IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-5455-2017 (O&M)
Date of Decision: 06.02.2020

Union of India & Anr.

... Appellants

Versus

Ram Niwas Kaushlia & Ors.

…Respondents

And **RSA-2669-2017**

Ram Niwas Kaushlia & Anr.

... Appellants

Versus

Union of India & Ors.

…Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : **Mr. Namit Kumar, Advocate,**
for the appellants-Union of India.

Mr. Mayank Aggarwal, Advocate
for appellant Ram Niwas Kaushlia in
RSA No. 2669 of 2017 and
respondent No.1 in RSA No. 5455 of 2017.

Mr. A.P. Setia, Advocate for
respondent No.2 Manohar Lal in
RSA No. 5455 of 2017 and
respondent No.3 in RSA No. 2669 of 2017.
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<u>ARUN MONGA, J</u>

1. Above titled two cross appeals are directed against a common judgment and decree dated 14.10.2016 rendered by First Appellate Court. Trial court judgment and decree dated 17.04.2013 partly decreeing the plaintiffs' suit for recovery of money with interest was upheld and both the cross first appeals were dismissed. For facility of understanding, the parties herein are

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recited hereafter as originally addressed before the trial court.

2. Facts succinctly are that defendants No. 3 to 5 (Manohar Lal Kumar, Kishan Lal and Shyam Lal) were the Agents of the Post office at the relevant time. Plaintiffs (Ram Niwas Kaushlia and his wife Smt. Santosh Kaushlia) had given crossed cheque dated 31.03.2003 for Rs 5 lakhs and dated 12.06.2003 for Rs. One lakh drawn in favour of defendant No. 2 (Post Master). The cheques were signed and issued by Ram Niwas Kaushlia-plaintiff No. 1 from his account in Syndicate Bank. Cheque proceeds were realized by defendant No. 2 on 03.04.2003 and 16.06.2003, respectively.

3. Plaintiffs asserted that cheques alongwith their signed forms of application for opening Monthly Income Scheme (MIS) accounts in Post Office were given by them to defendant No. 3 for opening their joint MIS accounts.. Defendant No. 3 had also taken blank signature on the reverse side of the cheques. Plaintiffs were paid a sum of Rs. 51,750/- through Cheque No. 527518 as interest. They *bonafide* believed that the amount of cheques aggregating Rs. Six lakhs had been invested for the specified purpose and their joint MIS accounts had been opened in the post office, Sonipat. However, when defendant No. 3 suddenly disappeared/absconded from Sonipat, the plaintiffs made enquiries from the post office/ authorities about their funds. It was discovered that instead of opening their joint MIS account, a Saving Bank account was got opened on 03.04.2013 in their joint names and the cheque amount of Rs. 5 lakhs was credited to that account. Later, not only the said amount of Rs. 5 lakhs in that account was withdrawn but Saving Bank account was also closed on 17.04.2003. It was discovered that the remaining amount of Rs. One lakh of cheque dated 12.06.2003, was credited into an MIS account opened in the name of defendant No. 6 (Smt. Shakuntala w/o Mehar Chand). All this was done by the officials of the Post Office in collusion with the private defendants fraudulently and by forging the

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plaintiffs' signatures on the relevant account opening and withdrawal forms. Instead of using the forms actually signed and given by the plaintiffs for opening of their joint MIS accounts by using those forged documents for the purpose. The plaintiffs thus claimed refund of the amount of Rs. 6 lakhs with interest @ 18% per annum.

4. Defendants No. 1-2 pleaded that the cheque for Rs. 5 lakhs endorsed for opening of Saving Bank account, application for opening Saving Bank account and deposit slip in the names of the plaintiffs were presented at the Post Office by defendant No. 3, who was also the introducer of the account. Accordingly, Saving Bank account No. 451236 was opened on 03.04.2003 in the joint names of the plaintiffs. Due to contravention of rules in opening the said Saving Bank account, the same was got closed and the money was withdrawn on 17.04.2003 by defendant No. 3 on the basis of relevant authority documents signed by the account holders. As regards the cheque dated 12.06.2003 for Rs. One lakhs, the same along with signed forms for opening of MIS account in the name of Smt. Shakuntala Devi (defendant No. 6) was presented by Krishan Kumar post office agent (defendant No. 4). Accordingly, an MIS account for Rs. One lakh was opened in the name of defendant No. 6. There was no negligence or collusion on the part of the officials of respondents No. 1 and 2. Fraud, if any, on the plaintiffs had been committed by the private defendants for which they (defendants No. 1 and 2) were not liable.

5. Private defendants denied any wrongdoing and liability.

6. Based on rival pleadings, trial court framed following issues:

1. Whether the plaintiff is entitled for a decree of Rs. 6,00,000/- alongwith interest at the rate of 18% per annum from the date of filing of the present suit till realization of amount ? OPP

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2. Whether the suit of the plaintiff is not maintainable in the present form? OPD

3. Whether the plaintiff has no cause of action to file the present suit ? OPD

4. Relief.

7. On appraisal of the evidence led by parties, the learned trial court held under issue No. 1 that a sum of Rs. 6 lakhs was deposited by plaintiffs with defendant No. 2. But, the said amount was misappropriated by the officials of the defendants No. 1 and 2 in connivance with their agent. Issues No. 2 and 3 were decided against the defendants and a decree with costs was passed to the effect that the plaintiffs are entitled to Rs. 6 lakhs alongwith interest @ 6% pr annum from the date of filing of the suit till realization.

8. Plaintiffs and defendants No. 1 and 2, being aggrieved, both filed appeals. The same were dismissed by a common judgment dated 14.10.2016 passed by the learned Additional District Judge, Sonipat, thereby affirming the findings and the judgment/decree of the trial court.

9. Before this Court also, the plaintiffs have filed RSA No.2669 of 2017 and defendants No. 1 and 2 filed RSA No. 5455 of 2017 assailing the judgment and decree of the learned First appellate Court, whereby it had upheld the judgment and decree of the learned trial court.

10. I have gone through the record of the case and heard learned counsel for the parties.

11. Learned counsel for the plaintiffs has argued that the Courts below misconstrued the provisions of Section 34 of Code of Civil Procedure by not allowing any interest on the principal amount of Rs. 6 lakhs for the period prior to the filing of the suit and by allowing lesser rate (6%) of interest than their claim/entitlement @ 15%.

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12. Mr. Namit Kumar, learned counsel for defendants No. 1 and 2 (Union of India) contended that fraud, if any, was committed by the private defendants, the department is not responsible or liable for the same as per Rule 15 of the Post Office Saving Bank General Rules, 1981. The two courts below wrongly held that defendants No. 1 and 2 are liable to pay the decreetal amount. He also contended that, if at all this Court holds defendants No. 1 and 2 liable, then the plaintiff are not entitled to any interest for the period prior to the filing of the suit or to any further increase in the rate of interest allowed by the Courts below.

13. In my opinion, the plaintiffs' appeal merits being partly allowed whereas the appeal filed by defendants No. 1 and 2 deserves dismissal.

14. After referring to, discussing and evaluating the evidence, especially the testimony and report of Finger print and hand wring expert (PW Ram Dhan Babbar), the learned trial court held that the account opening form for the saving bank account did not bear the plaintiffs 'genuine signatures, form of withdrawal of money (Rs. 5 lakhs) from the said account purporting to bear the signature of plaintiff No. 2 Smt. Santosh Kaushlia also did not bear her genuine signature and that the said documents bore the plaintiffs' forged signatures. Further, as per Rules, the maximum amount of Rupees two lakhs could have been deposited in and that some initial cash deposit was mandatory for opening the saving bank account. There was contravention of the said provisions in opening the said Saving Bank account. As regards the plaintiffs' remaining amount of second cheque for Rs. 1 lakh, the trial court found that plaintiffs had given the said cheque also for opening MIS account in their own joint names but the same had been fraudulently used for opening of and credited into MIS account in the name of defendant No. 6 Shakuntala Devi. Consequently, it held that a sum of Rs. 6 lakhs deposited by plaintiffs

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with defendant No. 2 was misappropriated by the officials of the defendants in connivance with their agent.

15. For ready reference, the relevant part of para 31 of the judgment dated 17.04.2013 passed by learned trial court is reproduced as under:-

> "*Admittedly, Saving Bank Account No.451236 dated 03.04.2003 was jointly opened in the names of plaintiffs through cheque No.812429 dated 31.03.2003 issued by plaintiff No.1 in favour of Postmaster, Sonipat. However, under the provisions of Post Office Saving Account Rules (Rule No.30) no new saving could have been opened without depositing the amount in cash. Further as per Post office Saving Account Rules, no amount exceeding Rs.2,00,000/- could be accepted in the Saving Bank Account by the officials of the post office. However, in the case in hand, Saving Bank Account in joint name of the plaintiffs was opened by defendant No.2 through cheque of Rs.5,00,000/- in contravention of the said rule. Further as per provisions of Post Office Saving Bank Rules, if new Saving Bank Account is opened in contravention of rules, in that event, account will be closed under the orders of the Head Postmaster after issuing of notice in writing in the prescribed form under Rules to the depositor at proper address and to remit the amount of credit in the account of depositor by cheque or by money order after deducting the usual money/commissions. However, in the present case, no such procedure has been followed by the Head Post Master. Neither any notice in writing was issued to the plaintiffs nor a sum of Rs.5,00,000/- was ever credited in the account of depositors through cheque, money order o even in cash rather Saving Bank Account of plaintiffs was closed by defendants on 17.04.2013. All these facts show that the officials of the Post Office deliberately and intentionally in connivance with Agent allowed withdrawal from the Saving Bank Account of plaintiffs fraudulently and illegally on the basis of withdrawal form bearing forged signatures of plaintiff No.2 Smt. Santosh. So far as other cheqe No.808531 dated 12.06.2003 drawn....*"

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16. The learned First Appellate Court concurred with and affirmed above finding of fact returned by the learned trial Court. The relevant para no. 19 of the judgment of the First Appellate Court is reproduced hereunder:-

> "*19. Defendant No.2 has taken a stand that plaintiffs issued a cheque of Rs.5 lacs with application and account opening form to open a Saving Bank Account in their joint names and accordingly, joint Saving Bank Account was opened in the names of plaintiffs. But, this Saving Bank Account was opened in contravention of rules due to which account was closed on 17.04.2003 and made payment of Rs.5 lacs to plaintiffs. It is admitted fact that as per provisions of Post Office, Saving Account Rules, no new saving account could be opened without depositing some amount in cash and no amount exceeding Rs.2 lacs can be accepted in the Saving Bank Account by the officials of the Post Office. However, in the present case, Saving Bank Account in joint names of plaintiffs was opened by defendant No.2 through cheque of Rs.5 lacs. Why this account was opened through cheque of Rs.5 lacs exceeding the limit of Rs.2 lacs and without cash deposit opened? There is no explanation put forwarded by defendant No.2. Further, as per defendant No.2, this account was closed on 17.4.2003, but defendant No.2 produced no evidence to show that any notice was ever given to the plaintiffs to close this account or payment of Rs.5 lacs was made to plaintiffs whereas it has been proved by the evidence of PW7 Ramdhan Babbar, Finger Print Expert that an amount of Rs.5 lacs not paid to plaintiffs. These facts show that officials of Post Office deliberately in connivance with agent withdrew or allowed to be withdrawn the amount from Saving Bank Account fraudulently and illegally on the basis of forged signatures of plaintiff No.2 Santosh.*

The findings of the trial Court were rightly affirmed by the first Appellate Court as the same have been returned after due appreciation of evidence adduced by the parties.

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17.1 Firstly; the cheque dated31.03.2003 for Rs 5 lakhs bearing the genuine signatures of plaintiff No. 1 had accompanied the forms allegedly submitted by defendant No. 3 to the post office for opening of SB account in the joint names of the plaintiffs. It has been found as a fact that the forms allegedly submitted by defendant No. 3 do not bear the plaintiffs' genuine signatures and that their signatures on these forms are forged. If at the time of opening the account, the purported signatures of plaintiffs No. 1 these forms had been compared with his genuine signatures on the cheque, the forgery of his signatures on the account opening form would have revealed then and there. It is obvious in the peculiar facts and circumstances of the case that the cheque payment of Rs. 51,750/- to the plaintiffs as interest was in fact intended to conceal the fraud and to mislead the plaintiffs into believing that their MIS joint accounts in the Post Office had been actually opened. Thus, it was due to sheer negligence, if not complicity of the concerned officials of defendants No. 1 and 2 that the Saving Bank account on forged signatures of the plaintiffs was opened at post office.

17.2 Secondly; the saving Bank account was opened in contravention of the relevant rules, which mandated some initial cash deposit for opening of Saving Bank account and prescribed the ceiling of Rs. 2 lacs for deposit in Saving Bank account.

17.3 Thirdly; no notice for closure of the wrongly opened Saving Bank account was issued to the plaintiffs nor was the amount in Saving Bank account remitted to them as per rules.

17.4 Fourthly; the Saving Bank account with cheque amount of Rs. 5 lakhs was opened on 03.04.2003. Within two weeks, the account was closed on 17.04.2003. In these circumstances, the concerned officials of the post office

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ought to have been extra vigilant and insisted that the plaintiffs/account holders should personally appear to receive payment of the heavy amount of Rs. Five Lakhs, being the closure proceeds of the account. Here, the amount of Rs. 5 lakhs payable to the plaintiffs as closure proceeds of the account was allegedly paid by the officials of defendants No. 1 and 2 to the post office agent (defendant No. 3). The gross negligence, if not complicity, of the concerned officials of defendants No. 1 and 2 resulting into the misappropriation of the plaintiffs' money is thus apparent on record.

18. In my opinion, the Courts below rightly recorded the concurrent finding of fact that the concerned officials of defendants No. 1 and 2 were negligent, owing to which the plaintiffs' money was misappropriated.

19. The cheque amount of Rs. One lakh had been deposited by the plaintiffs for opening MIS account in their own joint names. However, the same had been misappropriated and wrongly used for opening an MIS account in the name of defendant No. 6. It is not shown if defendant No.6 was in any way related to or at the relevant time she was even known to the plaintiffs or they had any dealings with her. It is highly unlikely that plaintiff No. 1 would have issued the cheque for Rs. One lakh in favour of defendant/ respondent No. 2 for opening an MIS account in the name of defendant No. 2, who was an utter stranger. Obviously, the opening of the MIS account in the name of defendant No. 6 on the basis of cheque issued by plaintiff No. 1 was the result of gross negligence, if not the manipulation of the concerned officials of defendants No. 1 and 2 in collusion with the post office agent. On this point, the Courts below returned concurrent finding of fact against the defendants.

20. The concurrent findings of facts returned by the two courts below are thus in consonance with the facts, circumstances and record of the case. The

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same are neither perverse nor illegal, so as to call for interference in the second appeal.

21. For ready reference, Rule 15 of the Post Office Saving Bank General Rules, 1981 relied upon by the learned counsel for defendants No. 1 and 2 is reproduced below:

> "***Responsibility of the Savings Bank-*** *The post office Saving Bank shall not be :*
> *(a) responsible to a depositor for any fraudulent withdrawal by a person obtaining possession of the pass book or cheque from the cheque book of the depositor;*
> *(b) liable if any fraud takes place due to failure of the depositor to ensure that the amount sought to be withdrawn is entered in the application for withdrawal before the same is presented at or sent duly signed by him to the Post Office Savings Bank for withdrawal;*
> *(c) Responsible to a depositor, if he or, in case the withdrawal form is presented by the agent, the agent fails to ensure that the receipt for the payment is signed by him or the agent, as the case may be, only at the time of actual payment and not at the time of presentation of the applicator for withdrawal."*

A bare reading of Rule 15 of the Post Office Saving Bank General Rules, 1981, reproduced above, would show that the same is not, in any way, attracted to the facts and circumstances of the present case. Reliance on the Rule ibid by the learned counsel for defendants No. 1 and 2 is thus misplaced. The Courts below have given conclusive findings that officials of the Post Office were not only collusive but also involved in the fraud leading to the withdrawal of amount of Rs.6 lakhs deposited by the plaintiffs without their knowledge. Therefore, the reliance placed on the judgments and Rules is misplaced as it is not a third party who has committed fraud herein but their officials themselves.

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22. As regards the claim for interest, I am of the opinion, that both the courts erred in law while totally refusing interest for the period prior to the filing of the suit and for allowing only 6% interest, against the plaintiffs' claim for 18% interest, from the date of filing of the suit till payment.

23. Section 34(1) of the Code of Civil Procedure provides that, where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, <u>in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit,</u> with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit. It further provides that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent. per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

24. Section 34 of the Code of Civil Procedure is reproduced as hereunder for ready reference:-

> "*34.* ***Interest.***
>
> *(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree,* ***in addition to any interest adjudged on such principal sum for any***

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> ***period prior to the institution of the suit**, with further interest at such rate not exceeding six per cent. per annum as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:*
>
> *Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent. per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.*

It would be seen the Section 34, ibid, clearly provides for the payment of interest for the period prior to the filing of the suit.

25. Admittedly, the cheque for Rs. 5 lakhs was realized on 03.04.2013 and cheque for Rs. 1 lakh was realized on 16.06.2003 by defendant No. 2. The plaintiffs stood out-pocketed from these dates. They ought to have been allowed interest on the said amounts from the respective dates. In my opinion, the learned Courts below misconstrued the provisions of the section ibid while totally disallowing interest for the period prior to the filing of the suit.

26. As regards the rate of interest, the Courts below have returned the concurrent finding that the amount of Rs. 6 lakhs was deposited by the plaintiffs for investment in the MIS accounts in their joint names but the same was misappropriated by the defendants. Indisputably, at the relevant time, deposits in the accounts under the MIS carried interest at the rate of 8% per annum. It is only just and fair that the plaintiffs should get the same rate of interest on their deposits from the dates of realization of the cheques by defendant No. 2 .

27. In result, RSA No. 5455 of 2017 filed by defendant Union of India is dismissed while RSA No. 2669 of 2017 filed by the plaintiffs is partly

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allowed with costs, modifying the impugned judgments and decrees passed by the Courts below and directing that, besides the principal amount of Rs. 6 lakhs, the plaintiffs shall be entitled to interest at the rate of 8% per annum on the sum of Rs.5 lakhs from 03.04.2013 to 15.06.2013 and on the sum of Rs. 6 lakhs from 16.06.2003 till payment.

28. Pending applications stand disposed of accordingly.

February 06, 2020 **(ARUN MONGA)**
Jiten **JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No

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