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

\+ **W.P.(C) 12028/2015**

Date of Decision: **17.08.2023**

IN THE MATTERS OF:

VAIJANTI MALA
W/O LATE SH.DHARANN SINGH
HOUSE NO.58, STREET NO.4, ARYA NAGAR,
NEAR DAYANAND VIHAR,
DEIHI - 110092 .....PETITIONER

Through: Mr.Rakesh Dhingra, Advocate.

Versus

UNION OF INDIA DELHI THROUGH SECRETARY
MINISTRY OF FINANCE, DEPARTMENT OF FINANCIAL SERVICES
JEEVAN VIHAR BUILDING,
PARLIAMENT STREET, NEW DEIHI –110001
..... RESPONDENT NO.1

SH. MAN MOHAN SINGH, BRANCH MANAGER
CENTRAL BANK OF INDIA
25/4, KARKARDOOMA, GAON & POST OFFCE SHAKARPUR,
DEIHI – 110092 ..... RESPONDENT NO.2

CENTRAL BANK OF INDIA THROUGH ITS CHAIRMAN,
CENTRAL BANK OF INDIA,
CHANDER MUKHI, NARIMAN POINT,
MUMBAI – 400021 ..... RESPONDENT NO.3

THE DRAWING & DISBURSING OFFICER-PENSIONS
THE CENTRAL PENSION ACCOUNTING OFFICER
TRIKOT - 2, BHIKAJI CAMA PLACE, NEW DELHI -110056
..... RESPONDENT NO.4

Through: Mr.Sanjib K.Mohanty, Sr.Panel Counsel for R-1 & 4.
Mr.Rajesh Sharma, Advocate for R-2 & 3.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioner in the instant petition has prayed for the following relief:-

> *"A) To issue a writ of mandamus or any other appropriate writ as deemed necessary by this Hon'ble Court thereby directing the respondents to release the amount standing in her bank account keeping in view the aforesaid facts as also in the interest of justice.*
> *B) To directed the respondents for payment of Rs.25,000/- as cost of legal expenses incurred by the petitioner.*
> *C) To pass such other and further order/ orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."*

2. The case of the petitioner appears to be that she is in receipt of the family pension after the demise of her husband. Upon realising that certain amount was being deducted from the total pension amount without the respondent-Bank giving any notice to her, she tried to contact the officials of the respondent-Bank. Since the same was not explained satisfactorily by the concerned officials, therefore, she has been constrained to approach this court in the instant petition.

3. In terms of the order dated 09.10.2018, this court had restrained the respondent-Bank from effecting any further recovery from the family pension. When the respondent-Bank is called upon to explain as to why the recovery is still being effected, it is submitted that an excess payment of

pension amounting to Rs.2,89,461/- has been paid to the petitioner on account of some inadvertence of the officials of the respondent-Bank, and as per the undertaking given by the petitioner, the excess amount is being recovered.

4. Learned counsel appearing on behalf of the respondent-Bank, while placing reliance on a decision of the Hon'ble Supreme Court in the case of ***High Court of Punjab & Haryana v. Jagdev Singh,***[1] submits that if there was an undertaking by the petitioner for allowing the respondent-Bank to recover any excess payment, the petitioner cannot challenge the said recovery.

5. Learned counsel appearing on behalf of the petitioner, however, states that the petitioner is not at fault for the action of the bank in releasing the excess payment in her account. Learned counsel also explains that if the facts are perused, the same would indicate that there was no excess payment and no inquiry has been conducted into the matter.

6. I have considered the submissions made by learned counsel for the parties and perused the record.

7. The undertaking submitted by the petitioner, which was relied upon by the respondent-Bank reads as under:-

> *"In consideration of your having at my request agreed to make payment of pension due to me every month by credit to my account with you, I, the undersigned agree and undertake to refund or make good my amount to which I am not entitled or any amount which may be credited to my account in excess of the amount to which I am or would be entitled. I further hereby undertake and agree to bind myself and my heirs, successors, executors and administrators to indemnify the bank from and against any loss suffered or incurred by the bank in so crediting my pension to my account under the scheme and to forthwith the same to the bank and also irrevocably authorize the bank to recover the amount due*

[1] (2016) 14 SCC 267

by debit to my said account or any other deposits belonging to me in the possession of the bank."

8. A cursory perusal of the undertaking indicates that the petitioner appears to be an illiterate lady since she has placed her thumb impression. There is no mention in the undertaking as to whether; the contents of the undertaking were explained to her in her mother tongue. Admittedly, the alleged undertaking is in English language.

9. It cannot be expected that an illiterate lady would have understood the context and meaning of such an undertaking. It is thus, seen that the same cannot be considered to be an undertaking, enabling the respondent-Bank to recover any excess amount, if paid inadvertently.

10. The Hon'ble Supreme Court in the case of ***High Court of Punjab & Haryana (supra)*** in paragraph nos.11 and 12 has held as under:-

"11 The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12 For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years".

11. A reading of the said decision rendered by the Hon'ble Supreme Court indicates that once the officer furnishes an undertaking while opting for the revised pay scale, he/she is bound by the same. The same is not applicable in the instant case as, firstly, the petitioner is not an employee. She is an illiterate pensioner. Secondly, owing to her non-understanding of the same, the present undertaking cannot be said to be an undertaking in the eyes of

law. The doctrine of *non est factum*, squarely applies in the present case. The Hon'ble Supreme Court, in the case of ***'Bismillah v. Janeshwar Prasad'***[2] has elaborated upon the said doctrine, in the following terms:

> *"**12.** The common law defence of non est factum to actions on specialities in its origin was available where an illiterate person, to whom the contents of a deed had been wrongly read, executed it under a mistake as to its nature and contents, he could say that it was not his deed at all. In its modern application, the doctrine has been extended to cases other than those of illiteracy and to other contracts in writing. In most of the cases in which this defence was pleaded the mistake was induced by fraud; but that was not, perhaps, a necessary factor, as the transaction is "invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signor did not accompany the signature; in other words, that he never intended to sign, and therefore, in contemplation of law never did sign, the contract to which his name is appended." [Chitty on Contracts, 25th edn., p. 341]."*

12. Upon consideration of the fact that the petitioner is an illiterate woman who could not have understood the meaning of the undertaking, without having been explained the content of the same, it is seen that the undertaking cannot be considered as a valid document.

13. It is for this reason, the impugned decision of recovery being effected by the respondent-Bank is set aside.

14. Let no further recovery be made from the petitioner and if any recovery, on account of the aforesaid reason is made, let the same be also released in favour of the petitioner, in her bank account, within a period of 8 weeks from the date of receipt of a copy of this order.

15. Accordingly, the instant petition stands allowed.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 17, 2023/MJ/rg

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[2] (1990) 1 SCC 207