THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NOS.20711 AND 20712 OF 2013

DATED 4th JUNE, 2015

W.P.No.20711 of 2013

Between:

Kum. G. Vaishnavi Reddy .. Petitioner

and

M/s. Vijaya Bank and another .. Respondents

W.P.No.20712 of 2013

Between:

G. Vikas Reddy .. Petitioner

and

M/s. Vijaya Bank and another .. Respondents

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NOS.20711 AND 20712 OF 2013

C O M M O N O R D E R

These writ petitions were listed before this Court upon the directions dated 17.07.2013 of the Hon'ble The Chief Justice on the administrative side. As the two cases pertain to the same issue, they are amenable to disposal by way of this common order.

The petitioners in these two cases, G.Vaishnavi Reddy and G.Vikas Reddy, are siblings. Their grievance is with regard to the action of the Vijaya Bank, the respondent, in not paying them the amounts due under the fixed deposits standing in their names. G.Vaishnavi Reddy, the petitioner in W.P.No.20711 of 2013, is concerned with four fixed deposits while her brother, G.Vikas Reddy, the petitioner in W.P.No.20712 of 2013, is concerned with six fixed deposits. These deposits were made in the year 1999 by the father of the petitioners during their minority. G.Vikas Reddy was 7 years at that time while G.Vaishnavi Reddy was 5 years old. The fixed deposits were renewed thereafter from time to time. The petitioners claim that after attaining majority they approached the respondent bank in October, 2012 seeking to liquidate the deposits. However, the respondent bank did not oblige despite issuance of legal notices. They therefore approached this Court by way of these writ petitions.

In its individual counter-affidavits filed in both the cases, the respondent bank asserted that the father of the petitioners was the Managing Partner of a registered partnership firm, M/s. G. Rajender Reddy & Co., and that various credit facilities were availed by the said firm. These facilities were in the form of a cash credit facility for Rs.10,00,000/-, bank guarantee facility for Rs.1,15,00,000/- and a loan against a motor vehicle. The respondent bank claimed that the firm provided a sum of Rs.51,00,000/- (approximately) as margin money against the bank guarantees and this margin money was in the form of deposits held under lien by the respondent bank. According to the respondent bank, the subject fixed deposits standing in the names of the petitioners were also held under such lien and were therefore not amenable to liquidation at their request. The respondent bank stated that litigation was ongoing with the firm as regards the facilities availed by it. The respondent bank asserted that the loan facilities availed by the petitioners' father were utilized for the business purposes of the minors' family and that they were therefore estopped from claiming the maturity value of the deposits. The respondent bank further stated that the deposits were made by the petitioners' father jointly i.e. in his own name along with his minor children, and the petitioners therefore could not claim the amounts due thereunder independently.

By way of separate reply affidavits, the petitioners contested the claims of the respondent bank. They asserted that the deposits were not joint deposits but were created in their individual names during their minority and their father's name was only mentioned in the capacity of a guardian. They also denied the assertion of the bank that any charge was created over the said deposits by their father and asserted that such a charge, even if created, was illegal. They pointed out that the firm in question was a registered one with an independent legal status and therefore, its liabilities could not be visited upon them. They asserted that the loan facilities, if any, availed by their father in the capacity of a partner of the registered firm were not used for the benefit of their family as such loans pertained only to the business of the registered firm. They pointed out that the respondent bank had filed O.A.No.21 of 2006 before the Debts Recovery Tribunal, Hyderabad, for a sum of over Rs.19.00 lakh and that the same was secured by immovable property guarantees. They further stated that they required the amounts covered by the fixed deposits for the purpose of their studies and that the bank had no legal right to withhold the same.

The original record was produced by Sri N.V. Subba Raju, learned counsel for the respondent bank. The guidelines of the respondent bank relating to creation of fixed deposits were also produced. Perusal thereof reflects that a guardian may open an account on behalf of a minor on furnishing a declaration as to the date of birth of such minor. Chapter-25 of the Manual of Advances (Vol-II) (2002-2003) of the respondent bank deals with advances against fixed and other term deposits. Clause 25.2 in the said Chapter deals with 'Deposits in joint names' and provides that when a deposit stands in the names of two or more persons and a loan is sought against the security thereof, it would be necessary to have a special clause in the application/account opening form for the term deposit, which reads as under:

> 'The Bank may, on receipt of a written application from Shri……………………………………………………, the former/the latter, the first named …………………………………………………., either or survivor of us ……………………………………………… etc., of us or ……………………………………………………………… the second named………………………………………………………… any one or survivor(s) of us, in its absolute discretion and subject to such terms and conditions as the Bank may stipulate,

a. grant a loan/advance against the security of the term deposit receipt/pass book to be issued in our joint names, or

b. make premature payment of the proceeds of the deposit to the former/the latter/the first named of us/either or survivor of us/the second named of us/any one of us or any one of he survivors of the last survivor of us.'

Clause 25.4 therein relates to 'Deposits in the names of minors' and Clause 25.4.1 states as under:

> 'Advances should not normally be made against deposits in the names of minors. However, where such an advance is to be considered and sanctioned, the advance should be for the benefit of the minor depositor. A letter to the effect that the amount of the advance would be utilized for the benefit of the minor should be obtained from the guardian, as per the specimen given below:
>
> "The fixed deposit Receipt No.________________________ dated____________for Rs._______________maturing on______________ stands in the name of________________________________who is my________________and for whom I am the Guardian.
>
> Being in urgent need of funds for the purpose of______________which is a necessity of the minor, I request you to kindly grant a loan of Rs.____________________to me as the Guardian of the minor on the security of the above deposit. In this connection, I declare that, the loan amount that may be granted to me will be wholly utilized for the benefit of the above said minor.
>
> I also undertake to indemnify you against any loss that you may incur by reason of any claim by or on behalf of the minor against you on account of your having granted the loan. I am willing to execute the necessary documents in your favour, both in the capacity as the guardian of the minor and in my individual capacity".'

In the backdrop of the above procedural regime provided under the respondent bank's own regulations, the original record of the respondent bank makes for an interesting reading. Shockingly, the deposit account opening forms relating to the subject deposits, available in the record, were not even filled up fully. One form, which pertains to a deposit for a sum of Rs.50,000/- in the name of G.

Vaishnavi Devi, the petitioner in W.P.No.20711 of 2013, was not even signed by the guardian! No date of birth is mentioned therein though the application reflects that it is in the name of a minor who was represented by a guardian. The 'Vijaya Cash Certificate' issued by the respondent bank against this application does not indicate that it was opened in the joint names of the minor along with the father. Further, the application form does not contain the relevant clause relating to loans against joint deposits, extracted hereinbefore. Further, the term deposit receipt issued by the respondent bank, upon renewal, indicates only the name of G. Vaishnavi Devi and there is no mention of the guardian's name, though she was still a minor. This certificate relates to a deposit for a sum of Rs.99,039/-, while another certificate relating to a deposit for a sum of Rs.86,876/- also reflects a similar state of affairs. Another term deposit receipt for a sum of Rs.43,750/- stands in the following name: 'G. Vaishnavidevi Reddy M/G G. Shivend'. The name, as set out, merely indicates that the deposit stands in the name of a minor by guardian. There is no indication that the fixed deposit was a joint deposit in the name of the minor and her father. So is the case with the third term deposit receipt pertaining to a sum of Rs.43,750/-.

As regards G. Vikas Reddy, the petitioner in W.P.No.20712 of 2013, the original record reflects the same situation. There is no indication whatsoever of any of the deposits being made jointly in his name along with his father. In fact, the 'Vijaya Cash Certificate' bearing the date 28.12.1999 for a sum of Rs.45,750/- stands in his name alone without even an indication of a guardian! At that point of time, G. Vikas Reddy was clearly a minor as the other 'Vijaya Cash Certificate' for a sum of Rs.50,000/-, bearing the date 17.09.1999, stands in the following name: 'G. Vikas Reddy M/G/F Shivender Reddy.' Two other term deposit receipts pertaining to G. Vikas Reddy also reflect that they were made out in his name with the words 'M/G G. Shivenderreddy' immediately thereafter. They were therefore made out in the name of the minor represented by the guardian, his father.

The record manifests that the petitioners' father did execute letters of lien in March, 2000, as regards the subject fixed deposits. However, the issue that falls for consideration is whether the respondent bank could have accepted such a charge over these deposits, being fully aware of the fact that they related to minors.

Though the bank asserted that the loan facilities were availed for the benefit of these minors or their family, there is no material to substantiate the same. Admittedly, the loan facilities were availed by a registered partnership firm and there is no indication that this was a family firm. The material placed on record indicates that the petitioners' father was not even the Managing Partner of this firm. Further, there is no proof forthcoming that the loan facilities were utilized for the benefit of the minors. Sri N.V. Subba Raju, learned counsel, was at a complete loss to justify how the liabilities of the firm, a separate legal entity, could be visited upon the petitioners. Even if the petitioners' father created a charge on the minors' property, the respondent bank ought to have been mindful while accepting the same. Further, as per Clause 25.4.1, extracted *supra*, the bank had to obtain a letter that the advances against the minors' deposits would be used for their benefit. The bank did not obtain such letters as is evident from the record. The letters of lien also manifest that the loans advanced were to the firm and were not for the benefit of the minor children. *Ergo*, the bald assertions made by the respondent bank in this regard have to be rejected.

Sri N.V. Subba Raju, learned counsel, placed reliance on ***VADLA NARASIMHULU V/s. VADLA RAMAYYA*** in support of his contention that the petitioners, though they were minors, would be bound to honour their father's liability. However, perusal of the said judgment reflects that the father in the said case, acting as the manager of the Joint Hindu Family, mortgaged the family properties and incurred debts which constituted a pious obligation on the son. The decree obtained against the father was therefore held to be binding upon the son though he was not a party to the suit. This judgment is therefore of no avail to the respondent bank as the necessary ingredients to apply the *ratio* laid down therein have not been substantiated on facts, as already indicated above.

Thus, the respondent bank permitted the father of the petitioners to create fixed deposits in their individual names during their minority duly represented by himself as their guardian. These fixed deposits were not joint deposits created in the name of the father along with the minor children but were in the names of the minors alone. The same, as already pointed out, was permissible under the bank's regulations. The bank illegally permitted the father to create a charge over these minors' deposits during their minority without adhering to its own regulations. The respondent bank ought to have been conscious of the fact that it was dealing with the monies of minors and been more mindful of its own regulations before accepting a charge against the same. These letters of lien therefore have no legal impact. Section 11 of the Hindu Minority and Guardianship Act, 1956, provides that no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the *de facto* guardian of the minor. As the respondent bank blindly accepted the charge created by the petitioners' father over his minor children's property, the above legal provision would be attracted and would render the charge so created illegal and wholly unsustainable. Viewed thus, the action of the respondent bank in withholding the amounts due to the petitioners under the subject fixed deposits cannot be countenanced. The petitioners are therefore entitled to the maturity value of the fixed deposits along with the interest accrued thereon.

The writ petitions are therefore allowed. The respondent bank shall remit to the petitioners the amounts due under the subject fixed deposits along with interest accrued thereon within two weeks from the date of receipt of a copy of this order, after due compliance with the required formalities. In the light of the wholly irresponsible and careless attitude of the respondent bank, a Government of India undertaking, this Court is of the opinion that it should pay exemplary costs of Rs.5,000/- (Rupees Five Thousand only) to each of the petitioners.

Before parting with the matter, this Court is constrained to note with concern the manner in which the respondent bank is conducting its affairs. The record produced before this Court demonstrates the haphazard way in which this bank is operating. The deposit account opening forms pertaining to minors were not filled up properly and one form was not even signed! Scant regard was shown by the respondent bank to its own regulations in the creation of fixed deposits as well as permitting a charge to be made thereon. Dealing with the hard-earned monies of innocent depositors and customers, the respondent bank has a fiduciary duty and obligation to ensure that such funds are utilized with care and when advanced by way of loans, it must necessarily ensure proper security therefor. Presently, this Court finds that it allowed a charge to be created against minors' deposits unmindful of the law and its own regulations and acted most recklessly. The respondent bank must therefore clean up its act and be more careful in future to avoid such situations.

A copy of this order shall accordingly be marked to the Managing Director of the respondent bank.

SANJAY KUMAR,J

4th JUNE, 2015

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