

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 30.03.2011

RFA No. 125/2009

SHRI M.L.JAGGI

.....Appellant

Through: Mr.S.C.Singhal, Advocate.

Vs.

PUNJAB NATIONAL BANK

.....Respondent

Through: Mr. Preet Pal Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 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 Code of Civil Procedure, 1908 the appellant seeks to challenge the

judgment and decree dated 20.10.2008 passed by the learned trial court whereby the recovery suit filed by the appellant was dismissed.

2. The brief facts of the case relevant for deciding the present appeal are that the mother of the appellant Smt. Wiran Bai Jaggi deposited a sum of Rs.30,000/- with the respondent Bank by way of term deposit for 36 months. That Smt. Wiran Bai Jaggi expired on 5.3.1995 leaving behind the appellant and respondent no.2 to 6 as her legal heirs. The case of the appellant is that he came to know about the existence of the said FDR much later after the death of his mother and on coming to know about the same, he applied to the respondent bank for its encashment but in vain. Consequently a legal notice dated 24.5.2004 was sent by the appellant and in its reply the respondent bank asked the appellant to furnish some particulars. But even on complying with the requirements of the Bank, the bank did not take any steps for the encashment and, therefore, another legal notice dated 23.12.2004 was served by the appellant but was not replied to by the bank. Consequently, the appellant filed a suit for recovery which

vide judgment and decree dated 20.20.2008 was dismissed. Feeling aggrieved with the same, the appellant has preferred the present appeal.

3. Mr.S.C.Singhal, learned counsel appearing for the appellant submits that the learned trial court has wrongly dismissed the suit filed by the appellant as the respondent bank did not prove on record the renewal of the FDR in question in the joint names of late Smt.Wiran Bai Jaggi and Smt.Urmil Bhambri. The contention of the counsel for the appellant is that the appellant was in possession of the original FDR and there could not have been any renewal of the said FDR without the surrender of the original FDR. Counsel also contends that the respondent-Bank failed to produce on record any application or request made by the deceased Smt.Wiran Bai Jaggi for the renewal of the said FDR in the joint names. Counsel for the appellant also submits that the learned trial court has also wrongly decided the issue of limitation in favour of the respondent. The contention of counsel for the appellant is that the amount lying deposited in FDR with the bank is not hit by law of limitation as the money deposited in the FDR

remains as a trust with the bank and as per Section 10 of the Limitation Act, no period has been prescribed to recover such an amount if the money is entrusted with someone.

4. Opposing the present appeal, counsel for the respondent submits that the Bank had duly proved on record the statement of account of joint account No.11276 which was opened in the joint names of late Smt.Wiran Bai Jaggi and Smt.Urmil Bhambri and in which account the interest, as was being accrued on the said FDR, was being credited quarterly. Counsel for the respondent further submits that the FDR in question was renewed at the instance of late Smt.Wiran Bai Jaggi in the joint names of herself and Smt. Urmil Bhambri on 31.05.1994. Counsel further submits that Smt.Wiran Bai Jaggi had died on 05.03.1995 and Smt.Urmil Bhambri had approached the Bank for encashment of the said FDR and the respondent-bank after completing all the formalities released the entire payment of the said FDR to her. Counsel further submits that Smt.Urmil Bhambri was the joint account holder with late Smt.Wiran Bai Jaggi and thus she was legally entitled to encash the amount of the said FDR as per the condition of

the joint account being in favour of 'either or survivor'. Counsel thus states that with the payment of amount of the said FDR in favour of Smt.Urmil Bhambri, who was the only survivor of the said joint account, the respondent bank rightly discharged its liability and after the payment of the said amount, the appellant had no right to claim the said amount from the respondent-bank. Counsel for the appellant also submits that the appellant also did not hand over the original FDR for the purpose of verification at the end of the respondent-bank and moreover mere possession of the FDR alone would not give any special right to the appellant to claim the amount of the FDR once the said FDR was renewed in the joint names of late Smt. Wiran Bai Jaggi and Smt.Urmil Bhambri.

5. Based on the above submissions, counsel for the respondent submits that no fault or perversity can be found in the impugned judgment and decree passed by the learned trial court and the same deserves to be upheld.

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

7. Based on the pleadings of the parties, the learned trial court framed the following issues:-

- (i) Whether the suit has been filed within period of limitation? OPP*
- (ii) Whether the plaintiff is entitled to recover the amount on FDR as claimed? OPP*
- (iii) If issue No.2 is decided in favour of the plaintiff, whether plaintiff is entitled to recover interest, if so, at what rate, for what period and to what amount? OPP*
- (iv) Relief."*

8. In evidence, the appellant examined herself as PW-1 while the respondent-bank examined three witnesses i.e. DW 1 Mr.R.K.Bhatia, Manager of the Bank, DW 2 Mr.H.R.Dhawan, who was posted as Assistant Manager with the respondent-bank at the relevant period and Smt.Urmil Bhambri who was the joint account holder of the FDR as DW-3. DW-2 in his evidence had proved the account opening form dated 31.05.1994 Ex. DW2/1 which contains the signatures of late Smt.Wiran Bai Jaggi and Smt.Urmil Bhambri. There is no reason to disbelieve the said account opening form and also

the statement of account proved on record as Ex DW 1/1. It is not the case of the appellant that any official of the respondent-bank was in collusion with Smt.Urmil Bhambri and to cause wrongful gain to Smt.Urmil Bhambri the officials of the respondent-bank had gone to the extent of fabricating the said documents to support the theory of opening a joint account in the name of Smt.Wiran Bai Jaggi and Smt.Urmil Bhambri. I also find it quite strange that the appellant even after having come to know that the bank had released the amount of the FDR in favour of Smt.Urmil Bhambri did not take any steps to sue Smt.Urmil Bhambri and such inaction on the part of the appellant would clearly show that the appellant had no grievance so far the release of the amount of FDR by the respondent-bank in favour of Smt.Urmil Bhambri was concerned. The appellant has also not placed on record any document to show that he had ever produced the original FDR to the bank so as to lodge his legal claim on the amount of the said FDR. As per the testimony of PW-1, he learnt about the said FDR sometime in the year 2000 and the original FDR was given to him by his brother sometime in the year 2003-04. It

would be thus quite apparent that the appellant was not aware of this fact that the said FDR was renewed by the bank in the joint names late Smt.Wiran Bai Jaggi and Smt.Urmil Bhambri and once the FDR was renewed for a further period of 12 months in the said joint names, then the fact that the appellant came to lay his hands on the said FDR sometime in the year 2003-04 would become absolutely meaningless. Mere possession of the original FDR alone could not have helped the appellant to succeed in his claim against the bank in the face of the renewal of the said FDR for a further period of 12 months in the joint names. The appellant has failed to give any explanation as to why he did not implead said Smt.Urmil Bhambri in the recovery suit at least after having come to know about the defence of the respondent-bank. The appellant has also not given any reasons for not summoning Smt.Urmil Bhambri as his witness who admittedly was in his close relation.

9. In the background of the aforesaid facts and also in the absence of any allegation of malafide or collusion attributed by the appellant against the officials of the

respondent-bank, the case set up by the appellant does not inspire any confidence. This Court, therefore, does not find any infirmity or illegality in the finding given by the learned trial court based on the documents proved on record by the respondent-bank and also on the testimony of Smt.Urmil Bhambri. The learned trial court has also correctly observed in the impugned judgment that no explanation came forth from the side of the appellant as to why no action was taken by the appellant for a period of four years after he got to know about the said FDR in the year 2000 itself. I also do not find any infirmity in the finding of the learned trial court taking a view that in case of deposit of money with a banker, the banker cannot be said to be a trustee for the customer in regard to the customer's money and, therefore, Section 10 of the Limitation Act would not be attracted to the facts of the present case. Hence, the suit filed by the appellant on 10.10.2005 to claim the amount of the FDR which had matured on 31.5.1994 was clearly bared by limitation.

10. In the light of the above discussion, I do not find any infirmity or illegality in the impugned judgment and decree dated 20.10.2008 passed by the learned trial court.

11. There is no merit in the present appeal and the same is hereby dismissed.

March 30, 2011
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KAILASH GAMBHIR,J