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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1092 OF 2014

Dileep Balkrishna Nevatia
Adult, Aged-64 years,
Occupatio-Business,
residing at Shashi Deep, 5-A, Worli Sea
Face, Mumbai-400 030.

..Petitioner

Vs.

Prothonotary & Senior Master, High Court,
Bombay.

..Respondent.

Mr. Dileep Nevatia, Petitioner in person present.
Mr. P.S. Dani, Senior Counsel a/w Ms. Rebecca Gonsalves, for
Respondent.

**CORAM: B.R. GAVAI &
A.S. GADKARI, JJ.**

Closed for Orders on : 6th May 2015.

Pronounced on: 8th May 2015.

P.C.:-

1 Rule, made returnable forthwith. Taken up for hearing by
consent of the parties.

2 Heard Mr. Dileep Nevatia, the petitioner present in person and Mr. P.S. Dani, the learned Senior Counsel appearing for the Respondent. We have also perused the record.

3 The petitioner has filed the present petition under Article 226 of the Constitution of India, thereby praying for a writ of certiorari or any other order or direction thereby calling for the accounts of the petitioner's deposit with the respondent and its bank and after examining the same, to pass orders directing the respondent to pay to the petitioner the short received amount of Rs.6,40,724/- or any such amount as this Court may deem fit and proper in the facts and circumstances of the present case.

4 It is the case of the petitioner that he is a businessman who was earlier carrying on his business in the name of M/s Sundeeep Industries situated at Udyog Bhavan at Worli as a proprietary concern. That pursuant to the demand of Rs.62,606.36 made by the Bombay Electric Supply & Transport Undertaking (B.E.S.T.) on the petitioner and the threat of disconnection of power supply in the month of April 1993, the petitioner filed a suit bearing no.1559 of 1993 in this Court against the BEST and

another for injunction and declaration. The petitioner also preferred a Notice of Motion in the said suit and by an order dated 10th May 1993 passed in the said Notice of Motion, this Court granted ad-interim relief in terms of prayer clause (a) of the said Notice of Motion thereby restraining the defendants from disconnecting supply of electric power of the petitioner subject to the petitioner depositing an amount of Rs.62,000/- in this Court on or before 14th May 1993. That in compliance with the order dated 10th May 1993, the petitioner deposited an amount of Rs.62,000/- with the respondent on 14th May 1993. That after the said amount of Rs.62,000/- was deposited by the petitioner, by an order dated 9th February 1996 the Notice of Motion No.1084 of 1993 was made absolute in terms of prayer clause (a).

5 It is the further case of the petitioner that due to increase in pecuniary jurisdiction of the Bombay City Civil Court, in the year 2012, the suit bearing no.1559 of 1993 filed by the petitioner was transferred to the City Civil Court at Mumbai and was renumbered as suit no.8877 of 1993. That the learned Judge of the City Civil Court, Greater Bombay after conducting a full-fledged trial was pleased to decree the suit in terms of prayer clauses (a) and (b) thereof with cost by its judgment and order dated

28th June 2013. In the said judgment and order dated 28th June 2013, the City Civil Court, Greater Bombay was further pleased to grant liberty to the plaintiff/petitioner to withdraw a sum of Rs.62,000/- and accrued interest thereon, if any, deposited vide order dated 10th May 1993. The petitioner has stated that in the month of July 2013 the petitioner made an enquiry with the office of the respondent and was informed that his deposit was also transferred along with the suit to the City Civil Court, Greater Bombay. The petitioner thereafter followed the matter with the Registrar of the City Civil Court, Greater Mumbai and he was informed that the principle amount of Rs.62,000/- along with interest accrued thereon has been transferred to his bank account. The petitioner thereafter took the statement from his bank and was shocked to find that the amount of only Rs.76,160/- was credited to his account on 24th October 2013 i.e. an interest of only Rs.14,160/- was credited on an amount of Rs.62,000/- lying with the respondent for over 20 years. The petitioner thereafter made enquiry with the office of the Registrar, City Civil Court, Greater Mumbai about the reason for such low interest given to him on his amount which was lying with the Registry of the Court for about 20 years. It was informed to him that the amount of Rs.14,160/- is the interest accrued for three years from 2010 to 2013 only and for earlier years no interest has been paid. It is

the case of the petitioner that since the year 1992 and thereafter for the years 2000 to 2013 the interest of “Prime Lending Rate” prescribed by the Reserve Bank of India was fluctuating between 16% to 9% per annum. Being aggrieved by non-payment of interest to him from 14th May 1993 till the year 2013 by the respondent on the amount deposited by him in the Registry of this Court in pursuance of the orders of this Court, the petitioner has filed the present petition.

6 After receipt of the notice, the Registrar (Legal & Research) High Court, Appellate Side, Mumbai has filed an affidavit-in-reply on behalf of the respondent dated 26th March 2015. In the affidavit-in-reply a preliminary objection as to the maintainability of the petition under Article 226 of the Constitution of India has been raised on the ground of availability of an alternative remedy of filing a civil suit for relief sought by the petitioner in the present petition. It has been further stated that the petitioner through his Advocate has deposited Rs.62,000/- on 14th May 1993. That though a liberty was granted to the defendant no-1 therein vide order dated 10th May 1993 passed in the suit no.1559 of 1993 to withdraw part of the said amount, the defendant no.1 did not avail of the said liberty. It has been further stated that as per the practice prevailing at that time, it

was only in the matters where a specific order had been passed by the Court for investment that the amount deposited be invested. That since no application was made to invest the said amount, and consequently there was no specific order for investment of the amount, the said amount was not invested in the Fixed Deposit Scheme. That the said amount was deposited in the Personal Ledger Account of the “Registrar, O.S./Prothonotary and Senior Master” of the Reserve Bank of India bearing Account No.6184053007, which is a non interest bearing account. That as such the monies deposited in this account are retained with the Treasury of the Government of Maharashtra till the payment or investment as the case may be. It is further stated in the said affidavit that in pursuance of the order dated 27th July 2010 passed in Civil Application No.2329 of 2010 in First Appeal No.1585 of 2003 wherein certain directions have been issued, regarding amount deposited in the Courts by the parties in civil proceedings, the Registry took steps to invest all amounts of the parties which had remained uninvested. That on 10th August 2010, the Registry invested the amount of Rs.62,000/- in suit no.1559 of 1993 with Canara Bank, Nariman Point Branch, Mumbai for a period of 36 months.

7 It has been further stated in the said affidavit that as per judgment dated 28th June 2013, passed in SC Suit No.8877 of 1993 (High Registration No.2559 of 1993), liberty was granted to the plaintiff to withdraw a sum of Rs.62,000/- deposited as per order dated 10th May 1993, with interest accrued thereon, if any. That interest of Rs.14,160/- was earned on the sum of Rs.62,000/- invested by the Registry and therefore the petitioner would only be entitled to interest of Rs.14,160/- and as per the order of the City Civil Court dated 28th June 2013 an interest of Rs.14,160/- accrued on amount of Rs.62,000/- was returned to the petitioner in compliance of the said order. It is further stated that, there is no question of paying the petitioner an amount of Rs.6,40,724/- by way interest as paid for by him as no such interest was earned on the amount of Rs.62,000/-.

8 The petitioner has filed an affidavit-in-rejoinder dated 7th April 2015 to the reply filed by the respondent. In his affidavit-in-reply the respondent has reproduced excerpt from the judgment of the Division Bench of this Court dated 13th /14th June 1991 passed in First Appeal No.341 of 1984 which reads as under:

“Before parting with this judgment, we deem it necessary to refer to one incidental aspect of the matter. In First Appeal no.341 of 1984, by order dated 23rd August, 1984, the Appellant

was directed to deposit an amount of Rs.25,000/- in the Tribunal. It was further directed that on such deposit being made, Respondent Nos.1 to 6 therein would be at liberty to make application to the Court for necessary reliefs with regard to the said amount. It appears that by Civil Application No.4271 of 1988, the Respondents did pray that the amount be paid over to them, but the said Civil Application was rejected by the Court and hearing of the said appeal was only expedited with the result that the amount of Rs.25,000/- deposited in the Tribunal by the said Appellant in the year 1984 continues to be idle without earning interest till today i.e. 1991. If the said amount was properly invested in the year 1984, it could have clearly earned almost equal amount by way of interest. We feel that this was clearly avoidable loss and a substantial one at that. We have come across several proceedings wherein large amounts are deposited in pursuance to orders passed by the Court, but no further step of investing the same is taken, resulting into avoidable huge monetary loss to the parties. It is time that such a situation is remedied. Therefore, it is necessary for the Advocates appearing for the parties to be particular to get the order of proper investment of amounts deposited in the Courts or Tribunals below and in case the Advocates fail to obtain such order or the Court omits to pass such order of investment, the office of this Court or office of the lower Tribunals should bring such cases to the notice of the appropriate Court or the Tribunal with a view to obtaining proper orders of investment regarding the amounts so deposited.”

(emphasis supplied)

It is to be noted here that subsequent Division Bench while dealing with the similar issue after relying on the said observations and/or directions given by the Division bench on earlier occasion gave further directions by its order dated 27th July 2010 passed in Civil Application No.2329 of 2010 in First Appeal No.1585 of 2003.

9 The petitioner who appears in person contended that it cannot be accepted that the amount deposited by the petitioner with the respondent on 14th May 1993 was lying idle over the next twenty years without earning interest on the same, as if it was kept in a locker and/or safe. He further contended that either the amount was invested by the respondent in the form of bulk deposit with the bank and the interest accrued on the bulk deposit is inadvertently not credited to the petitioner's account or alternatively the amount was kept in a saving accounts in which case the respondent would have still earned some interest and bank can earn major portion of the interest. The petitioner however contended that, the litigant deposits the amount with the Registry of the Court in pursuance of the orders passed by this Court. The amount so deposited cannot be said to have been not invested at all anywhere or the contention of the respondent cannot be accepted that the amount was kept idle in the Government account and did not receive any interest on it over period of 20 years. He further submitted that relegating him to adopt alternate remedy would amount to asking the litigant to again face a trial for no fault on his part, and therefore, the petitioner urged before us that this petition may be allowed in its entirety.

10 Mr. Dani, the learned Senior Counsel appearing for the respondent per contra supported the stand taken by the respondent in his affidavit dated 26th March 2015 and submitted that the petitioner is having substantive alternate remedy of at his command by way of filing a civil suit. He further submitted that since no application was made to invest the said amount, and as there was no specific order for its investment, the said amount was not invested in a Fixed Deposit scheme and was deposited in the “Personal Ledger Account” of the respondent as stated herein above. He further submitted that if the petition is allowed then several hundreds of litigants would approach this court by way of writ petition whose amounts have similarly been not invested by the respondent with the bank and the amounts have been deposited simply in the “Personal Ledger Account” of the “Registrar, O.S./Prothonotary and Senior Master” of the Reserve Bank of India bearing Account No.6184053007, which is a non interest bearing account. He further submitted that the respondent is not liable to pay any interest from 14th May 1993 till the year 2010, as has been claim by the petitioner. He lastly urged before us that the present petition may be dismissed in limine.

11 At the outset, we may deal with a preliminary objection raised by the respondent about the maintainability of the present petition. It is now settled position of law that relegating the petitioner to an alternative remedy is a matter of propriety, but when the Court comes to the conclusion and when it is found necessary to subserve the ends of justice, the Court is certainly empowered to exercise its jurisdiction under Article 226 of the Constitution of India. In the present case, if the contention of the respondent is accepted, thereby relegating the petitioner to avail alternative remedy of suit for recovery of his legitimate dues from the respondent, would amount to adding insult to his legal injury, and therefore, we do not find any substance in the said preliminary objection of the respondent.

12 In the present case, it is admitted position from the pleadings of the parties that the petitioner deposited an amount of Rs.62,000/- in the Registry of this Court on 14th May 1993 in pursuance of the order dated 10th May 1993. It is the further admitted position that the suit filed by the plaintiff/petitioner came to be decreed in his favour on 28th June 2013. That the Trial Court granted liberty to the plaintiff/petitioner to withdraw sum of Rs.62,000/- and accrued interest thereon, if any, deposited by him vide order dated 10th May 1993. It is the further admitted position from the

affidavit-in-reply filed by the respondent that the respondent has paid interest of Rs.14,160/- from the year 2010 till the year 2013 and has not paid the interest on the deposited amount from 14th May 1993 till the year 2010. It is the further admitted position that the Division Bench of this Court by its order dated 13th /14th June 1991 passed in First Appeal No.341 of 1984 had issued directions including direction to the Registry for taking necessary steps in investing the amounts deposited by the litigants with a view to avoid monetary loss to the parties. In our considered opinion the respondent ought to have scrupulously followed the directions issued by the Division Bench of this Court by its order dated 13th /14th June 1991. We find that the attitude of the officer of the Registry in totally ignoring the directions issued by the Division Bench of this Court in its order dated 13th /14th June 1991 is thoroughly casual. We further find that an attempt to justify a casual approach in an affidavit-in-reply is just to cover up the lapses on the part of the officer of the Registry.

13 We may state that though an attempt has been made in the affidavit-in-reply to justify the inaction on the part of the Registry, the justification which is sought to be given cannot be accepted by any standards. There is no justification as to why specific direction given by the

Division Bench of this Court in First Appeal No.341 of 1984 vide order dated 13th /14th June 1991 regarding investment of the amount deposited by the litigants are not complied with. It may further to be noted here that, if the Registry of this Court itself is not following and/or adhering to the directions issued to them, then how can this Court expect the other authorities to obey it in its proper spirit. We are of the considered opinion that the concerned officers of the respondent who were in-charge at the relevant time have clearly failed in following the directions issued by this Court by its order order dated 13th /14th June 1991. The petitioner has given break-up of the interest and/or amount which according to him is due and payable by the respondent as per the rate of interest prevailing from time to time at page-24 of the petition. Had the amount deposited by the Petitioner with the respondent on 14th May 1993 would have been invested in a Nationalised bank as per the said directions of this Court, then it would have certainly fetched simple interest at least at the average rate of 9% per annum from 14th May 1993 till the amount is returned to the Petitioner. As stated above, in the present case the respondent has clearly failed to follow the directions issued by this Court in the said Appeal and in our opinion now cannot be allowed to take a spacious plea as has been taken in the reply. We therefore find that the petitioner is certainly entitled for interest

on the amount deposited by him from 14th May 1993 till the year 2010, as the petitioner has already received the interest on the principal amount from the year 2010 to 2013, we direct the respondent to pay the interest at the rate of 9% per annum from 14th May 1993 till the year 2010.

14 As stated above, as the petitioner has already received principal amount along with interest from the year 2010 to 2013, it is directed that the respondent shall pay the interest at the rate of 9% per annum on the aforesaid amount of Rs.62,000/- to the petitioner from 14th May 1993 till the year 2010 within a period of three months from today. We, however, make it clear that the respondent is at liberty to recover the said amount of interest from the officer/officers concerned who have not followed the directions issued by this Court by its order dated 13th /14th June 1991 by adopting appropriate procedure as may be permissible under the law.

The petition is allowed in the above terms.

(A.S. GADKARI, J.)

(B.R. GAVAI, J.)