IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Aniruddha Roy

WPA 19959 of 2014

The West Bengal State Co-Operative Bank Ltd. & Anr.
Vs.
Punjab National Bank & Ors.

For the petitioners:	**Mr. Shakti Nath Mukherjee, Sr. Advocate,** **Mr. Saptansu Basu, Sr. Advocate,** **Mr. Sukanta Chakraborty, Advocate,** **Mr. Anindya Halder, Advocate.**
For the P.N.B.:	**Mr. Jishnu Choudhury, Advocate,** **Ms. Aparajita Rao, Advocate.**
For the RBI:	**Mr. Alok Kumar Banerjee, Advocate,** **Mr. Arunabha Sarkar, Advocate.**

Reserved on:	**06.05.2022**
Judgment on:	**18.05.2022**

ANIRUDDHA ROY, J.:

Facts:

1. The first writ petitioner is a State Co-Operative Bank and a Scheduled Bank within the meaning of the Reserve Bank of India Act, 1934 (for short, the R.B.I. Act) carries on, inter alia, banking business. The first petitioner is also registered under the provisions of the West Bengal State Co-Operative Act,

1940 (for short, the Co-Operative Act) and carries on its business, inter alia, at and from its Registered Office/Head Office at 24A, Waterloo Street, Kolkata.

2. Pursuant to the functional requirement and mandate, the first petitioner was required to deploy its excess funds, inter alia, in fixed deposits with the Commercial Banks as an inter bank investment as and when such excess funds accrued in its account, after disbursement of all its banking obligations in order to earn interest income so that its funds get increased.

3. Following the said obligations the first petitioner negotiated, at the relevant point of time, with several bankers to obtain maximum available interest on its deposit. In course of such negotiation, and in usual course of business, the Punjab National Bank, being the first respondent herein (for short, PNB) agreed to provide the highest available interest to the first petitioner at the relevant point of time. The first respondent through its Salimpur Branch by its letter dated January 17, 2013 made a proposal to the petitioners to accept a bulk deposit for a sum of Rs. 10 crore and above for a period of one year with interest @ of 9.65% per annum. The first petitioner was requested to remit its fund in favour of PNB through electronic mode of transfer at its **Account No. 1770002100040286** through the **IFSC Code No. PUNB0177000.**

4. Pursuant to and in terms of the said offer/proposal made by the PNB, on January 22, 2013 the first petitioner reviewed the same and found that, the said proposal of the first respondent was with the maximum available rate of interest at 9.64% per annum for a period of one year. Thereafter further negotiation was held by and between the first petitioner and the first

respondent, when it was agreed by and between the parties that the first petitioner would invest a sum of rupees more than Rs. 10 crores but not more than Rs. 20 crores for a period of three years at the same rate of interest and the offer of the first respondent for the same was duly accepted by the first petitioner.

5. The first petitioner then on January 24, 2013 duly remitted and deposited a sum of Rs. 20 crores in favour of the first respondent through Real Time Gross Settlement (RTGS) process, which is an electronic mode of transfer of fund though the payment and settlement platform of the ninth respondent (for short, R.B.I.) at 11:14:50 hrs at the designated IFSC Code and the account number provided by the PNB, the recipient bank. The necessary Unique Transaction Reference (UTR) **bearing no. WBSCP13024000001** was generated, this denoted the due receipt of the said sum of Rs. 20 crores remitted and deposited by the first petitioner in favour of the PNB. The further detail of the transaction was mentioned in paragraph 5 of the writ petition.

6. After the said deposit being made at the account of the PNB, the third respondent being the Senior Manager PNB on February 04, 2013 through its forwarding letter duly issued the necessary certificate of the said fixed deposit **bearing account no. 177000DP00001447** w.e.f. January 24, 2013 showing the maturity dated as January 24, 2016 and the sum a maturity would be Rs. 26,35,18,454.93/-. The said fixed deposit receipt issued by PNB along with its forwarding letter was disclosed as **Annexure P-4** to the writ petition.

7. The petitioners thereafter came across some news from the daily newspaper regarding some disputes relating to fixed deposits arose out of fraud with the UCO Bank, Circus Avenue Branch, Kolkata. The first petitioner then by its letter dated March 20, 2013 requested PNB to confirm the balance on account of the said fixed deposits for a sum of Rs.20 crores. In response to the said letter on March 21, 2013 the first petitioner received a letter from PNB issued by one Mr. A.C. Saha Sardar, Branch Manager, of the Salimpur Branch, where from for the first time the first petitioner came to know that the PNB had not opened the said fixed deposit **account bearing the said no. 177000DP00001447** at this branch in favour for the first petitioner for the said sum of Rs. 20 crores.

8. Immediately the first writ petitioner through its letter dated March 21, 2013 narrating the entire facts lodged a complaint before the Deputy Commissioner of Police, Detective Department, Kolkata alleging fraud and wrongful misappropriation of the said sum of Rs. 20 crores against the PNB and its officials.

9. Pursuant to and in terms of the said compliant necessary First Information Report (FIR) No. 191 dated March 22, 2013 was drawn up, inter alia, under the various provisions of the Indian Penal Code (for short, the IPC). The Police Authorities started the necessary investigation in the matter. The original documents relating to the transactions were seized and lying with the concerned police authority. Criminal case was registered before the Learned Chief Metropolitan Magistrate, Kolkata as GR Case No. 191 dated March 22,

2013. Pursuant to the direction made by the Criminal Court an amount of Rs. 1,09,51,500/- along with some gold ornaments valued at Rs. 21,91,754/- were returned. Few officials of the PNB were also arrested from whom such recovery was made.

10. According to the petitioners the said wrongful misappropriation of huge fund would give rise to various statutory default and negligence, for which the petitioners will be held liable.

11. Despite demands made by or on behalf of the petitioners, the first respondent failed to return the fixed deposit amount to the first petitioner. In view of the above, the petitioners filed the writ petition praying for the following reliefs:

> *"a) A writ in the nature of Mandamus commanding and/or directing the Respondent Nos.1 and 2, specially the Respondent no.2 to take appropriate steps for refunding and/or returning the sum of Rs.20 crore deposited on 24.01.2013 in the form of Fixed Deposit (FD), for a period of 3 years, with the respondent Nos.1 and 2, specially Punjab National Bank, Salimpur Branch @ 9.64% interest per annum till the payment;*
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> *b) A writ in the nature of Certiorari directing the respondent No.2 and each one of them to transmit all relevant documents of the respondent bank to this Hon'ble Court for perusal of the same and for passing necessary order quashing the adverse remarks or statements if any made by the respondents against the interest of the petitioner bank;*
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> *c) A writ in the nature of Mandamus directing the Reserve Bank of India to pass appropriate order and/or take decision declaring that the amount of Rs.20 crore deposited with the respondent with the respondent bank, Respondent no.2 herein, shown as Loss Asset in the audit report in the financial year 2012-2013, as Performing Asset instead of Non-Performing Asset (NPA);*
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> *d) A writ in the nature of Mandamus directing the Union of India and/or appropriate authorities for appointing a high level investigating agency to unearth the fraud on public fund having access to all corners of the country and abroad for taking appropriate steps against the persons involved in misappropriation of fund and further for recovery of the same;*

e) An appropriate order of declaration that the amount of Rs.20 crore and above, shown as Loss Asset in the financial year 2012-2013, as performing asset;
f) An order of injunction restraining the respondents by passing adverse order or specifically any order against the petitioner bank relating to the banking business under Section 22 of the Banking Regulation Act, 1949;

g) Ad-interim Order in terms of prayers (a), (c), (d), (e) & (f);

h) Rule NISI in terms of prayer (a) & (f) as above;

i) Any other or further order or orders, direction or directions as this Hon'ble Court may deem fit and proper".

12. Pursuant to the direction made by this court the first respondent had filed its affidavit-in-opposition and the petitioners had filed their affidavit-in-reply.

13. The principle defence of the first respondent to the said writ petition had been summarized under various sub paragraphs to paragraph 4 of its affidavit-in-opposition. According to the first respondent, one Mr. Sanjoy Kumar Pandey was a constituent of the Salimpur Branch of PNB. The said Sanjoy Kumar Pandey carried on business under the name and style of one Laxmi Enterprise. The said Laxmi Enterprise opened a Current Account with the Salimpur Branch on December 22, 2012. The said account was opened after due compliance with the procedure relating to Know Your Customer (KYC) formalities, as mandated by the R.B.I. After the introduction of electronic transaction the money could be transferred from one account to another by various electronic modes, one of which is RTGS. In case of transfer of fund through RTGS, PNB had no role to play. The code numbers are inserted by the payee and on receipt of confirmation from the receiving bank the money gets automatically transferred. By a letter in writing the first petitioner informed the

first respondent that they had made RTGS in favour of Laxmi Enterprise, a copy of such letter was also annexed as Annexure R-3 to the said affidavit-in-opposition. The first respondent by its letter dated January 28, 2013 confirmed the credit of Rs. 20 crores to the account of the said Laxmi Enterprise through RTGS and requested the first petitioner to inform them about the purpose of such credit. On or about February 04, 2013 the first respondent received a letter from the first petitioner informing it had made RTGS for a sum of Rs. 20 crores in favour of the said Laxmi Enterprise against a tender for construction of a hospital. A copy of the said letter of the first petitioner dated February 04, 2013 was annexed as Annexure R-5 to the said affidavit-in-opposition. In view of the exchange of such correspondence, the first respondent contended that, there was no reason for suspicion about the operation of account of Laxmi Enterprise. The said sum of Rs. 20 crores was then withdrawn in a phase manner from the said account by the Laxmi Enterprise. A supporting Bank statement was annexed as Annexure R-6 to the said affidavit-in-opposition. The first respondent further contended that the account of the Laxmi Enterprise was then made inoperative.

14. In the affidavit-in-reply the petitioners denied the contentions of the first respondent. The petitioners contended that, pursuant to the criminal complaint lodged on their behalf some officials including a former employee of the PNB were identified by the Police Authority during investigation. The said Athindra Chandra Saha Sardar was detected to have received monetary consideration for the said fraudulent misappropriation of the Fixed Deposit.

Some officials of PNB were arrested. It was further contended that, the account of the said Laxmi Enterprise was opened on December 22, 2012 in violation of the relevant RBI Regulation and without following the same. The documents annexed to the affidavit-in-opposition filed by the PNB as Annexures R-3 and R-5 were never issued by the first petitioner. The petitioners further contended that, the letter head of the first petitioner which were disclosed and relied upon by PNB in its affidavit-in-opposition were not the letter head of the first petitioner and the same is ex facie clear on a plain look of the same and on perusal of the tenor thereof. The said documents according to the petitioners were manufactured, purposive and engineered for the purpose of setting up an alleged defense against the claim of the petitioner and were relied upon by the first respondent. The petitioners further contended that, the document being Annexure R-4 to the affidavit-in-opposition is also a manufactured one. In addition to this, the petitioners further stated that there were serious violation of the various guidelines and norms issued by RBI on the part of the first respondent.

15. RBI had also filed its affidavit-in-opposition affirmed on December 22, 2015. RBI contended that, the writ petition was not maintainable against it and its official, the tenth respondent, as they had not failed to perform any public or statutory duty. Thus, no relief can be granted against them in this writ petition.

Arguments:

16. Mr. Shakti Nath Mukherjee, Learned Senior Counsel, appearing in support of the writ petition submitted that, the Fixed Deposit was made pursuant to the offer made by the first respondent as it had agreed to provide highest rate of interest @ of 9.65% per annum amongst other bankers. Following the said offer the first writ petitioner in acceptance thereof agreed and deposited a sum of Rs. 20 crores in the Fixed Deposit Account with the first respondent. The first respondent had duly provided its bank detail including the Account Number and the IFSC Code as mentioned in its letter dated January 17, 2013 and it was specifically mentioned that the cheque should be issued in favour of the first respondent at its **Account No. 1770002100040286**. Pursuant to such instruction and the information provided by the first respondent, the first petitioner on January 24, 2013 duly deposited the said sum of Rs. 20 crores at its said account. Such deposit was made through an electronic mode of transfer, namely RTGS, which is an uniform platform and system created by RBI. Such fact would also be evident from Annexure P-3 to the writ petition. After being satisfied with the said deposit of Rs. 20 crores made by the first petitioner, by a forwarding letter dated February 04, 2013 the first respondent issued the original Fixed Deposit Receipt (FDR) for a sum of Rs. 20 crores for a period of 1096 days, which would earn an interest @ of 9.65% per annum in favour of the first petitioner. The Fixed Deposit Account number as allotted by the first respondent was **177000DP00001447** with its Salimpur Branch. The said forwarding letter was issued under the seal and signature of the then

Senior Manager of the first respondent and the Fixed Deposit Receipt was duly signed by the two officials of the first respondent, who were the authorized signatories of it. These two documents had never been questioned by the first respondent save and except a general and evasive denial in its affidavit-in-opposition. By a letter dated March 20, 2015, when the first petitioner requested the first respondent for a balance confirmation with regard to the Fixed Deposit Account, then for the first time by a letter dated March 21, 2013 the first respondent informed that it had not opened the Fixed Deposit Account in the name of the first petitioner but no explanation was provided as to the fate of the same. Though PNB had issued the original FDR in favour of the first petitioner. Immediately the petitioner lodged a complaint dated March 21, 2015 before the concerned Police Authority and the criminal case was initiated by the State.

17. Mr. Mukherjee, Learned Senior Counsel then submitted that, from the affidavit-in-opposition for the first time the petitioner came to know as to the frivolous stand of the PNB that the amount was credited in the account of one Laxmi Enterprise bearing **Current Account Number 1770002100040286,** who had utilized and/or withdrawn the same from time to time. The relevant correspondence being Annexure R-4 to the said affidavit-in-opposition filed by the PNB is a manufactured document as would be evident from it. The document according to Mr. Mukherjee was not genuine. He further submitted that, the first petitioner had no nexus or connection with the said Laxmi Enterprise in any manner whatsoever neither the first petitioner had any

privity of whatsoever nature with the said entity. No construction work was entrusted to the said Laxmi Engineering by the first petitioner in any manner whatsoever. Thus, the question of making any payment of Rs.20 crores to the Laxmi Enterprise from the public deposit did not and could not arise. The letters relied upon by the first respondent in its opposition being Annexures R-3 and R-5 thereto were manufactured documents only to create a dispute on facts to defeat the claim in the writ petition. Referring to the document Annexure P-5 to the writ petition, the learned senior counsel submitted that, these two documents namely R-3 and R-5 of the opposition are ex facie manufactured and the letter head was not of the first petitioner.

18. The Learned Senior Counsel for the petitioners then submitted that, the act of the Senior Manager or the authorized signatories of the first respondent binds the first respondent. The authorized signatories or the Senior Manager being an employee of the first respondent had a vicarious liability towards its principle, the first respondent. The first respondent did not raise any objection as to the Fixed Deposit Receipt issued by it in favour of the first petitioner after being satisfied with the deposit of Rs. 20 crores made by the petitioner. The first respondent had duly issued the said Fixed Deposit Receipt which was duly signed by its Authorized Officers. Save and except an evasive denial in its opposition, the first respondent did not dispute or deny the said Fixed Deposit Receipt. The first respondent also did not throw any challenge in due process of law to the said Fixed Deposit Receipt. The first respondent, therefore, could not take any stand contrary thereto. The first respondent did not even deny or

dispute the authority of the authorized signatories who had signed and issued the Fixed Deposit Receipt. The act of such authorized signatories of the first respondent binds it as well. In support, Mr. Mukherjee, Learned Senior Counsel had relied upon the following decisions:-

i.) In the matter of: Sitaram Motilal Kalal vs. Santanuprasad Jaishankar Bhatt, reported at (1966) 3 SCR 537: AIR 1966 SC 1697;

ii.) In the matter of: Pushpabai Purshottam Udeshi & Ors. vs. M/s. Ranjit Ginning & Pressing Co. (P) LTD. & Anr., reported at (1977) 2 SCC 745;

iii.) In the matter of: Canadian Pacific Railway Company vs. Leonard Lockhart, reported at 1942 SCC OnLine PC 25: AIR 1943 PC 63;

iv) In the matter of: Ashok Amritraj vs. Reserve Bank of India, reported at 2012 (5) CTC 763 and;

v) In the matter of: Indian Bank vs. Godhara Nagrik Cooperative Credit Society Limited & Anr., reported at (2009) 4 SCC 629.

19. The learned counsel for the writ petitioner then submitted that, the PNB being an article 12 authority had acted clearly in breach of and failed to perform with its statutory obligation by not returning the total fixed deposit proceed on its maturity to the first writ petitioner. The action and/or in action on the part of the first respondent is clearly arbitrary, mala fide, illegal, wrongful and in

colorable exercise of its power and authority. Hence, necessary direction may be made upon the first respondent to return the fixed deposit proceed to the first petitioner without any further delay.

20. Mr. Alok Kumar Banerjee appeared for the ninth and tenth respondents being the R.B.I. and its official. He denied the allegations made in the writ petition as against his clients. Mr. Banerjee submitted that, R.B.I. did not act in any manner which is in violation of any of its statutory obligation, it is obliged to discharge under the relevant law. The R.B.I. had performed all its responsibilities and duties in the matter. It is a dispute really between the petitioners and the first respondent to which the ninth respondent had no role to play. Thus, no relief can be granted against the ninth and tenth respondents in this writ petition.

21. Mr. Jishnu Chowdhury, learned counsel with M/s. Aparajita Rao, learned advocate appeared for PNB and its respective officials namely the respondent nos. 1 to 3. At the threshold, Mr. Jishnu Chowdhury, learned counsel for the PNB submitted that, this is a classical case which could be decided in a properly constituted civil suit alleging a clear case of fraud. Referring to the pleadings filed by the parties he submitted that, in the light of the defence taken by the first respondent in its affidavit-in-opposition and the corresponding response of the petitioners thereto in their affidavit-in-reply and on a plain reading of the averments made in the writ petition, it would be evident that, complicated disputed questions of facts arose, which were fit to be tried by way of a complete and comprehensive evidence/witness action and as

such writ petition could not be the proper proceeding. Inasmuch as, the first writ petitioner had already lodged a criminal complaint under the relevant provisions of Indian Penal Code (IPC), in terms whereof the State prosecution had already issued the necessary charge-sheet upon the accused and criminal case was also registered against such accused. Some of such accused were also arrested who were the concerned bank officials at the relevant point of time along with an ex-employee of the bank. The Jurisdictional Criminal Court would come to a logical conclusion after detail trial, upon which the claim in the writ petition would depend for its result. Thus, the said writ petition is not maintainable at all in the facts and circumstances of the case.

22. Learned counsel for the first respondent then submitted that, from a plain reading of the writ petition it is clear that the petitioners sought to enforce a money claim that too where the facts were wholly disputed. It is not such that the money claim in the writ petition was admitted by the first respondent or on its behalf so that a simple direction for release of such money could be made in this writ petition. There was no explicit admission by the first respondent in respect of the disputed money claim made in the writ petition. The claim arose, if at all, out of a contract between the parties thereto. No contractual claim can be enforced or released through a writ petition. No mandamus could be issued. In support, Mr. Chowdhury had relied upon the following decisions:

i) In the matter of: Indian Bank vs. Godhara Nagrik Cooperative Credit Society Limited & Anr., reported at (2008) 12 SCC 541 and;

ii) In the matter of: M/s Hyderabad Commercials vs. Indian Bank & Ors., reported at 1991 Supp (2) SCC 340 and;

iii) In the matter of: W.P. No. 24410 (W) of 2013 Rashmi Ispat Ltd. vs. Bank of India, reported at 2013 SCC OnLine Cal 14874.

23. Learned counsel for the first respondent next submitted that, the fiduciary relationship would not apply between the master and servant, when the servant acted beyond his authority of employment prescribed by its master. Such an act on the part of the servant is unauthorized, illegal and would not bind the master. In support, the learned counsel placed reliance on the following decisions:

i) In the matter of: State Bank of India (Successor to the Imperial Bank of India) vs. Smt. Shyama Devi, reported at (1978) 3 SCC 399;

ii) In the matter of: The Secretary, Naguneri Peace Memorial Co-operative Urban Bank Ltd. Naguneri vs. Alamelu Ammal reported at AIR 1961 Madras 419 and;

iii) In the matter of: N. Sridhar vs. Maruthi Jayaraman & Anr., reported at (2009) 152 Comp Cas 100.

24. Mr. Chowdhury further submitted that, forgery and fraud are essential by matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts in the case. He submitted that, the

allegations of fraud as alleged by the parties could only be decided by way of a complete of trial in a civil action and not in this writ petition. The writ petition is, therefore, not maintainable. In support, he relied upon a judgment of the Hon'ble Supreme Court *In the matter of: Indian Bank vs. Satyam Fibres (India) Pvt. Ltd., reported at AIR 1996 SC 2582.*

25. To sum up his argument, the learned counsel submitted that, in a complicated disputed facts like the instant case, the writ petition is not maintainable. The role of the employees of the first respondent who were involved in the fraud also needed to be ascertained upon a proper judicial finding, for which the criminal case is pending and such a wrongful act on the part of the employees would not bind the first respondent. Thus, the first respondent has no liability towards the petitioners. The petitioners, therefore, cannot claim the return of the fixed deposit proceeds from the first respondent through this writ petition. The writ petition is misconceived and is liable to be dismissed.

26. The parties upon conclusion of their respective arguments filed their written notes.

Decision:-

27. The principle contention raised on behalf of the PNB that the writ petition involved a money claim simplicitor on various disputed questions of facts and on fraud, the Writ Court thus, should not adjudicate upon such claim.

28. To address this issue the relevant averments made in and the documents appended to their respective pleadings are required to be considered. Some of

such relevant averments made by the parties in their respective pleadings are reproduced below:-

Writ Petition

"2. That the Petitioner bank, i.e., The West Bengal State Co-operative bank Ltd. is required to deploy its excess funds in Fixed Deposits of Commercial Banks as Inter Bank investment, investment in Consortium Finance, Purchase of Bond, Commercial Deposit (CD), investment in Co-llaterase Boroughing and Lending Obligation (CBLO) etc. as and when required after exhausting the loan proposals, considering the need of the Bank in order to earn higher interest income and keep the pubic deposit safe.

3. That the Punjab National Bank, Selimpur Branch under their reference letter no.Sprb/1256/12-13, dated 17/01/2013 sent a proposal through fax to the Managing Director of The West Bengal State Co-operative Bank Ltd. for bulk deposit of Rs.10.00 crores and above for a period of one year with interest rate @9.65% per annum with their bank deposit account no. 1770002100040286, IFSC Code No. PUNB0177000 and name of the Branch Manager being Atindra Ch. Saha Sardar.
A copy of the letter of the Branch Manager, Selimpur Branch received through FAX message is annexed herewith and marked with the letter "P-1".

4. That the members of the Investment Committee on 22.01.2013 reviewed the position and found that the offer sent by Punjab National Bank, Selimpur Branch regarding special rate of interest @ 9.65% p.a. for 1 year and telephonically confirmed period up to 3 year for more than Rs.10 crore but not more than Rs.20 crore being the most suitable offer to invest the surplus fund for sage and secured gainful income. Members analysed and resolved that the proposed rate was better in comparison to other offers. It was further resolved to request the Chief Dealer to deploy towards Punjab National Bank, Selimpur Branch Rs.20 core for 3 year tenure @ 9.65% on 24.01.2012 if proposal remains valid.
5. That based on such resolution an amount of Rs.20 crores were remitted to the Selimpur Branch of the Punjab National Bank through Real Time Gross Settlement (RTGS), the Payment and Settlement platform of Reserve Bank of India, on 24.01.2013 at 11:14:50 hours at the designated IFSC Code and Account Number cited above as informed by the recipient bank and the system generated one UTR (Unique Transaction Reference) being number WBSCP13024000001 through which the recipient bank also received the following instructions:

:	*Transaction*	
2020:	*Reference Number*	
		T10
	Transaction	
	Reference Number	
:4488	*Value Date,*	
	Currency, Amount	
		24/01/2013
	Value Date	
		INR

Currency Amount	*20,00,00,000.00*
:5500: Ordering Customer Ordering Customer	*THE WEST BENGAL STATE COOPERATIVE BANK LTD.*
:5517: Ordering Institution Bank Identifier Code	*WBSC0000001*
:5561: Benficiary Customer	
Account Number	*1770002100040286*
Name and Address	*THE WEST BENGAL STATE COOPERATIVE BANK LTD.*
:7495 Sender to Receiver Information Code	*URGENT*
Information Following Code	*TDR FOR 3 YEARS*
	/ / AT THE RATE OF 9.65 PER CENT
Additional Information	*/ / PER ANNUM ON QTRLY*
	/ / COMPUND BASIS

So, there was a clear lawful authorized irrevocable official mandate from the part of the Petitioner bank that the Petitioner bank intended to open a Term Deposit for 03 years @ 9.65% interest on quarterly compounding basis in favour of the Petitioner bank.
A copy of the system generated RTGS mandate drawn from the payment and settlement system of the Reserve Bank of India is annexed herewith and marked with the letter "P-3".

6. That on 04.02.2013 through forwarding letter no. Sprb/1321/12-13 the Sr. Manager, Punjab National Bank, Selimpur Branch, Respondent no.3 herein sent the certificate of fixed deposit of bearing account number 177000DP00001447 with effect from the 24th January, 2013 showing the matured value Rs. 26,35,18,454.93 through Special Messenger.
A copy of the Deposit receipt of the Respondent bank alongwith the forwarding letter dated 04.02.2013 are annexed herewith and marked with the letter "P-4" collectively.

11. That through newspaper reporting and (XXth) Statutory Inspection Report of NABARD it revealed that a few officials of the Respondent bank had been arrested by the Police and reportedly some recovery also had been made by the Police. The Petitioner bank craves leave to submit the necessary document in course of the hearing.
Copies of the availing newspaper reporting and a copy of the relevant portion of NABARD, Inspection Report are annexed herewith and marked with the letter "P-9" and "P-10" respectively.

12. That the Learned Chief Metropolitan Magistrate, Kolkata under his order in the matter of GR Case No. 191 dated 22.03.2013 had returned an amount of Rs.1,09,51,500/- (Rupees One Crore Nine Lakhs Fifty One Thousand Five Hundred only) and gold ornaments of value Rs. 21, 91,754/- (Rupees Twenty One Lakhs Ninety One Thousand Seven Hundred Fifty Four only) to the Petitioner bank on the condition that the Managing Director of the Petitioner Bank would produce the same before the Court as and when called for and were given liberty to keep the amount in any nationalised Bank. The petitioner bank craves leave to produce the order of the learned criminal court at the time of hearing of this case. The Petitioner Bank and kept the seized amount as fixed deposit with a nationalsed bank ".

Affidavit-in-opposition filed by PNB

"6. Statements made in paragraphs 1 to 4 of the said petition are matters of record.

7. Allegations made in paragraph 5 of the said petition are denied. I deny that the sum of Rs.20.00 crore or any other sum was remitted to the Selimpur branch of the respondent no.1 favoring the petitioner no.1 as alleged ir at all. There is no account in the name of the petition with the respondent no.1 bank.

8. With reference to paragraph 6 of the said petition I say that no such document was ever issued by the respondent no.1. I say that the document relied on by the writ petitioner is not genuine and no reliance can be placed on the same.

11. With reference to paragraph 11 and 12 of the said petition I say that the bank is not a party to the criminal proceedings and I am not aware of the same".

29. From the verification of the writ petition, the above stated averments were verified as derived from informations from records in course of the official business of the deponent and he believed the same to be true to his knowledge. From the verification of the said affidavit-in-opposition the above statements were verified to be true to the knowledge of the deponent. The deponent was the third respondent (defendant as stated) in the writ petition and was the Senior Manager of PNB, Salimpur Branch. The authority of the said deponent was not under challenge.

30. On a careful scrutiny of the documents appended to the said pleadings filed by the parties, it appeared from **Annexure P-1** to the writ petition that, the said document was issued by the Senior Manager of PNB providing the details and particulars of the account number and the IFSC Code of the particular Branch of the PNB at which the writ petitioner was asked to deposit the money for creation of the Term Deposit/Fixed Deposit. The PNB also promised the rate of interest being 9.65% per annum payable to the first petitioner. The petitioner was asked to issue a cheque in favour fo the PNB and deposit the money in **Account No. 1770002100040286.** **Annexure P-3** to the said writ petition was a transaction reference document showing the deposit of Rs. 20 crores made by the first petitioner on **January 24, 2013** in the same Account Number for a term of three years at the said agreed rate of interest. This was a document generated electronically evidencing the deposit made by the first petitioner with the first respondent. **Annexure P-4** to the writ petition is a forwarding letter dated February 04, 2013 issued by the PNB enclosing the original Fixed Deposit Receipt (for short, the FDR) for the said sum of Rs. 20 crores for 1096 days. The FDR Account No. was mentioned as **177000DP00001447** and the Branch Serial No. was mentioned as **177000.** This document was signed by the Senior Manager of PNB. The appended document thereto was the copy of the original FDR which contained the title as **"confirmation of deposit".** The Branch was mentioned as **"Salimpur Road Kolkata"**. The Branch Serial No. mentioned as **177000.** The FDR Account No. was mentioned as **177000DP00001447.** The date of issue was mentioned as

January 24, 2013 and the **date of maturity** was mentioned as **January 24, 2016.** The **Maturity Value** was mentioned as **Rs. 26,35,18,453.93/-** . The invested amount was mentioned as Rs. 20 crores. The said document was signed by the two authorized signatories of the PNB and was signed by both of them on January 24, 2013. The Annexure P-1 was addressed to the Managing Director (M.D.) of the first petitioner. Annexure P-4 was addressed to the General Manager.

31. By a letter dated March 20, 2013 signed by the Managing Director of the first petitioner, the first petitioner requested the Branch Manager, Salimpur Branch, PNB for a confirmation as to the balance amount under the said Fixed Deposit Receipt with the face value of Rs. 20 crores with the necessary details. In reply to the same by a letter dated March 21, 2013 signed by the Branch Manager Salimpur Branch, PNB informed the Managing Director of the first petitioner that, the first respondent did not open any such Fixed Deposit Account at their Branch in the name of the first petitioner for the said sum of Rs. 20 crores. At this juncture, according to the first respondent the dispute started.

32. In the affidavit-in-opposition the first respondent annexed several documents in support of their contention that, the Salimpur Branch also had a Bank Account of one Laxmi Enterprise through its proprietor one Sanjay Kumar Pandey (for short, the proprietor). Annexures R-3, R-4 and R-5 to the said affidavit-in-opposition were the correspondence exchanged allegedly between the first writ petitioner and the first respondent showing that, that the first

respondent caused the RTGS in favour of the said Laxmi Enterprise at its account no. **1770002100040286** against a tender for construction of hospital. The said letter was signed by an authorized signatory of the first petitioner. The first respondent confirmed that the said sum of Rs. 20 crores was credited to the account no. **1770002100040286** to the credit of Laxmi Enterprise on January 24, 2013 through RTGS caused by the petitioners. The said letter was signed by the Manager of the Selimpur Branch and was addressed to the authorized signatory of the first petitioner. An authorized signatory of the first petitioner by its letter dated February 04, 2013 confirmed the Branch Manager of the Selimpur Branch that the said sum of Rs. 20 crores was issued through RTGS in favour of the Laxmi Enterprise against a tender for construction of a hospital. Such payment was the first installment. Annexure R-6 to the said affidavit is a statement of account relating to the account of the said Laxmi Enterprise which was opened on December 22, 2012, showing the credit of a said sum of Rs. 20 crores on January 24, 2013 and the continuous withdrawal of diverse from sums time to time from the said account of Laxmi Enterprise till December 31, 2014 (Value Date) and January 03, 2015 (Tran Date).

33. Upon a careful scrutiny of the averments made by the parties and the evidence disclosed in support thereof there was no doubt that the term deposit account was opened and the said sum of Rs. 20 crores was deposited by the first petitioner through RTGS in the specific bank account as was provided by the first respondent and the first respondent by issuing the said original Fixed Deposit Receipt unequivocally accepted, confirmed and admitted such deposit.

Annexures P-1, P-3 and P-4 to the writ petitions were not in any way challenged, questioned, rebutted or controverted by the first respondent. The first respondent also did not deny and challenge the issuance and existence of the said documents and the power and authority of the signatories thereof, save and except a bare and evasive denial of Annexure P-4, for the sake of denial, which was no denial in the eye of law. These documents read with the relevant averments made by the parties in their respective pleadings clearly showed that, the first respondent had received the said sum of Rs. 20 crores from the first petitioner with a promise to pay interest thereupon @ 9.65% per annum as a Term Deposit/Fixed Deposit. The mode of transfer was RTGS which was an automated system and platform generated under the control and authority of the ninth respondent. Neither the petitioners nor the first respondent had any role to play on the said RTGS platform.

34. Till the time the said Laxmi Enterprise alleged to have utilized and withdrawn the said amount, the first respondent was the custodian of the same. On March 20, 2013 when the first writ petitioner requested the first respondent for confirmation of the said term deposit, the first respondent by its letter dated March 21, 2013 informed, that the said Fixed Deposit was not available in the name of the first petitioner and even then the first respondent did not take any step whatsoever as a trustee and/or custodian of the said sum for not allowing the said third party Laxmi Engineering of withdraw the said sum or any part therof from its bank account maintained with the fist respondent or to probe into the issue.

35. The said transaction between the first petitioner and the first respondent were thoroughly commercial in nature. A person with a common and commercial prudence when found a dispute had cropped up with regard to the said substantial and huge quantum of money invested by the petitioners, immediately would have caused a detailed enquiry to be made and if necessary, would have initiated an appropriate proceeding in accordance with law before the Jurisdictional Court of law to resist, counter and dislodge the claim of the petitioners. No such step was taken by the first respondent. The writ petitioners lodged criminal complaint immediately, inter alia, on the ground of fraud, criminal breach of trust and misappropriation of the said term deposit account against the officials of the first respondent. Charge sheet had been issued. The said criminal proceeding is awaited trial. It was submitted on behalf of the first respondent that, some of the officials had also been arrested. However, the first respondent did not take any step against its delinquent officials who according to the first respondent may be involved in the fraud.

36. On the strength of the said documents being Annexures P-1, P-3 and P-4, as they stand, there was an unequivocal admission on the part of the first respondent to have the said sum of Rs. 20 crores received from the first petitioner on account of term deposit. This fact is undisputed and not an iota or shade of dispute could be thrown in assessing the said documents. Cause of action in a proceeding, are the bundle of facts. Each and every fact which are claimed to be disputed in a proceeding may not really be relevant. It is only the material fact which is disputed or not, is relevant for the purpose of

adjudication of a proceeding. As suppression of each and every fact are not relevant, it is only the material suppression which is relevant for adjudication of a particular proceeding. In the instant case the material facts are the execution, existence and exchange of documents being Annexures P-1, P-3 and P-4 to the writ petition which are not disputed. Once these documents and/or evidences stand in the eye of law without any rebuttal, as in the facts of this case, the claim of the petitioners for return of the term deposit proceed gets a solid foundation.

37. It is really not a money claim in true and strict sense. The petitioners are basically claiming return of their property, which had been withheld by the first respondent without any established procedure of law. There was no requirement of any adjudication of claim. The property of the petitioners in the form of money stood crystallized as on January 24, 2016 for a sum of Rs.26,35,18,454.93 by virtue of the unequivocal admission of the first respondent, as would be evident from Annexures P-1, P-3 and P-4 to the said writ petition. The term deposit of Rs. 20 crores had matured pursuant to the promise made by the first respondent with an agreed rate of interest on January 24, 2016.

38. Even if, the accused are convicted in the criminal trial, which is still pending, the criminal charges would be proved and as a consequence, the petitioners would not get their term deposit proceed returned from the first respondent. The first respondent had not proceeded against any of its alleged delinquent employees allegedly involved in the fraud, as it was claimed that the delinquent

employees acted in excess or in derogation of their authority. No legal proceeding was initiated by the first respondent in this regard. So the respondent now cannot take the plea as a defense that the alleged delinquent employees involved in the alleged fraud had acted beyond, dehorse or in excess of their authority after unequivocally accepting and acknowledging the said sum of Rs.20 crores having been received from the first petitioners on account of the said Term Deposit.

39. It is not an absolute bar that the writ court cannot go into the disputed questions of facts, though this court is of the firm view, that in the facts of this case the material facts are not disputed that the first respondent had received the said sum of Rs. 20 crores from the petitioners and were duty bound to return the same on its maturity as on January 24, 2016. It is a self imposed restrictions by the writ court that when facts are so disputed that the adjudication is impossible without a detailed witness action and without a detail fact finding enquiry, normally the writ court avoids such adjudication and relegates it to a properly constituted civil suits. However, this is not such, in the facts of this case as discussed above.

40. In a much celebrated decision, the Hon'ble Supreme Court, *In the matter of: ABL International Ltd. & Anr. vs. Export Credit Guarantee Corporation Of India Ltd. & Ors., reported at (2004) 3 SCC 553,* had observed:

> *"51..*
> *..*
> *..*
> *Therefore, in our opinion, it does not require any external aid, much less any oral evidence to interpret the above clause. Merely because the first respondent wants to dispute this fact, in our opinion, it does not become a disputed fact. If such objection as to disputed questions or interpretations is raised in a writ*

> *petition, in our opinion, the courts can very well go into the same and decide that objection if facts permit the same as in this case. We have already noted the decisions of this Court which in clear terms have laid down that mere existence of disputed questions of fact ipso facto does not prevent a writ court from determining the disputed questions of fact".*

41. *In the matter of: M/s Hyderabad Commercials (supra)* the Hon'ble Supreme Court had observed as under:-

> *"2. This appeal is directed against the judgment and order of the High Court of Andhra Pradesh dismissing the appellant's writ petition on the ground that it involved disputed questions of facts which could be determined by the civil court in a suit. After hearing learned counsel for the parties and having perused the material on record we find that the case does not involve any disputed questions of facts instead on admitted facts the appellant is entitled to relief.*
> *5. Since the basic facts regarding the unauthorized transfer of the disputed amount from the appellant's account as well as the bank's liability was admitted, there was no justification for the High Court to direct the appellant to file suit on ground of disputed questions of fact. The respondent bank is an instrumentality of the State and it must function honestly to serve its customers".*

The ratio in the said decision, to my view, squarely supported the claim of the petitioners. The documents being **Annexures P-1, P-3 and P-4** to the writ petition squarely show an unequivocal admission on the part of the first respondent that, the sum of Rs. 20 crores was deposited by the first petitioner on account of the said term deposit with the Selimpur Branch. The said **Annexure P-4 (the FDR)** was also an unequivocal admission on the part of the first respondent that on maturity of the term deposit **as on January 24, 2016** the same would be crystallized to a sum of **Rs. 26,35,18,454.93/-**, payable to the first petitioner. This can also be construed and accepted as an admission within the meaning and expression **"*otherwise*"** as defined under the provisions of Rule 6 under Order XII of the Code of Civil Procedure, 1908.

Hence, on the strength of the ratio of the said judgment, in my view, the claim of the writ petitioners was well founded.

42. *In the matter of: Rashmi Ispat Ltd. (supra)* the respondent bank refused to release the payment to the writ petitioner therein, as the account holders where from the money was to be released had been frozen or its operations were suspended in connection with a criminal proceeding pending against such account holder (respondent No.7 therein) from whose account the payment was demanded by the writ petitioner. In the facts of the instant case, there being no such embargo, the ratio of the said decision has no application in the facts and circumstances of the instant case.

43. *In the matter of: Godhara Nagrik Cooperative Credit Society Ltd. & Anr. (supra),* in the facts of this case the deposit was made through some so-called commission agents of the banks on payment of huge commission which was ordinarily not allowed by the nationalize banks. The bank refused to accede to the request of the investors for encashment of the FDR since the proceed was paid by way of loan and no amount thus, was payable. In the instant case there was no involvement of any such so-called commission agents of the bank. The money was transferred directly from the account of the first petitioner to the specific account of the first respondent in terms of the details and particulars as provided by the first respondent through Annexure P-1 to the petition and consequently as an unequivocal admission of receipt of the said sum the first respondent issued the FDR being Annexure P-4 to the petition. Therefore, in the facts of the instant case there was no disputed facts arose for

adjudication. Thus, the ratio of the said decision has no application in the facts of the instant case.

44. *In the matter of: Smt. Shyama Devi (supra),* in the facts of the said case the depositor was introduced to the bank by one Kapil Deo Shukla who was an employee of the bank. The said employee of the bank defrauded the depositor by acting not in due course of his employment or as an agent of the bank. Such is not the fact of the instant case as discussed above. Thus, the ratio in the said decision has no application in the facts and circumstances of the instant case.

45. *In the matter of: The Secretary, Naguneri Peace memorial Co-operative Urban Bank Ltd. Naguneri (supra),* in this case the concerned Cooperative Bank denied that the fixed deposit receipts, as not being issued by the bank neither the same were signed by the authorized person by the bank and as such those fixed deposit receipts were bogus and not binding on the bank. Such is not the fact in the instant case as discussed above. Thus, the ratio in the said decision has no application in the facts and circumstances of the instant case.

46. *In the matter of: N. Sridhar (supra),* the judgment was delivered arising out of a civil suit. The employee of the concerned company was involved in connivance and fraud preparing forged share transferred deed. Such is not the fact in the instant case and the respondent bank herein did not contend that, the FDR was prepared and issued as a result of fraud or that the money was never received by the bank which was duly transferred by the first petitioner in the

manner and mode indicated by the first respondent. Thus, the ratio of this decision has no application in the instant case.

47. *Satyam Fibres (India) Pvt. Ltd. (supra)* there was a serious allegation of fraud at the threshold. In the instant case, their had been a categoric and unequivocal admission on the part of the first respondent that the sum was received by it and the first respondent issued the FDR and the sum would be payable to the first petitioner on maturity. Thus, the ratio in this case has no application in the facts of the instant case.

48. The legal argument advanced by the learned Senior Counsel for the writ petitioners that the act of a servant in course of his usual employment and discharging its usual functions in course of his employment binds the employer. The nature of liability is vicarious. As such the act of the Authorized Officer/Manager of the Selimpur Branch of the first respondent binds the first respondent in the facts of this case. There is no doubt of such settled legal proposition. **Annexures- P-1, P-3 and P-4** to the writ petitions were duly issued by the authorized employees of the first respondent in usual course of business and their employment. The first respondent never raised any dispute or denied the authority of the said authorized employees. The said documents, therefore, had a binding force on the first respondent and the first respondent could not have contended anything to the contrary. Inasmuch as, the first respondent did not initiated any proceeding or action challenging the said documents or the transaction in accordance with law.

49. Upto the issuance and existence of the said three documents, namely, **Annexures- P-1, P-3, and P-4** to the writ petition there was no dispute between the parties, which in my view, were the material facts relevant for adjudication of the claim in the writ petition for return of the term deposit proceeds. The facts beyond those three documents and subsequent thereto, even if they were taken to be disputed by the parties, the same would not have any material bearing in adjudicating the instant writ petition. The first respondent was all along the custodian of the said fixed deposit and was a trustee as such.

50. It is, therefore, clear from the enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the Court entertaining such petition under Article 226 of the Constitution is always not bound to relegate the parties to a suit. It is not an absolute bar for a Writ Court. The State or an instrumentality of the State is obliged in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned Act and conduct the first respondent, an instrumentality of the State refused to make over the matured term deposit proceed which was unequivocally admitted by it to have been received, as discussed above, the same would amount to an act in contravention of the aforesaid requirement of Article 14 and this Court has no hesitation and is of the firm view in holding that, a Writ Court can issue suitable direction to set right the arbitrary actions of the first respondent.

51. What is disputed as contended by the first respondent was the alleged appropriation of the proceed by another third party account holder, namely, Laxmi Enterprise and not the acknowledgment or admission of receipt of the said sum of Rs. 20 crores from the first petitioner and to return the said proceed with the agreed rate of interest on maturity. Here the conduct of the parties would also have a relevant and crucial role to play. Even after the alleged discovery of fraud as contended by the first respondent, it did not take any step to resist and dislodge the claim of the petitioners by initiating appropriate legal proceeding or otherwise in accordance with law and allowed the said amount to be misappropriated from its custody, for a substantial period of time. The criminal proceeding already initiated at the instance of the petitioners might confirm the criminal charges after proper trial against the accused but would not enable the first petitioner to receive its matured term deposit proceed, as the scope of a criminal trial is wholly different from the scope of a civil proceeding.

52. In view of the fore going discussions and reasons, I am of the firm opinion that the first respondent had illegally, wrongly and arbitrarily withheld the said matured term deposit proceed of the first petitioner. This was purely a commercial transaction between the parties. The first respondent should also pay interest upon the said matured term deposit proceed to the first petitioner for such wrongful with holding. Contemporaneously when the fixed deposit was created and was matured and immediately thereafter, the rate of interest was much higher than what is prevailing now. Balancing the equity between the

parties, this Court directs the first respondent to pay simple interest @ of 5% per annum since January 25, 2016 on the said matured value of Rs. 26,35,18,454.93/- till the day the said entire proceed with interest as directed herein would be tendered to the first petitioner and not thereafter.

53. The first respondent must tender and carry out the entire exercise, as directed above, for return of the said sum of Rs. 26,35,18,453.93/- together with interest as directed above to the first petitioner within a period of six weeks from the date of communication of a server copy of this judgment and order to the Selimpur Branch of the first respondent and/or to any other appropriate authority as the first petitioner would be informed by the first respondent.

54. On the above terms, this writ petition **WPA 19959 of 2014** stands allowed.

55. All connected applications, pending if any, are disposed of.

56. There shall, however, be no order as to costs.

(Aniruddha Roy, J.)