. There, the testator, who was resident and domiciled in the Province of Nova Scotia, on his death had a deposit with the New Brunswick branch of the bank whose head office was in London. The amount was paid to the executors after they had obtained probate in New Brunswick and the question was where the deposit was situate. It was held that the deposit being placed with the New Brunswick branch, its locality was New Brunswick and was therefore subject to succession duty under the New Brunswick Succession Duty Act. In the course of delivering the judgment of Privy Council, Lord Robson said, at p 219:

> *Although branch banks are agencies of one principal firm, it is well settled that for certain special purposes of banking business they may be regarded as distinct trading bodies. Thus, it was held in* ***Woodland v Fear*** *(1857) 7 E & B 519 that the obligation of a bank to pay the cheques of a customer rested primarily on the branch at which he kept his account, and that the bank in that case had rightfully refused to cash the cheque at another branch. Commenting on that decision, Sir Montague Smith, in*

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> *delivering the judgment of their Lordships` Board in* ***Prince v Oriental Bank Corporation*** *3 App Cas 325, points out that it would be difficult for a bank to carry on its business by means of branches on any other footing, because the officials at one branch do not know the state of a man`s account at another branch.*

47 All these judicial pronouncements must be viewed in the context of the banking practice prevailing then. The learned authors of ***Ellinger & Lomnicka`s Modern Banking Law*** (2nd Ed) said at pp 337-338:

> *Although a bank has a single legal personality, accounts are deemed to be domiciled at the branch at which they are kept. This principle is explainable by the banking practice of the nineteenth century. In the absence of expeditious means, such as the telephone, to enable a teller to verify a balance kept in an account maintained with a branch other than that at which the cheque is presented, and in the absence of facilities for the verification of a signature in any place other than at the drawee branch, it was impossible to develop a practice that would facilitate the payment of cheques at a place other than the branch on which they were drawn. Modern banking facilities have introduced new possibilities. A balance can be verified instantaneously by an enquiry made through the computer facilities linked to the bank`s central computer. A signature can be printed in invisible infra-red ink when a document, such a cheque form, is furnished to the customer, so that any signature executed can be compared with the hidden one ... The days in which cheques had to be regarded as payable solely at the drawee branch are over from a practical point of view.*

48 We fully endorse these comments. Over the past two to three decades, there have been tremendous technological advancements made in the banking industry, and as a result, businesses and practices of banking have changed dramatically since the 1920s. There are now facilities available for effecting instantaneous transfer of funds, by banks inter se and within the banks themselves, from one part of the world to the other, for withdrawing funds from banks by the use of auto-teller machines, for using funds deposited in banks by the use of debit cards worldwide, and more recently for phone banking and internet banking. Certainly in Singapore a customer of a bank is no longer

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required to go to the branch of the bank where he has a current account to withdraw his moneys. If he does not wish to avail himself of the facilities of auto-teller machines, he may withdraw his funds at any branch of the bank. In the light of modern technological and business development it is doubtful whether the principle of banking law that a demand for payment must be made at the branch where the account is kept in order to found a cause of action is still good law. However, it is unnecessary for our purpose to examine further the validity or otherwise of this proposition, as it is not applicable to the case at hand, which is clearly distinguishable from those cases we have discussed.

49 ***FCNRD***

50

51 In the present case, the deposits were placed under the FCNRD scheme which has certain very special features. First, the scheme is not open to persons resident in India and is available to only Indian nationals or persons of Indian origin resident abroad. It was not intended that such persons making deposits with the authorised banks or branches of a bank in India should, on the maturity of the deposits, make a demand for payment in person at the respective banks or branches in India. Secondly, the deposits can be placed, and in the case of KPD were placed, through a branch of the bank in another country. Thirdly, unlike a normal current account, the deposits cannot be paid out to the customer over the counter at the branch where the account is kept. The payment can only be effected by an `overseas` branch of the bank, that is, a branch in India which is specifically authorised to deal in foreign exchange. There is no necessity that the particular branch where the deposit is placed must be an `overseas` branch. The alternative means of payment is for a demand draft to be drawn on a foreign bank outside India or a telex transfer to be made to a bank outside India.

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52 It is important to bear in mind the course of dealings between KPD and IBS. KPD was a long standing customer of IBS and it must have been IBS which first acquainted him with the benefit of the FCNRD scheme which was available to him. IBS must have played an active and pivotal role in obtaining the deposits from KPD and procuring them to be placed with the various branches of the respondents in India. The evidence shows that KPD placed most, if not all, of the deposits with the branches of the respondents in India through IBS. In particular, the deposits in the joint names of KPD and the appellant were placed through IBS with various branches which had no practical or significant dealings with KPD or the appellant. The bulk of the documentary evidence shows that KPD acted through IBS to deal with his various FCNRD accounts located in different branches in India. The fact that there were instances, where there was direct correspondence between certain branches and KPD, does not alter the fact that KPD dealt through IBS. It might well be that KPD regarded direct correspondence with some of the branches as a faster means of communication. In fact, a large number of direct correspondence with the branches arose as a result of delays by IBS in obtaining the desired information or response for KPD. A letter dated 29 April 1987 from KPD to the Himaytnagar branch in the state of Hyderabad provides some insight into KPD`s frame of mind and indicates that even when he wrote directly to the branches in India, he was operating on the basis that he could effect deposits and receive payments through IBS:

> *Each time I sent deposits to you we had verbally and positively informed your Singapore office to pay me the accrued interest half yearly and therefore I am entitled to compensation of loss of interest on late receipt of funds.*

53 The deposits of KPD were placed by IBS in at least ten different branches of the respondents and seven different states of India. Some of the branches where KPD`s deposits were kept were not `overseas` branches and

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could not effect payment on their own. The deposits were placed by IBS with such diverse branches for their own reasons. Evidence was given by Mr M Nachiappan, the assistant manager of IBS, to the effect, among other things, that KPD `was interested in the interest`; that he `did not mind which branch` the deposits were placed; that he left it to IBS and that IBS decided which of the branches to place the deposits but before doing so would seek the concurrence of KPD; and that the advantage of placing the deposits in different branches was for the manager of IBS, as it allowed him to give the deposits to branches whose managers were his friends, thereby aiding those managers` chances of promotion by increasing the businesses of their branches. Throughout his evidence, Mr M Nachiappan was unable to give any reason why KPD himself would choose the inconvenience of placing his deposits in so many branches when some of them could not even effect payment on their own. Indeed it would have made more sense for KPD to place all his deposits in one `overseas` branch in India, thereby simplifying the management of his accounts and easing the mode of payment. The following portion of Mr Nachiappan`s evidence is revealing of the relationship between KPD and IBS:

> Q: Have you ever refused his request to liase with other branches?
>
> A: I do not think so.
>
> …
>
> Q: Would KPD have expected you to write to the branches?
>
> A: Yes.

54 All these facts overwhelmingly indicate that there was, at the very least, an implied term in the dealings between KPD and IBS that instructions with reference to the FDs placed by KPD could and would be given at IBS instead of the branches in India, that IBS would cause and procure the branches to give

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effect to and carry out those instructions and in particular to cause and procure the branches with which his deposits were placed to effect payment timeously, and that IBS would keep records and account for all the FDs which were placed through them with the various far flung branches of the respondents in India. There is no conceivable reason why KPD would agree to the placement of these FDs at the diverse branches across the length and breadth of India, unless IBS would assume these obligations with respect to such deposits. In our judgment, with reference to the deposits placed by KPD with the branches of the respondents and in particular those deposits in the joint names of KPD and the appellant which were placed through IBS, IBS were obliged to give to the appellant all information relating to such deposits and furnish to the appellant an account of all such deposits and interest accrued thereon.

55 In this respect, we find that IBS were not too forthcoming in providing the appellant with the information she sought and were not helpful to her as a widow whose husband had been killed. They seemed to prevaricate and were reluctant to furnish the requisite information. During KPD`s lifetime, throughout the course of their business with him, IBS dealt only with him. They would have known that the appellant was a housewife and was not involved in or acquainted with the business affairs of her husband. It should therefore have been obvious to them that she was largely unaware of the extent of the funds her husband had deposited with the respondents. IBS certainly knew that she was a joint holder of a large number of deposits and should be able to furnish her all the information to which she was entitled and also render her the necessary assistance in procuring their branches to pay her the deposits as and when due and payable in accordance with her instructions given on 2 August 1991, subject to the discharge of KPD`s liabilities, if any, secured on those deposits. In addition to being a joint holder of the deposits, she was also one of

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the executors of the estate. There was no question that she was entitled to the information relating to the joint account and also to the accounts of KPD. In our judgment, the respondents were in breach of their obligations to the appellant.

56 ***Wrongful retention of moneys***

57

58 A sum of US$1,074,042.80 was paid to the appellant on 29 May 1995, after the appellant had made a demand on IBS for payment of the OISB deposits, informing them that the estate had obtained a default judgment declaring the FDs of OISB as belonging to KPD. This sum of US$1,074,042.80 was based on the respondents` calculations of the balance remaining in a deposit of US$1,448,987.67 placed with the Harbour branch of the respondents which was due on 8 February 1995, after offsetting the liabilities of KPD and his associate firms against (i) the four OISB deposits, (ii) seven of the eight charged FDs in the joint names of KPD and the appellant, and (iii) a part of the deposit with the Harbour branch.

59 Counsel for the appellant submits that this sum should have been paid to the appellant in August 1991, and not on 29 May 1995 on the ground that on 27 August 1991, the respondents applied the proceeds received from the four FDs of OISB to set off the liabilities of KPD to the extent of US$1,427,351.37. This set-off was, however, subsequently reversed by the respondents on 8 November 1991, and the liabilities of KPD and his associate firms reinstated by that amount. It is counsel`s contention that once the OISB deposits had been utilised to set off the liabilities of KPD and his associate firms, those liabilities were discharged as of August 1991 and could not subsequently be revived in November 1991. In support, counsel relies on **Re Matlock Old Bath**

Hydropathic Co [1873] 29 LT 324. In that case, shares in a company were allotted to a creditor in satisfaction of a debt owed by the company. Subsequently, the company issued a debenture for the debt to the creditor treating the debt as subsisting, but the creditor continued to retain the shares. The company went into liquidation and the liquidator sought to place the creditor on the list of contributories. It was held that upon the allotment of the shares to the creditor in satisfaction of the debt, the debt was extinguished and the shares having been given in satisfaction of a debt could not be treated as unpaid shares and the creditor accordingly should not be placed on the list of contributories. Mellish LJ who delivered the main judgment of the Court of Appeal said at p 412:

> *The debt was not kept alive, but ceased to exist on the allotment of the shares, and the two companies could not revive the debt and make the Finance Corporation again creditors in respect of the debt which had been satisfied. There was nothing to show that the Finance Corporation had ever agreed to take unpaid shares, and the shares having been given in satisfaction of the debt must be treated as fully paid-up shares. They were therefore entitled to have their name removed from the list of contributories.*

60 Counsel for the appellant further points out that the reversal the respondents made in November 1991 was in turn reversed by them in May 1995, when they reverted to their original position taken in August 1991 and utilised the OISB deposits to offset KPD`s and his associate firms` liabilities. By this reversal in May 1995 the respondents thus reverted to the original position taken in August 1991 and this gave rise to a surplus of US$1,074,042.80. Since the respondents were not entitled in November to reverse the original offset made in August, the appellant was entitled to that sum as of August 1991.

61 We agree with the proposition of law submitted that once the liabilities of KPD and his associate firms had been discharged, they could not be revived

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and that the respondents were not entitled to effect the reversal which they purported to do in November 1991. However, the difficulty in the way of the appellant`s claim for the moneys is that even if the respondents had not in November reversed the offset they made in August 1991, the appellant would still not be entitled to payment of the funds by the respondents. The reason is that the liabilities of KPD and his associate firms as of that date would still have exceeded the amount payable and there would be no sum which the appellant was entitled to withdraw. The total quantum of such liabilities was, as of that date, approximately US$4.54m. At end August 1991, the available funds of KPD was US$1,427,351.37 from the OISB deposits, US$1,770,997.89 from the deposit with the Panaji branch which was due only on 14 November 1992 but which was withdrawn prior to that date, because IBS withdrew that deposit from the Panaji branch in order to meet the claims of Lloyds Bank plc and Pacific Bank Berhad on account of KPD, and US$319,805.38 from the deposit with the Richmond Circle branch which became due on 26 August 1991. The other six charged FDs had yet to mature. The total amount from the available deposits was therefore insufficient to meet and satisfy all the liabilities of KPD and his associate firms.

62 The only way for there to have been a surplus in favour of the appellant in August 1991 was to have an early payment on the six charged FDs which had yet to mature, and to offset them against the remainder of the liabilities of KPD and his associate firms. There was, however, no indication from the appellant in August 1991 that she wanted an early payment of all the FDs to which she was entitled prior to maturity, assuming that she was entitled to make a demand for such payment prior to maturity.

63 The appellant did not demand in writing for an early payment. The earliest letter relating to payment was the letter dated 2 August 1991, in which

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the appellant informed the respondents that she wanted the deposits to be transferred only on maturity. This, amounted in effect, to a demand for payment of the deposits on maturity, but not one for early payment prior to maturity. It appears to us that until November 1991, all the appellant`s letters focused on the request for information of the accounts held by KPD, and did not mention an early payment of the FDs. The appellant`s letter to MAS suggested that she wanted the deposits to be paid prior to maturity. That was the first time such indication was given. Subsequently, there was a series of correspondence between IBS and the appellant which strongly indicates that there was a demand made for payment of the deposits sometime in November 1991 which was followed by the appellant`s letter of 29 November 1991 referring to the need of the appellant to borrow moneys in consequence of the respondents` failure to respond to her demands. This in turn led to the respondents` reply on 21 February 1992 where the respondents stated firmly that the appellant was not allowed to withdraw the fixed deposits.

64 The question we need to consider is whether the appellant was entitled in November 1991 or thereabouts to payment of the deposits prior to maturity. At that point in time, out of the eight charged FDs only one of them was available. The FD with the Richmond Circle branch had matured on 26 August 1991. The FD with the Panaji branch, which matured only on 14 November 1992, had been withdrawn by IBS in August 1991 and proceeds therefrom had been applied by them in or towards payment of the claims made by Lloyd Bank plc and Pacific Bank Bhd. The other remaining six charged FDs had yet to mature.

65 The question whether a bank is obliged to pay to its customer on demand moneys placed on fixed deposit prior to maturity depends on the terms on which the deposit is made. It is settled law that the relationship between the depositor

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and the bank is one of creditor and debtor, and whether the customer is entitled to payment on demand depends essentially on the terms of the contract between them. Where moneys are deposited with a bank on a current account such moneys are payable by the bank to the depositor on demand. This is an implied term in the relationship between the depositor and the bank. However, where moneys are deposited for a fixed term, ie on fixed deposit, and no express terms are agreed in relation to such deposit, it is debatable whether such moneys are payable by the bank on demand prior to maturity. Normally moneys placed on fixed deposit bear a higher and more stable rate of interest than moneys placed on current account. It is therefore arguable that in return for such higher and more stable rate of interest payable on the fixed deposits, the bank is not obliged to repay the fixed deposits before the maturity of the term. There is really no clear authority on the point.

66 In ***Paget`s Law of Banking*** (11th Ed) at p 168 with reference to moneys on a deposit account, the learned editor said:

> *Where a depositor wishes to withdraw without waiting for the expiry of the agreed period of notice, it is usual to allow him to do so but he may have to forfeit some interest. [Emphasis is ours.]*

67 Similarly, in ***Ellinger & Lomnicka`s Modern Banking Law*** (2nd Ed) at p 267 in discussing interest bearing accounts, the learned authors said:

> *Another well known variety is the fixed deposit. Here the customer deposits a given amount for a specified period of time at an agreed rate of interest. The deposit may, of course, be renewed at maturity. But a new rate of interest will then be determined, depending on the then prevailing market.* ***In practice****, a fixed deposit can be withdrawn before the agreed maturity date, provided the customer is prepared to lose part of the interest. [Emphasis is ours.]*

68 Such statements are probably more indicative of the practice of banks rather than a statement of the law that there can be early withdrawal of fixed

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deposits. In most cases, fixed deposits are governed by detailed terms and conditions and it may well be that one of the standard terms of most of the banks is that a fixed deposit can be withdrawn subject to the consent of the banks and on such terms as the banks think fit, eg on terms that no interest or a lower rate of interest will be paid on any withdrawal prior to maturity. It may well be that the practice of local banks generally is to allow their customers to withdraw fixed deposits prior to maturity but without the benefit of any interest accrued on the date of withdrawal or with lesser interest.

69 We now turn to the terms which governed the placement of the FDs with the respondents. In this respect, while reference is made in the FCNRD application form to the provisions governing the Foreign Currency (Non-Resident) Account Scheme, there does not seem to be any evidence of any specific or standard terms or conditions stipulated or laid down by the respondents and agreed to, expressly or impliedly, by KPD relating to deposit and withdrawal of FDs. It is curious that neither party has made any reference to such terms and conditions.

70 The only documents evidencing some terms relating to the deposits are the receipts for such deposits issued by the respondents. Such receipts stated briefly the amounts received, the interest payable and the due dates on which the deposits were repayable respectively, eg six months, one year, three years and so on, as the case may be. These receipts had apparently been accepted by KPD without any protest or objection. Neither had there been any protest or objection from the appellant at any time. In the circumstances and in the absence of any other terms, the terms stated on these receipts represent the terms and conditions of the deposits agreed to by both parties. The receipts did expressly say that the deposits were `repayable` on the due date, ie on maturity. This is one of the express terms of the deposits, and in view of such a term the

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respondents were not obliged to repay the deposits to the appellant prior to maturity, even if the appellant was prepared to forego the interest accrued. It therefore follows that even if there was a demand made by the appellant or on her behalf in November 1991 or thereabouts, as we find there was, she was not entitled to payment of any of the deposits prior to maturity.

71 This point is crucial to the substantial claim of the appellant, namely, the claim for the amount due. By her letter dated 2 August 1991 she asked for the transfer of her deposits to another bank as and when they matured and sought the advice of the respondents as to the appropriate procedure for such transfer. She had then therefore clearly indicated to the respondents that she wished to withdraw her deposits on maturity. She instituted proceedings against the respondents on 29 June 1992 claiming the amount due and payable and for an account. The question is what amount, if any, was due to her as at the date of commencement of the action. As of that date, of the eight charged FDs, the deposit with the Panaji branch had been withdrawn prior to maturity by IBS to meet the claims of Lloyds Bank plc and Pacific Bank Bhd, and only three deposits had matured, namely, (i) the deposit with the Richmond Circle branch which matured on 26 August 1991 amounting to US$331,798.08 and (ii) the two deposits with the Ballygunge branch which matured on 28 December 1991 and 9 January 1992 amounting to US$112,216.86 and US$105,115.37 respectively. However, the total of these amounts could not be paid to the appellant for the simple reason that there were still outstanding liabilities of KPD due to the respondents which had yet to be discharged and the total of these three amounts was insufficient to discharge all the outstanding liabilities, and the respondents were entitled to withhold all these amounts and applied them in or towards the discharge of such liabilities. As for the other remaining four charged FDs, they were then not due and the appellant`s action was

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premature. She had no cause of action against the respondents in respect of these deposits. Her claim for damages for wrongful retention of moneys by the respondents failed.

72 In the action, the appellant also claimed for an account of the deposits in the joint names of KPD and herself, and as a survivor of the joint deposits she was clearly entitled to a full account of such deposits. As we have held, the respondents were obliged to furnished such accounts to the appellant and they had committed a breach of their obligation. While the action was in progress, the respondents had been providing the appellant with information, and it appears to us now that all the information the appellant required had been furnished and there is nothing more the respondents could provide her. Accordingly, no useful purpose would be served by making any order in relation to this claim. At any rate, before us that is not the order the appellant seeks.

73 ***Loss suffered by the appellant***

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75 As a result of the breach of obligation by the respondents, the appellant had to incur the expenses of engaging Amex to assist her to obtain the information and procure payment of the deposits from the respondents` various branches in India. This is also attributable to the stand taken by IBS, which we do not accept, that a demand for payment of the deposits could not be made through IBS. The appellant therefore had suffered loss. We therefore order the respondents to pay for the expenses incurred by the appellant in appointing Amex to obtain the information and the payment of her deposits, such assessment to be conducted by the Registrar, unless the parties can agree on the amount payable.

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76 ***The charge on the Adyar, Harbour and Panaji deposits***

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78 The third main issue in this appeal is whether the respondents have a charge over FDs with the Adyar, Harbour and Panaji branches (`the three FDs`). The essence of the appellant`s contention is that although KPD created a charge in favour of the respondents over the deposits with the Adyar and Harbour branches in 1985 and the deposit with the Panaji branch in 1988, when the appellant was added as a joint account holder in early 1991, the previous contracts between the respondents and KPD over the three FDs ceased to exist, and new contracts over these three FDs came into existence between the respondents and KPD jointly with the appellant. The effect of this was that the initial charges held by the respondents were discharged and the consent of both KPD and the appellant was now required in order for there to be a charge over the three FDs. Since the appellant did not give her consent, the respondents did not have a charge over the three FDs. No authorities were offered in support of this submission.

79 This argument is basically unsound. It is premised on the supposition that when the appellant`s name was added as the joint holder of the deposits, the former contracts for the three FDs between KPD and the respondents were extinguished, thereby extinguishing also the charge which the respondents had over the three FDs. In our view, however, the adding of the appellant`s name did not extinguish the original deposit contracts. All that happened was that the fixed deposit contracts between KPD and the respondents were varied, such that the debt owed by the respondents became repayable to both KPD and/or the appellant, instead of just KPD alone. Besides that one variation, the contract remained the same. In each case, it was still the same deposit with the same

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branch, with the same maturity date. This variation of the deposit contracts is in itself insufficient to discharge the security which the respondents had. There must be further evidence of an agreement from the respondents that they would release their security over the three deposits. Otherwise, all that happens is that the fixed deposit contracts were varied such that the deposits were payable to KPD and/or the appellant, but subject to the respondents` existing security rights. What the appellant contends for, namely, that the mere addition of another account holder to a deposit account is sufficient to discharge whatever existing security the bank possesses over the deposit, is totally dissonant with commercial realities. The addition of an account holder is subject to the bank`s approval, and no banks, in their right mind, would allow a joint account holder to be added if the effect of it is to discharge whatever security they have over the original fixed deposits, without there being any further provision for alternative security.

80 Even if it could be argued that in respect of each of the three FDs a new fixed deposit contract came into existence when the appellant was added as a joint account holder thereby discharging the respondents` security, it was not necessary in this case for the respondents to obtain the appellant`s consent to a new charge over the new deposit accounts. The fixed deposit receipts for the three FDs specify that the joint account is one of `either or survivor account` and the `principal amount of the deposit/s in my/our name/s and interest thereon are to be held at the/my disposal of either of us or survivor`. The effect of this is that either of them could withdraw the money and charge it as security to the respondents. In **Ho Dwan Tiauw & Anor v Banque Nationale de Paris** [1993] 2 SLR 329 , this court said, at p 334:

> *Even assuming that the account had in fact been converted into a joint account we do not think there is any merit in that point. On the basis of the letter of 11 August 1981, either appellant*

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> *could operate the account. Either appellant could withdraw the money and charge it as security. The consent of the first appellant was certainly not required.*

81 Similarly, since the three FDs were placed on terms that `either or survivor` could operate the accounts, KPD could deal with and dispose of the accounts without the consent of the appellant, and consequently could charge the deposits as security in favour of the respondents without the appellant`s consent.

82 As was found by the trial judge, there is ample evidence that KPD intended to create a charge over the three FDs in favour of the respondents in return for their continuing grant of facilities to him and his associate firms. No new FD receipts were issued after the appellant was added as a joint account holder. The original FD receipts were amended to include the appellant`s name, but continued to be marked `under lien to the Singapore branch` and continued to be held by IBS. There was also no objection by KPD to the receipts being so marked when a photocopy of the receipts were given to him. We therefore find no basis for disturbing the learned judge`s holding that the respondents had a charge over the three FDs.

83 ***Conclusion***

84

85 For the reasons given above, the appeal is allowed in part. The respondents are ordered to pay damages to be assessed by the registrar in respect of the expenses incurred by her in engaging the services of Amex to obtain the information and procure the payment of the FDs.

86 ***Costs***

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88 We now come to the question of costs. On the basis of what we have decided the appellant would have failed in her claim for the loss alleged to have been sustained by the retention of the moneys due to her. Her claim for an account of the deposits was justified, but no order would have been necessary as at the time of the conclusion of the trial, whatever information to which she was entitled and which was required had already been furnished. She should have succeeded in her claim against the respondents in respect of the expenses she incurred in engaging Amex.

89 There is one other salient point which we should take into account. The action was to a large extent contributed by the respondents` breach of the obligation to furnish the required information relating to the FDs.

90 Having regard to what the appellant had succeeded below and what she should have succeeded, and the conduct of the respondents, we set aside the order as to costs made below and order the respondents to pay the appellant 30% of the costs below. As for the costs of the appeal, the appellant succeeds in part in the appeal, but fails on two major issues, ie her claim for the loss occasioned by the retention of funds by the respondents and the charges on the three FDs. We award her also 30% of the costs of the appeal. The deposit in court as security for costs is to be refunded to the appellant or her solicitors.

91 **Outcome:**

92 Appeal allowed in part.

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Lai Kew Chai J
L P Thean JA
Yong Pung How CJ

Samuel Chacko (Manjit, Samuel & Partners) for the appellant
Deborah Barker and Wang Tiak Kweng (Khattar Wong & Partners) for the respondents

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