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The plaintiff-company filed the suit for declaration that the defendants are not entitled to deduct Rs.2,50,480-75 p.s. towards excess amount paid and interest thereon, on 04.02.1985, on the encashment of 10 F.D.Rs bearing Nos.21/364 to 21/373 each for Rs.10,00,000/- and for refund of Rs.1,257.72 p.s. the interest calculated due to mistake and Rs.251.07 p.s. towards interest from 05.08.1990 and Rs.534.55 p.s. towards interest on overdraft deducted; and Rs.7,140.11 p.s. being the interest on Rs.2,50,480.75 p.s. at the rate of 24% per annum for illegally withholding the same from 06.08.1990 to 17.07.1990, alleging that the plaintiff is a Public Limited Company having its registered office at Manoor House, 2nd floor, 100 Harrington Road, Madras carrying on investment and finance business, having its administrative office at Narsapur. The 1st defendant is a Nationalised Bank having its Head Office at Hyderabad and 2nd defendant is its Branch Manager at Narsapur Branch. On 14.11.1984, the plaintiff deposited a sum of Rs.1,00,00,000/- in 10 F.D.Rs for a period of 36 months. Subsequently, the plaintiff-company encashed 10 F.D.Rs, as the purpose for which deposits were made frustrated, and requested the defendant-bank to allow the plaintiff-company to re-deposit Rs.1,00,00,000/-, with an understanding that the plaintiff-company should re-deposit the amount in different heads of accounts in the defendant-bank itself, without levying or collecting or applying any penalty and addressed a letter dated 28.01.1985 requesting the defendants to accept the above conditions for re-depositing the amount. The defendants received the letter, allowed the plaintiff-company to redeposit the amount in fixed deposits. Thereafter, the plaintiff-company deposited Rs.80,00,000/- with the defendant-bank on 04.02.1985; by that time, the defendant-bank did not raise any objection for the condition put forth by the plaintiff-company. In pursuance of the request made in the letter dated 28.01.1985, the plaintiff deposited a sum of Rs.80,00,000/- under the impression that the defendants agreed for the conditions in the letter and that the defendants also did not raise any objection for subsequent deposit of Rs.20,00,000/-. While the matter stood thus, the plaintiff-company received statement of account from the defendants on 06.08.1990 debiting Rs.1,25,807.75 p.s. as penal interest on Rs.80,00,000/- from 14.11.1984 to 04.02.1985, as against the agreement, and debited interest thereon @ 18% from 04.02.1985 to 05.08.1990, which comes to Rs.2,50,480.75 p.s. and the said debits were without the consent or knowledge of the plaintiff and, hence, they are illegal and contrary to the agreement between the plaintiff-company and the defendant-bank. As per the agreement between the plaintiff-company and the defendant-bank, under letter dated 28.01.1985, the understanding between the parties is that the defendants are not entitled to deduct penal interest and interest @ 18% on the F.D.Rs of Rs.1,00,00,000/-. Hence, deduction of Rs.2,50,480.75 p.s. from the fixed deposits of Rs.80,00,000/- is contrary to the agreement. Therefore, the deduction is illegal and void and sought for declaration that the 1st defendant is not entitled to deduct the amount. It is also contended that the claim of the defendants is barred by limitation and when the claim is barred by limitation, the defendant- bank is not entitled to recover the amount from the deposits of Rs.80,00,000/-. Hence, the plaintiff-company is entitled to recover the said amount and prayed to pass a decree in its favour. 4. The 1st defendant filed written statement contending that when the defendant-bank paid the amount at the time of encashing the F.D.Rs, the bank is entitled to recover the excess amount paid by the defendant-bank since the encashment is premature. Thereafter, the plaintiff-company deposited Rs.80,00,000/- in fixed deposits in the names of Moses Sikile and J. Sikile foundation in the former account under 3 receipts and in the latter account under 5 receipts, each receipt for value of Rs.10,00,000/-. The plaintiff-company expressed only a wish and the plaintiff-company as well as this defendant is fully aware that the said wish cannot be fulfilled and this defendant is also not competent to alter the rates of interest payable to the depositors. The deposits were not hedged by any conditions at all; this defendant debited a sum of Rs.1,25,807.75 p.s. as a penal interest on Rs.80,00,000/- and also debited interest @ 18% on the above said sum from 04.02.1985 to 05.08.1980 totaling a sum of Rs.2,50,480.75 p.s. Subsequently, the plaintiff addressed a letter dated 16.08.1990 questioning the action of the defendants in deducting the amount with further interest thereon and also pointing out some mistakes in calculation of the interest etc., the plaintiff undoubtedly presented cheques mentioned in paragraphs 17 and 18 of the plaint and they were properly returned with the endorsements 'refer to drawer' as there was no balance in the plaintiff's account, therefore, the plaintiff is not entitled to claim any amount from the defendant-bank. The earlier deposit of Rs.1,00,00,000/- was for 3 years and accrued rate of interest thereon was @ 10% but due to premature withdrawal of the deposit, the plaintiff is not entitled to claim the same rate of interest and, at best, the plaintiff is entitled to claim the prevailing rate of interest as per the Reserve Bank of India's directives in force by then. The rate of interest payable in respect of a premature withdrawal term deposit shall be the one applicable to the period for which the deposit remained with the Bank prevailing as on the date of deposit, less 1% penalty for premature withdrawal. The rate of interest prevailing by then was only 3% but the defendant-bank by mistake paid Rs.2,24,657/- towards interest @ 10% but the actual interest payable was only @ 3% which is to Rs.67,397.20 p.s. Thus, the defendants paid excess interest of Rs.1,57,259.80 p.s. and an amount of Rs.31,452.05 p.s. was debited from the plaintiff's current deposit and the balance amount which was paid excess by mistake was Rs.1,28,807.75 p.s. and this amount was not legally due to the plaintiff but due to mistake the amount was paid, therefore, the defendants are entitled to deduct the amount from the plaintiff's account. Subsequently, the plaintiff addressed several letters; suitable reply was issued. The action of the defendants is not at all illegal and irregular and it is as per the guidelines of Reserve Bank of India and Banking laws, consequently, the plaintiff is not entitled to the declaratory decree and recovery of amount and prayed to dismiss the suit. 5. The 2nd defendant filed memo adopting the written statement filed by the 1st defendant. 6. Basing on the above pleadings, the trial Court framed the following issues: 1) Whether there was a contract and also an understanding between the plaintiff company and the defendant bank that if the plaintiff-company re-deposits an amount of Rs.80,00,000/- out of the amount of Rs.1,00,00,000/- uplifted from fixed deposits, the defendant-bank would not levy or collect any penalty? 2) If there was such a contract, whether it was illegal, opposed to public policy and hit by Section 23 of the Contract Act and void? 3) Whether the defendant-bank was entitled to deduct an amount of Rs.2,50,480.75 p.s., and if so, whether it was not barred by limitation? 4) Whether there were mistakes in calculation of interest of Rs.1,257.72 p.s. and Rs.251.07 p.s. by defendant-bank and the plaintiff is entitled to refund of the same? 5) Whether the plaintiff is entitled to the declaration and refund of Rs.2,50,400/- as prayed for? 6) Whether the plaintiff is entitled to refund of excess interest, if any, charged on over draft? 7) Whether the plaintiff is entitled to any past interest and future interest and, if so, at what rate? 8) What balance of amount, if any, is the plaintiff entitled to be refunded in view of payment of Rs.1,24,673/- by the defendant on 21.09.1990 to the plaintiff? 9) To what relief? 7. During course of trial, on behalf of the plaintiff, PW.1 was examined and Exs.A-1 to A-8 were marked; on behalf of the defendants DWs.1 to 3 were examined and Exs.B-1 to B-4 were marked. 8. Upon hearing argument of both the counsel, considering oral and documentary evidence, the trial Court dismissed the suit holding that the defendant-bank is entitled to deduct the amount from the plaintiff's account and as such the plaintiff is not entitled to recover the amount from the defendant-bank. 9. Aggrieved by the decree and judgment of the trial Court, the plaintiff-appellant preferred this Appeal on various grounds mainly contending that deduction of amount from the plaintiff's account on the ground that the defendants paid excess amount, which the plaintiff is not actually entitled, is an unilateral act and that the claim of the defendants is barred by limitation. It is further contended that the trial Court did not appreciate the evidence on record with reference to the prevailing rate of interest and it's calculation of interest on the deposit of Rs.1,00,00,000/-, which was withdrawn prematurely, after 82 days from the date of deposit, though it was agreed to be kept in deposit for 36 months, therefore, the action of the defendant-bank is illegal and prayed to set-aside the decree and judgment of the trial Court, and pass a decree in favour of the plaintiff, by allowing this Appeal. 10. During course of argument Sri Jagadish Chandra Prasad, learned counsel for the plaintiff-appellant, contended that the claim of the defendants to recover the amount, paid in excess what the plaintiff-company is entitled, is barred by limitation as the deduction was beyond 3 years; apart from that, it is an unilateral act and that too the earlier deposit was in the name of the plaintiff but the present deduction is from the deposits in the names of Moses Sikile and J. Sikile, therefore, the deduction of the amount is illegal and prayed to pass a decree in favour of the plaintiff declaring the action of the defendant-bank as illegal, arbitrary and direct the defendant-bank to repay the illegally deducted amount together with interest. 11. None

appeared for the defendants-respondents, though notices were served on them. 12. Considering the contentions of learned counsel for the plaintiff-appellant, perusing the oral and documentary evidence including the decree and judgment under challenge, the points that arise for consideration are: 1) Whether deduction of Rs.2,50,480.75 p.s., Rs.1,257.72 p.s., Rs.251.07 p.s. Rs.543-55 p.s. and Rs.7,140-11 p.s. respectively by the defendant-bank is unilateral, illegal and arbitrary? If so, is the plaintiff entitled to a declaration that deduction of the above said amount is illegal and arbitrary? 2) Whether the plaintiff is entitled to recover Rs.2,50,480.75 p.s. together with interest? 13. POINT No.1: Undisputedly, the plaintiff deposited Rs.1,00,00,000/- with defendant-bank on 14.11.1984 for a period of 36 months but withdrawn the amount prematurely after 82 days and addressed letter to the 1st defendant-bank, marked as Ex.A-2 but the 1st defendant-bank paid interest on Rs.1,00,00,000/- @ 10%, as agreed under the F.D.Rs for 36 months, however, the plaintiff is not entitled to interest @ 10% for the reason that the deposits were withdrawn prematurely and as per the guidelines of the Reserve Bank of India, the plaintiff is entitled to interest @ 4% as per the prevailing rate of interest, out of which 1% is to be deducted towards penal interest. Therefore, at best, the plaintiff is entitled to interest @ 3% on the above deposited amount of Rs.1,00,00,000/-; due to mistake, the defendant-bank paid interest @ 10% amounting to Rs.2,50,480-75 p.s. Therefore, the defendant-bank paid excess amount to the plaintiff by mistake. At this stage, it is relevant to advert to the evidence on record to decide whether there was any contract between the plaintiff and defendants for payment of interest @ 10% though the deposits were withdrawn prematurely. Before adverting to the oral evidence, I feel that it is better to advert to the documentary evidence. Ex.A-1 is the account statement furnished by the defendant-bank which disclosed that the plaintiff deposited Rs.1,00,00,000/- under 10 F.D.Rs bearing Nos.21/364 to 21/373 on 14.11.1984 for a period of 36 months and the rate of interest applicable due to premature cancellation was 3% and rate of interest applicable for 36 months is 10% however, calculated interest @ 10% though it was premature and paid excess of Rs.1,25,807-75 p.s. and interest on excess amount paid from 04.02.1985 to 05.08.1990 @ 18% comes to Rs.1,24,673/- and the total comes to Rs.2,50,480-75 p.s. Ex.A-2 is the letter addressed by the defendant-bank explaining the discrepancies pointed by the plaintiff justifying the action of the defendant-bank in deducting the amount. From this evidence, it is clear that the defendant-bank paid excess amount towards interest on the premature withdrawal of deposits of Rs.1,00,00,000/-. Admittedly, there was no contract between the plaintiff-company and defendant-bank for payment of interest @ 10% though the amount was allegedly withdrawn prematurely but received excess amount of interest contrary to the terms of F.D.Rs. At this stage, it is relevant to advert to the evidence of the plaintiff, PW.1, on record. As usual, he supported the case of the plaintiff in all respects, however, in the cross-examination, he made some crucial admissions which are relevant for deciding the real controversy regarding contract between the plaintiff-company and defendant-bank, payment of interest @ 10% on the premature withdrawal. The relevant portion in the evidence of PW.1 is extracted hereunder, for better appreciation: "Originally, the plaintiff made a deposit of 1 crore with the 1st defendant-bank for a period of 36 months. The original contract was to keep the amount for 36 months. The deposits were made on 14.11.1984. But even before the due date of deposits, the plaintiff prematurely cancelled all the deposits of 1 crore worth on 04.02.1985 itself, thus, the number of days that the above deposits were kept with the Bank for 82 days. As per the directives in force, if the deposits amount were kept till full maturity period, the deposits would have earned interest at 10%. For the prematurely withdrawn amount, the rate of interest that was applicable was 4% less 1% penalty so the rate of interest is actually payable 3% only. There is no contract in writing to show that the defendants agreed to pay interest at 10% only even for prematurely cancelled deposits and also they would not depose any penalty. It is true that there is nothing in writing that the defendant-bank accepted our request." 14. From the crucial admissions extracted above, there is absolutely no contract between the plaintiff and defendants for payment of interest @ 10% on premature withdrawal deposits and, at best, the plaintiff is entitled to interest @ 3%, according to his own admission, but received interest @ 10% from the defendants, due to mistake of the defendant-bank. Again, in his cross-examination at Page 6, the plaintiff admitted that out of Rs.2,50,480-75 p.s. the interest portion of Rs.1,24,673/- was returned to the plaintiff-company by the defendant-bank on 13.09.1990. If the said admission is accepted, the amount deducted by the defendant-bank is only Rs.1,25,807-75 p.s. Thus, the amount allegedly deducted by the defendant-bank arbitrarily is Rs.1,25,807-75 p.s. In his further cross-examination at Page 7, PW.1 admitted as follows: "I know that for premature withdrawal of amount, the defendant-bank have to levy penalty and also the amounts are subject to payment of lesser rate of interest. So, as per Ex.A-8, we only suggested that penalty may not be applied that is the only suggestion made. This letter Ex.A-8 only speaks of suggestion regarding the waiver of penalty. It does not speak of payment of lesser rate of interest for premature withdrawal." 15. Even according to this admission, there was no contract for payment of interest @ 10% on the premature withdrawn deposits but in the letter Ex.A-8, the plaintiff requested to waive the penalty, which was not accepted by the defendant-bank, as it is contrary to the directives of Reserve Bank of India. In any view of the matter, in view of the evidentiary admissions of PW.1, there was no contract between the plaintiff and defendants for payment of interest at the rate of 10% on the premature withdrawal of Rs.1,00,00,000/-; payment of interest at the rate of 10% on the premature withdrawal is purely a mistake. 16. In support of the contentions of the defendant-bank, the defendants examined DWs.1 to 3, who testified about payment of Rs.1,25,807-75 p.s. towards interest at a higher rate i.e., 10% though the F.D.Rs were prematurely withdrawn and established the excess payment of amount towards interest on the F.D.Rs. Since excess amount is not in dispute, the evidence of the defendants needs no reappraisal. 17. According to Section 72 of the Indian Contract Act, 1872 a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. In the present case, the defendant-bank paid interest @ 10% on the premature withdrawn deposits, which comes to Rs.1,25,807-75 p.s. to the plaintiff-company and, in such case, applying the principle enunciated under Section 72 of Indian Contract Act, the plaintiff is under obligation to repay the amount paid to it by mistake by the defendant-bank. Hence, the plaintiff is under obligation to repay Rs.1,25,807-75 p.s. which amount is paid towards interest than what the plaintiff is actually entitled on the premature withdrawal deposits. 18. Admittedly, the plaintiff deposited Rs.80,00,000/- in F.D.Rs and from the amount payable to the plaintiff under those F.D.Rs, the defendant-bank deducted the excess amount earlier paid towards interest at the rate of 10% on the premature withdrawn deposits. The 1st defendant-bank is entitled to recover the amount from the plaintiff's account in view of obligation imposed on the plaintiff to repay the amount, which was paid by mistake by the defendant-bank, under Section 72 of Indian Contract Act. Therefore, the action of the defendant-bank in deducting Rs.1,25,807-75 p.s. cannot be said to be arbitrary and illegal for the reason that when the plaintiff disown his obligation to repay Rs.1,25,807-75 p.s., excess amount paid by the defendant-bank by mistake, such act cannot be said to be unilateral or opposed to any law. 19. One of the main contentions of the learned counsel for the plaintiff-appellant is that the defendant-bank is not entitled to deduct the amount as the claim of the defendants is barred by limitation. No doubt, the excess amount was paid to the plaintiff on 04.02.1985 on premature withdrawal of F.D.Rs of Rs.1,00,00,000/-, as per Ex.A-1, but deducted the excess paid amount after three years from the plaintiff's account. Undoubtedly, the defendants' right to claim the said amount by filing a suit is barred by limitation since the limitation starts from the date of payment by mistake to the plaintiff by the defendant and the deduction of Rs.2,24,657/- took place beyond three years of limitation. It is well settled principle of law that the limitation bars the remedy but not recovery. The rules of limitation are not meant to decide the rights of the parties they are meant to see that the plaintiff does not take a dilatory tactics but seeks remedy within the period stipulated by the legislation. The rules of limitation, thus, will only bar the remedy but do not extinguish the right. The right continues to exist even though the remedy before the Court is barred by limitation; therefore, a debt may be time barred debt and cannot claim it back on the belief that it is barred by limitation. 20. Thus, it is clear from the settled law that Limitation Act is applicable to the suits brought by the plaintiff and it does not apply to a right set by defendant in defence and the defendant will be precluded from setting up a right by way of defence, even if he could not defendl so the plaintiff by way of substantial claim and therefore the limitation bars the remedy before a Court in a suit or any other proceedings but not the recovery. 21. In the present case, the defendant-bank deducted excess amount of interest paid on the premature withdrawal F.D.Rs which is totally in consonance with Section 72 of Indian Contract Act and though the right to remedy of the plaintiff to file a suit and recover the excess amount is barred by limitation, still he is entitled to recover the amount since limitation does not bar the recovery. Therefore, the contention of the plaintiff that the right of the defendant-bank to recover the amount is barred by limitation would not stand to any legal scrutiny. Hence, I hold that deduction of Rs.1,25,807-75 p.s. towards excess interest paid on the premature withdrawal deposit of Rs.1,00,00,000/- is legal and the defendant is entitled to deduct the amount though the remedy to file a suit for recovery is barred by limitation. Hence, I find no illegality in the judgment of the trial Court in declining to grant declaratory decree. 22. Admittedly, the suit is filed for grant of declaration questioning the right of the defendant-bank to deduct Rs.2,50,480-75 p.s. under Section 34 of the Specific Relief Act, 1963. The relief under Section 34 is purely discretionary in nature and the plaintiff, who approached the Court seeking declaratory relief, must approach the Court with clean hands and do equity. When the plaintiff is claiming equitable and discretionary relief under Section 34 of the Specific Relief Act, having received an amount of Rs.1,57,259-80 p.s. in excess what the plaintiff actually entitled towards interest on the premature withdrawal of deposit, interest @ 10% though he is under obligation to repay the same, in view of Section 72 of Indian Contract Act, he disown his liability to repay the same and contended that he is entitled to recover the amount. The defendant is a banking company and entitled to claim lien on the amount lying in deposit of the plaintiff. By exercising right of lien, the defendant-bank is entitled to recover the amount from the other account of plaintiff without notice to the plaintiff for the reason, it is a statutory right of lien and the question of limitation does not arise when the bank exercised lien as held by the High Court of Punjab and Haryana in First National Bank Limited Vs. Seth Santh Lal. The trial Court after appreciating the facts with reference to case rightly concluded that the plaintiff is not entitled to declaration that the defendant is not entitled to deduct the amount. Hence, I find no legal infirmity warranting interference with the said finding. Therefore, it is clear that the action of the defendant is legal, when the plaintiff received amount only as unjust enrichment he is bound to repay it and, therefore, the ground of limitation raised by the plaintiff is most inequitable. Therefore, the equities are in favour of the defendants and not in favour of the plaintiff and that the plaintiff approached the Court with unclean hands, which disentitled him to claim declaratory relief under Section 34 of the Specific Relief Act. Accordingly, the point is held in favour of the defendants and against the plaintiff. 23. POINT No.2: In view of my finding on the above point, the action of the defendant-bank is legal in deducting Rs.2,50,480-75 p.s. towards excess amount paid by mistake; thereby question of recovery of amount by the plaintiff does not arise, hence, the plaintiff is not entitled to recover Rs.2,50,480-75 p.s. deducted by the defendant-bank towards excess amount paid on premature withdrawal deposits. 24. During course of hearing, learned counsel for the plaintiff-appellant except contending that the claim of the defendants is barred, no other point is urged before this Court and in view of my finding on above point, I need not advert to any other material including the evidence of defendants in view of admitted facts and crucial admissions made by PW.1 in his evidence. Hence, it is wholly un-necessary to advert to any other material available on record to decide the real controversy. Therefore, I find that the plaintiff is not entitled to recover the amount from the defendant-bank and I find no legal infirmity in the judgment under challenge passed by the trial Court, warranting interference of this Court. Accordingly, the point is held in favour of the defendants and against the plaintiff. In the result, the Appeal Suit is dismissed confirming the decree and judgment dated 17.01.1997, passed in O.S. No.99 of 1990 by the learned Senior Civil Judge, Narsapur. In consequence, miscellaneous petitions, if any, pending in this Appeal, shall stand dismissed. No order as to costs. ______________________________ M. SATYANARAYANA MURTHY, J Date: 24-04-2015. Dsh HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY 126 03062015 APPEAL SUIT No. 457 OF 1997 Date.24-04-2015 DSH AIR 1959 P&H 328 PAGE PAGE 12 MSM, J A.S. No.457/1997

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