Jsn

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 35 OF 2015

1. Devendra P. Thaker
2. Usha D. Thaker
R/at. 1st Floor, 21-New Gitanjali Society,
Near Kameshwar School, Jhodhpur Cross
Roads, Satelite Ahmedabad – 380 015.
Gujarat, India. **…Petitioners**

Versus

1. Senior Superintendant of Post Office, Mumbai City North West Division and Sub Post Master, Borivali.
Kandivali (East), Mumbai 400 101

2. Chief Post Master General, Maharashtra Circle, Mumbai

3. Director (F & S), Department of Post
Dak Bhawan, Sansad Marg, New Delhi – 110 001.

4. Government of India,
The Ministry of Finance,
North Block, New Delhi. **…Respondents**

Mr. Atul Daga, with Ms. Debashree Mandpe for the Petitioner.
Mr. Dhanesh R. Shah, for the Respondents.

CORAM: B.R. GAVAI AND RIYAZ I. CHAGLA, JJ.
DATED: 24th July 2017

<u>J U D G M E N T :-</u> (Per Riyaz I. Chagla J.)

1. Rule. Rule made returnable forthwith. Learned counsel for the Respondent waives service of notice. Heard by consent.

2. The Petitioners by the present Petition are challenging the impugned communication dated 31st July 2012 by which the Respondents have refused the claim of the Petitioners for the amounts payable to them on maturity of the 20, 6 Years National Saving Certificates ('**NSC**' VIII Certificates) of Rs.10,000/- each from post office, Borivali (East) Branch, Mumbai which they had purchased in October – November 1998. The Petitioners had been promised an amount of Rs.20,150/- on maturity of each of the 20 NSE VIII Certificates aggregating to Rs.4,03,000/-, maturity dates being October 29, 2004 and November 12, 2004 respectively.

3. The Petitioners had purchased the 20 NSC VIII certificates issued by Respondent No.4 which is the subject matter of the present Petition. The Petitioners had forwarded

the cheques on 29th October 1998 and 12th November 1998 towards payment of the said 20 NSC VIII certificates and it was mentioned by way of stamp endorsement that the same was issued through “NRO A/c”. The applications for the siad 20 NSC VIII certificates also disclosed and stated “NRI” as the Petitioners belonging to NRI and the Respondents have noted the same. The Constituted Attorney of the Petitioners approached the officers of Respondent No.1 for claiming the amount payable to the Petitioners on maturity of the 20 NSC VIII certificates. The CA was informed that there were irregularities in the issue of the Certificates to the Petitioners. The Petitioners were informed of the irregularities viz. that the Petitioners being NRIs were not eligible to be issued the NSC VIII Certificates and are thus not entitled to the maturity amount. The Petitioners preferred written complaints during the year 2004 – 2005. On receipt of this complaint, the Petitioners were informed by Respondent No.1 that the matter had been referred to the Ministry of Finance by the Directorate vide communication dated 9th May 2004 for clarification. The Petitioners not having any response from the Respondents, had addressed a letter to the Chief

Postmaster General Maharashtra Circle, Mumbai. In response, the Petitioner No.1 was informed vide letter dated 4th July 2006 that the matter has now been referred to Respondent No.3. The Petitioners were not residing in India and their Constituted Attorney, being the Petitioners sister passed away in August 2007. The Petitioners made constant enquiries but there was no definite answer to the letters addressed by the Petitioners' representative to Respondent No.1 on 13th July 2011 and 31st July 2011. The Petitioners had addressed yet another letter dated 24th September 2011 to Respondent No.1 and which was endorsed to the Director (FS), Department of Posts, New Delhi and was received on September 27, 2011. The Petitioners had also made necessary applications under the Right to Information Act, 2005 (RTI Act). The Petitioner No.1 received communication dated 20th December 2011 in response to the Petitioners' Application under RTI dated 24th October 2011 from the Respondent No.1 stating that on receipt of sanction for regularisation of the irregular issue from the competent authority, maturity amount would be paid to the Petitioners. The Petitioners had learnt through RTI that the matter had been referred to Respondent No.2. The Petitioners were also supplied certain documents from Respondent No.4 and pursuant to which, the Petitioner No.1 received a communication copy from Respondent No.1 by which the Petitioners were informed that Respondent No.4 has vide ID No. F 3/2/2009-NS-II dated 18th July 2012 allowed only POSB rate of interest to the Petitioners in respect of their NSC VIII Certificates and their investment has been referred to as an “irregular investment”. Petitioner No.1 had accepted an amount of Rs.3,01,460/- vide cheque bearing No.595522 under protest reserving his rights to claim the difference plus interest. Petitioner No.1 had also addressed a letter dated 30th August 2012 to the Minister of State, Communication and IT, New Delhi. In response to the said letter, Petitioner No.1 received a letter addressed by Assistant Director Postal Service (SB & FS), Maharashtra Circle, Mumbai, informing the Petitioners that only the POSB rate of interest had been paid and that appropriate action had been taken against the official who was at fault. The Petitioners have not obtained the requisite information under RTI and preferred an appeal before the Central Information Commission, New Delhi and pursuant to which Respondent No.3 who was directed to furnish relevant file notings for the year between 2006 to 2012. The Petitioners being aggrieved by the impugned communication dated 31st July 2012 and the refusal on the part of the Respondents to make payment of the said amount on maturity of the NSC VIII Certificates as well as furnish all the necessary information, have filed the present Petition.

4. Shri Daga, learned counsel for the Petitioners submitted that the Respondents were at all time were aware that the Petitioners were NRI and in fact this had been mentioned in their application for the NSC VIII Certificates, and on the cheques it was mentioned by stamp endorsement that the same was issued through “NRO Account”. Shri Daga has also relied upon the National Saving Certificates (VIII Issue) Rules, 1989 and in particular Rule 4 (3), wherein it is mentioned that “Non-Resident Indians (NRIs) were not eligible to purchase the National Savings Certificates” and this was introduced by way of amendment on 25th July 2003, subsequent to the investment made by the Petitioners. Shri Daga has relied upon a judgment of this Court in ***Romeo***

Sam Arambhan Vs. Union of India[1] in support of his submission that the Petitioners cannot be deprived of interest legitimately accrued on investment after maturity of the Certificates. Shri Daga has submitted that when the investment had been made by the Petitioners of the NSC VIII Certificates, there was no such bar on NRIs purchasing the NSC's. Shri Daga has submitted that Respondents have failed to fulfil their obligation of making payment of aggregating to Rs.4,03,000/- along with interest which they had promised to pay on maturity of the NSC VIII Certificates. Shri Daga has, therefore, submitted that the present Petition be allowed as prayed for.

5. Shri Dhanesh Shah, learned counsel for the Respondents has also referred to the National Saving Certificates (VIII Issue) Rules, 1989 and in particular Rule 4 (3) and has submitted that the said Rule was applicable and that the investment made by the Petitioners as NRI was irregular as was communicated to the Petitioners. Shri Shah has submitted that the Petitioners are only entitled to the

1 AIR 2003 Bombay 452.

POSB rate of interest as applicable. Shri Shah has accordingly submitted that there is no merit in the Petition.

6. We are of the considered view that the Petitioners being NRI's were eligible to make the investment in the NSC VIII Certificates in 1998 and that there was no bar as the National Saving Certificates (VIII Issue) Rules, 1989, in particular Rule 4 (3) had been inserted only on 25th July 2003 i.e. subsequent to the purchase of the Petitioners. The documents on record also clearly reveal that Respondents were aware that the Petitioners were NRI and this is apparent from the application for purchase of the NSC's and the cheque which had been issued by the Petitioners, wherein the endorsement had been made that it was through an 'NRO' Account. In the light of this Court's judgment in ***Romeo Arambhan (Supra)***, we are of the considered view that the impugned communication has erroneously stated that the investment was irregular and Petitioners can only be granted POSB interest.

7. We accordingly allow the Petition and pass the following order:-

(a) The Writ Petition is made absolute in terms of prayer clause (b).

(b) The Respondent shall make payment to the Petitioner within a period of 6 weeks from today.

(c) Writ Petition is disposed of in the aforesaid terms.

(RIYAZ I. CHAGLA J.) **(B.R. GAVAI J.)**