

IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA 615 OF 2007

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Date of Decision: 17th May, 2010

ANSHUL KATHURIA

...Appellant

Through: Mr. G.D. Gandhi, Advocate

Versus

\$ **PUNJAB NATIONAL BANK & ANR.**
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...Respondents

Through: Mr. N.K. Beniwal, Advocate for

R-1

Mr. Robin Majumdar, Advocate for

R-2

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the judgment?(No)
2. To be referred to the Reporter or not? (No)
3. Whether the judgment should be reported in the digest? (No)

JUDGMENT

P.K.BHASIN, J:

The appellant is the plaintiff in a suit filed by him for recovery of Rs.5,00,000/-(rupees five lacs) against the two respondents herein. The suit came to be dismissed by the learned Additional District Judge vide judgment and decree dated 10th July, 2007. Feeling aggrieved thereby the present appeal was filed by the appellant, who shall hereinafter be referred to as 'the plaintiff'.

2. The relevant facts emerging from the pleadings of the parties, evidence adduced during the trial as well as from the impugned judgment may first be noticed. The plaintiff is the grandson of respondent no. 2 herein(who was arrayed as defendant no. 2 in the suit and shall hereinafter also be referred to

as 'defendant no. 2'). The plaintiff had lost his father when he was a minor thereafter his mother remarried. Then litigation for his custody started between his mother(PW-2) and defendant no.2. The defendant no. 2 filed a petition in Court for the custody of the plaintiff(being Guardianship Case No.180 of 1990) on 21/09/87. That petition was, however, withdrawn by him on 06-04-92. It appears that during the pendency of the guardianship matter the defendant no. 2 had got prepared one Fixed Deposit Receipt for a sum of Rs.1,00,000/- in the name of the plaintiff from New Bank of India on 19-11-88. Since the plaintiff was a minor at that time, defendant no. 2 was shown as the guardian in that FDR and there was an endorsement on the FDR made by the bank to the effect that FDR proceeds were not to be paid till the attainment of majority by the plaintiff. The FDR was made for a period of 84 months and the maturity value was Rs.1,99,650/- and the defendant no.2 appears to have kept the same at the disposal of the Guardianship Court where the plaintiff's custody matter was pending. When that case was withdrawn by defendant no. 2 the Judge had directed that the FDR amount be invested in the name of the minor child with the Unit Trust of India and FDR delivered to defendant no.2. That, however, was not done and it appears from the pleadings of the parties and the evidence led before the trial Court that the defendant no. 2 had got the FDR encashed but had neither got the proceeds thereof invested with the Unit Trust of India nor had he given the money to the plaintiff. The plaintiff on majority filed the suit for recovery of Rs. 5,00,000/-, which included the principal amount of maturity value of the FDR and interest thereon, on 19-05-2005 impleading Punjab National Bank, respondent no. 1 herein as defendant no.1 since by that time it had taken over the erstwhile New Bank of India. His grandfather was impleaded as defendant no.2. The plaintiff had claimed in the suit that both the

defendants were jointly as well as severally liable to pay the said amount along with interest thereon @ 18% p.a. from the date of filing of the suit till actual payment to him.

3. The suit was contested by both the defendants. The defendant no. 1 bank claimed that FDR in question stood paid to defendant no.2 and further that because of the disputes between the plaintiff and defendant no. 2 the bank had been dragged into litigation to extract money.

4. Defendant no. 2 claimed that the suit was not maintainable as there was no cause of action against him. He pleaded that the FDR in question was encashed by him on the request of the plaintiff's mother. Defendant no. 2 also claimed that he had plaintiff's school fees of Rs. 65,000/- in cash and Rs. 6546/- and also paid other expenses including lodging and boarding of the plaintiff and has from time to time paid cash of Rs.2,00,000/- apart from above mentioned expenses to the plaintiff's mother for the welfare of the plaintiff.

5. The pleadings of the parties led to the framing of following issues by the trial Court:-

- (i) *Whether there is no outstanding in the books of defendant no.1 against FDR in question? OPD-1.*
- (ii) *Whether the defendant no.1 converted the FDR in question into UTI saving certificate in terms of order of guidelines(sic) court? OPD-1.*
- (iii) *To what principal amount, if any, is plaintiff entitled from the defendant? OPD.*
- (iv) *Whether the plaintiff is entitled to interest, if so, at what rate, for which period and to what amount? OPP.*
- (v) *Relief.*

6. Vide impugned judgment the learned trial Judge decided all the issues against the plaintiff and consequently the suit came to be dismissed.

7. As far as the rejection of plaintiff's claim against defendant no.1 Punjab National Bank is concerned there is no infirmity whatsoever in the impugned judgment. The FDR had been issued by the erstwhile New Bank of India which came to be taken over by the Punjab National Bank and its stand was that it had no old records of the New Bank of India. The plaintiff had not produced the original FDR in question which in any case could not have been produced since defendant no.2 has admitted that he had got the FDR encashed. A perusal of the impugned judgment shows that the learned trial Judge had perused the case of guardianship case filed by the defendant no.2 and the trial Judge has noticed from that record that defendant no.2 was permitted to retain the original FDR and its copy was to remain with the mother of the plaintiff. It also appears that defendant no.2 got a coloured copy made of the original FDR, and is marked as Ex. PW-1/D, and gave it to the plaintiff's mother and since it was not the original FDR the plaintiff obviously could not have got it encashed and defendant no.2 admittedly having got the original FDR encashed Punjab National Bank could not be fastened with any liability in respect of that FDR. Therefore, the findings of the trial Court on issues no. 1 and 2 are affirmed.

8. Now I come to the challenge to the trial Court's decision rejecting his claim even against his grandfather who himself had admitted in his written statement as well as during his evidence that he had got the FDR encashed and had also not paid its proceeds to the plaintiff. In respect of this controversy the learned trial Judge had framed issues no.3 and 4 and after evidence he dealt with and decided those issues together and held that the plaintiff was not entitled to get anything from even from his grandfather. The entire discussion and findings on these two issues given by the trial Court are to be found in two

paragraphs no. 31 and 32 of the impugned judgment and the same are reproduced below:-

“31. As regards these issues are concerned, onus to prove the same has been placed upon the plaintiff and plaintiff is required to prove that he is initially entitled to an amount of Rs.1,00,000/- from defendants. As regards this issue is concerned, defendant No.1 is liable to pay the amount to the plaintiff only in case the amount is either deposited by the plaintiff or by any person on behalf of plaintiff. The evidence in this case clearly shows that FDR Ex.PW1/3 which is bearing no. 110440/257/88 dated 19.11.88 is not original FDR as tried to have been proved by the plaintiff but is only a coloured copy of the FDR. This can be inferred from the order dated 27.08.92 passed by Ms. Mamta Sehgal, the then Ld. Guardian Judge in Misc. Application No. 45/92 as this order was passed in presence of father of Smt. Renu Kathuria, the mother of the plaintiff and vide said order only copy of FDR was allowed to be given to the defendant i.e. Smt. Renu Kathuria. So by stretch of imagination, it can be inferred that original FDR of an earlier date would have been given to the defendant.

32. As regards liability of defendant No.2 to pay the amount to the plaintiff is concerned, defendant No.2 has deposed that during the minority of the plaintiff, the mother of the plaintiff has remarried and shifted to Bombay and that the plaintiff was adopted by the new husband of the mother of the plaintiff. This fact is not disputed by the plaintiff during Cross-examination of DW 2 Sh. H.K.L. Kathuria. Accordingly, in the circumstances of the case, the plaintiff cannot claim any amount as of right from defendant no.2 who is father of the plaintiff. Accordingly, these issues are decided against the plaintiff.”

9. Learned counsel for the defendant no.2(respondent no.2 herein) had contended that there is nothing wrong in these findings of the trial Court while the learned counsel for the plaintiff-appellant argued that these findings cannot be upheld at all in view of the categorical admission made by defendant no.2 that he had encashed the FDR and retained the proceeds with himself. Learned counsel also argued that the defence of defendant no.2 that he had spent some money on the education of the plaintiff had not been proved and in any case even if he had spent any money for his grandson that was of his free will and out of his love and affection for his grandson but legally he could not have

retained the proceeds of the FDR which was in the name of the plaintiff and was payable to him only on his attaining majority.

10. After considering the pleadings of the parties, evidence adduced by them and after giving thoughtful consideration to the rival submissions made during the course of hearing this Court unhesitatingly has come to the conclusion that the learned trial Judge was not right in rejecting the plaintiff's claim against his grandfather. As has been noticed already, defendant no.2 had not disputed that there was one FDR for Rs.1,00,000/- in the name of the plaintiff under his guardianship and also that he had got it encashed. It appears that he had done that before his grandson attained majority. As per the orders of the Guardianship Court the proceeds thereof were required to be invested with the Unit Trust of India but defendant no.2 does not even claim to have complied with the orders of the Court and appears to have got encashed the FDR without bringing to the notice of the bank that the FDR proceeds were to be invested with the Unit Trust of India as per the Court orders. His stand has been that he had spent some money on the education of his grandson and that he had got the FDR encashed when the plaintiff's mother had approached him after getting remarried with the request to look after the plaintiff because she and her new husband were not in a position to provide good education to the plaintiff due to limited economic resources. That appears to be the reason for his not making the payment of any money to the plaintiff after he had attained majority. However, this stand of defendant no. 2 cannot be accepted since undisputedly there were orders of the Guardianship Court to the effect that the FDR proceeds were to be invested in the name of the plaintiff with the Unit Trust of India. Defendant no. 2 does not even claim to have got that order modified before getting the FDR encashed and pocketing the money of his grandson.

The plaintiff had examined his mother Mrs. Renu Sachdeva who had categorically denied having sought any financial assistance from defendant no. 2 after her remarriage for her son's education and upbringing. Nothing could be elicited from her in cross-examination from which it could be said that she had authorized defendant no. 2 to get the FDR encashed. In any event, even her consent would have been of no consequence as far as the encashment of the FDR and utilization of the proceeds thereof is concerned. Even plaintiff's mother could not have spent the FDR amount for the welfare of the plaintiff after encashment of the FDR without seeking permission of the Court. Unfortunately, all these aspects have not even been considered by the learned trial Judge while rejecting the plaintiff's claim against defendant no. 2. The reasons given by the trial Judge have already been noticed and it appears that the learned trial Judge rejected the plaintiff's claim against his grandfather primarily on the ground that the FDR amount of Rs. 1,00,000/- did not belong to the plaintiff. This finding of the learned trial Judge ignores the fact that the FDR was exclusively in the name of the plaintiff over which his grandfather had no right and consequently he could not have got it encashed. In any case, after encashing the FDR defendant no. 2 was bound to invest the money with the Unit Trust of India or to have paid the money to the plaintiff on his attaining majority on 25th May, 2002. The defendant no. 2 has also not led any evidence to show that he actually spent any money for the education of the plaintiff as was being claimed by him. He has also not proved the plea that plaintiff's mother had approached him for financial assistance for her son because of financial problems. In fact, during the course of hearing of the appeal written submissions were filed on behalf of defendant no. 2 in which a different point was taken. It was claimed that the plaintiff's mother had approached him with

a request to bear the expenses of her son as her husband had not been taking care about his studies and further that he had spent about Rs. 3,00,000/- for the education of the plaintiff.

11. I am, therefore, of the view that the findings of the learned trial Court on issue nos. 3 and 4 deserve to be reversed and the suit of the plaintiff needs to be decreed, but partly, after setting aside the impugned judgment and decree of the trial Court. Consequently, this appeal is allowed. The judgment and decree of the trial Court are set aside. The plaintiff's suit is decreed in his favour and against defendant no. 2 for a sum of Rs. 1,99,650/- along with interest thereon @ 6% p.a. from the date of filing of the suit till payment is actually made to the plaintiff. The plaintiff shall also be entitled to proportionate costs throughout.

Decree be drawn accordingly.

P.K. BHASIN,J

May 17, 2010
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