

CHAPTER - IV

RELATIONSHIP BETWEEN BANKER AND CUSTOMER

The relationship between a banker and a customer depends on the activities , products or services provided by bank to its customers or availed by the customer. Thus the relationship between a banker and customer is the transactional relationship. Bank's business depends much on the strong bondage with the customer. "Trust" plays an important role in building healthy relationship between a banker and customer.

Definition of a 'BANKER'

According to Macleod " The essential business of a 'Banker' is to buy money and debts, by creating other debts. A banker is therefore, essentially, a dealer in debts or credit".

According to Dr. H.L.Hart " A banker or a bank is a person or a company carrying on the business of receiving moneys, and collecting drafts, for customers, subject them from time to time by the customers to the extent of the amounts available on their current accounts".

Under Section 5(1) of the Banking Regulations Act, 1949 a banking company is defined as "any company which transacts the business of 'banking' . "

Under Section 5 (1) (b) ' banking' means accepting for the purpose of lending or investment, deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise.

As per Sec. 3 of the Indian Negotiable Instruments Act 1881, the word "banker includes persons, or a corporation, or a company acting as bankers.

Sec.5(c) of BR Act defines "banking company" as a company that transacts the business of banking in India. Since a banker or a banking company undertakes banking related activities we can derive the meaning of banker or a banking company from Sec 5(b) as a body corporate that:

- Accepts deposits from public.
- Lends or
- Invests the money so collected by way of deposits.
- Allows withdrawals of deposits on demand or by any other means.

Accepting deposits from the 'public' means that a bank accepts deposits from anyone who offers money for the purpose. Unless a person has an account with the bank, it does not accept deposit. For depositing or borrowing money there has to be an

account relationship with the bank. A bank can refuse to open an account for undesirable persons. It is banks right to open an account.

WHO IS A 'CUSTOMER' ? :

The term Customer has not been defined by any act. **The word 'customer' has been derived from the word 'custom', which means a 'habit or tendency'** to-do certain things in a regular or a particular manner's. In terms of Sec.131 of Negotiable Instrument Act, when a banker receives payment of a crossed cheque in good faith and without negligence for a customer, the bank does not incur any liability to the true owner of the cheque by reason only of having received such payment. It obviously means that to become a customer account relationship is must. **Account relationship is a contractual relationship.**

Great Western Railway Company Vs London and County Banking Company, a customer was defined as "a person who has some sort of an account, either deposit or current account, or some similar relation with a banker ".

It is generally believed that any individual or an organization, which conducts banking transactions with a bank, is the customer of bank. However, there are many persons who do utilize services of banks, but do not maintain any account with the bank. Thus bank customers can be categorized in to four broad categories as under:

- (a) Those who maintain account relationship with banks i.e. existing customers.
- (b) Those who had account relationship with bank i.e. Former Customers
- (c) Those who do not maintain any account relationship with the bank but frequently visit branch of a bank for availing banking facilities such as for purchasing a draft, encashing a cheque, etc. Technically they are not customers, as they do not maintain any account with the bank branch.
- (d) Prospective/ Potential customers: Those who intend to have account relationship with the bank. A person will be deemed to be a 'customer' even if he had only handed over the account opening form duly filled in and signed by him to the bank and the bank has accepted the it for opening the account, even though no account has actually been opened by the bank in its books or record.

The practice followed by banks in the past was that for opening account there has to be an initial deposit in cash. However the condition of initial cash deposit for opening the account appears to have been dispensed with the opening of '**No Frill**' account by banks as per directives of Reserve Bank of India. '**No Frill**' accounts are opened with 'Nil' or with megre balance.

The term 'customer' is used only with respect to the branch, where the account is maintained. He cannot be treated as a 'customer' for other branches of the same bank. However with the implementation of 'Core Banking Solution' the customer is the customer of the bank and not of a particular branch as he can operate his account from any branch of the bank and from anywhere. In the event of arising any cause of action, the customer is required to approach the branch with which it had opened account and not with any other branch.

BANKER-CUSTOMER RELATIONSHIP:

Banking is a trust-based relationship. There are numerous kinds of relationship between the bank and the customer. The relationship between a banker and a customer depends on the type of transaction. Thus the relationship is based on contract, and on certain terms and conditions.

These relationships confer certain rights and obligations both on the part of the banker and on the customer. However, the personal relationship between the bank and its customers is the long lasting relationship. Some banks even say that they have generation-to-generation banking relationship with their customers. The banker customer relationship is fiducially relationship. The terms and conditions governing the relationship is not be leaked by the banker to a third party.

CLASSIFICATION OF RELATIONSHIP :

The relationship between a bank and its customers can be broadly categorized in to General Relationship and Special Relationship. If we look at Sec 5(b) of Banking Regulation Act, we would notice that bank's business hovers around accepting of deposits for the purposes of lending. Thus the relationship arising out of these two main activities are known as General Relationship. In addition to these two activities banks also undertake other activities mentioned in Sec.6 of Banking Regulation Act. Relationship arising out of the activities mentioned in Sec.6 of the act is termed as special relationship.

GENERAL RELATIONSHIP:

The general relationship between a banker and customer can be studied under three heads.

- 1) Debtor - Creditor relationship.
- 2) Trustee - Beneficiary relationship.
- 3) Agent - Principal relationship.

1. Debtor - Creditor Relationship: On the opening of an account, the banker assumes the position of a debtor. The money deposited by the customer with the banker is in legal terms, lent by the customer to the banker, who makes use of the same according to his discretion. The creditor has the right to demand back his money from the banker, and the banker is under an obligation to repay the debt as and when he is required to do so.

A depositor remains a creditor of his banker so long as his account carries a credit balance. The relationship will be reversed as soon as the customer's account is over drawn. Though the relationship between a banker and his customer is mainly like a debtor and creditor, this relationship differs from similar relationship arising out of ordinary commercial debts in the following ways:

A. The Creditor must demand payment: In case of ordinary commercial debt, the debtor pays the amount on the specified date or earlier or whenever demanded by the creditor. But in case of a bank deposit, the debtor (banker) is not required to repay the amount on his own. It is essential that the creditor (depositor) must make a demand for the payment of the deposit in the proper manner. This difference is because a banker is not an ordinary debtor; he is termed as a privileged debtor.

B. Proper Place and Time of Demand: The demand by the creditor must be made at the proper place and in proper time. His demand for the repayment of the deposit must be made at the same branch of the bank, in which he has the account. Otherwise, the banker is not bound to honor the checks.

It is also essential that the demand must be made during banking hours only on a working day of the bank. If the banker makes payment after or before the banking hours, he might be held liable for the same.

C. Demand must be made in Proper Manner: Demand for the refund of money deposited must be made through a check or an order. In other words, the demand should not be made verbally or through a telephonic message.

2. Trustee - Beneficiary Relationship: In certain circumstances, the banker may act as a trustee also. **A trustee holds money or assets and performs certain functions for the benefit of some other person called the beneficiary.** For e.g. if the customer deposits securities or other valuables with the banker for safe custody, the banker acts as a trustee of his customer.

The legal position of the banker, as a trustee, therefore differs from that of a debtor of his customer. The position of a banker as a trustee or as a debtor is determined according to the circumstances of each case. For e.g. in case of a check sent for collection, the banker acts as a trustee till the check is realized and credited to the customer's account and thereafter he will be the debtor for the same amount.

3.Agent -Principal Relationship: A banker acts as an agent of his customer and performs a number of agency services. For e.g. the banker buys and sells securities on behalf of his customer, collects checks on behalf of his customer and makes payment of various dues of his customer. Thus, the range of such agency functions has become much wider and the banks are now rendering large number of agency services.

SPECIAL RELATIONSHIP:

The opening of an account by a customer with a banker creates an obligation on the banker towards its customer in respect of certain rights and responsibilities. Those rights and responsibilities are also known as “special features of relationship between a Banker and Customer”. The following are the special relationships between Banker and Customer.

1. Banker’s obligation to honor the cheques,
2. Banker’s lien
3. Banker’s duty to maintain secrecy of customer’s accounts and
4. His right in respect of combining accounts
5. Banker’s Right to Set-off
6. Banker’s Right of Appropriation
7. Banker has a right to claim incidental charges:

1. Banker’s obligation to honor the cheques : According to sec.31 of the Negotiable Instruments Act, 1881, every banker must honor the cheques drawn on it by a customer, provided:

- The customer has sufficient amount of balance to his account with the banker.
- The funds are properly applicable to the payment of such cheque.
- The banker has been duly required to pay
- The cheque has been presented to the banker within a reasonable time (i.e within six months) after the apparent date and of its issue
- No prohibition order of the court or any other competent authority (e.g income tax) is standing against the account of the customer.

2. Banker’s lien : A lien may be defined as the right to retain property belonging to a debtor until he is discharged of his debt due to the retainer (creator) of the property. The banker’s lien refers to the right of banker over such of his customer’s securities as may come into his possession in the ordinary course of business. According to Sec.171 of the contract act, a banker has a general lien on cash, cheques, bills of exchange and securities deposited with him.

Conditions required for the banker to exercise general lien

- The securities and goods must come to his hands in his capacity as a banker.

- The banker should have obtained the possession of the securities and goods lawfully.
- The goods or securities should not have been entrusted to the bank for a specific or special purpose.
- The goods and securities, held by the bank shall stand in the name of borrower only and jointly with others.
- There must be no arrangement either express or implied that is inconsistent with the banker's right to lien.

3. Banker's duty to maintain secrecy of customer's accounts: It is an obligation on the part of a banker to maintain secrecy about the customer's accounts. The banker must not disclose any information pertaining to the customer to any one. But there are certain exceptions. They are,

- Where such disclosure is required by law
- Where such disclosure is in public interest to disclose
- Where the interest of the bank require such disclosure
- Where disclosure is made by the express or implied consent of the customer and
- Where such disclosure is permissible on account of banking practice.

4. His right in respect of combining accounts: The banker has a right to combine several accounts kept by the customer at the same branch or different branches of the bank (Garnet V. Mc Kervan). The banker however, cannot combine the personal account of a customer with a joint account of a customer and some other person. Customer has no right to treat two accounts as one.

5. Banker's Right to Set-off : The banker can adjust a debit balance to a customer's account with any balance standing to the customer's credit. While doing so, the banker gives due notice to the customer. To exercise the right of set-off the following conditions should be fulfilled.

- The debts are certain and are due. The right cannot be exercised against future debt/or contingent debts.
- The debit and credit balances are of the same person in the same capacity.
- There should not be any express or implied agreement to the contrary.

6. Banker's Right of Appropriation: as a part of ordinary banking business, the banker receives deposits of money from his customer. The customer has the right to dictate as to which account a particular amount is to be credited where he has more than one account and / or loan account. In case the customer has not appropriated, i.e., not indicated his account to which they said amount is to be credited, the creditor is at liberty to apply the payment to any debt owed by the debtor including to a debt barred by limitation.

7. Banker has a right to claim incidental charges: Every banker has a right to claim incidental charges on un remunerative accounts of a customer, e.g., collection charges, remittance charges for drafts etc.,

Termination of Relationship between a Customer and Banker :

As a rule, as long as an account (either deposit or loan) exists, the relationship between a banker and customer would continue. **The relationship would come to an end under the following circumstances or conditions.**

1. If the customer dies
2. If the customer becomes an insolvent
3. If the customer becomes an insane
4. If the customer closes his account
5. If the banker closes the customer's account
6. If the court orders the bank to close the customer's account.