IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

Present:

The Hon'ble Justice Sugato Majumdar

CS/258/2016

ANIL KUMAR PATODIA
VS
UNION BANK OF INDIA & ANR.

For the Plaintiff	:	Mr. Sarvapriya Mukherjee, Adv. Ms. Rajshree Kajaria, Adv. Ms. Vrinda Kedia, Adv.
Hearing concluded on	:	03.02.2026
Judgment on	**:**	**10.02.2026**

<u>Sugato Majumdar, J.:</u>

This is a suit for recovery of money.

The plaint case may be summarized as follow:-

a) The Defendant No. 2 is a joint family company where the Plaintiff along with his two brothers, namely, Sunil Kumar Patodia and Pawan Kumar Patodia and two cousins, namely, Sudhir Kumar Patodia and Sushil Kumar Patodia are equal co-owners.

b) The Defendant No. 2 which is a company incorporated under the Companies Act, 1956, enjoyed credit facility from the Defendant No. 1 bank. The Plaintiff had furnished personal guarantee by way of collateral security in the form of pledge of the Government of India bonds against value of Rs.60,00,000/- for securing debts of the Defendant No. 2 from the Defendant No. 1. These bonds were own and separate assets of the Plaintiff which he furnished for personal guarantee.

c) Bonds worth Rs.60,00,000/- were pledged in the year 2002. These bonds, on maturity, converted into fixed deposits in the name of the Plaintiff which continued to be pledged with the Defendant No. 1. These bonds which were converted into fixed deposits, did not constitute the Plaintiff's contribution to the joint corpus for setting up the joint family business being the Defendant No. 2.

d) Even though the Defendant No. 2 is a joint family company, Pawan Kumar Patodia in collusion with some other relatives, wrongfully usurped the control of the Defendant No. 2 by issuance of shares to his nominees. The matter is sub-judice being the C.S. No. 338 of 2013. The suit is one of partition and administration. In view of the dispute, the Plaintiff was not willing to extend his personal guarantee for the Defendant No. 2 to the Defendant No. 1 bank. The personal guarantee was last extended on 11/03/2008. Thereafter, there had been no renewal of the personal guarantee. Previously, personal guarantee had been extended every year.

e) On 23/03/2013, the Defendant No. 1 discharged/waived the personal guarantee of the Plaintiff. Thus on and from 23/03/2013, the Plaintiff ceased to be the guarantor of the Defendant No. 2 to the Defendant No. 1.

f) At the time when C. S. No. 338 of 2013 was filed, the Plaintiff was under *bona fide* impression that the fixed deposits were still lying pledged for the credit facilities of the Defendant No. 2. It is only on 24/10/2013 the Plaintiff came to know on receiving a letter dated 01/10/2013 from the

Defendant No. 1 intimating applying of the fixed deposit assets of the Plaintiff towards repayment of the dues of the Defendant No. 2. From this letter it appeared that the Defendant No. 1 had unilaterally appropriated three of these fixed deposits amounting to Rs.1,00,65,000/- against the dues of the Defendant No. 2. The remaining one fixed deposit in the name of the Plaintiff's HUF for Rs.7,58,000/-, as on 25/01/2007 is still lying with the bank which had been renewed by the Defendant No. 1 from time to time.

g) On receiving the letter dated 01/10/2013, the Plaintiff made further enquiry and came to learn that the Defendant No. 1 adjusted the fixed deposits at the request of the Defendant No. 2 for granting fresh credit facilities to the Defendant No. 2. The Plaintiff further came to know that the personal guarantees of the Plaintiff were waived.

h) The Plaintiff states that without any written request from the Plaintiff the fixed deposits could not be encahsed. According to the Plaintiff, the Defendants colluded with each other to encash the fixed deposits though at that point of time there was no personal guarantee of the Plaintiff for the Defendant No. 2.

i) On being constrained, the Plaintiff instituted the instant suit claiming as follow:

The Value of pledged fixed deposits as on 30/09/2013	:	Rs.1,00,65,000/-
Interest at a rate of 18% p.a. from 01/10/2013 till 15/09/2016	:	Rs.53,65,610/-
		Rs.1,54,30,610/-

j) The Plaintiff herein prays for money decree of Rs.1,54,30,610/-; decree for return of the fixed deposit account no. 495603030006513 dated 25/01/2007 for Rs.7,58,000/- with accrued interest along with other prayers.

Writs of summons were served upon the Defendants but they did not contest the suit. Therefore, the Co-ordinate Bench, in terms of the Order dated 01/07/2022, listed the suit as undefended.

Plaintiff himself deposed as PW-1; various documents were produced which were differently marked as exhibits. Ext. B is collective mark of series of documents of the nature of a Report on modification cum enhancement proposal of the Defendant No. 2 in respect of the account maintained in the Defendant No. 1. This document is in substance, memorandum to Credit Approval Committee II dated 07/03/2013 and page 20 of the document noted that personal guarantee of the Plaintiff had not been renewed/executed. Page 23 also noted that personal guarantee could not be obtained. Page 40 also noted that - <u>"Branch is to press upon the borrower to renew the guarantee of Mr. Sunil Patodia and Mr. Anil Patodia. "</u> Memorandum to Credit Approval Committee II dated 03/06/2014 contains statement and reflects that waiver of personal guarantees of Mr. Anil Patodia and Sunil Patodia was permitted by Credit Approval Committee II in the meeting held on 23/03/2013. As on 01/10/2013 there was no personal guarantee of Plaintiff No. 1 for providing credit facilities to the Defendant No. 2. Ext. G being the letter dated 01/10/2013 written by the Assistant General Manager of the Defendant No. 1 bank intimated the Plaintiff that the deposit receipts had been encashed without specifying the date when they had been encashed. The documentary evidences as mentioned above shows that these deposits were not renewed and seized to be considered as a personal guarantee extended to the Defendant No. 1 for Plaintiff No. 2.

The Learned Counsel for the Plaintiff Mr. Mukherjee filed notes of argument. Among others Mr. Mukherjee argued that mandatory notice under Section 176 of the Indian Contract Act, 1872 was not served. However, the provision of Section 176 is not applicable in the facts and circumstances of instance case, at least the pleading does not support the plea. However, I agree with the submissions of Mr. Mukherjee that after waiver of personal guarantee these receipts can be encashed for a non-existent purpose. Unchallenged testimony and evidences adduced establish that neither the Defendant No. 1 Bank had any right or authority, once personal guarantee being waived to invoke and encash the same again, nor permitted by law. Therefore, the Defendant No. 1 is liable to refund the encashed fixed deposits.

For reasons discussed above, this Court is of opinion that the instant suit succeeds.

The Defendant No. 1 shall be liable to return the pledged value of fixed deposits as on 30th September, 2013, namely, a sum of Rs.1,00,65,000/-; the said amount shall bear interests till repayment as would have been paid to the Plaintiff had that been continued to be deposited. In addition the Defendant No. 1 shall pay compensatory interests at a rate of 5 % per annum on the principal amount along with capitalized interests from the date of institution of the suit till repayment. The Defendant No. 1 shall pay the aforesaid amount within thirty days from the date of drawing up the decree, in case of default, additional interests of two percent shall be charged on the outstanding amount with capitalized interests from the date of default. The Defendant No. 1 shall also return the Fixed Deposit No, A/C

No:495603030006513 dated 25/01/2007 for Rs.7,58,000/- with accrued interest thereon within thirty days from the date of the decree.

Let the decree be drawn up.

The instant suit is disposed of.

(Sugato Majumdar, J.)