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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 2546 of 2023

Netai Chandra Das
Vs.
Union of India & Ors.

Mr. Shibasis Chatterjee
...for the petitioner

Mr. Soumak Bera,
Mr. Debapriya Samanta
...for the Union of India

Ms. Manika Roy,
Ms. Shinjini Ray
...for the State Bank of India

1. The petitioner contends that the operation of a bank account, which is a pension account of the petitioner, has been stopped at the behest of the private respondent (wife of the petitioner), by the Bank. The account has been designated under the classification "either or survivor".

2. Learned counsel for the petitioner relies on *Anumati vs. Punjab National Bank*, reported at *(2004) 8 Supreme Court Cases 498* in support of the proposition that in such situations, the Bank has no right to refuse payment of the amount to one of the account-holders.

3. Learned counsel further argues that although a matrimonial suit has been filed at the behest of the petitioner, the private respondent-wife has not yet

taken out any maintenance application therein. Hence, there is no occasion for the Bank to stop the operation of the account of the petitioner.

4. Despite service, none appears for the private respondent-wife.

5. Affidavit of service filed today be kept on record.

6. Learned counsel for the Bank seeks to support the action of the Bank on the ground that it is the policy of the Bank that in case of "either or survivor" joint accounts, in the event there is objection to operation of the accounts by one of the account-holders, the Bank shall stop the operation of the account.

7. A perusal of the cited judgment indicates that the Supreme Court aptly held in the said judgment that a fixed deposit in the joint names of two persons is nothing but a joint account which, as the name itself suggests, is repayable on the expiration of the agreed period. The fixed deposit receipt is merely a written acknowledgement by the Bank that it holds a certain sum to the use of its customers. The Bank is thus a debtor to the account-holders in respect of the amount deposited – a debt which is repayable by the Bank to the account-holders with interest on the expiry of an agreed period. An "either or survivor" clause in such an account means that the amount payable

by the Bank on maturity of the fixed deposit may be paid to either of the account-holders by the Bank in order to obtain a valid discharge. In other words, under a tripartite agreement between the joint account-holders inter se and the Bank, the Bank may, on maturity, make payment only to either of them. This tripartite agreement, it was held, cannot be bilaterally modified by one of the joint account-holders for example by pledging the account with any third party.

8. Quoting another judgment of the Division Bench of the Lahore High Court in *Simla Banking and Industrial Co. Ltd. vs. Bhagwan Kuar*, reported at *AIR 1928 Lah 316,* the Supreme Court went on to observe that the Bank pleaded a general lien and claimed to have acted within its rights in appropriating the amount of an "either or survivor" account but the Division Bench was of the view that the action of the Bank was neither supported by authority nor in law nor in equity.

9. Ultimately the Supreme Court held that the Bank had no right to refuse payment of the amount deposited to the appellant.

10. The instant case is a bit distinguishable from the said judgment inasmuch the private respondent-wife has staked a claim against the petitioner, which partakes of the character of an

inter se dispute between the account holders themselves.

11. The nomenclature “either or survivor” merely indicates the nature of the modus of operandi of an account.

12. When the account is withdrawn or, if fixed, matured, it is only to either of the survivors whom the Bank can pay the amount.

13. Either of the parties is entitled equally to operate the amount and the account cannot be stopped at the behest of one of them without a proper order permitting the Bank or one of the parties to do so, which has to be passed by a competent court of law or a competent forum.

14. In the present case, although a matrimonial suit is pending, as per the petitioner there is no order of alimony passed by the said Court.

15. Only if such an order is passed and the wife has a specific order of the court to attach the property would the Bank be entitled, at the behest of the wife, to stop operation of the account by the petitioner.

16. In the present case, there does not appear to be anything of that sort, even as per the pleading of the Bank, which says that on mere request of the wife, who is one of the account-holders, the operation of the account was stopped.

17. It is well-settled that what cannot be done directly in law cannot also be done indirectly by a party. Since the wife does not have any order of court to that effect, she does not have any *locus standi* to interdict the operation of the account by her spouse through the Bank.

18. In such view of the matter, there was no justifiable reason for the Bank, merely at the request of the private respondent-wife, to stop operation of the pension account of the petitioner, particularly since the corpus of the account pertains to the pension of the petitioner as well, to which the petitioner has an unfettered right in the absence of any court order to the contrary.

19. Keeping in view of the above observations, W.P.A. No. 2546 of 2023 is allowed on contest, thereby directing the Bank to immediately permit the petitioner to operate the joint account standing in the name of the petitioner and the private respondent-wife in "either or survivor" mode.

20. The parties shall act on a server copy of this order for the purpose of compliance.

21. There will be no order as to costs.

22. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)