IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5725 of 2014 (O&M)
Date of decision: 07.03.2017

Sumitra Devi .... Appellant

Vs.

Manager, Punjab National Bank & ors. .... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Amit Parashar, Advocate for
Mr. Rajneesh Chadwal, Advocate
for the appellant.

Mr. R.T.Redhu, DAG, Haryana.

Mr. Arvind Rajotia, Advocate
for respondent No.2.

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RAJIV NARAIN RAINA, J. (ORAL)

The husband of the appellant- Sumitra Devi served in the Health Department and expired during government service and therefore, she became entitled for family pension every month. The government agreed to transfer the family pension account to the Branch of Punjab National Bank at Mahendargarh. The Branch Manager – respondent No.1 took an undertaking Ex.DB from the Sumitra Devi that in case any excess payment is made to her by mistake, the Bank would be free to make deductions from the family pension to recover the amount paid in excess. Excess pension was credited in the account of the appellant which the Bank started to recover. This brought Sumitra Devi to file a suit in Narnaul, which was decreed in her favour.

The Bank made an appeal and succeeded in getting the trial court's judgment and decree set aside. The right of the Bank to recover money was declared in their favour on the basis of the undertaking which both the parties were bound by as one is bound by a writing in the nature of contract.

Aggrieved by the rejection of her suit, Sumitra Devi has approached this Court in regular second appeal praying that the judgment and decree passed in appeal be set aside and mandatory injunction be issued restraining the Bank not to make deduction for excess payment made by the Bank.

The law in ***State of Punjab and ors. vs. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334*** has been subsequently explained by the Supreme Court in ***High Court of Punjab and Haryana & ors. vs. Jagdev Singh, (2016) 4 SCC 497*** holding that the judgment is not an authority in cases of undertakings given by an account holder that in case of excess payments made by mistake, the Bank can make recoveries of the extra payments. Sumitra Devi furnished an undertaking to which she was bound and therefore, cannot be heard to wriggle out from its terms. It is settled law that Court will not permit a party to wriggle out its contractual obligations voluntarily incurred and accordingly this Court has no hesitation in upholding the judgment in appeal as being the correct position in law. *Jagdev Singh's* case covers the issue in appeal in favour of securing the recovery.

On a query put to the parties, the Court is informed that the total amount involved in excess payments is about ₹ 80,000/-. The husband of the appellant was a Class IV employee, who died in harness and it would cause undue hardship to the appellant if excess payments are recovered in one go and accordingly to secure the ends of justice, the decree deserves to be modified to the extent that the over-paid will be recovered in $1/3^{rd}$ of the total monthly pension till the recovery is made and nothing is left due and payable.

In this exercise, and as a special case, it is directed that the Bank would not charge any interest on excess payments because Sumitra Devi was not at fault. She did not practice deceit or commit fraud or make any misrepresentation and it was the Bank who released the excess payments to her. If the Bank failed to keep check and control on its internal functioning, then the appellant – Sumitra Devi cannot be held responsible in terms of undertaking to be saddled with interest and only the principal can be recovered. Nevertheless, the respondent Bank is at liberty to recover the element of interest from erring officials who permitted over-payments by negligence and systems failure.

With these observations, the appeal is dismissed but the decree is modified accordingly as above.

(RAJIV NARAIN RAINA)
JUDGE

07.03.2017
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1.Whether speaking/reasoned? *Yes*
2.Whether reportable? *No*