IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24129 of 2013

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Shiv Prasad S/O Late Mandeep Gopi Resident Of Kaila, Post- Kaila, P.S- Sare, Via- Asthawan, District- Nalanda, Bihar, Pin- 803107

... ... Petitioner/s

Versus

1. The Chairman Cum Managing Director Punjab National Bank and Ors
2. The General Manager, Punjab National Bank, Inspection And Audit Division, Rajendra Bhawan, Rajendra
3. The Deputy General Manager, Punjab National Bank, R, Block, Patna, Bihar.
4. The Regional Manager, Punjab National Bank, Nalanda At Biharsharif, Bihar.
5. The Branch Manager, Asthawan Branch, Punjab National Bank, Asthawan, Nalanda.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bimlesh Kumar Jha
For the Respondent/s : Mr. Kumar Priya Ranjan

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL ORDER

15 19-04-2024 Heard the Learned counsel for the petitioner and the Learned counsel appearing for the respondents.

2. The writ petition is filed by the petitioner seeking a direction to command the respondent-Bank to pay the interest at the rate of 11% on fixed deposit of Rs. 27,000/- dated 27.05.1993, Punjab National Bank, Asthawan Branch, Nalanda for twelve months.

3. The brief facts culled out of the petition are that, the petitioner deposited Rs. 27,000/- as Fixed Deposit in Punjab National Bank, Asthwan Branch, Nalanda for a period

of one year at the rate of interest of 11% vide Branch serial No. 121/1993, A/C No. 1693. Further, the petitioner had addressed a letter to the branch on 26.06.1993 reporting that the fixed deposit amount was not mentioned in the Bank record and, therefore, requested to return the amount in question. He also addressed letters to respondent Nos.1, 2, 4 and 5 reporting about the fraud which took place in the Punjab National Bank, Asthawan Branch, Nalanda at Biharsharif and also claimed for payment of the deposited amount along with interest. In turn, the 5th respondent addressed a letter to the petitioner reporting that an F.I.R. was lodged against the staff regarding the fraud committed in the bank. Further, on 15.05.2009, the Branch Manager, Asthawan Branch, Nalanda addressed a letter to the petitioner reporting that the Bank was unable to do anything till the final disposal of the case which is pending before the S.D.J.M., Nalanda. Thereafter, the petitioner preferred a complaint before the Ombudsman, Patna but the Ombudsman, Patna did not interfere in the matter because a criminal case was pending before the S.D.J.M., Nalanda. Further, the Chief Manager of the Bank addressed a letter to the Branch Manager, Asthawan Branch regarding the

Sanction of amount to the petitioner and the respondents have paid Rs. 3,0095/- to the petitioner on 06.10.2012 against the fixed deposit of Rs. 27,000/-. Further, the respondents also paid Rs. 19,365/- towards the interest part on 25.06.2013, on the basis of interest being awarded by the Bank. Being aggrieved and dissatisfied with the amount paid to the petitioner against his fixed deposit, the petitioner had approached this Court.

4. It is the contention of the Learned counsel for the petitioner that the petitioner has sent a legal notice to the respondents to pay interest @ of 11% from the date of disposal till the date of payment and, therefore, prayed for the aforesaid relief.

5. A detailed counter affidavit has been filed on behalf of the Punjab National Bank-respondents reporting to the Court that the competent authority has settled the claim of the petitioner in terms of the FPIS internal Circular No. 2/2010 dated 12.01.2010 in respect of his SF Account No. 4792 for Rs. 948.55 (after netting the existing balance of Rs. 127.65 in his SB account) and FDR No. 1693 for Rs. 27,000/- (M.V. Rs. 30,095/-) along with admissible interest amounting to Rs. 19,465/- on FD and SF from 27.05.1994 to 06.10.2012

and the same was paid to the petitioner on 25.06.2013. Rs. 30,095/- has been paid towards FD account No. 1693 for Rs. 27,000/- on 11.10.2012 and Rs. 820/- has been paid towards settlement of old SF account No. 4792 on 06.10.2012.

6. Further, the counter affidavit reveals that it is admitted by the petitioner vide letter dated 19.12.2023 that a Fixed Deposit of Rs. 27,000/- was prepared by Shri Dinesh Kumar, Peon/Daftary and the fraud was committed by him by issuing fictitious FDRs and Non-Deposit of amount in SF account. The FDR in question had been reported lost by the branch and an F.I.R. was lodged against Shri Dinesh Kumar, Peon/Daftary (U/S) at branch office, Asthawan. A criminal case was also lodged against Dinesh Kumar on 05.07.1993 before the Biharsharif police station (GR No. 1125 of 1993) which was pending before the S.D.J.M., Nalanda.

7. The counter affidavit, further reveals that Dinesh Kumar was suspended and a departmental enquiry was initiated against him, but the delinquent died on 24.09.2006 and as such, the departmental inquiry got abated. The respondents have settled the claim of the customer in terms of FPIS internal Circular No. 2/10 dated 12.01.2010 in

favour of the petitioner towards full and final settlement and, therefore, the claim of the petitioner is not at all maintainable and the writ petition itself is not maintainable and prayed to dismiss the writ petition.

8. A detailed rejoinder was filed by the petitioner in reply to the counter affidavit contending that the petitioner has been paid Rs. 30,095/- along with interest amount of Rs. 19,465/- on Fixed Deposit. Further, the petitioner is entitled to Fixed Deposit interest till 2013 i.e. 25.06.2013 as the interest was only paid up to 06.10.2012. Further, the petitioner is also entitled to interest from 25.06.2013 to till the date of the payment of dues of interest. It is further contended that the Bank cannot disown their liability to pay the interest, on the Fixed Deposit in the event of their employees committing fraud, as per the directions of the Hon'ble Apex Court.

9. Further, Supplementary affidavit was also filed which reveal that the petitioner is entitled to compound interest and the bank is liable to pay Rs. 5,94,673/- after deduction of the paid amount.

10. Heard the Learned counsel for the petitioner and the Learned counsel appearing for the respondent-Bank.

11. On perusal of Annexure-12, it is evident that the interest was mentioned in the FDR as 11%. There is no agreement between the petitioner and the Bank towards the compound interest. Further, the learned counsel for the petitioner relied upon a judgment of Hon'ble Madras High Court in ***Ashok Amritraj vs. Reserve Bank of India & Ors.*** passed in ***W.P. No. 22258 of 2011*** and contended that the writ petition is maintainable. On perusal of the said judgment, it is evident that the Learned single Judge while adjudicating the question of maintainability, has relied upon a judgment of Hon'ble Apex Court rendered in the case of ***State of Madhya Pradesh and Anr. Vs. Bhailal Bhai & Anr***. reported in ***AIR 1964 SC 1066.*** Paragraph -17 of the judgment is being reproduced hereinbelow;

> "*At the same time we cannot lose sight of the fact that the special remedy provided in Article 226 is not intended to supersede completely the modes of obtaining relief by an action in a Civil Court or to deny defences legitimately open in such actions. It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse*

there is for it. Another is the nature of controversy of facts and law that may have to be decided as regards the availability of consequential relief. Thus, whereas in these cases, a person comes to the court for relief under Article 226 on the allegation that he has been assessed to tax under a void legislation and having paid it under a mistake is entitled to get it back, the court, if it finds that the assessment was void, being made under a void provision of law, and the payment was made by mistake, is still not bound to exercise its discretion directing repayment. Whether repayment should be ordered in the exercise its discretion directing repayment. Whether repayment should be ordered in the exercise of this discretion will depend in each case on its own facts and circumstances. It is not easy nor is it desirable to law down any Rule for universal application. It may however be stated as a general Rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus. Again, where even if there is no such delay the Government or the statutory authority against whom the consequential relief is prayed for raises a prima facie triable issue as regards the availability of such relief on the merits on the grounds like limitation the court should ordinarily refuse to issue the writ of mandamus for such payment. In both these kinds of cases, it will be sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a Civil Court and to refuse to exercise in his favour the extraordinary remedy under Article 226 of the Constitution."

12. In view of the above discussion and

observation of the Hon'ble Apex Court, this Court is of the view that wherever the question of facts are involved, which are to be decided, and whereas, in such cases, a person comes to the court for relief under Article 226 of the Constitution of India, it is purely a discretionary relief being prayed and even the Learned Single Judge has relied upon a judgment of the Apex Court in the case of ***Hyderabad Commerialise Vs. Indian Bank and Othes*** reported in ***AIR 1991 SC 247***, wherein the Hon'ble Supreme Court has considered the basic facts relating to the disputed amount which was unauthoizedly transferred from one account to another as well as the bank liability was admitted and there was no justification for the bank to file suit on the ground of disputed questions of facts which can be entertained in exercise of powers conferred under Article 226 of the Constitution of India. But, in the present case, there is no transfer of the amount from the petitioner's account to somebody else account and it is not a case of any amount being transferred on oral instruction also, therefore, the said judgment is not at all helpful for the petitioner for the facts and circumstances of this case. In view of the aforesaid discussion, the writ petition fails for the relief sought by the petitioner and it does not warrant the interference of this Court.

13. Needless to say that if at all the petitioner has any grievance, he is at liberty to agitate his grievance before the appropriate authority.

14. It would be worth to mention here that since the present writ petition was filed in the year 2013 prior to receiving payment, the doctrine of limitation would not come in the way of the petitioner to agitate his grievance before the appropriate authority.

15. With the above observation, the present writ application is disposed of.

(G. Anupama Chakravarthy, J)

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