

(2009) 07 JH CK 0011**Jharkhand High Court****Case No:** None

Haradhan Goswami

APPELLANT

Vs

The Bank of India and Others

RESPONDENT

Date of Decision: July 24, 2009**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 120B, 420, 467, 468, 471

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J**Bench:** Single Bench**Judgement**

D.G.R. Patnaik, J.

Heard Sri Anil Kumar, learned Counsel for the petitioners and Sri A. Allam, learned senior Counsel for the respondents.

2. At the outset, it may be noted that during the pendency of this writ application, the petitioner No. 2 had died. On the prayer of the learned Counsel for the petitioner, the name of the petitioner No. 2 has been deleted and this writ application is being pursued by the petitioner No. 1 alone, being the husband of the deceased petitioner No. 2.

3. The petitioners had jointly deposited different amounts of money on different dates in between October, 1983 to August, 1990 by way of Long Term Double Deposit Scheme and each of such deposits were to mature on specified dates. The total amount so deposited by the petitioner was Rs. 1,06,705/-.

4. On initial maturity of the deposits, the petitioners renewed the sum for the further period and on subsequent maturity, the petitioners demanded payment of the amount but each time they approached the Branch Manager, he deferred the payment of the maturity amount on one pretext or the other.

5. In course of time, the Branch Manager of the respondent-Bank namely D.B. Mandal was transferred to another branch and in his place another manager has

joined. Upon demand of the payment of the maturity amounts, the petitioners were informed by the successor Branch Manager that the fixed deposit amounts were allegedly pledged to the account of one Gajendra Mishra against the borrowing of overdrafts by him.

6. To the surprise of the petitioners, they realized that on 20.02.1988 when the petitioners had met the Branch Manager D.B.Mandal, he had obtained their signatures on some blank papers and deposit forms on the pretext of processing the same for payment of the maturity amount and the petitioners had subscribed their signatures on the blank papers in good faith, reposing confidence upon the manager.

7. Upon realizing that the Branch Manager D.B.Mandal, in connivance with the bank's customer Gajendra Mishra had cheated them, the petitioners lodged an F.I.R. with the Giddi Police Station and a case under Sections 420, 467, 468, 471 and 120B of the Indian Penal Code was registered against the accused bank official and the said customer. Both the accused persons were tried and convicted for the offence under Sections 468, 420 and 120B of the Indian Penal Code and were sentenced to undergo imprisonment. The Branch Manager D.B.Mandal was thereafter dismissed from service.

The appeal filed by the accused Branch Manager against the judgement of his conviction and sentence was also dismissed.

8. During this period, the respondent-Bank filed a money suit vide Money Suit No. 10 of 1996 in the Court of the Sub-Judge-I, Hazaribagh for realization of a sum of Rs. 92,980.63 together with interest @ 18% per annum with quarterly raised against the said bank customer Gajendra Mishra and the petitioners were also impleaded as proforma defendants in the suit.

9. The petitioners filed their written statements putting forth the counter claim against the Bank demanding payment of the maturity amount of the fixed deposits together with interest.

In the rejoinder filed by the respondent-Bank against the counter claim made by the petitioners, the Bank has taken its stand that since the petitioners were impleaded only as proforma respondents and no relief having been sought against them, the counter claim is not maintainable.

The dispute raised in the money suit could not be resolved even before the Lok Adalat due to the refusal of the officials of the respondent-Bank to return the money of the petitioners.

10. Claiming that the refusal on the part of the respondent-Bank to pay up the money belonging to the petitioners, is illegal and arbitrary, the petitioners have filed the instant writ application with a prayer to direct the respondent-Bank to forthwith pay to the petitioners the amount of Rs. 1,06,705/- alongwith maturity value and

together with interest @ 18% per annum.

11. A counter affidavit has been filed by the respondent Bank. The preliminary objection taken by the respondents is of non-maintainability of the writ claiming that the respondent-Bank has already instituted a suit for recovery of the outstanding dues against the defendants including the present petitioners who are "necessary defendant Nos. 2 and 3" and the petitioners are also contesting the suit.

The next contention of the respondents is that the writ is also not maintainable as because the disputes involve disputed question of facts which cannot be adjudicated upon in this writ application.

The respondents have sought to explain that the petitioners and the principal borrower Gajendra Mishra were friends and the said Gajendra Mishra had borrowed loan from the bank and was sanctioned an overdraft of Rs. 87,000/- on 17.02.1988. Such loan was sanctioned by the then Branch Manager D.B.Mandal against the collateral security given by the present petitioners by depositing their D.B.D. and R.D. Accounts. Since the principal borrower had defaulted in the payment of loan amount, the outstanding dues had accumulated. The Bank proceeded to make recovery from the accounts of the bonower Gajendra Mishra and the proceeds of the D.B.D. accounts of the petitioners were appropriated on 20.08.1993 against the outstanding loan and when even thereafter, the dues were not satisfied, the Bank filed the money suit in the Court of Sub-Judge, Hazaribagh on 07.08.1996 for recovery of the remaining outstanding balance of Rs. 92,980.63. The principal borrower Gajendra Mishra is the main defendant while the petitioners have been impleaded as proforma defendants since they were responsible to the extent of their collateral security which was pledged with the bank against the loan obtained by the principal borrower.

12. The respondents in their counter affidavit have acknowledged the fact that the petitioners had informed the Branch Manager in 1992 about the fraud practiced upon them by the former Branch Manager and the principal borrower Gajendra Mishra and the Bank was also informed about the criminal case instituted by the petitioners against the former Branch Manager and Gajendra Mishra in which both of them were convicted and sentenced to imprisonment.

13. From the rival submissions, it appears that admittedly the petitioners had deposited different sums of money by way of long term deposit with the respondent-Bank amounting a total sum of Rs. 1,06,705/-.

The amount of long term deposits on maturity was not paid to the petitioner by the bank. Rather, they were informed that the same were pledged by the petitioners by way of collateral security against the loan advanced by the bank to one of its customer namely Gajendra Mishra.

The petitioners had disputed the claim and had instituted a criminal case against the bank's Branch Manager and the customer.

The charge against both the accused persons at the trial was essentially for the offence relating to cheating the petitioner by dishonestly and deceptively obtaining the signatures and practicing fraud upon them. The charge for the offence was proved at the trial and both the accused persons were convicted and sentenced. The appeal filed against the judgement of conviction and sentence of the Trial Court, was dismissed.

Acknowledging these facts, the bank had dismissed the Branch Manager.

14. From the rival submission the admitted facts are that the dispute relating to the non-payment of the maturity amount is presently resting with the Civil Court. The petitioners by their written statements filed in the suit, have raised a counter claim against the Plaintiff Bank.

The petitioners' grievance is that despite knowledge of such fraud practiced upon them by their own Branch Manager, the bank had illegally proceeded to appropriate the money of the petitioners towards repayment of the outstanding dues owed to the bank by the said borrower, although the petitioners had never accepted or acknowledged to have stood surety for the repayment of such money nor did they ever pledge their fixed deposits by way of any collateral security.

15. Since admittedly, the petitioners have pursued their claim against the respondents by filing their counter claim in the money suit and since the relevant issues, upon the pleadings of the parties in the suit, have to be framed and decided by the trial court in the money suit and since the dispute involves disputed question of facts, this Court cannot possibly go into the same in exercise of its writ jurisdiction. As such, this writ application is held not maintainable and accordingly dismissed.

16. However, the petitioners shall be at liberty to pursue their claim for realization of their amount against the Bank through the process of law, if permissible on the basis of the pleadings in the pending money suit, or alternatively, through separate proceeding and in such event, they shall be entitled to claim and obtain the relief of condonation of delay in preferring such claim.

With these observations, this writ application is disposed of.

In the facts and circumstances, there shall be not order as to cost.