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W.A.No.532 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2023

CORAM :

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

AND

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No.532 of 2020

The Bank Manager
Canara Bank
No.124, Old Mahabalipuram Road
Sholinganallur
Chennai 600 119

.. Appellant

v.

1. P.Renuka
2. Pasupathy

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 22.06.2018 in W.P.No.2382 of 2017.

For Appellant :: Ms.Harsha Vardhini for
Mr.M.Balachandar

For Respondents :: Mr.G.Murugendran for R1
Not ready in notice reg R2

JUDGMENT



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(Judgment of the Court was made by D.KRISHNAKUMAR,J.)

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The appellant Bank has filed this intra-Court appeal, as against the order allowing the writ petition filed by the first respondent.

2. The first respondent/writ petitioner filed the writ petition by stating that her mother-in-law, namely, Visalakshi, W/o Jambulingam had deposited a sum of Rs.6,00,000/- in fixed deposit with the appellant bank on 28.01.2009 payable with interest at 9.5% per annum by appointing the first respondent as the nominee for the aforesaid fixed deposit. It is also the case of the first respondent that her mother-in-law has been suffering from mental illness and that on 29.05.2010, she left the house and did not return back. Unable to trace her whereabouts, the first respondent lodged a police complaint and a case was registered in F.I.R.No.361 of 2010 on the file of J10-Semmancherry Police Station for 'woman missing'. It is the further case of the first respondent that out of the deposited amount of Rs.6,00,000/-, her mother-in-law had already withdrawn a sum of Rs.1,00,000/- on 16.04.2010. Therefore, the first respondent made a representation on



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09.07.2016 before the appellant bank to repay the deposited amount of Rs.5,00,000/- together with interest at the rate of 9.5% per annum. But the said representation was not considered. Therefore, she filed W.P.No.29455 of 2016 seeking a direction for disposal of her representation and this Court, by order dated 28.09.2016, directed the bank to dispose of the first respondent's representation in accordance with law. In the meantime, on 28.09.2016, the appellant Bank has rejected the request holding that presumption of death can be raised only after a lapse of seven years from the date of his/her being reported missing, as the settlement of claims in respect of missing persons is governed by the provisions of Sections 107 & 108 of the Indian Evidence Act, 1872 and as such, the nominee/legal heirs have to raise the claim after seven years from the date of presumed missing by submitting requisite documents. The said order was challenged by the first respondent in the writ petition and the writ Court, by the impugned order, has directed the appellant Bank to refund the entire amount along with interest at the rate of 9.5% per annum from the date of deposit till realisation, within a period of two weeks from the date of receipt of a copy of the order. Aggrieved thereby, the present appeal has been filed.



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3. The primordial contention of the learned counsel appearing for the appellant is that the writ Court has awarded interest at the rate of 9.5% per annum, which is excessive. It is further submitted that although a case has been registered for 'woman missing', the first respondent has not produced the non-traceable report from the jurisdictional police to the appellant Bank till date. When the first respondent/nominee is not entitled to make the claim in respect of the deposit made by the missing person, namely, her mother-in-law before the expiry of seven years from the date of her reported missing by submitting requisite documents as per para 16.2 of the Memorandum of Instructions on settlement of death claims and nomination of the bank as well as under Sections 107 & 108 of the Indian Evidence Act, the said claim has been rightly rejected by the bank by the order impugned in the writ petition. However, the writ Court has wrongly interfered with the said order and has given a direction to the appellant Bank to refund the deposited amount with interest at the rate of 9.5% to the first respondent. Therefore, the order of the writ Court is liable to be set aside.

4. Per contra, the learned counsel appearing for the first respondent



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submitted that the order of the writ Court is perfectly in order and the same requires no interference, as the bank has agreed to repay the fixed deposit amount with interest at the rate of 9.5% per annum as per the terms and conditions of deposit.

5. We have heard the rival submissions and also perused the materials available on record. Though the appellant Bank has rejected the claim of the first respondent by relying upon the provisions of Sections 107 & 108 of the Indian Evidence Act, 1872, wherein the presumption of death can be raised only after a lapse of seven years from the date of his/her being reported missing and as such the nominee/legal heirs have to raise the claim after seven years from the date of presumed missing by submitting requisite documents, on the date of filing of the writ petition and before passing the impugned order, in the case on hand, it is now represented across the Bar that the mother-in-law of the first respondent is still found to be missing. Further, the appointment of the first respondent as the nominee by her mother-in-law, namely, Visalakshi for receipt of the proceeds of the aforesaid fixed deposit with accrued interest on maturity is also not disputed



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by the appellant Bank. Therefore, considering the facts and circumstances of the case, we are not inclined to interfere with the order of the writ Court so far as the interest portion is concerned. In that view of the matter, this Court directs the appellant to settle the entire amount together with interest at the rate of 9.5% per annum, after deducting the amount already paid, to the first respondent/writ petitioner, within a period of 12 (twelve) weeks from the date of receipt of a copy of this order, subject to production of non-traceable report from the Station House Officer of J10-Semmancherry Police Station as to the registration of 'woman missing' case in F.I.R.No.361 of 2010. With this direction, the writ appeal stands dismissed. Consequently, interim order stands vacated and the C.M.P.No.7673 of 2020 is also dismissed. There shall be no order as to costs.

(D.K.K.,J.) (P.B.B,J.)
26.09.2023

Index : yes/no
Neutral citation : yes/no

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