

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 18.11.2010

Judgment delivered on: 15.03.2011

RFA No.141/2003

STATE BANK OF INDIA

.....Appellant

Through: Mr.S.L. Gupta & Mr. Ram Gupta,
Advocates.

Vs.

SMT.VIJAY LAKSHMI THAKRAL

.....Respondent

Through: Mr. J.R.Bajaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

KAILASH GAMBHIR, J.

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1. By this appeal filed under Section 96 of the Code of Civil procedure, 1908 the appellant seeks to set aside the judgment and decree dated 11.11.2002 passed by the Court of

the ADJ, Delhi whereby the suit for recovery filed by the respondent was decreed in favour of the respondent and against the appellant.

2. Brief facts of the case relevant for deciding the present appeal are that the respondent is the widow of late Sh. Satish Chander Thukral who was working as an officer in the State Bank Of India and had expired on 22.11.84 leaving behind the respondent widow and his mother as legal heirs. That after the death of her husband, the respondent vide her application dated 29.3.85 requested the appellant bank to release his terminal dues like provident fund and gratuity, etc. In response, when the Bank asked the respondent to submit the requisite papers including the succession certificate, she was unable to do so due to the inter se disputes between the legal heirs. For this purpose, the respondent had approached the concerned civil court which granted the succession certificate on 4.6.97 in favour of the respondent. On furnishing the same on 6.6.97, the Bank released the terminal dues of the deceased in October, 1997 but did not pay any

interest on the amount for the delayed period. The respondent consequently filed a suit for recovery of the interest which vide judgment and decree dated 11.11.2002 was decreed in favour of the respondent for a sum of Rs.3,76,404 alongwith costs and pendentalite and future interest @10.5% p.a. Feeling aggrieved with the same, the appellant has preferred the present appeal.

3. Mr. S.L. Gupta, learned counsel for the appellant submitted that the suit filed by the respondent was clearly barred by limitation as the time prescribed for filing of the recovery suit against the bank is three years, the same being a simple recovery suit. The contention of the counsel for the appellant was that the Id. Trial Court has wrongly observed that the succession certificate was a money decree which can be executed within a period of 12 years. Counsel further submitted that before the Succession Court the appellant was not a party and in any case the succession certificate cannot be enforced as a money decree against the appellant bank, the same being a decision by the succession court *inter se*

between the legal heirs of the deceased employee of the bank. Counsel thus stated that the suit for recovery filed by the respondent was clearly barred by limitation. The other argument raised by the counsel for the appellant was that the appellant was not liable to pay the interest on the amount of gratuity and the provident fund as the appellant had never shown any reluctance to pay the amount of terminal dues to the legal heirs of the deceased employee and it was only on account of the *inter se* dispute between the legal heirs that the appellant bank was prevented from releasing the amount of the provident fund and the gratuity. Counsel further invited attention of this court to the letter dated 16.05.1985 (Ex. DW 1/3) addressed by the nominee of the deceased employee as well as the injunction order dated 20.9.85 granted by the Succession Court. Counsel thus stated that it was not the fault of the appellant bank but due to the infighting of the legal heirs themselves due to which the appellant could not make the timely payment of the said dues. Counsel also submitted that the Rule 359 on which the ld.

Trial court placed reliance is not applicable to the instant facts; firstly, because the said rule is from a reference book which has no binding effect on the appellant and secondly even under the reference book in the illustration (3) of Rule 362 it has been clearly provided that the nominee/legal heirs are entitled for interest from the date of submission of the application in the prescribed format and not from the date of the death of the member. The contention of the counsel for the appellant was that the application in the prescribed format for seeking release of the said amount was made by the wife of the deceased employee only after the grant of the succession certificate and not prior thereto. Counsel also placed reliance on sub Section 3A of Section 7 of the Payment of Gratuity Act, 1972, proviso of which clearly provides that the interest shall not be paid by the employer if there is a delay on the part of the employee in claiming the said payment. The appellant submitted that in fact the appellant bank has its own rules which govern the payment of gratuity and the provident fund. Counsel also invited attention of the

Court to Rule 33 of the SBI Employees' Provident Fund Rules which states that interest on the money standing in the books of the fund to the credit of a member shall cease on the day such particular employee leaves the service of the bank or on the day when he dies, whichever event shall happen first. The contention of the counsel for the appellant was that the said rules governing the Provident Fund and Gratuity have been framed by the appellant bank deriving its power from Section 50(2)(o) of the State Bank of India Act, 1955 and thus have a statutory force. Counsel thus submitted that the provident fund amount and the gratuity amount were immediately released by the appellant bank after the respondent had submitted the succession certificate along with application in the duly prescribed form. Counsel also submitted that the respondent has claimed the amount in suit for the payment of interest at one particular rate of 9% p.a. and then charging the interest at the higher interest rate @ 18% p.a. while calculating the decretal amount and this fact has been overlooked by the learned trial court while granting relief to

the respondent. Counsel for the appellant hence submitted that in any event of the matter the appellant is not legally obligated to pay the interest amount.

4. Mr. Bajaj, learned counsel for the respondent on the other hand argued that the *Reference Book on Staff Matters* which was relied upon by the respondent in fact is a Bible for the appellant bank and the same contains various administrative instructions and statutory rules governing the service conditions of the employees of the bank including the retiral benefits. Counsel for the respondent submitted that under Rule 359 of the Employees Provident Fund Rules forming part of the Reference book on Staff Matters, the bank is under a legal obligation to release payment towards provident fund from the date of death of the employee or from the date of the application submitted by the legal heirs of the deceased employee. Counsel further submitted that in the present case, there is an enormous delay on the part of the bank in releasing the provident fund and the gratuity amount and, therefore, the respondent became entitled to interest in

terms of illustration 3 of the said Rule 362. Similarly, counsel submitted that the respondent is entitled to interest on the delayed payment of gratuity in terms of Rules 415 and 417 of the said reference book. Under Rule 417, the bank is even liable to pay compound interest @ 9% p.a. for the intervening period during which the bank fails to pay the amount of interest on the gratuity amount. Mr. Bajaj also placed reliance on Section 8 of the Payment of Gratuity Act, 1972, which gives right to an employee to recover the amount of gratuity payable together with compound interest thereon, if it is not paid within the prescribed time.

5. Counsel further invited attention of this Court to the legal opinion submitted by the Assistant General Manager (Law) dated 02.02.1999 to the Chief Manager (Personnel), State Bank of India thereby taking a stand that the bank is liable to pay interest for the period from 20.09.1985 till the date of production of succession certificate by the respondent. This stand was taken by the said officer of the appellant-bank after looking into the bank's extant instructions and also on

account of the fact that the said money remained with the bank because of the operation of the restraint order. Counsel further submitted that the money was with the bank as per the privity of contract of an employee with the bank and not with the provident fund trust and, therefore, the said money being with the bank must have fetched interest thereon and hence the bank cannot deny payment of interest to the respondent. Counsel also submitted that the suit filed by the respondent was within the prescribed period of limitation as the appellant-bank through its letter dated 05.03.1999 took a stand to deny the said interest to the respondent and the learned court has rightly decided the issue of limitation in favour of the respondent.

6. I have heard learned counsel for the parties and gone through the records.

7. The respondent had filed a suit for recovery of Rs.3,76,404/- against the appellant-bank mainly on the ground that the appellant-bank failed to pay the interest on the provident fund amount and the gratuity amount of the

deceased-husband of the respondent who was employed as an officer with the appellant-bank. Before dealing with the rival contentions of both the parties, it would be useful to refer to some of those facts which are not in dispute between the parties. These admitted facts are:-

- a) The husband of the respondent was working as an Officer with the appellant-bank and had died on 22.11.1984 leaving behind the respondent i.e. his widow, and his mother Smt.Saraswati Devi as the only legal heirs.
- b) That vide letter dated 09.01.1985 the appellant-bank called upon the respondent to submit the requisite papers so as to enable the appellant-bank to process her claim and make the necessary payments including the provident fund amount etc.
- c) In response to this letter dated 9.1.1985, a reply dated 21.01.1985 was sent by the respondent to the appellant-

bank stating that she was not in a position to submit the papers desired by the appellant-bank.

d) The respondent vide her letter dated 29.03.1985 made a request to the appellant-bank to pay the terminal dues of her deceased husband such as provident fund, gratuity, leave encashment and salary for 22 days etc. In this letter dated 29.03.1985 the respondent informed the appellant-bank that she was the only legal heir to claim right over the retiral benefits of the deceased including the provident fund and gratuity etc. as were admissible as per the Bank Rules and Regulations. The respondent further informed the bank not to entertain any claim from any other family member of her husband.

e) That vide letter dated 09.05.1985, the appellant bank received a legal notice from Smt. Saraswati Devi, mother-in-law of the respondent, thereby informing the appellant bank that she being the mother of her late son, Satish Chander Thukral, was entitled to equal share

along with his widow. In this letter, mother-in-law of the respondent also requested the appellant bank not to take any hasty action.

- f) That vide letter dated 16.05.1985, Mr. Ram Dutta Thukral informed the appellant bank that he was the nominee of the deceased and thus in that capacity he was entitled for the payment of entire retiral dues of the deceased.
- g) That vide order dated 20.09.1985, the Court of Shri J.P.Sharma, Sub-Judge, First Class passed a restraint order against the bank from paying any amount to any one till further orders are passed by the Court. The said order was duly intimated to the appellant-bank.
- h) That succession certificate was granted by the Court of Administrative Civil Judge vide order dated 04.06.1997 in favour of the respondent.
- i) That on 06.06.1997 the respondent forwarded a copy of the succession certificate to the appellant bank and the

appellant bank released the provident fund amount of Rs.58,049/- on 06.10.1997 and gratuity amount of Rs.29,250/- on 21.10.1997.

8. In the background of the aforesaid admitted facts, the rival contentions raised by both the parties need to be examined and appreciated. Rule 359 of the Staff Reference Book is the sole basis for the learned Trial Court to accept the claim of the respondent. The said reference book is a compilation of various rules governing the service conditions of the employees of the Bank and the said Rule 359 deals with the payment of interest when refund is delayed. For better appreciation of the said rule, the same is reproduced as under:-

"Para 359. It is observed that despite efforts to settle expeditiously the claims on account of refund of the Provident Fund balance of Ex. Employees, delays some times abnormally long continue to occur. There have also been a few instances where delays have occurred in the settlement of pension payable. All this causes hardship to employees who have a record of long, loyal service to the Institution, besides depriving them of interest on sizeable funds for long periods. While efforts should continue to be made to settle these claims expeditiously, to ameliorate the hardships to the extent possible, interest rate prevailing for Provident Fund account be allowed to the Provident Fund balance of ex.

Employees from the date of employees' application for refund of Provident Fund or from the date of retirement whichever is later, to the date of actual refund. The procedure for application of interest will also be the same as applicable to the Provident Fund account maintained at Central Accounts office."

9. Certainly, the aforesaid rule 359 is a beneficial rule framed for the expeditious settlement of the provident fund dues and pension claims of bank employees and to burden the bank with the interest liability in the event of any delay. The delay envisaged in the said Rule is not the delay which can be attributed to the retiring employee himself or the legal heirs including the nominee of the deceased employee. It is a matter of common knowledge that despite various directions given by the High Courts and the Hon'ble Supreme Court, the retiral dues, pensionary benefits and provident fund, gratuity etc. are not released to the retiring employees with promptitude the same deserves. The said Rule 359 thus deals with such routine delays caused by the Bank in the release of provident fund balance of the ex employees or in the settlement of the pension payable to such employees and

manifestly not in those cases where the delay is caused at the end of such an employee or the legal heirs of the deceased-employee.

10. The learned counsel for the appellant also placed reliance on Rule 33 of the State Bank of India Employees Provident Fund Rules to support his argument that interest on all moneys as standing to the credit of the employee shall cease on the day on which he dies. Counsel also placed reliance on the judgment rendered by the Division Bench of the Madras High Court in the case of ***State Bank of India Vs. P. Sarathy*** (MANU/TN/3318/2006) in support of his argument. In the said judgment of the Madras High Court, a similar question arose for consideration and the Court took a view that if the delay is not due to the laches on the part of the Bank then the employee cannot be entitled to any interest on the amount of the provident fund. The Division Bench of Madras High Court also upheld the legality and constitutionality of the said Rule 33 of the State Bank of India

Employees Provident Fund Rules in the said case. The relevant paras of the said judgment are reproduced as under:-

"8. Mr.K.M.Ramesh, learned Counsel appearing for the respondent/writ petitioner contended that as per Rules, it is the duty of the employer/here Trustees of the Fund to intimate the employee and make payment. In the light of the specific provision in Rule 33 of the Rules, we are of the view that after cessation of service, the employee is required to make a demand for refund of the P.F. balance and then only it becomes payable. As rightly pointed out by the learned Senior Counsel for the Bank, if the service of the employee is terminated as a result of disciplinary action, the Provident Fund balance becomes ready for settlement and even after making a request for payment of the P.F. balance lying in his credit, he can contest the order of the disciplinary authority before different forums, viz., Appellate Authority, Reviewing Authority or by filing writ in the High Court and Appeal up to the Supreme Court, however, if he feels the acceptance of the Provident Fund does prejudice his case, he has to obtain necessary order for keeping the P.F. amount in fixed Deposit and if he does not obtain such order, the Bank cannot pay interest on the said amount. Further, some employees may, even after cessation of employment, purposely leave the amount under the fund as the P.F. interest rate offered by the Board is higher than the deposit rates prevailing in the Banks. It is also brought to our notice that the interest income on P.F., which was not withdrawn, is eligible for tax benefit. Therefore, if delay is not due to laches on the part of the Bank, the employee cannot be entitled to interest on the said amount.

10. Coming to the case of the respondent/petitioner, it is brought to our notice that, at the time of admission to the P.F., he had subscribed to the Rules, therefore, it cannot be said that he was not put on notice about Rule-33. In such case, it was for the petitioner to apply for settlement of his dues immediately after his cessation of employment. It is not in dispute that he was removed from service by the Bank on 11.01.1983. It is equally true that he was questioning the order of removal by way of departmental appeal, review, civil suit, writ petition in this Court and even went upto the Supreme Court. Merely because he was agitating his order of removal before various authorities, it cannot be said that, for the entire period, interest is payable on his P.F. amount."

11. Somewhat similar situation has arisen in the present case. From the admitted facts already reproduced above, it is manifest that immediately after the death of the husband of the respondent, the appellant-bank wrote to the respondent vide its letter dated 09.01.1985 thereby calling upon the respondent to submit necessary papers so as to enable it to release the necessary dues but, in response thereto, the respondent expressed her helplessness in submitting the desired papers. Even vide letter dated 29.03.1985, on which much emphasis was laid by the counsel for the respondent, the respondent is not seen to have fulfilled the Bank's formalities. The main concern expressed by the respondent in the said letter was that the Bank should not entertain claim of any other member of her husband's family and she being the only legal heir was entitled for the grant of provident fund, gratuity and other terminal dues of her deceased husband. The respondent has not disputed the fact that the mother of the deceased-employee was also one of the

legal heirs entitled to an equal share in the said terminal benefits. In claiming her legal rights, the mother-in-law of the respondent had even served a legal notice dated 09.05.1985 upon the appellant bank.

12. Another fact which cannot be ignored is the claim of the nominee, Mr. Ram Dutta Thukral, who also vide his letter dated 16.05.1985 called upon the appellant bank to pay the provident fund amount to him being the nominee of the deceased employee. In such a scenario, it cannot be said that there was a delay on the part of the appellant-bank in not making the timely payment of provident fund and gratuity amount to the respondent. The argument of counsel for the respondent was that immediately on the death of the employee, his wife became entitled to the retiral benefits including the amount lying in the provident fund account, gratuity etc. even though no application in writing was made by the legal heir. It would be useful to reproduce section 7 of the Payment of Gratuity Act, 1972 here:

"7. DETERMINATION OF THE AMOUNT OF GRATUITY. - (1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify : Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

.....".

Looking attractive at the first blush, but on deeper examination of such claim of the respondent, the argument lacked any merit. No doubt as it is clear from the language of Section 7 that so far the payment of gratuity amount is concerned, sub section 2 casts an obligation on the employer to determine the amount of gratuity even in a case the application, as referred to in sub section 1, has been made or

not. But clearly sub section 2 does not envisage a situation where there are inter se disputes between the legal heirs of the deceased employee. Rather, Proviso 1 of Sub Clause (3A) of Section 7 will be attracted to the facts of the present case which states that no such interest shall be payable if the delay in payment is due to the fault of the employee.

13. *Black's Law Dictionary (7th Edition)* defines 'interest' inter alia as the compensation fixed by agreement or allowed by law for the use or detention of money, or for the loss of money by one who is entitled to its use; especially, the amount owed to a lender in return for the use of the borrowed money. According to *Stroud's Judicial Dictionary of Words And Phrases (5th edition)* interest means, inter alia, compensation paid by the borrower to the lender for deprivation of the use of his money. The essence of interest in the opinion of Lord Wright, in *Riches v. Westminster Bank Ltd., (1947) 1 All ER 469* is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the

profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not used that money. The general idea is that he is entitled to compensation for the deprivation. Hence interest is a compensation payable when the money is unnecessarily withheld by one whose obligation was to pay the same at a given time and the same is not paid in breach of the legal rights of the creditor.

14. The Hon'ble Supreme Court in a catena of judgments has held that the provident fund amount or the gratuity amount has to be paid by the employer immediately on the retirement of the employee or on the cessation of his service and the employee would be entitled to interest if there is a delay on the part of the employer in payment of such amounts. The judgment of the Hon'ble Apex Court in *H.Gangahanume Gowda Vs. Karnataka Agro Industries Corporation Ltd. AIR 2003 SC 1526* and in *M/s Champaran Sugar Co. vs. Joint Commissioner & Ors. AIR 1987 Patna 96* cited by the counsel for the respondent, reiterating the said

legal position, will be of no help to the respondent in the facts of the present case, as the consistent view of the Courts is that the interest would be payable only where the delay is not due to the fault of the employee.

15. As discussed above, in the facts of the present case, the appellant-bank cannot be blamed for not making the refund of the provident fund amount and gratuity amount to the respondent; firstly because the respondent did not come forward to make the proper application after completing all the formalities of the bank as was notified to her by the bank vide its letter dated 09.01.1985; secondly because of the *inter se* dispute between the legal heirs of the deceased employee. Once the succession certificate was obtained by the respondent in her favour and the same was forwarded to the appellant bank, then the requisite amounts were released by the appellant bank to the respondent on 06.10.1997 and 21.10.1997 without much delay.

16. The appellant has also contended that the respondent has claimed the amount of interest @9% p.a and @18% p.a both and the learned trial court without going into the question of rate of interest has granted the same. The respondent however cannot calculate the amount due by applying two types of rate of interest. The general principle governing the grant of interest is looking at the facts and circumstances of each case as to whether such interest is in the nature of compensation, damages or penal interest. The delay which causes the interest to be accrued on the amount due should be such so as to cause harassment to the rightful beneficiary of such amount. In the case at hand the release of benefits to the respondent was rather swift within a period of almost three to four months as compared to what it takes in normal circumstances.

17. Coming to the argument of the counsel for the appellant that the suit is barred by limitation, this court also does not subscribe to the finding given by the learned trial court on the issue no.1, taking the view that the recovery suit

could be filed by the respondent within a period of 12 years from the date of grant of succession certificate. This finding has been given by the learned trial court on the premise that the period of limitation for the execution of a decree has been prescribed for 12 years under Article 136 of the Limitation Act 1963 and therefore, the suit filed by the respondent on 6.2.2002, five years from the date of the succession certificate was well within the prescribed period of limitation. This court is of the considered view that the reasoning given by the learned trial court is wholly fallacious and contrary to the legal position. Under Section 2(2) of the Code of Civil Procedure 'decree' has been defined in the following words:

"Section 2

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include-

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

Explanation - A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when

such adjudication completely disposes of the suit, it may be partly preliminary and partly final; “

18. Before the succession court, the lis was between the legal heirs of the deceased and not between the legal heirs on one hand and the appellant bank on the other and thus the bank clearly was not a party to the said lis, therefore, it cannot be said that any ‘*decree*’ was passed by the succession court against the appellant bank. The grant of succession certificate merely clothes the holder of the certificate with an authority to realize the debts of the deceased and to give authority of discharge. In ***Shri Banarasi Dass Vs. Mrs. Tekku Dutta (2005) 4 SCC 449***, the Apex Court has held that the object of the succession certificate is to facilitate the collection of the debt, to regulate the administration of succession and to protect persons who deal with the alleged representatives of the deceased. The purpose of the grant of succession certificate is thus to give a valid discharge of the debt. The succession certificate is granted by the court while conducting summary proceedings and the grant of succession certificate is not a final decision

to determine the rights of the parties. In the case of ***Joginder Pal Vs. Indian Red Cross Society, (2000) 8 SCC 143***, the Apex Court held as under:

"These Sections make it clear that the proceedings for grant of succession certificate are summary in nature and that no rights are finally decided in such proceedings. Section 387 puts the matter beyond any doubt. It categorically provides that no decision under Part X upon any question of right between the parties shall be held to bar the trial of the same question in any suit or any other proceeding between the same parties. Thus Section 387 permits the filing of a suit or other proceeding even though a succession certificate might have been granted.

16. This question was also considered by this Court in the case of Madhvi Amma Bhawani Amma and Ors. v. Kunjikutty Pillai Meenakshi Pillai and Ors. : AIR2000SC2301 . In this case after having considered the provisions of Sections 370 to 390 of the Indian Succession Act as well as Section 11 of the CPC, it has been held that any adjudication under Part X does not bar the same question being raised between the same parties in a subsequent suit or proceeding. It has been held that Section 387 of the Indian Succession Act takes a decision given under Para X of the Indian Succession Act outside the purview of Explanation VIII to Section 11 of the CPC. It has been held that Section 387 gives a protective umbrella to ward off from the rays of res judicata to the same issue being raised in a subsequent suit or proceeding. We are in full agreement with the view expressed in this case."

It would be thus seen that the grant of succession certificate in favour of the petitioner cannot operate even as res judicata in a subsequent suit as the succession court only prima facie determines the right of a person entitled to collect the debts

of the deceased. Therefore in the background of this settled legal position, the succession certificate cannot be treated as a *decree* which can be said to have conclusively determined the rights of the parties and in any event of the matter in the present case the bank and other debtors are not before the court nor their rights are involved for any determination. The succession certificate therefore cannot be treated as a *decree* as envisaged under Section 2(2) of the Code of Civil Procedure. The grant of succession certificate in favour of the respondent thus entitled her to file the recovery suit within a period of three years from the date of the grant of said succession certificate. There is no particular Article in the Limitation Act which deals with the limitation period to recover the statutory dues and therefore the residuary Article 113 of the Limitation Act would attract to such a suit and the period of three years would be reckoned from the date when the right to sue is accrued. In the facts of the present case, the right to sue in favour of the appellant accrued on the date of grant of the succession certificate or at the most when the

respondent had presented the application with the bank to seek release of the said statutory dues of the deceased employee. The recovery suit was filed by the respondent on 6.2.2002, whereas the succession certificate was granted on 4.6.97 and it was submitted by her to the appellant bank on 6.6.97. Therefore, undoubtedly the suit of the respondent was hopelessly barred by time.

19. In the light of the above discussion, the present appeal is allowed and the impugned order dated 11.11.02 passed by the learned trial court is set aside.

March 15, 2011

KAILASH GAMBHIR, J