

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.3267 of 2013

Date of decision: March 09, 2015.

Bank of Baroda and another

... **Petitioners**

v.

Sukhwinder Singh

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON**

Present: Shri C.S. Pasricha, Advocate, for the petitioners.
Ms. Gurnam Kaur turka, Advocate for the respondent.

Dr. Bharat Bhushan Parsoon, J. (Oral):

Owing to absence of customer friendly attitude of the petitioner-Bank, which has rather been antagonist and dictatorial to the respondent-depositor and thus beneficiary of succession certificate (Ex.P2) has again been dragged in this unsavoury litigation in this revision petition by the petitioner-Bank. The matter is very short and insignificant for the petitioner-Bank but the respondent-decree holder is continuously being dragged in the courts by the Bank since long.

2. It may be mentioned here itself that the petitioner had to face many rounds of litigation because of obsessively obstinate as also rough and tough attitude continuously and consistently manifested by the Bank, for him.

3. In short, Smt. Shamsher Kaur wife of Harbhajan Singh @ Bhajan Singh of Patiala had three fix deposit accounts as also one savings Bank account with the petitioner-Bank. The petitioner claiming himself to be a legal heir of depositor Smt. Shamsher Kaur, initially had filed a suit for

declaration against the Bank claiming himself to be entitled to the proceeds of the FDRs and savings Bank accounts after the death of depositor Smt. Shamsheer Kaur. The suit was dismissed since suitor Sukhwinder Singh had not been named in the nomination column by the depositor and thus the Bank had shown its inability to release the payment in his favour.

4. Against the order of dismissal of the suit of , an appeal was preferred by Sukhwinder Singh, now respondent-decree holder, but he had withdrawn the same for taking steps for obtaining succession certificate from a competent forum. Succession certificate subsequently sought by him, was granted to him by the court of competent jurisdiction. The Bank was not satisfied even with grant of succession certificate to Sukhwinder Singh and refused to honour it. It rather paid a paltry sum of Rs.6,276/- in addition to Rs.17,01,039/- towards total amount of 3 FDRs of the depositor. This payment was received on 1.11.2006 by the decree holder under protest.

5. **The entire dispute is with regard to quantum of interest payable on the deposits kept in the fixed deposits by the depositor.**

6. There is copy of Annexure R-3 of the certificate issued by the Bank as on 5.7.2004, whereby the total amount of 3 FDRs with interest had been calculated by it itself to be Rs.25,05,815/-. Frustrated with the red tapist and unduly tough attitude adopted by the Bank, decree holder Sukhwinder Singh again knocked at the door of the executing court on 18.8.2007 and sought release of the payment granted under the succession certificate in his favour by the court of competent jurisdiction. Vide order dated 28.2.2013, dismissing the objection petition preferred by the Bank against the said execution petition, the Bank has been called upon to make the entire payment in terms of succession certificate (Ex.P2) to the decree holder beneficiary.

7. Main plea of the Bank against the impugned order is that as per RBI instructions, interest more than the interest payable on savings Bank account after the death of the depositor, is not payable. It is also claimed that the decree holder had never disclosed to the Bank that the depositor had died.

8. Repudiating this claim, counsel for the respondent has urged that the Bank having actively participated in the earlier litigation with the decree holder, had the knowledge of death of depositor Smt. Shamsheer Kaur and had issued certificate dated 5.7.2004 (Ex.P3) which formed the basis for issuance of succession certificate. Prayer for dismissal of the petition was made by counsel for the respondent-decree holder.

9. Certificate, issuance of which on 5.7.2004 (Ex.P3), is relied upon by the decree holder, has not been denied by the Bank either. It is not a case of suppression of material facts or making of wrong or false disclosure by the beneficiary. The Bank itself had been extending the period of maturity of the FDRs despite the fact of death of the depositor having come to its knowledge due to active participation in the earlier litigation, which had been started by the present decree holder inter-alia against the Bank. Needless to state that the Bank had filed the written statement in the said litigation, wherein issuance of this certificate (Ex.P3) had neither been denied nor had been disputed in its contents or effect.

10. Merely because the petitioner Bank was not a party in the proceedings of the issuance of succession certificate, does not affect merits of the matter as the succession certificate is directed only against the Bank for making the payment to the beneficiary thereof.

11. If we examine the entire controversy between the parties, there does not remain any dispute that the beneficiary decree holder had to move

from pillar to post, when the Bank had refused to firstly accept him as a beneficiary of the amount lying in the deposit accounts of the deceased and then had even refused to honour the succession certificate issued in his favour by the court of a competent jurisdiction. In short, the entire proceedings right from the very start, including the proceedings for issuance of succession certificate, were forced upon the respondent-beneficiary by the Bank.

12. During the course of arguments, great emphasis has been laid by the Counsel for the petitioner-Bank on Book of Instructions (31.12.2003), Volume I of the petitioner-Bank, Clause (viii) whereof, reads as under:-

“(viii) Dealing with Overdue Deposits of deceased depositors:

In the case of death of the depositor, after the date of maturity of the deposit, the branches shall pay interest at savings Bank rate operative on the date of maturity from the date of maturity till the date of payment, as per RBI guidelines.”

13. The driving force behind these instructions is mentioned to be the RBI guidelines. Counsel for the petitioner took pains even to refer to Master Circular (30.6.2008) pertaining to interest rates on rupee deposits of RBI, Central Mumbai, Clause 11 whereof dealing with the matter in issue, is relevant and for ready reference, is reproduced as below:-

“11 Interest Payable on a Deposit Account of Deceased Depositor

The criterion for payment of interest on term deposit standing in the name/s of
(i) a deceased individual depositor or
(ii) two or more joint depositors, where one of the depositors has died to be paid to the legal heir/s/representative/s/nominee/s has been left to the discretion of the individual Banks, subject to their Board of Directors, laying down a transparent policy in this regard and the customers being notified at the time of acceptance of deposits. The policy should be non-discretionary and non-discriminatory.”

14. From perusal of the relevant instructions of RBI, it is thus clear that the matter in fact had been left by the RBI to the discretion of the

individual Banks. The Banks were required to:-

- (i) lay down a transparent policy in this regard;
- (ii) such policy was to be approved by the Board of Directors of the Bank;
- (iii) the said policy of rate of interest was to be notified to the customers at the time of acceptances itself of deposit; and,
- (iv) the policy was to be non discretionary and non-discriminatory.

15. When called upon, Counsel for the petitioner-Bank has not been able to convince that this policy of the Bank as depicted in Clause (viii) of the Book of Instructions, Volume I, reproduced in earlier part of the judgment, had been duly notified to the depositors at the time of acceptance of such deposits in terms of the 'RBI instructions' quoted earlier. Had the RBI instructions been followed in letter and spirit, which was sacrosanct duty and rather responsibility and liability of the Bank to follow, the relevant instructions appearing in the Book of Instructions, Volume I of the petitioner-Bank were to form part of the instructions of FDRs issued to the depositor at the time of acceptance of deposits by the petitioner-Bank. The petitioner Bank thus had clearly failed to follow the RBI instructions on the subject and rather had followed those instructions in breach.

16. Relationship of the petitioner-Bank with its customers is of the nature of *uberrimae fidei*, i.e., of 'utmost good faith'. *Uberrimae fidei* contracts are made in utmost good faith. There is no concealment or deception in such contracts. If one of the parties to a contract has a special knowledge, he/she must disclose such knowledge relevant to the contract. The shabby way the respondent-decree holder has been treated by the petitioner-Bank, speaks volumes of the importance, the Bank gives to its customers. Throughout being on the wrong side, the Bank continued chasing the respondent-decree holder like wild hounds. Such conduct of the Bank is deplorable.

17. Citing Indian Bank v. Blue Jaggers Estates Ltd. and others, AIR 2010 SC 2980, it is urged by Counsel for the petitioner that the Bank is a trustee of public funds and it cannot compromise the public interest for benefiting private individuals.

18. The authority cited by Counsel for the petitioner-Bank, with due deference to the law laid down therein, is entirely in different context on different issue with different facts. The matter before the Bench was with regard to repayment of loan taken by a borrower and the Hon'ble Supreme Court had held that those who take loan from the Banks, are duty bound to repay the same strictly in accordance with the terms of the contract. The case was under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

19. The impugned order of the executing court is not only clear and categorical as also is terse and telling, but it even takes into account each and every issue raised by the parties while putting forth their rival claims. The lower court had given ample opportunity to the parties to produce their respective evidence when issues had been framed by the executing court as back as on 24.10.2007. Entire evidence produced by the parties has been discussed in requisite details and there is neither remissness on facts nor in law, calling for any interference with the impugned order.

No merits.

Dismissed.

[Dr. Bharat Bhushan Parsoon]
Judge

March 09, 2015.
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1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*