

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.310 of 2009
IN
Civil Writ Jurisdiction Case No. 867 of 1999**

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1. The Chairman-cum-Managing Director, Punjab National Bank, 7, Bhikaji Cama Place, Africa Avenue, New Delhi – 110 066
 2. The General Manager, Punjab National Bank, 7, Bhikaji Cama Place, Africa Avenue, New Delhi – 110 066
 3. The Zonal Manager, Punjab National Bank, Zonal Office, Chanakya Place, Patna
 4. The Regional Manager, Punjab National Bank, Regional Office, Patna-B, Chanakya Place, Patna [since renamed as Circle Office, Punjab National Bank through its Circle Head, Darbhanga]
 5. The Branch Manager, Punjab National Bank, Havelikharagpur Branch, District Munager Appellants [Respondent Nos. 2 to 6 to writ petition]

Versus

1. The Union of India through the Secretary, Banking Division, Department of Finance, New Delhi [Respondent No.1 to Writ Petition]
 2. Atmanand Singh Son of Sri Parmanand Singh, Resident of Village – Ghowshpour, P.O. and P.S. Havelikharagpur, District Munager
 3. The District Magistrate-cum- Collector, Munger
 4. The Circle Officer, Havelikharagpur, Munger
- Respondents

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Appearance :

For the Appellant/s : Mr. Sharad Kumar Sinha, Advocate
Mr. Amit Kumar Anand, Advocate

For the Respondent no.2 : Mr. Chittranjan Sinha, Senior Advocate
Mr. Akashdeep, Advocate

For the Respondent nos. 3 and 4 : Mr. Chittranjan Sinha, PAAG-II
Mr. Ranjan Kumar Singh, AC to PAAG-II

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**CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

C.A.V. JUDGMENT

(Per: HONOURABLE JUSTICE SMT. NILU AGRAWAL)

Date: 23 -02-2017

Heard Sri Sharad Kumar Sinha, Advocate

appearing on behalf of the appellants-bank, Mr. Chittranjan Sinha,



Senior Advocate ably assisted by Mr. Akashdeep, Advocate for the writ petitioner-Respondent no.2 and Mr. Chitranjan Sinha, PAAG-II for the Respondent nos. 3 and 4.

2. The appellants-Punjab National Bank is aggrieved by the order dated 10.02.2009 passed in C.W.J.C. No. 867 of 1999 (Atmanand Singh Vrs. The Union of India & Ors.) whereby and whereunder, learned Single Judge has allowed the claim of the writ petitioner for payment of money, which was allegedly agreed by the appellants-bank as per the agreement dated 27.05.1990 with the writ petitioner. The appellants-bank has preferred the present appeal stating herein, as was the stand of the Bank before the learned Single Judge, that the writ application could not have been held to be maintainable and the learned Single Judge could not have directed for enforcement of an agreement. Secondly, the District Magistrate had no power to adjudicate the money claim of the writ petitioner and initiate an enquiry into the matter and that the very basis of the claim of the writ petitioner on which the enquiry was conducted with regard to Misc. Case No. 4 (DW 1) PNB/1989-90, was forged and fabricated document, as no enquiry of any such sort was conducted and the claim of the writ petitioner is based on forged and fabricated documents.

3. Writ petitioner had preferred writ application seeking a mandamus upon the respondents-Punjab National Bank



to refund the money of the writ petitioner by honouring the agreement dated 27.05.1990 contained in Annexure-5B to the writ application.

4. The facts of the case is that the writ petitioner had taken a term loan of Rs. 10,000/- from the Bank by way of financial assistance to run a business in the name of “Sanjeev Readymade Store” from Haveli Kharagpur Branch of Punjab National Bank in the district of Munger. The writ petitioner was paid the said sum of Rs. 10,000/- in two instalments of Rs. 4,000/- on 21.07.1984 and Rs. 6,000/- on 01.10.1984. The writ petitioner had yet another savings account in the same branch of the respondents-bank. However, on 14.02.1990, the term loan with interest had mounted upto a figure of Rs. 13,386/-. In 1989, the writ petitioner, who is Respondent no.2 in the appeal, was granted two cheques of Rs. 5,000/- each by the Circle Officer, Haveli Kharagpur under the Earthquake Relief Fund. The said two cheques were deposited with the Bank for encashment in the other savings account, but instead, were transferred to the loan account. This was done without any authorization of the writ petitioner and without direction of any competent authority. Some time thereafter, the writ petitioner’s son was afflicted by cancer, which required immediate treatment at All India Institute of Medical Sciences, New Delhi. In order to meet the expenses of the treatment, writ petitioner sold 406



bhars of gold jewellery of his wife's "stridhan" and received Rs. 14,93,268/-. He approached the branch of the respondents-bank with a sum of Rs. 14,93,000/- on 04.08.1989 for issuance of two bank drafts, one in his name and the another in the name of his wife. The then Accountant, Mr. T.K. Palit showed his inability to prepare the drafts on the ground of shortage of staff on that day and requested the writ petitioner to deposit the amount in the savings account No. 1020 in the said branch. The Accountant, after receipt of the money, transferred total amount of Rs. 15,03,000/- to the loan account, whereas in the loan account upto 14.02.1990 outstanding dues of principal and interest was only Rs. 13,386/-. The writ petition made grievance before the Branch Manager of the said branch and also filed representations before the Bank-authorities. Thereafter, the writ petitioner approached the District Magistrate, Sri Nanhe Prasad, who ordered the then Circle Officer, Haveli Kharagpur, District Munger, Sri Binod Kumar Singh to make a detailed enquiry into the matter and report. Accordingly, a Misc. Case No. 4 (DW 1) PNB/1989-90 was initiated and in those proceedings, various officials of the Punjab National Bank, including the then Branch Manager, District Coordination Officer of the Punjab National Bank and the Accountant of the Bank were examined from time to time and reports were submitted to the District Magistrate, Munger. Several witnesses were examined



even by the District Magistrate, Munger. There were officers from the Regional Office of the Punjab National Bank, one of them being Sri Tej Narain Singh, the Regional Manager of the Punjab National Bank, Regional Office, Patna-B also deposed making reference of what had transpired to the Zonal Office of the Bank. On the basis of these statements, which were recorded by the Circle Officer and / or by the then District Magistrate-cum-Collector, Munger, Sri Gorelal Prasad Yadav, the matter proceeded. The basic assertion of the writ petitioner having been found correct and the liability having been accepted by the respondents-bank, it was reduced to an agreement dated 27.05.1990, which is Annexure-5B to the writ application between the parties. The agreement was signed by one and all in presence of the Circle Officer and the overall supervision of the District Magistrate. It was duly recorded in writing that the bank had received the deposit amounting to Rs. 15,03,000/- as per deposits made on 02.08.1989, 04.08.1989 and 04.10.1989. It was also recorded that the total term loan and the liability of the writ petitioner up to 14.02.1990 came to Rs. 13,386/- only and the amount of Rs. 14,89,614/- of the writ petitioner would be kept in the Fixed Deposit of the bank and shall be paid with interest by September, 1997. The writ application was filed, when the bank refused to honour this agreement. In support of the writ application, certified copies of the entire proceedings, depositions



as had been obtained by the writ petitioner in the year 1990 were annexed.

5. It may be recorded that before arriving at the above agreement between the parties dated 27.05.1990, the District Coordination Officer of the Bank had also held a detailed enquiry and he found the allegations of the writ petitioner, *prima facie*, to be true. He also recommended that the payment to the writ petitioner be made by September, 1997 with prescribed interest rate and compensation, which could be borne out from Annexure-7 to the writ application.

6. It may also be noted that in course of enquiry by the District Magistrate, in order to ascertain whether the writ petitioner had sold gold jewellery and ornaments, the District Magistrate, Munger had asked one Sri Nityanand Prasad, who was the then Income Tax Officer at Munger to enquire and submit report, who submitted a report affirming the said sale of gold jewellery and receipt of the said amount. Sri Binod Kumar Singh, Circle Officer, Haveli Kharagpur, Munger also submitted an enquiry report substantially supporting the claim of the writ petitioner and also the petitioner having sold the gold jewellery and having received cash in excess of Rs. 14 lacs. The report of the District Coordination Officer of the Bank was also forwarded to the Regional Manager of the Bank, who categorically recorded in his



observation dated 17.06.1990 that the Branch Manager and the Accountant of the Branch had admitted lapses. The above endorsement of the Regional Manager has reflection in the noting of the Zonal Manager contained in Anneuxre-9 series to the writ application.

7. When no payment after September, 1997 came to be made to the writ petitioner, he filed representation before the Bank-authorities, which were Annexures-13 and 14 series to the writ application. When the same did not beget any response, legal notices were sent to the Bank, which were annexed as Annexures-16 and 17 in the writ application. Finally, petitioner moved this Court in writ application not only to honour the so called agreement, but also to refund his money, which was illegally transferred or misaccounted by the Bank or its employees, as the Bank being Public Sector Undertakings has the responsibility towards its customers and citizens at large to act in a fair and honest manner and to maintain the account of its customers with due diligence, fairness and honesty.

8. Before the learned Single Judge as is the stand in this appeal, the Bank filed counter affidavit in the writ application raising serious doubt with regard to existence of any case registered as Misc. Case No. 4 (DW 1) PNB/1989-90. They took the stand that no enquiry was ever conducted nor there was



any enquiry report nor any official of the Bank ever deposed in the enquiry. There was no record of those proceedings and the certified copies, which have been produced and were part of the record of the writ application, were forged and created by the writ petitioner. Another objection was taken by the Bank in the writ proceeding that the District Magistrate had no power to adjudicate the matter and order for enquiry. Yet another objection was taken that the matter relates to disputed questions of fact, which is not maintainable under Article 226 of the Constitution of India in writ jurisdiction.

9. So far legal issues were concerned, the learned Single Judge was correct in holding that the delay in honouring their agreement was a flimsy ground of the Bank and law is well settled by the Hon'ble Supreme Court in the case of **Babubhai Muljibhai Patel Vrs. Nandlal Khodidas Barot and others** since reported in **AIR 1974 SC 2105** that even disputed questions can be gone into in a writ application and the claim of the writ petitioner, which had precipitated way back in 1997, could not be thrown out on the basis of existence of an alternative remedy, when the Bank had itself accepted the liability of payment long back. Learned Single Judge was also correct in holding that the writ application is maintainable against a Bank for maintenance of proper accounts and suit is not a remedy, as has been held in the case of **M/s**



Hyderabad Commercials Vrs. Indian Bank and others since reported in **AIR 1991 SC 247**.

10. Learned Single Judge, after having gone through the voluminous documents, which were brought on record in support of the pleadings by the writ petitioner, found that such documents cannot be created or manufactured, as those were photocopies of the certified copies of the enquiry proceedings before the then District Magistrate. Learned Single Judge, after a detailed hearing had allowed the writ application directing for payment of money, which had been quantified in terms of Annexure-5B to the writ application with due accrued interest within a period of three months from the date of communication/production of a copy of the order.

11. The respondents-bank being aggrieved by the order of the learned Single Judge preferred appeal wherein the same contention was raised and also that the affidavits, which have been filed by the two bank employees, who were said to have participated in the enquiry proceedings before the District Magistrate, were obtained after the judgment of the learned Single Judge and were self serving affidavit.

12. During course of hearing of the present appeal, the District Magistrate-cum-Collector, Munger and the Circle Officer, Haveli Kharagpur, Munger were impleaded as party



respondents and certified copies of the proceedings and the evidences as well as certified copy of the issue register were given to trace out the original record or contemporaneous records of the said Misc. case. The District Magistrate-cum- Collector, Munger in turn constituted a committee, which in its report stated that the records could not be traced out as the office was torched by fire in the year 2002 in students' agitation and a First Information Report had been lodged to the said effect. However, it was stated in the counter affidavit filed on behalf of the Sub-Divisional Officer, Haveli Kharagpur, Munger that one Rajeev Ranjan, the then Incharge Clerk (Revenue Clerk) at that relevant period, had certified and compared and thereafter issued the said certified copies. The Incharge Head Assistant, Chandra Narayan Prasad working at that time had also affirmed that the said certified copies had been signed by one Sri Uday Kumar, the then Circle Officer, Haveli Kharagpur and a short signature had been put by him. One Peon, Ran Vijay Kumar Singh had also affirmed the existence of Misc. Case No. 4 (DW 1) PNB/1989-90. However, the then Collector, Munger, Sri Nanhe Prasad and Gorelal Prasad Yadav, who were posted at that time could not give a positive response because of their old age and matter being an old one.

13. Having heard the learned counsel for the parties and taking into consideration the copies of the proceedings



of Misc. Case No. 4 (DW 1) PNB/1989-90 as well as the certified copy of the proceedings filed before this Court in appeal, which is a voluminous one with a plethora of documents, it could not have been a figment of imagination or a piece of fiction. Thus, the order of the learned Single Judge does not suffer from any infirmity and calls for no interference, which has further been fortified by affirmation of the officer and the office peon as well as Head Clerk posted at the relevant time in the office of the Circle Officer, Haveli Kharagpur.

14. The order of the learned Single Judge passed in CWJC No. 867 of 1999 is affirmed and the appeal is dismissed.

(Nilu Agrawal, J.)

Navaniti Prasad Singh, J. I agree.

(Navaniti Prasad Singh, J.)

Arjun/-

AFR/NAFR	AFR
CAV DATE	20.09.2016
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