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Banking Special Customers

RAGHVI GUPTA¹

ABSTRACT

Banking is an important sector and lots of informalities occur while dealing with the customers which are classified as special as due to prevalence of other laws, customs and most importantly the soundness of mind. And therefore, keeping in mind all of these, special rules are formulated to deal with such customers and situations.

A banking relationship between a customer and a bank is also a type of legal contract. Banks solicit the deposit of money from public and any person who is legally capable of entering in a valid contract may apply in a proper way to deposit his or her money with the bank and hence enter into a valid contract with the bank. As , by the law, there are exceptions regarding people or situations , similar is with the banking customers. The banks consider a few categories of people including minors, married women, and lunatics etc. as their special customers.

The research deals with the rules for minors and guardianship rules, studied taking in view the different religions and its significance in the field of banking. Also, the paper answers the questions like precautions to be taken while operating or creating accounts of married and pardahnashin women and provisions for the blind and illiterate customers.

I. SCOPE OF THE PROBLEM

Banks solicit the deposit of money from the members of the public. Any person who is legally capable of entering into a valid contract may apply in the proper way to deposit his/her money with the bank. The term customer of a bank is not defined by law. In general, any person having an account in a bank is considered as its customer. Every person is legally capable of opening an account with a banker. A customer of a bank need not to be necessarily a person, it may be a firm, joint venture, a society or any separate legal entity. The researcher's topic is special customers of banking. Special customer means the customers who are distinguished from other types of ordinary customers by some special features. They need to be dealt with care in the process of operating and opening of accounts. Below mentioned are some special types of customers:-

¹ Author is a student at Ajeenkya D Y Patil University, Pune, India.

- a) Minors
- b) Married women
- c) Lunatics
- d) Illiterate persons
- e) Partnerships
- f) Trust etc.

II. LIMITATIONS

Banking is an important sector and many informalities occurs while dealing with the special customers as due to prevalence of other laws, customs and most importantly the soundness of mind. Therefore special rules are formulated to deal with such customers so no person is denied the access to the facility of bank.

The research paper deals with the laws and rules related to special customers in the field of banking. Mainly, the laws related to minors, married women, illiterate person and blind person.

III. LITERATURE REVIEW

- 1) Milnes Holden T, "Banking law and practice in India" to know about the relationship between banker and customer in India. The provisions and rules meant for special customers are elaborated in the given book.
- 2) Banker's journal, February 2010, the banking law in theory and practice. This journal was followed to know about the cases on banker-customer relationship.
- 3) Dr.S.R.Myeneni's "law of banking and negotiable instruments". This book beautifully elaborates about the special customers including the laws and rules, the provisions and the precautions that a banker should take while dealing with such customers.

IV. RESEARCH QUESTIONS

- 1) What are the rules for minors and rules regarding the guardianship in different religions and how it is related to banking field?
- 2) What precautions should the banker take while opening and operating accounts of married and pardanashin women?
- 3) What are provisions for illiterate and blind customers?

V. ANALYSIS

Minors

Minors are the persons who are not a major.

According to section 3 of the Indian majority act,1875,a minor is a person who has not attained the age of 18 and in case a guardian is appointed, it is 21.it means that if a guardian of his person or property or both has been appointed by a court or if the superintendence of his property or both has been assumed the age of 18 years, he remains minor till he completes the age of 21 years. In the case of a person not domiciled in India, the age of majority is according to the law of his domicile.

According to the section 11 of the Indian contract act,1872,a minor is not capable of entering into a valid contract. Any contract entered by a minor is void and also void-ab-into i.e. from the very beginning.

According to the section 26 of the Negotiable instruments act,1881,a minor can draw,endorse,deliver and negotiate a promissory note, bill of exchange or cheque so as to bind all the parties except himself.

Guardians

A natural guardian in case of Hindu is mentioned under section 6 of the minority and guardianship act 1956 which provides that in case of a minor boy or unmarried girl, the father and after his death, the mother shall be the guardian of both person and property of the minor. Step father or step mother cannot act as a natural guardian. After the death of both father and mother, a minor can be represented only through a legal guardian.

In case of Muslims, father is natural guardian. After the death of the father, the guardianship goes to the executor appointed by the father in his will. But in the absence of such will, it goes to father's father and then executor appointed by the will made by father's father and in the absence of all the above, it goes to a legal guardian. Mother can only act as a guardian if appointed by court or by will.

In case of Christians and persons of other religions, father is treated as natural guardian and after his death the mother becomes natural guardian. In case both ,mother and father are dead, a person appointed by the court act as guardian.

Banker's duty towards minors

Opening of a bank account:-the banker may open a savings account and not a current account

in the name of minor as it incurs no responsibility or liability to the minor. Also, in case of an overdraft the minor does not have any personal liability.

The savings bank account can be opened in the following ways:-

- I. in the name of the minor
- II. in the joint names of the minor and his/her guardian
- III. in the name of guardian

In the name of the minor:-an account can be opened by the minor himself. There is nothing unlawful since the law provides that a minor can draw, endorse, deliver and negotiate instrument.²The banker should record the genuine date of birth of the minor. Banker should insist to provide with relevant documents like some schooling records, or date as entered in births register of the municipality etc. Minors are allowed to open savings account only when they have attained a certain age, say 12 years or in some banks it is 10 years. It would be prudent to issue cheque books only to minors of certain age like 16 or 17 years of age. Accounts for illiterate minors are not opened in their single name. And as a precautionary measure, banks adopt a general rule not to accept deposits exceeding a particular sum. A loan contract with a minor is void and therefore a minor's account should never be allowed to be overdrawn.³

Joint names of minor and guardian:-a joint account in the names of a guardian, who is an adult and the minor can be opened. And in such case, the banker can make the guardian liable for all transactions of the minor. The minor can operate the account as an agent, and he is regarded a ward. Sometimes women customers approach banks for opening accounts in the name of minors, with mother as their guardian. Notwithstanding the legal provision, banks do not open saving/time deposit accounts in the name of minors jointly with their mothers as per guardians as per RBI directives.⁴The banker can open a minor's account jointly with a lawful guardian. The account is opened with the benefit of minor so the banks have an habit of writing the name of the minor first, but the account is usually opened by the guardian only. While opening of the bank account of the minor jointly with the guardian, the banks obtain a minorship declaration form which inter alia contains the date of birth of the minor and the form is signed by the guardian himself and no further proof of the minor's age is necessary for the opening of the account. If the guardian dies, the balance held in the account shall be paid to the minor as per the instructions given by the guardian in the minorship declaration form. After the minor attains

² Section 26, Negotiable Instruments Act 1881

³ Section 11 of the Indian Contract Act, 1872

⁴ No. DBOD Leg BC 158/C-90(H)-76 AND DBOD Leg BC 19/C-90(H)-89

majority, the account automatically becomes a normal joint account.

Account in the name of guardian:-when an account in the name of minor alone is opened by his guardian and only guardian operates the same, the account opening form as also the cheques etc. may be signed by the guardian in any of the forms. The banker should scrutinize whether he is the legal guardian or not. If the minor dies, the amount of his credit is to be paid to his next of kin on the production of a letter of administration. The guardian is prohibited from operating the account in case of premature death of the minor.in the case that the banker is compelled to grant loan to the minor, he must make sure that the loan is granted either for the necessities of his life against sufficient securities or against a joint promissory note in which one of the parties is an adult or against an indemnity bond given by an adult. If a fixed deposit receipt is in single name of a minor, repayment thereof before maturity would not ordinarily involve any risk provided the discharge of the minor is properly obtained and can be proved.

Married women

The Hindu married women are governed by the Hindu Succession Act; 1956.In case of married women belonging to other than Hindu religion, the status is governed by the Indian succession Act, 1925 and the married women's property Act, 1874.

Married women can enter into contracts and bind her estate (stridhan).it would be a binding contract as she has the power to draw cheques and give a sufficient discharge. Banker may open an account to any other another customer. However, a banker may open an account in the name of a married woman as the banker open an account to any other customer. However, a banker should exercise caution when an account is opened for the wife of an undischarged insolvent. If the nature of the transactions put through the account indicates that the account is operated by the wife for her husband's transactions, it should be reported to the official assignee or the receiver as the case may be.

Duties of the bank:-

- 1) If an unmarried woman is competent to contract (not a minor, insane or of unsound mind) then the bank can safely enter into a banking relationship with her.
- 2) The bank should enquire about her means and circumstances and if she is living with her husband, something about him, his occupation etc.
- 3) Under the following circumstances, the woman can make her husband liable for the overdraft enjoyed by her:-
 - a.if she borrows money for the necessities of her or husbands life

b.if she acts as an agent of her husband

The husband shall not be liable for the debts taken by wife in any other circumstances.

The debtor may recover the debt from the personal assets of the woman.

- 4) A married woman cannot be committed to a prison in execution of a decree
- 5) She cannot be made an insolvent unless she carries on some trade or business
- 6) In case she applies for an overdraft, the banker should see that she owns separate property in her own name and precaution should be kept in mind regarding her status and capacity to pay
- 7) On account of marriage of a woman she may be allowed to change the title of the account so far as the surname is concerned on being satisfied about marriage after attaining a copy of the marriage certificate.

Precautions to be taken by the banker:-

- 1) Banker can open an account in the name of a married woman but he should observe that there is a credit balance in her account
- 2) If applies for overdraft or loan, he should seek suitable securities, preferably on her own, which can be attached in future by the courts
- 3) Banks usually require that a married woman be independently advised by her own solicitor when depositing security for the account of another person's. A married woman of full age may enter into a contract of guarantee and this contract is enforceable only against her separate estate.
- 4) In case of a illiterate woman, her thumb impression should be obtained on the account opening form and identification card.

In the case of pardanashin woman:- a pardanashin woman observes complete seclusion in accordance with her customs of her own community, she does not deal with people other than the members of her own family.as she remains completely secluded, a presumptions in the law exists that:- a pardanashin woman observes complete seclusion in accordance with her customs of her own community, she does not deal with people other than the members of her own family.as she remains completely secluded, a presumptions in the law exists that:-

- a. Any contract entered into her might have been subject to under influence

- b. The same right not have been made with her free will and with full understanding of what the contract actually means.

Thus, a contract entered by pardanashin women is not a contract free from all defects. The other party to the contract shall have to prove that the contract with her was free from the above that the contract with her was free from the above mentioned defects in order to enforce the same. The banker should, therefore, take due precaution in opening an account in the name of a pardanashin woman. As the identity of such woman cannot be ascertained the banker generally refuses to open an account in her name.

Illiterate persons

A person who, for want of education cannot read or/and write and who cannot sign his name is known as illiterate. Since any person who is a major and is of sound mind is competent to contract, therefore, an illiterate person is competent to contract.⁵

Now an illiterate person cannot read and write. It is a general condition of all the banks that they must fill in a form required to open an account with a bank. Usually such forms are meant to collect necessary information as per the KYC norms. In addition to this information most of the Account Opening forms do contain certain terms and conditions to be followed by the customers. Besides the customers are also required some sort of obligations to take care of while operating their respective account.

Special care to be taken by the banker:-

- 1) The account of an illiterate person may be opened provided he/she calls on the bank personally alongwith a witness who is known to both depositor and the banker.
- 2) A passport size photograph of the illiterate person is identified before the banker in presence of the account holder.
- 3) The left hand thumb impression in case of a male illiterate and right hand thumb impression in case of female illiterate are duly attested by some responsible person on the account opening form.
- 4) One or two identification marks of the depositor should be noted on the account opening form.
- 5) The illiterate person should be provided with a pass book which should also contain an attested photograph of the person. the person must bring with him the pass book issued

⁵ Section 11 indian contract act 1872

by the bank to confirm his credentials because in case of illiterate persons most of the bank paste a photograph of the account holder on the passbook. It facilitates any banker to recognize his customer.

- 6) No cheque book facility is provided on accounts in the name of the illiterate persons.
- 7) At the time of the withdrawal or repayment of deposit amount, the account holder should attend personally with a passbook and affix his/her thumb impression or mark in the presence of the authorized officer.
- 8) The thumb impression of illiterate person on the withdrawal form or cheque and on the back of the withdrawal form/cheque should be duly compared with the specimen impression kept by the bank.

bank does not owe any duty to the third parties who are not its customers. The mere fact that a bank owes a duty to its customer in connection with a transaction does not mean that it owes a duty to its customer in connection with a transaction does not mean that it owes a parallel duty to third person who may also be interested in the transaction.⁶

Blind customers

blind person can be literate and also illiterate but there is no bar for these persons to open an account with any bank. Every person who is of sound mind and not a minor is competent to contract and therefore a blind person is competent to contract⁷. Therefore, banks cannot refuse to open accounts of blind people.

The Banks take some extra precautions while opening the accounts of blind persons as they cannot see.

- A. A bank should allow the person when well introduced, to open an account jointly with one person, who can see, read and write, and the bank may allow a joint operation on the account. The bank must be careful in respect of cash withdrawal by the blind customer himself from his account.
- B. In case of issue of cheque books only crossed cheques are issued to them.
- C. The receipts and payments of such persons are made in the presence of some independent witness whose signatures are also obtained on the mandate of such customers.

⁶ Auchteronis Co. Vs Midland Ltd., AIR 1928S

⁷ Section 11 indian contract act, 1872

- D. Normally before issuing cheque books to such customers the words “bearer” are replaced with “order” so that payees can be easily searched.
- E. The bank must be careful in respect of cash withdrawal by the blind customer himself from his account.

VI. CONCLUSION

The banks have a million of customers. They may be private individuals or small/huge business firms some formed as private companies and the majority of them being traders or partnerships. Banks also have to deal with some special and god gifted customers too and such customers are referred to as “special customers”. Special customers include minors, drunkards, lunatics, insolvent people, married women, joint firms, agents, blind people, illiterate people etc. Out of these people having insolvent minds, minors and drunkards are not competent to contract and therefore contracts made with them are not valid and are void. On the other hand, married women, blind people, illiterate people can enter into valid contracts. Banks have special provisions for minors and have the rule of guardianship, therefore under special conditions, minors can open bank accounts. Banks have to pay special care while dealing with special customers and also there are special rules and provisions to open and operate accounts for them. Banks cannot deny such people of service as it is the right of such people to have a contract and that too a valid one with the banks. Thus requiring extra care to ensure that their accounts are conducted in accordance with the provisions of their respective charters.

VII. SUGGESTIONS

The above mentioned facts and information highlights the legal aspects, provisions and position of the special cases of a bank’s customer and the necessary precautions that a banker should take while dealing with them. Any person who is legally competent to enter into a valid contract and abides to the banks rules in proper manner i.e. undertakes to abide by the banks procedure and terms and conditions can open an account in the bank. People like minors, drunkards, lunatics and insolvents are not competent to enter into valid contracts and thus require extra care to ensure that their accounts are conducted in accordance with the provisions of their respective charters. It is a good provision by the banks and our law to provide with the provisions to avail the facilities which are available for normal customers. This practice is an example to maintain equality in customers.
