

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

+ **RFA No. 230/2005**

% **20th August, 2018**

ANJANA KHANEJA Appellant

Through: Ms. Biji Rajesh, Advocate
(Mobile No. 9717577733).

versus

STATE BANK OF PATIALA Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 ('CPC') is filed by the plaintiff in the suit impugning the Judgment of the Trial Court dated 28.1.2005 by which the trial court dismissed the suit for recovery of Rs.8,62,336/-. Defendant in the suit is State Bank of Patiala.

2. The basic issue in the suit and the appeal was/is whether the respondent/defendant-bank was entitled to deduct one additional percent of the Fixed Deposit amount, in addition to giving a 2% lesser

interest rate than as payable on completion of Fixed Deposit period, as charges on account of premature conversion by the appellant/plaintiff of a Fixed Deposit of Rs.6,57,00,000/- i.e. on a normal premature encashment of a fixed deposit rate of interest was brought down from 14% to 12% when the fixed deposit was prematurely encashed, and which Fixed Deposit was in rupees, and thereafter since the new fixed deposit is made in foreign currency, therefore besides deducting 2% for premature encashment, a 1% of the amount additionally has to be deducted for creating a foreign currency account in terms of relevant RBI Circular.

3. The facts of the case are that appellant/plaintiff on 23.4.1997 created a fixed deposit for two years and three months of a sum of Rs.6,57,00,000/-. The maturity amount was Rs.8,95,42,356/-. Since however this fixed deposit was encashed prematurely by the appellant/plaintiff on 24.4.1998, a sum of Rs.7,36,05,600/- was credited to the account of the appellant/plaintiff giving a lesser interest of 12% instead of 14% to be paid on completion of maturity period. The amount of Rs.7,36,05,600/- was converted to US\$ 18,55,285.68 and put in an FCNR(Foreign Currency Non-Resident deposit) fixed

deposit with maturity value of US\$ 19,53,966.47 at 5.25%. This Fixed Deposit called as Special Term Deposit was rolled over when it matured on 29.4.1999 for another period of twelve months with agreed interest at 4.75 % compounded with maturity value being US\$ 20,47,881.92. When this term deposit was encashed after its period on 24.4.2000, the respondent/defendant-bank however deducted an amount of Rs.7,39,623/-, and it transpired that this amount which was deducted by the respondent/defendant-bank was on account of the fact that actually at the time of first premature encashment on 24.4.1998 the appellant/plaintiff besides getting a lesser interest at 12% instead of 14%, the respondent/defendant-bank was entitled to charge a penalty of 1% on account of RBI circulars and for this 1% of Fixed Deposit amount of Rs. 7,39,623/- no deduction was made at the relevant point of time. Appellant/plaintiff protested to this, as it was contended by the appellant/plaintiff that this was done without any notice, and this could not have been done on 24.4.2000 when the claim was as on 24.4.1998.

4. In the written statement filed by the respondent/defendant-bank the sole issue which was raised was that

by mistake when for the first time that the fixed deposit of Rs.6,57,00,000/- was encashed on 24.4.1998, an amount of 1% of penalty had to be deducted because conversion was from a rupee account to a foreign currency account in view of the Circular dated 13.3.1992 but was by mistake not deducted ,and consequently the respondent/defendant-bank was entitled to this 1% amount which translated to a sum of Rs.7,39,623/-.

5. After pleadings were complete the trial court framed the following issues:-

“(1) Whether deduction of Rs.7,39,623/- made by defendant is illegal as alleged by the plaintiff? OPP

(2) If issue no. 1 is decided in favour of the plaintiff, whether she is entitled to recover this amount from the defendant? OPP

(3) Whether the plaintiff is entitled to recover any interest from the defendant if so at what rate, for what amount and for what period? OPP

(4) Relief.”

6. Trial court had held issue no. 1 in favour of the respondent/defendant-bank by holding that the respondent/defendant-bank had committed a clerical mistake which was pointed out during the audit proceedings and the RBI instructions were proved as Ex.DW1/2 which directed deduction of 1% additional penalty on

conversion of a rupee account to a foreign currency/US\$ account. The relevant circular in this regard, and which was proved by the respondent/defendant-bank was Ex.DW1/2, and which is not reproduced in the impugned judgment, the same reads as under:-

“Circular No. P&SB/3 of 1992-93

Dated: 8th April, 1992

NRI SEGMENT –
CONVERSION OF NRE DEPOSITS INTO FCNR
DEPOSITS AND VICE-VERSA BEFORE MATURITY
OF DEPOSITS

Please refer to our Circular No. P&SB/90 of 1989 dated the 30th June, 1989

2. In terms of paragraph 29A.19 (ii) of Exchange Control Manual “in cases where FCNR deposits are converted into NRE deposits before maturity at the request of account holders, the FCNR deposits should be treated as if they have been withdrawn prematurely for making new deposits in NRE accounts. The rule regarding rate or interest for premature withdrawal of FCNR deposits will be applicable in such cases.” Similarly NRE deposits when converted into FCNR deposits before maturity have been subjected to penalty of 1%.

3. The Reserve Bank of India vide their directive DBOD. No. BC.100/13.01.09/92 dated the 13th March, 1992 have advised in regard to queries raised by some banks as well as others regarding waiver of charging of penal interest on conversion of NRE deposits into FCNR deposits and vice-versa, before maturity of deposits that it is not considered necessary to waive the penal provision.

4. All branch managers are advised to keep a note of above instructions and bring the contents of this Circular to the notice of staff for meticulous compliance.”
(underlining added)

7. In my opinion, Ex.DW1/2 being the circular dated 8.4.1992, is conclusive in regard to the issue requiring decision

because it shows that when a rupee NRE account of a fixed deposit is converted into FCNR deposits i.e. a Foreign Currency Non Resident Deposits then a penalty of 1% is chargeable whenever a Fixed Deposit is prematurely encashed.

8. In my opinion, therefore, the respondent/defendant-bank did not do anything illegal because it has acted in terms of the RBI direction and which circular has been proved as Ex.DW1/2. Respondent/Defendant-bank has done the necessary adjustments because it had in his hand the moneys of the appellant/plaintiff, and though no period of limitation is provided for adjustment, even if we take a three year period of limitation, it is seen that entitlement of the respondent/defendant-bank arose on 24.4.1998 and the necessary adjustment was made by the respondent/defendant-bank on 24.4.2000.

9. I do not find any merit in the appeal and the same is hereby dismissed.

AUGUST 20, 2018

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VALMIKI J. MEHTA, J