IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 969 OF 1998

Mulchand Daulatram Kriplani since deceased, through legal heirs Gul M. Kirpalani and Ors.	**}**	**Petitioners**
versus		
State Bank of India and Ors.	**}**	**Respondents**

Mr. Arif Bookwala-Senior Advocate with Mr. Ashish Kamat, Ms. Mahek Bookwala and Mr. Subhradeep Banerjee i/b. M/s. Ranjeet and Co. for the petitioners.

Mr. S. S. Gaikwad i/b. M/s. SSP Legal for respondent no. 1-absent.

CORAM :- S. C. DHARMADHIKARI &
PRAKASH. D. NAIK, JJ.

DATED :- MARCH 27, 2018

P.C. :-

1. In terms of the earlier order passed by this court, we would proceed to dispose of this writ petition.

2. We have noted the core issue. That is that the heirs of one Mulchand Kriplani, the State Bank of India, the Reserve Bank of India and a private party, namely, Abhishek Agrawalla are respondents to this writ petition. The petitioners, being the heirs of the deceased Mulchand Kriplani, are seeking a direction to the State Bank of India and the Reserve Bank of India to forthwith

make payment of maturity value of India Development Bonds with interest. They also claim the accrued interest and that is the alternate prayer.

3. It is common ground that the State Bank of India offered the India Development Bonds on 26th September, 1991. The terms and conditions of the bonds need not be referred in further details, but what transpired was that the third respondent wrote to the first respondent for purchase of these bonds in London worth US$ 1,00,000/-. There was a circular issued by the first respondent's London Branch enclosing application forms. The State Bank of India issued, on 15th January, 1992, 10 bond certificates bearing distinct numbers. The redemption of these bonds were to be made on expiry of five years payable in US$. A fax was sent by one Umashankar Modi to the third respondent stating that the bonds would be pledged with Indian Bank and that it should keep them duly signed at the back. It is stated that there was a certificate allegedly issued confirming the arrangements, but the petitioners claim that this was a fabricated document. The said Umashankar Modi himself denied the validity and existence of this document in his affidavit filed in Notice of Motion No. 2408 of 1993 in Suit No. 3653 of 1993. This document was never produced in any proceedings filed by

respondent no. 3 or respondent no. 1. The alleged document dated 16th March, 1992 was never produced for inspection of the petitioners either. It may be that one interest warrant was despatched to respondent no. 3, which is duly encashed. However, the third respondent visited India, visited the original petitioner in the presence of Mr. Umashankar Modi and gifted the 10 bonds to the original petitioner. There was a gift declaration duly signed by the third respondent. The application was in usual proforma prescribed by the first respondent. In August, 1992, the first respondent claimed that the remaining nine interest warrants were despatched to respondent no. 3. There was a letter addressed at page 67 of the writ petition dated 8th September, 1992. Then, there is a warrant dated 15th July, 1992 encashed by the third respondent. That is in the sum of US$ 4750/-, but now the first respondent, in this writ petition, on an affidavit, states that the warrants were incorrectly encashed despite instructions to the contrary. On 5th December, 1992, the petitioner addressed a letter through his advocate to respondent no. 1 requesting it not to allow the third respondent to encash any warrant of interest or pay any further sums to him. A reply was sent by the first respondent to the petitioner on 12th December, 1992 stating that the interest cheques should be retrieved by the petitioner from the third respondent and then handed over to the first respondent. It is stated that the third respondent then took a stand, particularly that the bonds were kept in safe custody and in trust with Mr. Umashankar Modi. However, the first respondent-Bank specifically informed the third respondent that the India Development Bonds have been gifted to the original petitioner and necessary formalities for registration have been completed. This is a document and according to the petitioner to be found at page 12 of the compilation of documents of the third respondent. That is how on 24th December, 1992 a message was forwarded by the first respondent to the third respondent calling upon him to surrender the nine interest warrants to enable them to issue fresh warrants in favour of the petitioners. All this is also recorded in the letter of even date of the petitioners' advocate.

4. The dispute started when the third respondent flatly refused that there was a gift of the bonds to the original petitioner and every single document related thereto relied upon by the petitioners is fraudulent. The first respondent corresponded with the third respondent and contended to the contrary. In fact, it questions the locus of the third respondent. The correspondence thus continued, but when the bank maintained as above, according to the petitioner, it is an obligation of the bank to handover the proceeds on maturity of these bonds. In fact, the

petitioners say that the original petitioner complied with his obligation by filing a suit in this court. It is an inter-pleader suit being Suit No. 3653 of 1993. It is in these circumstances that an application for interim relief was also made. Thus, there were proceedings, but what is material to note, according to the petitioners, is that in the suit filed by the third respondent against the first respondent in Delhi High Court, the original petitioner was not made a party. Even otherwise, no interim relief or ad-interim relief was granted in favour of the third respondent. The original petitioner also opposed any relief being granted to the third respondent in the inter-pleader suit. In the meanwhile, on 15th January, 1997, the India Development Bonds matured. The first respondent filed an appeal against the order dated 9th December, 1996 in the notice of motion in the above inter-pleader suit. The appeal was also dismissed.

5. Then, there is a suit filed being Suit No. 212 of 1997 by the third respondent against the original petitioner, the bank, namely, respondent no. 1 herein. In this suit also an application by way of Notice of Motion No. 379 of 1997 for interim relief was moved and that order is heavily relied upon. Copy of that order is at page 153 of the paper book.

6. It is then contended that the said order was challenged in appeal by the third respondent, but on 19th February, 1997, that appeal was also dismissed. The pertinent observations in paras 6 and 7 of the order are lied upon. It is also observed in the said order that the deceased-original petitioner-the first defendant to that suit cannot be restrained from encashing the bonds or no equitable relief should be granted in favour of the third respondent before us when there bas been a gross delay on his part. The bonds also have been already transferred in favour of the original petitioner by the first respondent-bank. A dismissal of this appeal, according to the counsel, therefore, confirms the *prima facie* position noted by this court in judicial orders. It is in these circumstances, the petitioners called upon the first respondent as also the third respondent to make payment, but the first respondent maintained that in the absence of an order of the court, no payment can be made. A letter was addressed by the advocate for the original petitioner alleging that the first respondent's refusal to make payment is wrongful and illegal. Even Notice Motion No. 379 of 1997 moved in Suit No.212 of 1997 was also dismissed. That is how the petition was filed being Writ Petition No. 969 of 1998. That is the instant writ petition. In this petition, several affidavits have been filed, including by the third respondent.

7. During the pendency of the petition, the original petitioner expired, but the heirs and legal representatives are brought on record by a judicial order of this court.

8. Prior thereto, on admission of this petition, an application seeking interim relief was moved, on which, the Division Bench, on 18th August, 2009 passed the following order:-

> "1. It appears to be common ground that the bonds have matured and therefore, bank can not retain realization amount of the bonds. The Bank has also filed Inter Pleader Suit for deciding as to who is entitled to the value of the bonds. Taking into consideration overall view of the matter, therefore, in our opinion, it will be appropriate to direct the respondent No.1 State Bank of India to deposit in this Court the redemption value of the bonds together with interest so that Court can pass further orders about the disbursement of due amount.
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> 2. Learned counsel appearing for the Bank states that the bank will need two weeks time to deposit the amount in the Court. In these circumstances, therefore, it is directed that the respondent No.1 bank shall deposit in this Court the redemption value of the bonds together with interest, with due intimation to the petitioner and respondent No.3. The Bank shall also file Statement showing as to how it has arrived the amount which it has deposited. The petitioner and the respondent shall be entitled to lodge their objections if they have any about the calculations. Put up the matter after three weeks.
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> 3. The Prothonotary and Senior Master, shall invest the amount in fixed deposit subject to the further orders."

9. Thus, the bonds have matured is the admitted position. The amount on maturity is due and payable is also admitted. The further undisputed fact is that the amount is brought in court and lying invested in a Nationalised Bank.

10. On such a petition filed in the year 1998, we made it clear to both sides that the third respondent was duly served earlier. He has also been served once again and by a private notice by the petitioners' advocate. There is, therefore, no impediment in passing the final orders.

11. We expressed to Mr. Bookwala as to whether the petitioners can indemnify the first respondent-bank against any claim being made by the third respondent and on instructions, Mr. Bookwala stated that such an indemnity would be duly furnished in favour of the first respondent. If that is furnished within a period of two weeks from today and a copy produced before the Prothonotary and Senior Master, the Prothonotary and Senior Master shall allow the petitioners to collect the proceeds with accrued interest. However, we clarify that our order passed today shall not conclude the issues and controversy in the pending suit, if any and particularly instituted by respondent no. 3. All contentions of all parties to that suit/proceedings are expressly kept open.

12. All concerned to act on an authenticated copy of this order.

13. The payment shall be made to the first petitioner, who shall collect the same on behalf of all the petitioners, who are the heirs and legal representatives of the deceased sole petitioner.

14. Rule is made absolute in the above terms. The writ petition is disposed of.

(PRAKASH.D.NAIK, J.) **(S.C.DHARMADHIKARI, J.)**