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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ LPA 568/2013 and CM No. 5312/2016

SHRI JAGAT SINGH ..... Appellant

Through: Mr K. Venkatraman, Adv.

versus

SYNDICATE BANK & ORS ..... Respondents

Through: Mr S.K. Taneja, Sr. Adv. and Mr T.N. Taneja, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% 16.03.2016

1. The appellant is aggrieved by the order of the learned Single Judge whereby his writ petition was rejected. The grievance urged in the proceedings before the learned Single Judge was that the respondent-bank, i.e. the appellant's employer unlawfully withheld the amount from the gratuity and provident fund dues payable to him upon his termination of employment.

2. The appellant was working as a Cashier in the respondent-bank. On account of several irregularities, he was issued with a charge-sheet; the disciplinary proceedings ended in a finding of guilt; eventually he was dismissed from the respondent-bank's service. The legality of the dismissal was put in issue in a reference before the Central Government Industrial Tribunal. In these proceedings as well,

the appellant failed. His dismissal thus attained finality. Parallelly, the allegations levelled against the appellant led to initiation of criminal proceedings. By judgment and order dated 08.04.2010, the Competent Criminal Court, i.e., the Court of Additional Chief Metropolitan Magistrate acquitted the appellant. Earlier on 27.07.1999—after intimating that Employees' Provident Fund (EPF) contributions were credited to the appellant's account—the respondent-bank intimated that the sums of Rs.71,000, Rs.34,244/-, Rs.93,000/- Rs.5920/- and Rs.3546.70/- were due. These were appropriated/adjusted from the final dues payable to the appellant.

3. The appellant had approached this Court in 2011 contending that he did not file any proceeding earlier due to the pending criminal proceedings. Learned Single Judge *inter alia* recorded as follows:-

> *"4. I asked the counsel for the respondent No.1-Bank to show me what are the rules of the respondent No.1-Bank which entitles the respondent No. 1-Bank either to withhold or appropriate the amounts which are otherwise due to an ex-employee. Learned counsel for the respondent No. 1-Bank says that as of today no rules are filed on the record of this Court. In my opinion, even if no rules are filed on the record, yet, whether for withholding or for appropriation of the amounts, the respondent No. 1-Bank which is a State under Article 12 of the Constitution of India cannot do so without conducting necessary enquiries which hold the petitioner guilty of the alleged losses caused to the bank. Thereafter, it was perfectly permissible for the respondent No. 1-Bank to appropriate or at least withhold the amounts which are now claimed by the petitioner, unless a law mandates payment to the*

petitioner. I may mention that simple withholding of an amount is not illegal because even if there are no rules of an organization (and a relevant rule is Rule 9 of CCS (Pension) Rules, 1972 entitling withholding of pension and gratuity) even under the general law, an organization can always withhold or appropriate/adjust amounts lying with it because payment in spite of a claim of withholding an appropriation would amount to payment to be made to an ex-employee which would result in payment of a disputed amount which is claimed by the organization on account of losses caused by the employee. In fact there is always a legal right to appropriate amounts already in the hands of a person and which belongs to another person, if the person holding/appropriating the same does it towards his entitlement vide ***Walchandnagar Industries Ltd. Vs. Cement Corporation of India, 2012 (2) ARBLR 19 (Delhi)****. The only exception is if law or rules of the employer direct/require the payment and thus disentitles appropriation/adjustment. As already stated above, appropriation is actually adjustment in legal terms and is part of the genre of equitable set off.*

5. I also asked the counsel for respondent No. 1-Bank to show me the enquiry proceedings and the orders which were passed entitling the respondent No. 1-Bank to withhold the amount as stated in the communication dated 27.07.1999, however, counsel for the respondent No. 1-Bank has failed to show me any Departmental Proceedings i. e issuance of show cause notice, holding of an enquiry and thereafter passing of an order holding the petitioner guilty of causing losses to the respondent No. 1- Bank and, therefore, the entitlement of respondent No. 1-Bank to appropriate this amount.

4. The Single Judge, however, was of the opinion that since the bank's decision to withhold the amount was a disputed question of fact, the remedy was a civil suit.

5. Mr Venkatraman, learned counsel for the appellant, urges that the learned Single Judge fell into error inasmuch as firstly he proceeded to dismiss the writ petition even after concluding that the amounts withheld were unsupported by any legal provision or preceded by any legally established procedure and secondly that despite observing that no reasonable opportunity of being heard was granted to the petitioner, the writ petition was dismissed. He relied upon the circumstance that during the criminal trial itself, internal enquiry report of the bank (DW-1/A) was produced which showed that the sum of Rs.71,000/- was not due. He also relied upon the letter written to the customer who had allegedly given the said amount to the appellant; the report concluded that the bank had in fact rejected his claim. It was submitted that the bank had initially made the payment on the security by indemnity bond, but not to claim the said amount from the customer. Likewise, it is submitted that so far as the other amounts of Rs.93,000/- is concerned, the indemnity bond stood secured from the concerned customer which is the part of the record. It was emphasized here that the appellant's role was never established.

6. Mr Taneja submitted that the impugned order has not called for any interference. He firstly submitted that the appellant had

approached the Court in a highly belated manner. It was next argued that the respondent-bank exercised its power of general lien and appropriated the amounts due. He contended that even though a formal departmental enquiry was not conducted, a “Fraud Cell” constituted by the bank furnished its confidential report which formed basis of the action of appropriating the amounts. As is evident from the factual narrative, the bank concedes that the amounts withheld from the appellant’s gratuity and other terminal benefits were not preceded by enquiry or based upon findings or at least preceded by procedure which involved him. Findings that are a matter of record, i.e., the internal report which was produced in the criminal proceedings (DW-1/A) as well as the judgment of the Criminal Court, rejected his complicity or involvement in regard to the amounts which were ultimately withheld from his account. So far as the sum of Rs.71,000/- is concerned, the customer’s claim itself appears to have been rejected subsequently—the bank was under an obligation to recover the amounts from the customer having rejected his claim. However, it chose an easy path of appropriating the amounts from the appellant’s account—in an utterly unlawful manner. Equally, so far as the other amount of Rs. 93,000/- is concerned, there is nothing on record to implicate the appellant—the bank seeks shelter under its general lien powers. Now, one can understand that under commercial transactions or where the bank is contractually entitled to claim amounts from an account holder, such power can be resorted to. However, in this case, the respondent-bank strangely seeks recourse to its banker's lien power to appropriate amounts for which it has no explanation or claim. The entire basis for the action appears to be suspicion on the part of its "Fraud Cell" which is not borne out by any evidence. As far as the argument of *laches* is concerned, the Court is of the opinion that the learned Single Judge did not feel constrained given the fact that the appellant has faced prosecution till 2010 and could not possibly have approached the Court till the culmination of those proceedings.

7. Also, it has been held by the Supreme Court that pension, gratuity and terminal benefits cannot be appropriated or withheld without due process of law—as provided under Article 300A of the Constitution of India (Referred to ***State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava and Anr.*** *AIR 2013 SC 3383*)

8. For the above reasons, the appeal has to succeed. The respondents are directed to release all the amounts unlawfully withheld/appropriated by them to the petitioner with interest @ 12% *per annum* from 01.07.2011. The amount shall be released to the petitioner within eight weeks from today. The appeal is allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MARCH 16, 2016
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