

**INDIAN OVERSEAS BANK**  
**v.**  
**RAMADAS & OTHERS**

COURT OF APPEAL  
EDUSSURIYA, J.  
JAYASINGHE, J.  
CA 501/90(F)  
DC COLOMBO 1794/M  
JANUARY 25<sup>TH</sup>, 1999

*Prescription Ordinance - Overdrafts - Does Prescription begin to run from date on which each sum is withdrawn or only after a demand for repayment?*

**Held :**

(i) No agreement has been placed in evidence and there is no evidence to the effect that the sums overdrawn became payable only on demand.

(ii) Claim in respect of the overdraft is time barred in as much as a period of over 3 years had lapsed by the date of institution of action since last payment by the Defendant Respondent.

**APPEAL** from the Judgment of the District Court of Colombo.

**Cases referred to :**

1. *Parrs Banking Company Ltd., v. Yates* (1998) 2 QB 460
2. *Wright v. New Zealand Farmers Co-operative Association of Canterbury Ltd.,* (1939) 2 All ER 701
3. *Joachimson v. Swiss Bank Corporation* (1921) All ER 921

*Prasanna Jayawardena* for Plaintiff-Appellant.

*Lalanath de Silva* for Defendant Respondent.

*Cur. adv. vult.*

February 26, 1999.

**EDUSSURIYA, J.**

The Plaintiff-Appellant instituted action to recover two sums of money aggregating to Rs. 591,789/24 with interest at 23% per annum from 1<sup>st</sup> May 1986. The first of the said two sums being a loan of Rs. 100,000/- together with interest

amounting to Rs. 155,279/44 cts. and the second being a sum of Rs. 436,509/80 cts.

The learned Additional District Judge dismissed the Plaintiff-Appellant's action after trial and consequently this appeal has been filed.

Counsel for the Defendant-Respondent conceded at the hearing of this appeal that the Plaintiff-Appellant is entitled to Judgment in the said sum of Rs. 155,274/44 cts. with interest as prayed for in the plaint. However it was the contention of counsel for the Defendant-Respondent that the Plaintiff cannot succeed in appeal in respect of the claim for Rs. 436,509/80 cts. due on the overdraft facility as it is prescribed in as much as the last payment made by the Defendant-Respondent was in December 1983, over three years prior to the date of institution of action, and that the account has remained dormant since then.

Counsel for the Plaintiff-Appellant contended that the cause of action arose only on demand and that this action had been instituted within three years of the demand for re-payment of the sum due on the overdraft facility.

The Plaintiff-Appellant has not produced any document entered into between the Bank and the Defendant-Respondent at the time of the granting of the overdraft facility, which sets out that re-payment will become due on demand. In fact the overdraft facility appears to have been made available to the Defendant-Respondent on an oral agreement.

Counsel for the Defendant-Respondent relied on the statement in the Judgment in *Parrs Banking Company Limited v. Yates*<sup>(1)</sup> to the effect that prescription begins to run as against each sum overdrawn from the moment it is overdrawn.

In that case the Bank sued a party who guaranteed re-payment of sums of money which were overdrawn by the

customer of the Bank, from time to time. By the date of institution of the action no sum of money had been overdrawn for over a period of six years and the Court treated the Statute of Limitations as beginning to run in respect of each sum overdrawn from the date it came into the account, although the guarantee was a continuing one. Counsel for the Appellant referred to Paget's Law of Banking and submitted that the question had been asked therein whether *Parrs Banking Company Limited v. Yates*(*Supra*) was any longer good law.

Paget's Law of Banking 9<sup>th</sup> Edition refers at page 521 to the decision of the Privy Council in *Wright v. New Zealand Farmers' Co-operative Association of Canterbury Limited*<sup>(2)</sup> wherein it was held that so long as there is a continuing guarantee, the number of years which have expired since any individual debt was incurred is immaterial. Be that as it may, the question before us presently is whether prescription begins to run from the date on which each sum is overdrawn or whether prescription begins to run only after a demand for re-payment is made by the Bank.

Our attention has been drawn to the decision in *Joachimson v. Swiss Bank Corporation*<sup>(3)</sup> which was a case where a customer of a Bank sued the Bank for the recovery of money standing to the credit of the customer in a current account, and it was held that in the absence of a special agreement a demand by the customer is a necessary ingredient in the cause of action against the bank for money lent.

The decision in that case stressed that the relationship between a banker and a customer is that of debtor and creditor and that the moment money was deposited in the Bank it became a debt due to the customer and that the question whether a demand by the customer is necessary before action is instituted arises only in the unlikely case of a banker pleading the Statute of Limitations or as in that case where the facts were special. That decision held that a demand was necessary in the absence of a special agreement for a cause of

action to arise for the reason that although the moment money is deposited it becomes a debt due to the customer, if the Bank were to seek the customer and repay the debt the bank would not be in a position to honour the other implied obligations that arise such as meeting cheques drawn by the customer etc.

However the same cannot be extended to cover the case of a customer who has overdrawn his account since there is no implied obligation that a customer's overdrawn cheques be met by the banker in the absence of a special agreement. As hereinbefore mentioned no such agreement has been placed in evidence and therefore there is no evidence to the effect that the sums overdrawn become payable only on demand.

Therefore I am of the view that the claim in respect of the overdraft account is time barred in as much as a period of over three (3) years had lapsed by the date of institution of action since the last payment by the Defendant-Respondent. The Judgment of the learned District Judge is thus set aside penalty and Judgment entered for the Plaintiff in a sum of Rs. 155,279/44 cts. with interest at 23% per annum from 1<sup>st</sup> May 1986 till payment in full. The Appeal is therefore partly allowed with costs fixed at Rs. 5250/-.

**JAYASINGHE, J.** - I agree.

*Appeal Partly Allowed.*