Calcutta High Court
Calcutta High Court
Shankarlal Agarwalla vs State Bank Of India And Anr. on 19 November, 1984
Equivalent citations: AIR 1987 Cal 29
Author: P Khastgir
Bench: P Khastgir
JUDGMENT

Padma Khastgir, J.

1. The petitioner owned and possessed 261 bank currency notes of Rs. 1000/- each. On Jan. 16, 1978, an ordinance was promulgated at the High Denomination Bank Notes (Demonetisation) Ordinance, 1978 which was published in the Gazette on Jan. 16, 1978 and became an Act in 1978. The said Act came into force on 16th Jan. 1978. On the expiry of 16th Jan. 1978 all high denomination bank noted ceased to be legal tenders. High denomination bank notes meant bank notes of the denominational value of thousand rupees, five thousand rupees or ten thousand rupees issued by the Reserve Bank of India. Under the said Ordinance no person was allowed after 16th Jan. 1978 to transfer to the possession of another person or receive into his possession from another person any high denomination bank note. It was further provided that such notes could be exchanged after 16th Jan., 1978 only by way of tender of the said notes. Every person desiring to tender for exchange a high denomination bank note should prepare in the form set out in the schedule, three copies of declarations signed by him giving full particulars in that form and hand over the same not later than 19th Jan., 1978 together with the high denomination bank notes either to the office of the Reserve Bank Head Office at Bombay or its sub-offices or to the main office or branch of the State Bank or to any other public sector bank notified by the Reserve Bank. Unless it appeared that the declaration has not been complete in all material particulars, the Reserve Bank, State Bank or any bank notified, as the case may be to which an application for exchange of high denomination bank note has been made shall pay the exchange value of the said notes either by crediting the account of the owner or if the owner did not have the bank account by tendering exchange value on proper identification. But where it appeared that the declaration had not been completed in all material particulars, the bank concerned would refuse to accept and pay for the bank notes and shall return one copy of declaration to the declarant after entering the date on which it was presented and shall refer the matter to the Bank concerned forwarding therewith a copy of the declaration with a brief statement of the reasons for refusing to pay for the bank notes. Thereupon the Bank concerned may require any declarant to amplify his declaration with proper particulars and unless the declarant was able to fully complete with such requirement, refuse, for reasons to be recorded in writing to sanction the exchange.

2. The Reserve Bank of India issued a notification naming 71 offices of Public Sector Bank where such exchange could be made. The Netaji Subhas Road branch of the State Bank of India was so notified. On 19th Jan., 1978 the petitioner tendered 261 thousand rupees bank currency notes to the State Bank of India, Netaji Subhas Road Branch together with three copies of declaration signed by him duly prepared in the form set out in the schedule to the said Act giving full particulars required by that form. The respondent State Bank of India duly accepted the said notices and also the declaration form whereupon the petitioner instructed the respondent 1 to make the payment of the value of the bank notes to the credit of his current account No. 1824 with the Punjab National Bank, Brabourne Road Branch. It was the petitioner's case that it was the statutory duty of the respondent to credit the total value of the said currency notes for Rs. 2,61,000/- being the exchange value of the high denomination notes. The petitioner repeatedly called upon the respondent bank to deposit the exchange value in respect of the receipt granted by the respondent bank on 19th Jan., 1978. The refusal by the respondent 2 to tender the exchange value was unlawful in clear breach of the respondent's statutory duty as conferred under Section 7 Sub-section (4) of the said Ordinance. The petitioner also alleged mala fides on the part of the respondent 1. Inasmuch as instead of tendering the exchange value, the respondent 1 made declarations made by the petitioner available to the I.T. authorities which entailed harassment by the I.T. Department inasmuch as the petitioner's residence as also the office had been raided, searches were made, books and other documents of his business had been seized and initialled, the petitioner had to give an

explanation as to how he came to own and possess the said high denomination notes. He was summoned under Section 31 of the Income-tax Act and his statements were recorded. Not only that but his son was also not spared of raids, summonses etc. The petitioner contended that the respondent bank had no authority to inform the Income-tax department and supply with such particulars. The petitioner had paid his income-tax dues for years together and the books of account of his business showed a cash balance in excess of Rs. 2,61,000/-. His books had all along been produced before the I.T. Authorities, assessments had been made and accepted by the department for such assessment. No income-tax was due and payable by the petitioner to the department, on the contrary a sum of Rs. 3,245/- became refundable to the petitioner by the I.T. Department. Hence neither there was any income-tax proceeding pending against the petitioner, nor there could be any. There was no case of any penalty proceedings nor any arrears of tax were due from the petitioner.

3. The respondent 2, the I.T. Authorities had issued two notices under Section 226(3) dt. 15th Feb., 1978 and under Section 281(b) dt. 20th Feb., 1978 of the Income-tax Act attaching the said sum of Rs. 2,61,000/- lying deposited with the State Bank of India. By subsequent two several notices both dt. 18th Oct., 1979 they were withdrawn and the notices had been cancelled. Thereafter, ultimately the respondent No. 1 by letter dt. 27th Oct. 1979 finally released the exchange value of Rs. 2,61,000/- under the said Act. Hence, the petitioner was aggrieved by the acts of the respondent attaching the said sum on and from 19th Jan., 1978 till the payment was made, thereby depriving the petitioner of utilising the said amount to his gain. In any event, the petitioner had been deprived of the interest accrued thereon for the said period on the said sum.

4. The petitioner moved an application under Article 226 on 27th of Mar., 1981 whereupon Mr. Justice Sabyasachi Mukharji (as he then was) issued a Rule. On 8th Feb., 1983 Mr. Justice P.C. Borooah (as he then was) after hearing the parties granted leave to the petitioner to file a fresh application on the same cause on proper materials.

5. The State Bank of India received the application of the petitioner for exchange on 19th Jan., 1978. The Manager of the Bank received a letter dt. 28th Feb., 1978 from the I.T.O. attaching provisionally the said money being the exchange value of the notes tendered and requested the bank Manager to hold the same subject to further order from the department. Thereafter, as indicated earlier those notes for provisionally attachment was cancelled. (sic).

6. The Bank contended that notices and circulars were given by the Reserve Bank of India and such instructions were followed in the instant case. In accordance with such directives it was the duty of the State Bank to furnish all particulars regarding the deposit of bank notes to the I.T. Department as soon as such notes were received. In accordance with such directives the State Bank in the usual course of business sent the intimation of receipt to the bank, notice to the office of the I.T. Department and the I.T. Department issued the order of attachment which prevented the State Bank to make the payment. Hence the State Bank did not act mala fide in giving such informations to the I.T. Department. On 1st May the Mariager of State Bank received a letter from the office of the Commissioner, West Bengal stating that the Commissioner of Income-tax had been directed by the Central Board of Direct Taxes, Ministry of Finance, New Delhi to collect all declaration forms made in respect of high denomination bank notes but rejected by the bank. He was further directed to hand over to an Assistant Director of Inspection of the I.T. Department all the forms lodged by the bank but rejected by the bank in the month of Jan., 1978. By a letter dt. 19th Jan., 1978 the Commissioner of Income-tax, West Bengal wrote a letter to the Manager, State Bank of India that all the declaration forms lodged with the bank in respect of high denomination bank notes and to hand over all such declaration forms lodged on 17th and 18th Jan., to the officer of the I.T. Department upon proper receipt with a further direction to hand over the forms which would be submitted on 19th Jan. Hence it was the case of the respondent bank that it had no alternative but to submit the forms to the Income-tax Authority.

7. The respondent 2 I.T. Department contended that the attachment order was issued for the purpose of protecting the interest of the revenue pending the assessment or re-assessment of the income of the assessee. They admitted that the house and the office of the petitioner had been raided. It further contended that a sum

of Rs. 2,16,827/- was due from the petitioner on account of income-tax hence the notice dt. 15th Feb., 1978 under Section 226 Sub-section (3) was served upon the Manager. It was contended that the assessment of the income of the petitioner and/or re-assessment of his income escaped assessment and certain cases were pending. The I.T.O. concerned was of the opinion that for the purpose of protecting the interest of the Revenue it was necessary to attach provisionally the exchange value in the custody of the bank. Hence the bank manager was requested to hold the money subject to further order of the said officer. The money had been refunded after the assessments were over.

8. The petitioner contended that there was no sum due and payable by the petitioner to the I.T. Department on the contrary refund cases were pending whereunder the petitioner was entitled to get refund from the department. Hence there was no question of protecting the interest of the revenue when nothing was due and payable to the Revenue Department. The petitioner contended that the search, seizure and other oppressive measures adopted by the Income-tax Department was futile inasmuch as no incriminating materials were recovered, nor any case had been filed with regard thereto. The petitioner's personal money could not be attached towards the tax liability of a company of which the petitioner was a director. There was no proceedings under Section 179, hence the jurisdiction under Section 226(3) or 281(b) could be adhered (sic) to by the respondent 2.

9. The petitioner's case was that the banker entrusted for encashment of the said notes had been confided with trust and confidence and in breach of its obligation and duty as a banker, had illegally with a mala fide motive informed the Income-tax Department that amounted to a mala fide abuse of the obligation created between a banker and its constituent. The Ministry of Finance had not issued any notification which clothed either the bank to disclose the information or the Commissioner of Income-tax with the power to attach the said sum. The Ordinance does not envisage any such power. On 19th Jan., 1978 the petitioner deposited the currency notes for exchange while the attachment order was made on 15th and 28th Feb., 1978. Under Section 7 sub-sec. (4) once the petitioner having complied with the provisions of the Act by furnishing full particulars and the bank granting a receipt and accepting the form was under an obligation to make the payment. In any event, the money had been withheld for one month without any rhyme or reason inasmuch as the attachment order was made almost one month after the deposit. The declarations had been complete in all material particulars, as such the bank did not reject the same. Hence there was no ground for withholding payment. This delay of one month had been deliberately made to suit the convenience of the I.T. department. In spite of that the I.T. Department could not justify such action as no case followed against the petitioner after such attachment.

10. The banker is under an obligation to secrecy. According to Lord Halsbury's Laws of England 4th Edn. Vol. 3 p. 72 Article 97.

"It is an implied term of the contract between a banker and his customer that the banker will not divulge to third person without the express or implied consent of the customer either the state of the customer's account or any of his transactions with the bank or any informations relating to the customer acquired through the keeping of his account unless the banker is compelled to do so by order of a Court or the circumstances give rise to a public duty of disclosure or protection of the banker's own interest requires it."

Under the circumstances it was the petitioner's case that the three circumstances under which such information could be given had not occurred in the instant case. Under the circumstances the State Bank of India, the respondent 1 was under an obligation of secrecy and was not obliged to divulge the informations to third party without the consent of the customer.

11. In the case reported in (1924) 1 KB 461 at 472 Tournier v. National Provincial & Union Bank of England it was held that under four heads the bank could disclose such informations namely -- (a) where the disclosure was under compulsion by law, (b) where there was a duty to the public to disclosre, (c) where the interest of the bank require disclosure and (d) where the disclosure was made by express or implied consent of the

customer. It was held : --

"An instance of the first class is the duty to obey an order under the Banker's Books Evidence Act. Many instances of the second class might be given. They may be summed up in the language of Lord Finlay in Weld-Blundell v. Stephens where he speaks of cases where a higher duty than the private duty is involved, as where "danger to the State or public duty may supersede the duty of the agent to his principal". A simple instance of the third class is where a bank issues a writ claiming payment of an overdraft stating on the face of the writ the amount of the overdraft. The familiar instance of the last class is where the customer authorises a reference to his banker."

12. In the instance case the petitioner contended that none of the conditions applied as such the disclosure of information made by the respondent bank to third parties was wrongful. Secondly, the petitioner contended that under Article 226 of the Constitution while issuing a writ of Mandamus the Court has ample jurisdiction to order for refund of the money. In the case State of M.P.

v. Bhailal Bhai it had been held:--

"Where sales tax, assessed and paid by the dealer, is declared by a competent Court to be invalid in law, the payment of tax already made is one made under a mistake within Section 72 of the Contract Act and so the Government to whom the payment has been made by mistake must in law repay it. In this respect the High Court has, in exercise of its jurisdiction under Article 226 of the Constitution power for the purpose of enforcement of fundamental rights and statutory rights to give consequential relief by ordering repayment of money realised by the Government without the authority of law.

At the same time the special remedy provided in Article 226 is not intended to supersede completely the modes of obtaining relief by an action in a civil Court or to deny defence legitimately open in such actions. . The power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it. Another is the nature of controversy of facts and law that may have to be decided as regards the availability of consequential relief. Thus, where a person comes to the Court for relief under Article 226 on the allegation that he has been assessed to tax under a void legislation and having paid it under a mistake is entitled to get it back, the Court, if it finds that the assessment was void, being made under a void provision of law, and the payment was made by mistake, is still not bound to exercise its discretion directing repayment. Whether repayment should be ordered in the exercise of this discretion will depend in each case on its own facts and circumstances."

13. But in the case Suganmal v. State of

M.P. it has been held : --

"On the first point we are of opinion that though the High Courts have power to pass any appropriate order in the exercise of the powers conferred under Article 226 of the Constitution, such a petition solely praying for the issue of a writ of mandamus directing the State.to refund the money is not ordinarily maintainable for the simple reason that a claim for such a refund can always be made in a suit against the authority which had illegally collected the money as a tax. We have been referred to cases in which orders had been issued directing the State to refund taxes illegally collected, but all such cases had been those in which the petitions challenged the validity of the assessment and for consequential relief for the return of the tax illegally collected. We have not been referred to any case in which the Courts were moved by a petition under Article 226 simply for the purpose of obtaining refund of money due from the State on account of its having made illegal exactions. We do not consider it proper to extend the principle justifying the consequential order directing the refund of amounts illegally realised, when the order under which the amounts had been collected

has been set aside, to cases in which only orders for the refund of money are sought. The parties had the right to question the illegal assessment orders on the ground of their illegality or unconstitutionally and. therefore, could take action under Article 226 for the protection of their fundemental right, and the Courts, on setting aside the assessment orders, exercised their jurisdiction in proper circumstances to order the consequential relief for the refund of the tax illegally realised. We do not find any good reason to extend this principle and, therefore, hold that no petition for the issue of a writ of mandamus will be normally entertained for the purpose of merely ordering a refund of money to the return of which the petitioner claims a right."

14. The exchange value had been made on 20th Oct., 1979. The petitioner's claim is for damages by way of interest which the petitioner failed to earn for not receiving the exchange value immediately. The petitioner deposited the money on 15th Jan., 1978 and the bank having accepted the declaration forms tendered by the petitioner along with the currency notes in terms of Section 7 Sub-section (5) and the bank not having refused to accept the same the bank was under an obligation under Section 7 Sub-section (4) to pay the exchange value to the credit of the petitioner's account as desired by him. By not having paid the money but by giving wrongful information to the I.T. Authorities the respondent 1 thereby deprived the petitioner of the utilisation of the said money under the circumstances the petitioner prayed for refund of the said sum which he could have so earned. The petitioner's such claim not only had been disputed inasmuch as the claim for such interest did not arise under the statute, nor there was an agreement by and between the parties for payment of interest. No notice under Section 1 of the Interest Act had been served, nor the petitioner could rely upon any custom or usuage under which such interest was payable. As such the question of awarding interest in a proceeding under Article 226 could not be availed of by the petitioner. Apart from that the claim for such interest also was barred by the Law of Limitation. The exchange value had been tendered to the petitioner on 20th Oct., 1979. The present application had been taken out on 20th Feb.. 1984. Under the Residuary Articles such claim was barred by the Law of Limitation. In the case State of M.P. v. Bhailal Bhai it was held :--

"It may, however, be stated as a general rule that if there has been unreasonable delay, the Court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus. Again, where even if there is no such delay the Government or the statutory authority against whom the consequential relief is prayed for raised a prima facie triable issue as regards the availability of such relief on the merits on the grounds like limitation the Court should ordinarily refuse to issue the writ or mandamus for such payment. In both these kinds of cases it will be sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a civil Court and to refuse to exercise in his favour the extraordinary remedy under Article 226 of the Constitution.

The provisions of the Limitation Act do not as such apply to the granting of relief under Article 226. However, the maximum period fixed by the Legislature as the time within which the relief by a suit in a civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable."

15. Hence not only the petitioner's claim for interest was not maintainable by way of writ of mandamus but it was also barred by the Law of Limitation inasmuch as where such an application is made beyond the period of limitation prescribed for a civil action and where the delay is more than this period it will almost always be proper for the Court to hold that such delay is unreasonable.

16. In the case Ratanlal Singhania v. M.

M. Sethi it was held :-

"Delay and laches are certainly a bar to the maintainability of an application in the writ jurisdiction. But whether there has been delay depends on the facts of each case. The provisions of the Limitation Act do not as

such apply to the granting of relief under Article 226. However, the maximum period fixed by the legislature as to the time within which the relief by a suit in a civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable."

17. The respondent contended that the petitioner was not a constituent of the bank. Paget in Banking Laws 9th Edn. Page -- 5 observed on banking business. Three criterions had been laid down to indicate the creation of relationship of the banker and its constituent i.e. such as conduct of account, payment of cheques drawn by the constituent, and thirdly collection of cheques on behalf of the customer. Whereas in the instant case there was no such relationship of a banker and a customer between the petitioner and the respondent 1. The petitioner had no banking account with the respondent 1 save and except the obligation of the State Bank of India arose under the High Denomination Bank Notes (Demonetisation) Act of 1978 where, under Section 7 Sub-section (2) it had been provided that any person desiring to tender for exchange a high denomination bank note should prepare in the form set out in the schedule, three copies of a declaration signed by him giving full particulars not later than 19th Jan., 1978 and delivery of such copies together with high denomination bank notes either (a) to the Reserve Bank at Bombay or to its sub-offices or branch, (b) to the main office or branch of the State Bank at the headquarters of a district, (c) to any other office of a public sector bank notified in that behalf by the Reserve Bank and under Section 4 provided such declarations were accepted, the bank was under an obligation to tender the exchange value. Hence there was no ordinary relationship of a banker and a constituent. The petitioner's claim appeared to be for damages, hence tortious in nature. To obtain a relief for such tortious action as the laws stand today is beyond the scope of an action under Article 226 hence it is still remote to obtain any relief for such tortious action by invoking the jurisdiction under Article 226. Hence the claim of the petitioner for interest was not maintainable in this proceeding.

18. The petitioner contended that the respondent 2 the I.T. Authorities had no authority to withhold the money in view of the various provisions of the I.T. Act.

19. Section 226 of the I.T. Act provides for modes of recovery. None of the modes could be applied in the instant case hence the petitioner contended that the issuance of notices by the department on the petitioner 1 in respect of any dues in anticipation was wrongful. Section 281(b) provides for provisional attachment to protect revenue in cases where during the pendency of a proceeding for assessment of any income or for re-assessment of any income which has escaped assessment and the I.T.O. is of the opinion that for the purpose of protecting the interest of the Revenue it is necessary to do so, he may with the approval of the Commissioner by order in writing attach provisionally any property belonging to the assessee. Every such provisional attachment shall cease to have any effect after the expiry of a period of six months from the date of the order made provided that the Commissioner may for reasons to be recorded in writing extend the aforesaid period by such period or periods as he thinks fit. However, the total period of such extension should not exceed 2 years. The petitioner contended such opinion must not be objective but subjective satisfaction on proper materials. The petitioner contended that the respondent had no materials whatsoever hence any such formally (sic) of opinion amounted to malice in law. In that respect the petitioner referred to the case Smt. S.R.

Venkataraman v. Union of India where it was held that malice in its legal sense meant such malice as may be assumed from the doing of a wrongful act intentionally but also without just cause or execuse or for want of reasonable or probable cause. Any use of discretionary power exercised for an unauthorised purpose amounts to malice in law. It is immaterial whether the persons acted in good faith or in bad faith. The petitioner relied upon the case Smt. S.R. Venkatraman v. Union of India, where it had been held : --

"There will be an error of fact when a public body is prompted by a mistaken belief in the existence of a non-existing fact or circumstances. This is so clearly unreasonable that what is done under such a mistaken

belief might almost be said to have been done in bad faith; and in actual experience and as things go, they may well be said to run into one another. The influence of extraneous matters will be undoubtedly there where the authority making the order has admitted their influence. An administrative order which is based on reasons of fact which do not exist must be held to be infected with an abuse of power."

20. The case relied upon by the petitioner held:--

"The reasons for the formation of the belief contemplated by Section 147(a) of the Income-tax Act, 1961, for the reopening of an assessment must have a rational connection or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the I.T.O. and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the Court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the I.T.O. on the point as to whether action should be initiated for reopening the assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and far-fetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment.

The reason for the formation of the belief must be held in good faith and should not be a mere pretence."

21. The case of the respondent 2 was that in para 25 of the petition the various grounds had been set out therein but no allegations and/or case had been made out against the respondent 2 the I.T. Authorities apart from that the interest payable under the I.T. Act under certain circumstances as enumerated in the Act itself which has no scope "application" for payment of interest to the petitioner. Under the circumstances as has arisen in this inslanl case, in any event, no case having been made against the I.T. Authorities, the petitioner's action, should fail against the Respondent 3.

22. While discussing what constitutes a customer Paget on Law of Banking 9th Edn. at Page 21 observed that it has been thought difficult to reconcile the idea of a single transaction with that of a customer; that the word predicates even grammatically, some minimum of custom antithetic to an isolated act. This view has generally been over thrown in favour of the view which records 'duration' is not of essence and an intention, other things equal to enter upon a course of dealing is probably sufficient to establish the relationship of banker and customer. Under the Act itself bank had been defined under Section 2(a).

23. The learned lawyer appearing on behalf of the petitioner strongly relied upon the case Shiv Shanker Dal

Mills v. State of Haryana where it has been held :--

"Where public bodies, under colour of public laws, recover people's money, later discovered to be erroneous levies, the Dharma of the situation admits of no equivocation. There is no law of limitation, especially for public bodies, on the virtue of returning what was wrongly recovered to whom it belongs."

24. The learned lawyers further relied upon the observation made in Gujrat Steel Tubes Ltd. v. Its Mazdoor Sabha to the

effect : --

"In the second chapter of our sum up the first thing we decide is that Article 226, however restrictive in practice, is a power wide enough, in all conscience, to be a friend in need when the summons comes in a crisis from a dictum of injustice, and, more importantly, this extraordinary reserve power is unsheathed to grant final relief without necessary recourse to a remand."

25. So far the petitioner's claim for interest is by way of damages is concerned, in (1938) 65 Ind App 66 : (AIR 1938 PC 67) Bengal Nagpur Railway Co. Ltd. v. Ruttanji Ramji it was held that in the absence of any usuage or contract express or implied or of any provision of law to justify the award of interesl on the decretal amount for the purpose before the institution of the suit, interest for that period could not be allowed by way of damages caused to the party for the wrongful detention of their money. It was further held : --

"The crucial question, however, is whether the Court has authority to allow interest for the period prior to the institution of the suit, and the solution of this question depends, not upon the C.P.C., but upon substantive law. Now, interest for the period prior to the date of the suit may be awarded if there is an agreement for the payment of interest at a fixed rate, or it is payable by the usuage of trade having the force of law, or under the provision of any substantive law entitling the plaintiff to recover interest, as for instance, under Section 80 of the Negotiable Instruments Act, 1881, the Court may award interest at the rate of 6 per cent. per annum. when no rate of interest is specified in the promissory note or bill of exchange. There is in the present case neither usuage nor any contract, express or implied, to justify the award of interest. Nor is interest payable by virtue of any provision of the law governing the case. Under the Interest Act, XXXII of 1839, the Court may allow interest to the plaintiff if the amount claimed is a sum certain which is payable at a certain time by virtue of a written instrument. But it is conceded that the amount claimed in this case was not a sum certain. The Interest Act, however, contains a proviso that "interest shall be payable in all cases in which it is now payable by law". This proviso applies to cases in which the Court of Equity exercises jurisdiction to allow interest. As observed by Lord Tomlin in Maine and New Brunswick Electrical Power Co. v. Hart, (AIR 1929 PC 185), "In order to invoke a rule of equity it is necessary in the first instance to establish the existence of a state of circumstances which attracts the equitable jurisdiction, as for example, the non-performance of a contract of which equity can give "specific performance". The present case does not. however, attract the equitable jurisdiction of the Court and cannot come within the purview of the proviso.

The learned Judges of the High Court have allowed interest by way of damages caused to the plaintiffs for the wrongful detention of their money by the railway, but the question is whether this view can be sustained. There is a considerable divergence of judicial opinion in India on the question of whether interest can be recovered as damages under Section 73 of the Indian Contract Act (IX of 1872), where it is not recoverable under the Interest Act."

26. In the case Shanti Prasad Jain v.

Director of Enforcement Foreign Exchange Regulation Act it was held that although there might be special arrangement whereunder a banker might be consiituted a trustee but spared from such arrangement his position qua banker is that of a debtor and not trustee. The law was stated in those terms in the old and well known decision of the House of Lords in Foley v. Hill. (1848) 2 HLC 28 and that has never been questioned.

27. Paget on the Law of Banking 9th Edn. P. 166 observed that out of the duties of the banker towards the customer among those duties may be reckoned the duty of secrecy. Such duty is a legal one arising out of the contract, not merely a moral one. Breach of it therefore gives a claim for nominal damages or for substantial damages if injury is resulted from the breach. It is, however, not an absolute duty but qualified subject to certain reasonable if not essential exceptions. The instances are (a) the duty to obey an order under the Banker's Book Evidence Act, (b) cases where a higher duty than the private duty is involved, as where danger to the State or public duty may supersede the duty of the agent to his principal; (c) of a bank issuing a writ claiming payment of an overdraft, stating on the face of it the amount of the overdraft; (d) the familiar case where the customer authorises a reference to his banker.

28. Under the heading compulsion by law it had been stated that compulsion must be confined to the regular exercise by the proper officer to actual legal power to compel disclosure. It is not every enquiry made by government official which falls within this heading. The learned lawyer appearing on behalf of the petitioner contended that a directive received from the Central Government to disclose the names of the depositors did

not fall within that category. Hence disclosure of those informations by the State Bank of India to the appropriate authorities was wrongful. The petitioner contended that the declaration from along with the currency notes for exchange were delivered on the 19th Jan., 1978. Having accepted the forms and by not rejecting the same the State Bank was under an obligation to tender the exchange value immediately although the I.-T. Authorities on 28th Feb., 1978, directed the bank to hold the money subject to further order of the I.-T. authorities. The State Bank was wrongful in withholding the money for that period. It was only on 18th Oct., 1978 that the said order of attachment was withdrawn and the bank was directed to release the money. Earlier thereto the State Bank of India was directed by the Reserve Bank of India and the Ministry of Finance to furnish all particulars regarding deposit of bank notes to the I.-T. department as soon as such notice were received. The respondents contended that such communication was made by the respondent 1 in public interest. Under the circumstances, this instant case falls within one of the exceptions as enumerated above. In any event this Court being of the opinion that the claim by way of damages for interest simpliciter by the petitioner could not be entertained under the writ jurisdiction of this Court, this application is liable to be dismissed. Hence the rule is discharged. All interim orders vacated.