THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION NO.16540 OF 2006

ORDER:

This Writ Petition is filed seeking a writ of mandamus declaring the impugned action of the respondent-Bank in appropriating a sum of Rs.2,13,380.62 ps, as bad, illegal and arbitrary and consequently to declare the letters dated 21.04.2006 and 10.12.2005 of the first respondent in appropriating a sum of Rs.2,13,380.62 ps from the petitioner's account as bad, illegal and arbitrary and to direct the respondent to repay a sum of Rs.2,13,380.62 ps to the petitioner along with interest @ 12% per annum with effect from 21.04.2006.

The facts of the case are that the writ petitioner joined as Clerk in the respondent-Bank on 23.04.1968 and subsequently, he was promoted as J.M.G. Grade-I Officer in January 1976. On 31.08.2000, he was deputed to Begumpet Branch of Indian Bank and was posted as Scroll Officer. At that point of time, he was new to computerization and had no knowledge of computers. While working so, on 20.10.2000, an amount of Rs.2,66,880/- was deposited by M/s. Jana Chaitanya Housing Society Ltd., bearing A/c.No.15778. The cashier, who was dealing with cash, gave credit in computer terminal to A/c.No.15578 of M/s. Vidyodaya Educational Society instead of giving credit to the account of M/s. Jana Chaitanya Housing Society Ltd., bearing A/c.No.15778. Since the petitioner was on deputation and was discharging duty as Scroll Officer, he cleared the credit entry given by the Cashier. He did not notice the discrepancy in the account number and hence, the mistake occurred. The said incident took place unintentionally. The cashier dealing with cash is the person who should enter the account number and amount correctly. In normal course, the petitioner cleared the entry in the computer. Though receipt of cash was checked by him, he did not realize that the cashier had credited the amount to a wrong account. On the said date, three officers were on leave and day books were not checked by them. On

29.12.2000, the discrepancy was rectified by debiting the amount to the account of M/s. Vidyodaya Educational Society 1and crediting to the account of M/s. Jana Chaitanya Housing Society Ltd. During the interregnum period, M/s. Vidyodaya Educational Society withdrew the amount credited to their account without informing the bank about wrong credit. However, an amount of Rs.80,000/- was repaid by them but no further efforts were made by the Educational Society to repay the remaining amount. A suit was filed in O.S.No.1336 of 2001 against M/s. Vidyodaya Educational Society for recovery of an amount of Rs.1,96,262/. The suit was decreed on 28.04.2003 for a sum of Rs.1,76,895.62 ps along with future simple interest at the rate of 10% from the date of suit till the date of realization. The Educational Society filed an affidavit seeking time for payment of decretal amount in instalments @ Rs.8,000/- per month. The Chief Manager, Indian Bank, Begumpet Branch, addressed a letter dated 02.08.2003 to the Deputy General Manager, Indian Bank, Circle Office, Hyderabad, informing about the decree in O.S.No.1336 of 2001 passed by the VII Senior Civil Judge, City Civil Court, Hyderabad, on 28.04.2003 for a sum of Rs.1,76,895.62 with interest @ 10% per annum and enclosed a copy of affidavit filed by the defendants for repaying the amount in monthly instalments. In pursuance of the Voluntary Retirement Scheme (VRS) announced by the Indian Bank, the writ petitioner applied for it in November 2000 and the same was accepted. Pending his relief, the Deputy General Manager, Indian Bank, Circle Office, Hyderabad and the Branch Manager, Begumpet, Indian Bank issued memos dated 12.03.2001 and 06.01.2001 respectively seeking his explanation with respect to wrong credit. In this regard, he gave detailed representations on 28.03.2001 and 23.01.2001 respectively and also informed the Bank about the circumstances under which the mistake took place and that the Bank had already registered a criminal case against the concerned and taken steps for recovery of amount from the concerned. FIR No.158 of 2001 dated 20.02.2001 was registered in Punjagutta Police Station apart from taking steps by filing suit. Under pressure to execute a letter of undertaking, the writ petitioner deposited a sum of Rs.1,90,000/- as Fixed Deposit and thereafter, he was relieved on 23.06.2001. The petitioner made all the efforts for recovery of amounts from Vidyodaya Educational Society. The bank had also accepted cheques of the said society over the said amount. In spite of recovering amounts from Vidyodaya Educational Society, the respondent vide proceedings dated 10.12.2005 addressed letter to the petitioner. The writ petitioner alleges that the respondent-Bank retained FDR with them and without any notice, the bank had adjusted the FDR amount to the account even after obtaining decree against the concerned. Hence, the Writ Petition.

In the counter filed by the Bank, they denied the allegations of the petitioner. As regards the allegation in regard to Voluntary Retirement Scheme 2000, the same was accepted by the bank but in view of the wrong credit of Rs.2,66,880/- in account No.15578, the bank had contemplated initiating disciplinary proceedings against the petitioner for his act of negligence. It is further contended that the petitioner in his eagerness to avail huge monetary benefits under the scheme, submitted request to accept an amount of Rs.1.90 lakhs towards FDR and submitted an unconditional affidavit to appropriate the amount without giving any notice to him in case of non-recovery of the amount in the account in which wrong credit had taken place due to his lapse and requested the bank to relieve him under VRS. The allegation that the petitioner was under pressure to execute a letter of undertaking on 30.05.2001 was denied. It is averred that the petitioner deposited the amount and executed the undertaking out of his own will and volition. Further, the suit was decreed on 28.05.2003 and the JDRs filed petition seeking instalments at Rs.8,000/- per month to pay the decretal amount and there were no chances to recover the amount by executing the decree, as whereabouts are not known. As such, there are no chances of recovery of amount from JDRs and that in pursuance of the letter of undertaking, the bank is entitled to appropriate the proceeds of the FDR towards the amount to be recovered. The bank has acted in terms of the undertaking and that the petitioner is estopped from contending the action of the bank as arbitrary. The bank initiated disciplinary proceedings against the cashier who gave wrong credit and punishment was also awarded to him. The bank had also initiated legal action by filing civil suit and initiating criminal proceedings and sought for dismissal of the Writ Petition.

The petitioner filed reply affidavit wherein it is denied that on his own volition he requested the authorities to accept an amount of Rs.1.90 lakhs in the form of R.I.P. under the Bank's lien and gave an unconditional affidavit to appropriate the same without any notice to him in the case of non-recovery of amount. It is stated that the respondent authorities under threat of rejecting VRS, pressurized the petitioner to give an amount of Rs.1.90 lakhs in the form of R.I.P. under the bank's lien and an unconditional affidavit to appropriate the same without any notice in case of non-recovery. Thus, the petitioner under the fond hope that the amount will be realized by the bank under the decree from the JDRs from out of their properties mentioned in schedule attached to the suit worth about Rs.1.5 crores had given undertaking, as required by the bank. The bank has not taken any effective steps for initiation of criminal prosecution or recovery of amounts. Hence, prayed to allow the Writ Petition.

Sri W.B.Srinivas, learned counsel for the petitioner, submits that the petitioner has not deposited the FDRs and the bank cannot appropriate the amount on the so-called undertaking affidavit given by the petitioner without making efforts to recover the amounts as per the decree in O.S.No.1336 of 2001. The said undertaking was given on a condition that only in case bank failed to recover the amount from the said society, who is the judgment debtor, the undertaking could be revoked. It is also submitted that basing on the undertaking, the bank cannot withdraw the FDRs. Without issuing notice and without following due process of law, the bank cannot appropriate the amount under FDRs. Even in case of lien, they have to follow the procedure. In support of his contentions, learned counsel relied on the decisions reported in **Y.Tatachari v. Acharya N.G. Ranga Agricultural University, Hyderabad**[1], **The Commissioner of Provident Fund, Hyderabad v. Dr. V.S.V. Ramesh, through General Power of Attorney Holder – Dr. V.V. Subba Rao, Guntur**[2] and **The State Bank of India v. Javed Akhtar Hussain and others**[3].

On the other hand, learned counsel for the respondent-bank submits that the petitioner on his own has committed mistake in typing the account number in the computer and the same was authorized by the petitioner and the same has happened during the tenure of the petitioner, which fact was admitted by his letter dated 15.03.2004 and he himself admitted that the bank has taken a lenient view and relieved the petitioner on 23.06.2001 in view of the undertaking dated 30.05.2001 where the petitioner unconditionally authorized the bank to appropriate an amount of Rs.1,90,000/- towards FDR. In view of the same, the petitioner cannot maintain this Writ Petition. It is also submitted that the bank could not realise the said amounts as the whereabouts of the educational society, in whose favour the wrong credit has been given, are not known and as such the said amount could not be recovered. It is submitted that this is purely a contractual obligation and as such the Writ Petition is not maintainable in view of the judgment of the Supreme Court in **Pimpri Chinchwad Municipal Corporation v. Gayatri Construction Company**[4].

In this case, while the petitioner was working in the respondent-bank, an amount of Rs.2,66,880/- was deposited by M/s. Jana Chaitanya Housing Society Ltd., bearing account No.15778 but the same was given credit to account No.15578 of M/s. Vidyodaya Educational Society and the petitioner was discharging duties of Scroll

Officer and he has cleared the said entry given by the Cashier. It is an admitted fact that the disciplinary proceedings were initiated against the Cashier and criminal proceedings were also initiated against the Educational Society and suit in O.S.No.1336 of 2001 was also filed for recovery. While the things were so, the petitioner made an application for voluntary retirement. In November 2000, the petitioner was admittedly issued memos dated 12.03.2001 and 06.03.2001 seeking payment for a sum of Rs.2,66,880/-. The petitioner admitted about the mistake and also explained the circumstances under which it had occurred. It is the specific case of the bank in the counter that the bank wanted to initiate disciplinary proceedings for the act of negligence and it is a case that the petitioner on his own accord filed an application for VRS and submitted an unconditional affidavit dated 30.05.2001 which reads as under.

> "I hereby unequivocally/irrevocably/unconditionally authorize the Bank to adjust/appropriate any portion of the amount to the extent of Rs.1,90,000/- from out of the above fixed deposits in the event, the Bank is unable to recover the amounts from the said Vidyodaya Educational Society, I give this authorization/undertaking to the Bank in view of the fact that the said wrong credit was given to the said account during my tenure and under my supervision in the capacity of Assistant Manager of the Branch.
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> The Bank is further authorised to deduct/adjust/appropriate such portion of the Un-recovered amount from the Vidyodaya Educational Scoeity from out of my fixed deposits for Rs.1,90,000/- lying with the Bank without any further notice/intimation to me."

A reading of the undertaking goes to show that again the petitioner admitted that he authorised the bank to adjust the amount due to them. The case of the petitioner is that it was given under pressure but the petitioner never addressed a letter to higher authorities nor he filed any suit saying that he was coerced to give such an undertaking. The case of the bank is that the whereabouts of society are not known to realise the said amount. Basing on the undertaking only the petitioner was relieved after accepting his voluntary retirement application and the bank also did not intend to initiate disciplinary proceedings. Having given such an unconditional undertaking the petitioner is estopped from contending otherwise. In view of the same, whether the bank was able to recover the amounts is the disputed question of fact and cannot be decided in this Writ Petition.

In view of the above, I do not see any merits in the Writ Petition and accordingly, the Writ Petition is dismissed. However, any amounts in excess of the due amount paid to the Society is available with the bank, the bank may return the same to the petitioner. There shall be no orders as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(A.RAJASHEKER REDDY, J)

17th March 2016
RRB

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[1] **(2000) 2 ALD 567 = (2000) 2 ALT 210 = (2000) 1 APLJ 439**

[2] **1996 (4) ALT 887 (D.B.)**

[3] **AIR 1993 Bombay 87**

[4] **(2008) 8 SCC 172**