



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

% Judgment reserved on: 05.12.2024
Judgment delivered on: 07.01.2025

+ W.P.(C) 4138/2021 & CM APPL. 12582/2021 & CM APPL.
4469/2024

MUKESH KUMAR BANSALPetitioner

versus

CENTRAL BANK OF INDIA & ANR.Respondents

Memo of Appearance

For the Petitioner: Mr. Rakesh Khanna, Sr. Advocate with Mr. Abdhesh Chaudhary, Ms. Geetanjali Setia, Mr. Vinayak Mishra and Mr. Sunil Kumar, Advocates.

For the Respondent: Mr. Anuj Jain with Mr. Mritunjai Singh, Advocates for Central Bank of India.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. This petition poses question whether it is permissible for any bank to 'put on hold' bank account of one entity to secure its dues to be recovered from another entity.

2. The broad facts are not in dispute.

3. Petitioner and his wife Mrs. Jyoti Bansal (respondent No. 2 herein) are partners in a partnership firm - *M/s Imperial Finance Company*. Such partnership firm maintains current account no. 3688550290 in one of the branches of the respondent no.1-Bank. Such branch is at Saraswati Bal Mandir, Uttam Nagar Branch, Rajouri Garden, Delhi.



4. Notably, Mrs. Jyoti Bansal, the other partner of the above said partnership firm, as sole- proprietor of *M/s Next World Technologies* is maintaining a separate current account i.e. CC Account no. 3163455860 with the respondent Bank, *albeit*, in another branch i.e. Parliament Street Branch, New Delhi, 110001.

5. Apparently, the bank accounts are of two different entities, maintained at different branches.

6. As averred, the petitioner, when, attempted to conduct an online transaction on 10.02.2021 in his abovesaid partnership firm's current account, he could not do so. He, eventually, learnt that the bank had placed their said partnership bank account 'on hold'. Consequently, the petitioner was unable to operate his said account and was unable to withdraw money from said partnership account.

7. The respondent bank also sent a letter to Mrs. Jyoti Bansal on February 11, 2021, informing her that she owed Rs. 80,47,000 in her said CC account related to *M/s Next World Technologies*. It was also mentioned therein that since despite several communication, she had not regularized said account and overdue was not paid, her said account had been classified as NPA (Non-performing Asset). The bank also stated in the abovesaid letter that she was partner in partnership firm *M/s Imperial Finance Company* and said firm was maintaining current account with Saraswati Bal Mandir, Uttam Nagar Branch, a sum of Rs. 38,60,000 lying therein had been put 'on hold' for the aforementioned outstanding sum payable by her proprietorship concern. She was advised to regularize her own account, else to face appropriate action under right to set off.



8. Such letter dated 11.02.2021 issued by respondent No. 1-Bank, whereby it has put on hold the current account of a partnership firm - *M/s Imperial Finance Company*, is under challenge before this Court by way of the present petition filed under Article 226 of the Constitution of India.

9. The above action of the bank has been assailed while contending as under: -

1) There is no relation or nexus between the two accounts. One account is of partnership firm; the other is of the proprietorship concern.

2) Merely because, respondent no.2 is also partner of M/s Imperial Finance Company, the bank would not get any right to freeze said firm account, when the same is being maintained as per the banking norms.

3) These entities - the partnership firm and the proprietorship firm – are distinct entities, having separate PAN, distinct beneficiary and different mode of operation.

4) No notice was, even otherwise, ever given by the bank to put the account 'on hold' and, therefore, also, such action of the bank is against the principles of Natural Justice as also against RBI Guidelines and Banking Rules.

5) Partnership firm is separate legal entity and no right of set-off is available to the bank. The amount put 'on hold' vests with partnership firm whereas the amount alleged to be due was from different concern i.e sole proprietorship concern.

6) Mrs. Jyoti Bansal and Mr. Mukesh Bansal have equal rights in the partnership firm and are entitled to apportion of profit as per Partnership Act, 1932 and the amount put in hold (i.e. Rs. 38 lacs) does not belong to any individual partner.

7) Respondent Bank has already initiated recovery proceedings against the proprietorship concern M/s Next World Technologies and the present action of attaching the account, therefore, amounts to double jeopardy."

10. Learned counsel for petitioner also relies upon *Gurbax Rai And Others Vs. Punjab National Bank, New Delhi 1984 SCC OnLine SC 73; Anumati Vs. Punjab National Bank 2004 SCC OnLine SC 1344; Punjab*



National Bank Ltd. Vs. Arura Mal Durga Das And Others 1960 SCC OnLine Punj 126; *Anantkoti Fabrics A Partnership Firm Vs. Bank of Baroda AIR ONLINE 2021 Gujarat 147* and *Shiv Developers Vs. Aksharay Developers And Others AIR 2022 SC 772*.

11. All such contentions have been refuted by Respondent No. 1/Central Bank of India.

12. It is submitted that since the present petition challenges the decision to "put on hold" the bank account of partnership firm, such firm - *M/s Imperial Finance Company* should have filed the petition whereas it has been filed by a partner only. It is also claimed that the petitioner has, purposely and knowingly, failed to disclose that he himself is the authorised signatory to the CC account of *M/s Next World Technologies* (sole proprietorship firm of respondent no.2). In fact, the OTS (One-Time Settlement) sanction letter dated 17.03.2021 qua *M/s Next World Technologies* has been received/acknowledged by petitioner under his own signatures. It is submitted that the petitioner, jointly and severally alongwith respondent no. 2, has siphoned off the funds of *M/s Next World Technologies* to the account of partnership firm *M/s Imperial Finance Company*, either directly or by channelizing the same from two other accounts i.e. one of petitioner himself bearing account no.3211486691 and another of *M/s Europa Digital Limited* (in which petitioner and respondent no.2 are signatories) bearing account no. 3132953622. It is further contended that OTS has already been revoked/recalled for not adhering to the terms of OTS. It has thus been submitted that respondent no. 1 bank has



every right to secure the outstanding amount of loan of *M/s Next World Technologies* under the right of "General Lien" of Banker.

13. In the backdrop of the above factual matrix and rival contentions, it is to be evaluated whether the action of the bank is legally permissible and sustainable or not.

14. As noted already, the two accounts are of different entities. It would be, in the present context, hardly of any real significance even if such sole proprietor is also one of the partners in the firm.

15. In *Gurbax Rai* (supra), a cash credit account was opened in the name of the firm with Punjab National Bank. There were numerous transactions in said cash credit account. The Bank, eventually, terminated the facility and called upon the firm to clear the account in which there was a debit balance of Rs. 3 lacs. The Bank also filed a recovery suit against the firm and its partners. The firm also filed a suit against the Bank praying for rendition of accounts in respect of cash credit account. The principal contention in the suit by the firm was that the firm had pledged certain goods with the Bank and the Bank, as a pledge, had not taken reasonable care of the goods pledged. It appeared that the goods were destroyed in a fire and the Bank recovered from the insurer which the Bank was bound to give credit. The suit of the Bank was dismissed. Initially, the suit of the firm was also dismissed but later on decreed and, the first appellate Court eventually, also confirmed the same. However, in *Letters Patent Appeal*, such decree was set aside and, resultantly, the firm filed SLP before Hon'ble Supreme Court. While allowing such appeal decreeing the suit of the firm, the Apex Court held that the pledged goods belonged to the firm and were not offered as



collateral for each partner's personal debt and, therefore, when the insurance was reimbursed for the sum due to the firm's pledged goods being destroyed, it must be given credit only in the cash credit account and, to that extent, the liability in the cash credit account would be reduced. Such observation seems little germane in the present context as well.

16. In *Anumati Vs. Punjab National Bank (supra)*, the question was whether a fixed deposit jointly owned with an “either or survivor” clause opened together by husband and wife could be pledged by one of the account-holders with the bank and whether the bank could adjust the amount of fixed deposit against such pledge, without the authority, knowledge or concurrence of the other account-holder. Such other account holder filed a complaint before District Forum claiming deficiency in service which was upheld and the bank was directed to pay proportionate amount with interest and compensation. Though, State Commission and National Commission set aside the same, the order of District Forum was restored by Hon’ble Supreme Court observing that the contract in respect of the joint account was between the respondent Bank and the ‘husband and wife’. The fixed deposit was not a ‘debt due’ by the Bank to the husband alone which could be set off by the Bank against any claim that the Bank may have had against such husband. Besides the right of husband was to receive the money deposited only after it matured, if he survived. Supposing he had died before the fixed deposit matured, the only person entitled to get the money would be the appellant i.e his wife and her right could not have been taken away without her consent. Though, the situation therein was little different but the crux remains the same.



17. The observations made in *Punjab National Bank, Ltd. v. Arura Mal Durga Das* (supra) are noteworthy wherein it has been held that Banker has a right to combine one or more accounts of the same customer but it cannot combine the account belonging to another. It also, while referring to *Lloyds Bank Ltd. v. Administrator General of Burma* [A.I.R. 1934 Rangoon 66], observed that in order to create Banker's lien on several accounts, it was necessary that they must belong to the 'payer in one and in the same capacity' and that where the person has two accounts, one a trustee account and another private account at a Bank, deposits in the two accounts cannot be set off, the one against the other. It also observed as under:-

"Similarly, the Banks have no lien on the deposit of a partner, on his separate account, for a balance due to the Bank from the firm. Therefore, the banker is entitled to combine all accounts kept in the same right by the customer. It does not matter whether the accounts are current or deposit or whether they are in the same or different branches [Garnett v. MKewan [(1872, L.R. 8 Ex 10.]. It is of essence to the validity of a banker's lien, that there should be a mutuality of claim between the Bank and the depositor. In order that it should be permissible to set off one demand against another both must mutually exist between the same parties. On this reasoning the joint and several accounts operated by two or more persons cannot be adjusted against the individual deposit of one of them. It is not open to the bank to claim the deposit of one partner made on his separate account in order to utilise other deposit against the debit due from the firm. In other words partnership deposits cannot be applied to the individual indebtedness of one of the partners (vide 7 A.M. Jur., page 458). Courts in England do not allow a lien to the banker on the deposit of a partner on separate account for a balance due to the Bank from partnership firm [vide Watts v. Christie [50 E.R. 928 (931).]]"

18. It was further held therein that there was no doubt with the proposition that a bank has no lien on a partner's private account for an overdraft on partnership account or vice versa, for want of reciprocity.



19. The above proposition was reiterated by Gujarat High Court in *Anantkoti Fabrics A Partnership Firm (supra)*.

20. Thus, bank can exercise lien only where there is mutuality of obligation between the two accounts.

21. Here, clearly, the lien is not permissible.

22. The accounts are of different bodies.

23. Money due to the bank by a proprietorship concern cannot be recovered from the account of partnership firm, even if such sole proprietor is one of the partners in such firm. It also really does not matter whether the petitioner herein had been operating both the accounts and certain amount was transferred from one account to the other. Bank could have only exercised some lien over the goods pledged by sole proprietorship concern but in the garb of set off, it had no business to touch account of an altogether different entity, on its own. Moreover, the bank is already before *Debt Recovery Tribunal* and there is judicial order, restraining the sole proprietorship concern from alienating or transferring hypothecated assets.

24. The bank has multiple roles to play. It is, at times, debtor, bailee, agent, assignee and trustee too.

25. In a case, where bank opens any deposit account for its customer, it essentially plays the role of a debtor. This means when a banker receives deposit from a customer or someone else deposits any amount therein, such deposit, being to the credit of the customer, the banker becomes a debtor and the customer a creditor. The bank becomes trustee when it undertakes to



collect cheques on behalf of its customers and after realizing those, the bank has to credit the proceeds to the account of the customer, whereby the customer becomes the beneficiary. The bank also becomes agent for its account holder, *inter alia*, when it makes payment to others, as per instructions of such account-holder. Bank will act as a bailee when goods are entrusted to it for a specific purpose.

26. Thus, any account-holder, invariably, banks on its bank, considerably.

27. Such trust and faith cannot be shattered by a bank in a monopolistic and exploitative style.

28. Being banker, the bank has certainly access to the details of all its accounts but that would not mean that it can freeze somebody's account in such arbitrary and whimsical manner, while acting itself as a judge, that too in its own cause.

29. Quite clearly, the bank muddled up in applying principle of set off as enumerated under Section 171 of Indian Contract Act, 1872, which is not attracted keeping in mind the peculiar facts of the case in hand. Lien is a right of a banker, by which it can retain any security coming to its possession for the purpose of any loan due by customer. Here, there was nothing offered as security by the partnership firm. Thus, there being no mutuality of obligation, which is an essential element in the right to set off, such right was not exercisable.

30. The firm in question comprises of two partners and both are parties to the present *lis*. Though ideally, the petition should have been filed by the firm but the fact that it has been filed by one of the partners does not mean



that the case has to be discarded, more so, when there is found to be clear-cut violation of law.

31. In view of foregoing discussion, the present petition is hereby allowed and, consequently, respondent-bank is directed to lift '*on hold*' from current account No.3688550290 maintained by partnership firm *M/s Imperial Finance Company* at Saraswati Bal Mandir, Uttam Nagar Branch, New Delhi immediately.

32. Needless to say, respondent-bank is always at liberty to pursue and/or to take any further step, as permissible under law, to recover its dues from *M/s Next World Technologies*.

(MANOJ JAIN)
JUDGE

JANUARY 7, 2025/HMJ