

Mr.Ashok Amritraj vs Reserve Bank Of India on 23 July, 2012

Author: N.Kirubakaran

Bench: N.Kirubakaran

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-7-2012

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.22258 of 2011

Mr.Ashok Amritraj

... Petitioner

-Vs-

1.Reserve Bank of India

For Glacias

P.Box N.40,

No.16, Rajaji Salai,

Chennai-600 001

through

The office of Banking Ombudsman

2.Canara Bank

Guindy Branch

Anna Salai

Guindy

Chennai-600 032

Rep. By its Chief Manager.

3.Canara Bank

Circle Office,

Anna Salai, Teynampet

Chennai-600 018,

Rep. by its General Manager

... Respondents

The writ petition is filed under Article 226 of the Constitution of India praying for th

For Petitioner : Mr.George Cheriyan

For Respondents : Mr.G.Masilamani,
Senior Counsel for
Mr.R.Umasuthan for RR 2 & 3

ORDER

"AS YOU SOW, SO YOU REAP ". What will be reaped by a party, if a party commits "suppression of material facts, pleading falsehood", the decision in this case would give the result. The petitioner invested a sum of Rs.6,35,00,000/- in the fixed deposits with the second respondent bank for the period of one year. On maturity, the amounts were not released inspite of request and reminders. Therefore, the petitioner is before this court seeking mandamus to discharge of of the petitioner's fixed deposit receipts to the tune of Rs.6,80,76,104/-.

2. The case of the petitioner is that he deposited Rs.6,35,00,000/- in second respondent bank by fixed deposit of Rs.6,35,00,000/- by issuing a cheque bearing No.650104 dated 9.8.2010, drawn on Indian Overseas Bank, Nungambakkam Branch. The deposit was made through duly authorising his Manager Mr.Anis.A.Abid. The second respondent issued six receipts each for Rs.95 lakhs and 7th receipt for Rs.65 lakhs. The maturity of the fixed deposit was on 13.8.2011. As the fixed deposits were to mature on 13.8.2011, the petitioner requested through his manager to issue pay order by discharging the F.D. receipts. However, the second respondent staff directed the petitioner to contact one Mr.D.R.Naik, the erstwhile Chief Manager, who was working as Divisional Manager in third respondent bank. Though the petitioner's manager contacted the said Mr.D.R.Naik, the respondent bank did not take any step to pay the amount, compelling the petitioner to write a letter on 25.8.2011 and again on 26.8.2011. Thereafter, the petitioner issued notice dated 31.8.2011 to pay the amount. The first respondent replied on 7.9.2011. However, no step was taken by the respondent bank. Therefore, the petitioner is before this Court.

3. The second and third respondents filed counter affidavit denying the contentions made in the writ petition.

4. It is contended that even though the petitioner deposited Rs.6.35 crores and the date of mature of the said deposit was on 13.8.2011, based on the specific request of the petitioner as contained in second application form, the single fixed deposit for the face value of Rs.6.35 crores was converted into 7 deposits. The petitioner through his letter dated 26.8.2010, requested the second respondent to pre-close four FDRs and to give the pay order to the bearer of the letter one Mr.Lawrence. Based on the said request, the second respondent pre-closed four fixed deposits and proceeds were paid through account payee demand draft in the name of the petitioner. Again on 12.11.2010, the writ petitioner through Mr.Lawrence sent FD receipt bearing No.090940100 3525/9 printed Sl.No.761023 for value of Rs.95 lakhs by discharging the same by signing his signature on the

reverse of the FDR. The second respondent issued A/c payee demand draft to the tune of Rs.96,08,063/-.

5. The petitioner by letter dated 19.11.2010 informed the Bank that the FD receipts bearing Nos.090401003525/7 and 0909401003525/8 for the value of Rs.95 lakhs and 65 lakhs were lost and requested to issue duplicate receipts. After getting indemnity agreements from the petitioner on 19.11.2010, duplicate FDRs bearing FDR No.090401003525/7 and 0909401003525/8 were issued in the name of the petitioner on 19.11.2010. On 24.11.2010, the petitioner through Mr.Lawrence sent the aforesaid two duplicate FDR for discharge by making his signatures on the reverse of the two FDR and the same was complied with by issuing account payee demand drafts on 24.11.2010 for the value of Rs.96,24,646/- and Rs.65,85,284/-. Thus the petitioner received the proceeds of the fixed deposits, paid through his representative Mr.Lawrence. The proceeds paid through demand drafts were also encashed through SB A/c.No.26051019452 standing in the name of the petitioner with M/s.Canara Bank, K.K.Nagar Branch.

6. When the above is the factual position, the writ petitioner sent his letter dated 25.8.2011 through M.Anish A.Abid calling upon the second respondent to pay the proceeds, suppressing pre-closure of FDRs already made. The photo copies of the FDRs were sent without surrendering the originals. Without awaiting any reply from the second respondent, the petitioner lodged a complaint with the first respondent vide letter dated 29.8.2011 and issued legal notices on 31.8.2011 and 22.9.2011. As the amounts were already paid, the second respondent bank did not comply with the petitioner's request for payment. Meanwhile, the respondent bank instituted a criminal complaint before the Superintendent of Police, Economic Offence Wing, Central Bureau of Investigation, Chennai and a case has been registered by CBI under RC.No.15 (E) of 2011 and investigation is in progress. Till the investigation is over, the amounts cannot be paid. 7. By giving the above version, the second and third respondent bank questioned the maintainability of the writ petition. It is contended that the writ petition is not maintainable as disputed questions of facts and triable issues are involved and the proper course is to approach the civil court for remedy and the petitioner is guilty of suppression of material facts and wanton mis-representation and he has not approached the court with clean hand and therefore, the writ petition is liable to be dismissed.

8. Mr.George Cheriyan, learned counsel for the petitioner submitted that the petitioner only made the deposits through his Manager Mr.Anis A Abid, who is authorised to transact with the respondent bank; The petitioner did not give any authorisation to Mr.Lawrence as alleged by the second respondent bank; He never withdrew the amount and in fact all the amounts are available in the fixed deposit; The petitioner never opened SB account in Canara Bank at K.K.Nagar Branch; The officials of the second respondent bank played fraud in order to deprive the petitioner's legitimate dues; The officials with the connivance of third parties created bogus certificates and based on the bogus certificates the amounts were withdrawn in clandestine manner; The bank flouted the norms of the bank in paying the amounts due to the petitioner to the strangers in dubious and negligent way; If the petitioner already hd withdrawn the amount, nothing prevented the second respondent bank to state the same by proper reply. The petitioner's counsel relied upon the following judgements:

- 1) Sardar Associates and others vs. Punjab and Sind Bank and others reported in 2009 (8) SCC 257
- 2) M/s.Hyderabad Commerce vs. India Bank and others reported in 1991 Supp (2) SCC 340
- 3) Zonal Manager, Central Bank of India vs. Devi Ispat reported in 2010 (11) SCC 186
- 4) ABL International and another vs. India Credit guarantee Corporation of India Limited and others reported in 2004 (3) SC 553.

9. Per contra Mr.G.Masilamani, learned Senior Counsel appearing for the respondent banks 2 and 3 would submit that there is sinister plan by the petitioner to make the deposit in Guindy branch of the respondent. When the petitioner is living in Shenoy Road, Egmore, there was no necessity for him to choose the second respondent branch which is located in Guindy. The act of demanding money again is tainted with criminality even after the amount was already paid based on the authorisation given by him. AS no amount is due to the petitioner, there is no statutory duty cast upon the second respondent bank, and writ of mandamus cannot be issued. Whether the petitioner authorised Lawrence to pre-close the deposits, he pre-closed the deposits, he encashed the amount through third respondent bank and as to whether the petitioner, only on maturity, requested the bank for release of the money are all disputed questions of fact. The above questions can be decided only by the civil court, where the parties would be at liberty to adduce evidence. When disputed questions of fact are involved, writ petition cannot be maintained. Moreover, the respondent bank already lodged a criminal complaint with CBI and the investigation is in progress. Therefore, pending investigation, the amount cannot be paid. In nutshell, he submitted that equity can be worked out in proper forum and not before the Writ Court. He relied upon a constitution Bench judgement of the Hon'ble Apex Court in State of Madhyapradesh and another vs. Bhailal Bhai and others reported in AIR 1964 SC 1006 to contend that when the disputed question of fact are involved, the discretionary relief under Writ Jurisdiction cannot be granted.

10. Heard the parties and perused the records carefully. It is an admitted fact that the petitioner deposited a sum of Rs.6 crores 35 lakhs in seven fixed deposits with the maturity date on 13.8.2011. The the FDR receipts details are as here under:

No.	FDR No.	Deposit Amount	Maturity Amount
0909401003525/2	95,00,000.00	1,01,84,614.00	0909401003525/3
95,00,000.00	1,01,84,614.00	0909401003525/4	95,00,000.00
1,01,84,614.00	0909401003525/5	95,00,000.00	1,01,84,614.00
0909401003525/6	95,00,000.00	1,01,84,614.00	0909401003525/7
95,00,000.00	1,01,84,614.00	0909401003525/8	65,00,000.00
1,01,84,614.00	0909401003525/8	65,00,000.00	1,01,84,614.00
Total	6,35,00,000.00	6,80,76,104.00	

It is also admitted by both the parties that the transaction was done through petitioner's manager. Mr.Anis A Abid. A perusal of the letter dated 9.8.2010 by which the petitioner authorised Mr.Anis.A.Abid would show that it is a proper authorisation letter which contained the name of his representative and the attested signature of the said person.

11. The dispute started only with regard to pre-closure. According to the petitioner, he did not pre-close FDR receipts. Whereas it is the specific case of the second and third respondents that FDRs were pre-closed. The amount involved is not a small amount. The amount is Rs.6 crore 35 lakhs along with interest. If really the contention of the second respondent bank that through letter dated 26.8.2010, letter dated 12.11.2010 on 24.11.2010, the petitioner pre-closed the FDRs, it is the bounden duty of the bank to prove that after following the proper procedure, the pre-closure was done. The respondent bank should have properly verified the authenticity of the alleged authorisation letter and the fixed deposit receipts produced and thereafter only it should have paid the amounts due under FDRs.

12. It is the specific contention of the bank that based on the authorisation letter dated 26.8.2010, the pre-closure proceeds of the following four FDR were given to the bearer of the letter Mr. Lawrence.

1) DR No.090940100 3525/2 Printed Serial No.761014 for Rs.95 lacs

2) DR No.090940100 3525/3 Printed Serial No.761014 for Rs.95 lacs

3) DR No.090940100 3525/5 Printed Serial No.761014 for Rs.95 lacs

4) DR No.090940100 3525/6 Printed Serial No.761014 for Rs.95 lacs The letter dated 26.8.2010 alleged to have been written by the petitioner reads as follows:

"Ref:DRNo:0909401003525/2,0909401003525/3,0909401003525/5,0909401003525/6 dated 12.8.10 Herewith I am enclosing fixed deposit receipts bearing No.761014,761015,761017,761018 due to administration reasons I am constrained to cancel the above mentioned fixed deposits and provide pay order in the name of undersigned and send the same through the bearer of this letter."

A perusal of the aforesaid letter would denote that there was mention of Mr.Lawrence's name and his attested signature. Therefore, the letter could not have been acted upon by the bank. The absence of material details in the above letter should have been taken note of by the officials and the authenticity of the letter should have been verified from the petitioner. That apart one another important aspect is that Mr.Anis.A.Abid was the original authorised agent who made the deposit whereas the subsequent letter authorised a stranger Lawrence. When such a letter is produced for encashment of FDR proceeds, that too to the tune of Rs.3.80 crores, (Pre closure of 4 FDR receipts), it is the bounden duty of the concerned bank officials to verify the authenticity of the letter either with the petitioner or with Mr.Anid A Abid.

13. The procedure for repayment of deposit before maturity is contained in clause 30.1.1, 30.2.1, 30.2.2 of the bank manual of the second respondent bank. The said clauses are extracted as follows:

" 30.1.1 Term deposits are contracts whereby the depositor agrees to receive principal amount after a certain period agreed upon at the time of deposit, interest being

received either periodically or at maturity. Hence, a depositor who seeks payment before maturity is not acting as per the contract. Subject to observance of rules and procedure governing repayment of Term Deposits before maturity, Managers are authorised to permit such withdrawals of deposits before maturity, without any ceiling on amount and period."

" 30.2.1 The deposit receipt duly discharged by all the depositors should be obtained in case authorisation in NF.108 is on record already, it is sufficient if any one of the depositors or survivors submits the deposit receipt duly discharged by him. The clause available on the reverse of the deposit receipt is to be utilised for this purpose.

"Please repay before maturity, with the prescribed penal cut if any as per rules".

30.2.2 While repaying the deposit before maturity, the aforesaid clause on the reverse of DR should be got signed by the depositors. In case cash payment is requested, NF 141 is also to be got signed by the depositors. "

The above clauses would reveal that the bank is required to receive the original deposit receipts duly authorised by the depositors. Though it is stated by the second respondent bank that the original deposit receipts were received by the bank before payments, copies of the FDR receipts filed by the bank would show that those receipts are fabricated. A close scrutiny of the receipts filed by the bank would show that the logo printed on the FDR receipts received by the bank for pre closure is different from the official logo of the bank. The bank logo consists of two triangles clubbed together, one placed vertically and another horizontally. Whereas the FDRs produced by Lawrence and acted upon by the bank would show that the logo printed in the FDR is a single Triangle. The aforesaid difference is striking and could be understood even by a layman where as inspite of the difference the bank officials either negligently or fraudulently acted upon the said receipts and paid the amount to Lawrence and it would speak volumes about complicity of the bank officials.

14. That apart, the name and designation and the seal of the supervisor are missing in the FDRs submitted by Lawrence. As per the details given in the FDR receipts before the settlement of FDR accounts, the signature of the depositor is required to be verified by the Supervisor/Manager, which is evident from the column incorporated in the reverse of FDR receipts which reads as follows:

"Signature verified Supervisor/Manager"

The aforesaid column would indicate the signature of the depositor needs to be verified by the supervisor/manager. In the absence of the signature of the Supervisor/Manager in the FDR issued by the bank, would certainly prove that the verification was not done by the Supervisor/Manager and it is the violation of the norms of the banks and the bank officials acted in negligent and carelessness manner deliberately with malafide motive.

15. It is the contention of the second respondent bank that as per the alleged petitioner's letter dated 19.11.2010, the petitioner informed about the loss of two original FD receipts and requested to issue duplicate FDRs in lieu of the original FDR receipts bearing No.090401003525/7 and 090401003525/8 for the value of Rs.95 lakhs and 65 lakhs. A close scrutiny of the said letter dated 19.11.2010 would reveal that the authorised person Mr.C.H.Lawrence name is neither stated in the body of the letter nor typed in the bearer column and only the name is found to be hand written below his alleged signature. When a person loses original FD receipts that too to the tune of Rs.95 lakhs and Rs.65 lakhs respectively, the best expected is a police complaint to be given. Neither police complaint was given nor the bank insisted upon production of copy of the police complaint only after the verification that the police complaint was given, the bank should have issued duplicate receipts to the depositors. The request for issue of duplicate receipts was made on 19.11.2010 and immediately the very next day viz on 20.11.2010 duplicate FDRs were issued as evident from the endorsement made in the said letter dated 19.11.2010. It only proved that the hurried manner in which, without even following the procedure, the said duplicates were given to wrong person.

16. Though it is stated that after getting the agreement to indemnify the Bank, it issued duplicate deposit receipts. The alleged indemnity agreement would reveal that the agreement was made on 19.11.2010. If really, subsequent to the letter dated 19.11.2010, the indemnity agreement was entered into, definitely the stamp papers should have been purchased either on 19.11.2010 or on 20.11.2010 whereas it was purchased in advance on 18.11.2010 as evident from the agreement. Secondly, the petitioner's name alone was shown in the agreement and names of the two other indemnifiers required to be incorporated. However no other name was given as indemnifiers. As per the agreement, the liability is fixed on the depositor as well as indemnifiers. Non-disclosure of indemnifiers' names in the Indemnity agreement, would make the agreement invalid. Based on the invalid agreement, without even verifying the same, the bank officials hurriedly and contrary to law accepted the agreement and issued two duplicate FDRs.

17. The statements made in the complaint given by the second respondent bank to CBI on 12.10.2011 gives the following details:

(i) The letter dated 26.8.2010 said to have been written authorising C.D.Lawrence, neither disclosed authorisation nor specimen signature of the bearer was mentioned.(para (d) of the complaint)

(ii) Pre-closure of KDR NO.3525/9 (Printed Sl.No.761023) for Rs.95.00 lakhs was made through the letter of authorisation and no letter of authority is available on record.(Para of the complaint)

(iii) In paragraph (J) of the complaint it is stated as follows:

" j) On verification of the Deposit Receipts closed before maturity under Ultra Violet lamp, the following came to light: Bank's water mark is appearing in respect of the following 3 deposit receipts:

i) KDR with printed Sl # 761023 for Rs.95 lakhs(This Deposit receipt was issued by the branch by changing the value date of the original deposit receipt bearing Sl # 761016. The original deposit was not obtained by the branch at the time of issuing fresh deposit receipt).

ii) Two Duplicate Deposit Receipts bearing Sl # 761556 and 761557 for Rs.95 lakhs and Rs.65 lakhs respectively.

iii) In respect of the remaining 4 Deposit receipts for Rs.95 lakhs each closed before maturity, Bank's water mark is not appearing. Hence, the same appear to be fake."

As the two duplicate receipts bearing Sl.No.761556 and 761557 were issued by the bank in the place of alleged loss of original FDRs, naturally the duplicate receipts would have water mark of the bank.

The penultimate paragraph of the above complaint dated 12.10.2011 reads as follows:

"Thus, it is clearly evident that there appears to be a criminal conspiracy among the perpetrators to defraud the bank and to make an unlawful gain. It is also evident that there is involvement of Sri D.R.Naik, Chief Manager, of our Guindy Branch, Chennai, (who has since been placed under suspension) which facilitated the fraudsters to perpetrate fraud on the Bank."

18. The admissions made by the second respondent bank in the complaint dated 12.10.2011 would clearly prove the case of the petitioner that the bank officials acted in violation of norms and without proper authorisation letter and without verification about the genuineness of the fixed deposits, acted negligently with malafide intention to defraud the amount payable to the petitioner and to pay the third party illegally. Therefore, for the negligent, fraudulent and illegal acts of the bank officials, the amounts due to the petitioner cannot be withheld.

19. As rightly pointed out by the petitioner, in paragraph 19 of the counter affidavit, the respondent bank contended that Mr.Lawrence on 12.11.2010 produced FD receipt bearing No.0909401003525/9 with printed serial No.761023 for the value of Rs.95 laksh by discharging the same putting his signature on the reverse of the FDR and the same was complied with by A/c Payee demand draft bearing No.158787 for Rs.96, 08, 063/-. However, even as per paragraph 15 of the counter affidavit, the respondent bank issued only 7 FDRs bearing 090401003524/2, 3, 4, 5 , 7, and 8 and no FDR No.090940100 3525/9 was issued to the petitioner. It is evident from the counter that second respondent-bank has not till date discharged the FD receipts No. 0909401003525/4 which got matured on 13.8.2011. In that event, the respondent-bank cannot falsely contend that money was already paid to the petitioner. When that is the position, it is not understandable as to how the FDR which was not at all issued to the petitioner, was discharged by making payment from the petitioner's amount to third parties. This would also indicate the collusion and fraud committed by the bank officials with interested third parties. It would also amount to manipulation of records and fraudulent drawing of money due to the petitioner.

20. The above irregularities, namely, 1) pre-closing of FDs without proper authorisation from the depositor and without verification of the same with the depositor or his original agent Anis A Abid, 2) accepting the letter to issue two duplicate FD receipts without police complaint and without even verifying as to whether indemnify agreement contained all the details including the names of the indemnifiers, 3) issuance of pay orders hurriedly without following the norms, would show that the bank officials only acted fraudulently with malafide motive with the connivance of third parties and paid the amounts to strangers illegally. Therefore the second respondent bank is responsible for the fraudulent and negligent acts which cannot be disowned by the bank. Entertainment of forged documents and payments are admitted in the complaint given by the bank to CBI, which would only show that there is nothing wrong on the petitioner and the bank acted negligently and unlawfully to deprive the petitioner's legitimate dues. The bank is answerable for the fraud or negligence committed by the bank officials. Therefore this court holds that the petitioner is entitled to get the proceeds of the 7 FD receipts from the second respondent bank.

21. As per class 1.5 of RBI circular-RBI/2011-12/74 dated 01.07.2011, it is the bounden duty of the bank to report the frauds involving Rs.1 crore and above to the Special Committee of the Board, which is to be constituted as per class 5.2.4 of the circular and the said committee should monitor and follow up the acts of fraud involving Rs.1 crore and above. However, there is no mention in the counter affidavit about the reporting of cases to the Special Committee of the Board. Clause 6.2 aforesaid RBI circular reads as follows:

"19. Public sector banks should report fraud case involving amount of Rs.1 crore and above to CBI and thus below Rs.1 crore to local police, as detailed below:

Cases to be referred to CBI.

(a) cases of Rs.1.00 crore and above upto Rs.7.50 crore.

* Whether staff involvement is prima facie evident-CBI (Anti Corruption Branch) * Where staff involvement is prima facie not evident CBI (Economic offences wing)

b) All cases involving more than Rs.7.50 crore - Banking Security and Fraud Cell of the respective centres, which is specialised cell of the Economic Offences Wing of the CBI for major bank fraud cases."

As per the aforesaid circular when the staff involvement is prima facie evident complaint is to be given to CBI (Anti Corruption Branch). Whereas in this case, even though the complaint dated 12.10.2011 given by the respondent bank speaks about the involvement of the staff, curiously the complaint was given to the Central Bureau Investigation (Economic Offences Wing) which is in gross violation of Class 6.2 (a) of the RBI circular dated 1.7.2011. Therefore, this court cannot rule out attempt of the bank to shield the staffs involved in the fraud deliberately.

22. Banking system is based on trust and faith. The banks act as custodian of public money and they are accountable. The second respondent cannot function irresponsible and negligent manner. The

respondent is a public sector nationalised bank performing public duties and they should function fairly whereas the way in which the officials acted fraudulently and unlawfully would definitely erode the image of the bank and demolish the confidence of the public in the banking system, which is not good for banking institution and general public.

23. There is no quarrel with regard to dictum laid down in the judgement in State of Madhyapradesh and antoher vs. Bhailal Bhai and another reported in AIR 1964 SC 1066 relied upon by the learned Senior counsel appearing for the second and third respondents that power under Article 226 of the Constitution of India is discretionary one. Even in that case, the Madhyapradesh High Court issued mandamus to the State Government to pay the money collected by the tax authorities and the same was upheld by the Apex Court. The judgement of the Hon'ble Apex Court in paragraph 17, which has been categorically stated by the constitution bench as follows:

"17. 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 thils 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." (Emphasis supplied) .

Therefore, in the above mentioned judgement the Hon'ble Supreme Court has not laid down any Rule with regard to the exercise of Extraordinary jurisdiction under

Article 226 and only stated that discretion powers is to be exercised to give relief on the facts and circumstances of the case.

24. With regard to the contention of the learned counsel for the respondent that writ petition is not maintainable in the above matter and only civil suit has to be filed, the Hon'ble Supreme Court in Hyderabad Commercialise vs. Indian Bank and others reported in AIR 1991 SC 247 held that bank is a instrumentality of the State and it must function honestly to serve its customer. The question for consideration in that case was whether the writ petition is maintainable seeking mandamus to re-credit the amount which were un-authorisedly transferred from one account to another. Though the respondent bank therein raised the plea that the disputed question of fact were involved, it could be determined only by the civil court., The Hon'ble Supreme Court held basic facts regarding unauthorised transfer of the disputed amount from the account, as well as bank liability was admitted and there was no justification for the bank to file suit on the ground of disputed questions of fact. It is further observed that such functioning of a nationalised bank is detrimental to public interest and it follows the practice of transferring money of its customer to some other person account on oral authority, people will loose faith in the credibility of the bank. The facts of the case is similar to the case in hand. In that case the amount was transferred on oral instruction. Whereas in this case, the amount was paid to strangers based on the alleged petitioner's authorisation letter which was not verified with the petitioner and bogus FDRs which is admitted by the bank itself.

25. The Hon'ble Supreme Court in State of West Bengal and others vs. Committee for Protection of democratic rights reported in 2010 (3) SCC 571 held in its constitution bench judgement that the High Courts are authorised under Article 226 of the Constitution of India to issue a direction or orders or writ to any person or authority including any government to enforce fundamental rights and for any other purposes. It is held by the Hon'ble Supreme Court in Shalini Shyam Shetty and another vs. Rajendra Shankar Patil reported in (2010) 8 SCC 329 held that even in civil or private dispute, the High Court can interfere if there is any violation of statutory duty or it can be shown that a private individual is acting in collusion with statutory authority.

26. The Hon'ble Apex Court in Sri.Anadi Mukta Sadgurumuktajee Vandasjiswami Suvarna Jayanti Mahetsav Sonarak Trust and others vs. V.K.Rudani and others reported in AIR 1989 SC 1607 held that mandamus can be issued not only to statutory authorities and instrumentality of the State and also to any other person or authority performing public duty. The Hon'ble Supreme Court followed its earlier judgement in Praga Tools Corporation vs Shri C.A.Imanual reported in AIR 1969 SC 1306, in paragraph 21 of its judgement held as follows:

" 21. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract.§ We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable

circumstances. Mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

In Bank of India and others vs. O.P.Swarnkar and others reported in 2003 2 SCC 721, it has been held that nationalised banks are coming under the statute within the meaning of Article 226 of the Constitution of India and the writ petition is maintainable. Recently in Zonal Manager, Central Bank of India vs. Devi Ispat Limited and others reported in 2010 11 SCC 186 it has been held that Where public Sector banks discharging public functions are having status of "State". Despite clearance of its outstanding dues in entirety by the borrower, the Appellant bank therein failed to return latter's title deeds. Therefore, writ of mandamus issued by the High Court for returning title deeds was upheld by the Hon'ble Supreme Court, rejecting the contention of the bank that the proper forum is Civil Court and further held that writ petition is maintainable in contractual matter. The above said position of law settled by the Hon'ble Supreme Court would make it clear that the writ petition is maintainable against the respondent bank.

27. The second respondent bank contended that adjudication of the disputed questions of facts cannot be made by the Writ Court. It has been held by the Hon'ble Supreme Court in ABL International Limited vs. Export Credit Guarantee Corporation of India Limited reported in 2004 3 SCC 553 that it is not an absolute rule that in all cases involving disputed questions of facts the party should be relegated to civil court. The Hon'ble Supreme Court followed the earlier judgement in Gunwant Kaur Smt and others vs. Municipal Committee Bhatinad reported in 1969 (3) SCC 769 and Century Spinning and Manufacturing Company Ltd. And another Ulhasnagar Municipal Council and another reported in 1970 1 SCC 582. wherein in para 13 of the judgement reads as follows:

"Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the same what lengthy, didlatory and expensive process by a civil suit against a public body. The question of fact raised by the petitioner in this case is elementary"

However in this case, 1) it is admitted that the petitioner deposited the amount in fixed deposit and that because of the collusion of the bank officials, the amounts were withdrawn and encashed fraudulently by third parties, 2) The amount was not paid to the petitioner is admitted and that there was collusion between the bank officials and third parties to defraud the bank. 3) It is admitted that the bank officials negligently acted and paid the money to the third parties without verification. The aforesaid admissions are apparent in the complaint given to the CBI by the bank. The obligation of the bank is to pay the amount to the petitioner and the entitlement of the petitioner can not denied by the bank. In that event, there is no dispute of question of facts and there is no necessity for the petitioner to wait for conclusion of CBI investigation.

28. The officials of the respondent bank should have exhibited skill prudence, responsibility while acting upon the alleged authorisation letters produced by Lawrence said to have been given by the petitioner. As the authorisation letter does not contain the name of the authorised representative or

signature, the bank officials should have verified with the petitioner as explained earlier and FD receipts should have been thoroughly checked closely before payment. If the above were verified thoroughly it would have revealed that the FDRs produced by are forged fake documents on the face of it. The Hon'ble Supreme Court in Eureka Forbes Limited vs. Allahabad Bank and others reported in (2010) 6 SCC 193 held that the doctrine of FULL FAITH & CREDIT applies to the act done by the officials. In that case, the Hon'ble Supreme Court held that the concept of public accountability and the performance is applicable to the instrumentality of the State like bank and thus all administrative norms and principles of fair performance are applicable to them with equal force. Paragraphs 79 of the above judgement is usefully extracted as follows:

"79. Inaction, arbitrary action or irresponsible action would normally result in dual hardship. Firstly, it jeopardises the interest of the Bank and public funds are wasted and secondly, it even affects the borrower's interest adversely provided such person was acting bona fide. Both these adverse consequences can easily be avoided by the authorities concerned by timely and coordinated action. The authorities are required to have a more practical and pragmatic approach to provide solution to such matters. The concept of public accountability and performance of functions takes in its ambit proper and timely action in accordance with law. Public duty and public obligation both are essentials of good administration whether by the State instrumentality and/or by the financial institutions."

In Kesharichand Jaisukhalal vs. Shillon Banking Corporation Limited Shilon (in liquidation) reported in AIR 1965 SC 1711 (V52 (292)). The Hon'ble Supreme Court held that the bank is bound to use reasonable skill and diligence in presenting and securing payment of the cheque and placing proceeds to its customers account in taking such other steps as may be proper to secure the customers interests. In view of the above legal position, it is very clear that this court has got powers even to adjudicate even the disputed questions of fact.

29. If the officials acted negligently without proper care and verification, it is the second respondent bank's INTERNAL ADMINISTRATION OR DOMESTIC MANAGEMENT and for which the petitioner cannot be held liable or he can not be prevented to have the money which is due to him It is evident that bank is at fault and it is well settled law that nobody can take advantage out of his own fault. Therefore, the bank is required to return the entire amount due to the petitioner under the 7 FDRs along with bank interest till the payment. However, considering the pendency of CBI investigation in the above matter, it is just, fair and appropriate that the amount is to be paid to the petitioner on condition that the petitioner furnishes an indemnity bond to the extent of amount being paid to him, pending CBI investigation.

30. The conduct of the respondent bank is not above board and bonafide right from the beginning. The petitioner approached the second respondent bank on 13.8.2011 for withdrawal of the money in FDRs on maturity. The money was not paid. Since the respondents failed to pay the amount, the petitioner wrote the letter dated 24.8.2011 to the second respondent and also the letter dated 26.8.2011 to the first respondent, which was replied by the first respondent on 29.8.2011. On 30.8.2011, the petitioner sent a notice to the second respondent to disburse the amount and as there

was no reply for a considerable time. The petitioner again sent a notice on 22.9.2011. As there was no proper response, the petitioner was compelled to file the writ petition on 26.9.2011. Thereafter the reply dated 27.9.2011 was issued by the second respondent stating the petitioner notice has been forwarded to legal section information and doing the needful. Till such time, the second respondent did not care even to give reply. Only after this Court ordered noticed on 28.9.2011, the second respondent woke up and lodged a complaint before the CBI (Economic Offences Wing) on 12.10.2011. This would only exhibit carelessness calculated silence kept by second respondent bank in this matter.

31. The second and third respondents neither pleaded the facts properly in the counter affidavit nor filed all the required documents before this Court. On the contrary deliberate falsehood, by suppressing material facts, has been pleaded in their counter to gain advantage and to deny the dues to the petitioner unlawfully. Though the second respondent in paragraph 27 of the counter affidavit stated that the criminal complaint has been filed before the CBI, copy of the complaint was not filed as a document by the respondents. The petitioner only filed the FIR before this Court on 11.11.2011. Mere reference about CBI complaint in the counter is not enough and the pleadings should be in consonance with the facts stated therein without twisting the facts to its convenience. Though the complaint was filed against Mr.DR.Naik, then Chief Manager (under suspension) Guindy Branch of the second respondent Bank and others accusing the involvement of DR.Naik, criminal conspiracy to defraud and to make unlawful gain, the said fact is suppressed in the counter affidavit. It is submitted in the criminal complaint that no letter of authority is available on record for the payment made in respect of KDR No.3525/9 printed Sl.No.761023 for Rs.95 lakhs and the payment was made on 12.11.2010. Whereas, in para-19 of the counter affidavit it has been vaguely stated that on production of FD receipts bearing No.0909401003525/9 printed Sl.No.761023 for the value of Rs.95 lakhs, the amount was paid through CH.Lawrence. In paragraph (j)(iii) of the complaint, it is stated that four FD receipts for Rs.95 lakhs, which were pre-closed, did not have the bank water mark and the same appears to be fake and the aforesaid fact has been suppressed in the counter affidavit. In paragraph (o)(vi and vii) of the complaint it has been categorically admitted that the SB Account opened in K.K.Nagar Branch is fictitious and the entire deposit of Rs.6.35 crores has been withdrawn by Mr.C.H.Lawrence in the name of Mr.Ashok Amirtharaj, the petitioner herein, whereas in paragraphs 24,27,37 and 40 of the counter, it has been falsely contended that the entire proceeds of the seven fixed deposits were encashed by the petitioner through SB Account No.26051019452 with the Canara Bank, K.K.Nagar Branch. More over, the real facts with minute details were given in the complaint dated 12.10.2011. Whereas, all the above material details which have bearing on adjudication of the issue have been deliberately and intentionally suppressed in the counter affidavit filed subsequently before this Court on 2.11.2011. Therefore, the second and third respondents are guilty of pleading falsehood, suppression of material facts and misleading the court. Having committed the above, curiously, the second second respondent bank falsely accuses that the petitioner is guilty of suppression of material facts and misleading court. Being a nationalised bank coming under the definition of the State under Article 12 of the Constitution of India, the respondent bank should not have stooped to this level.

32. A nationalised bank is required to act fairly, justly and reasonably in the interest of public and public good. If any attempt is made to prevent this Court from rendering of justice, it cannot be

tolerated by this Court. If such attempt is not nipped in the bud, it will have adverse effect on the functioning of the nationalised bank. The Apex Court following earlier judgement in Dalid Singh vs. State of U.P. Reported in 2010 2 SCC 114, held in Ramjas Foundation and another vs. Union of India and others reported in (2010) 14 SCC 38 that every court is not only entitled but is duty-bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case. In Amar Singh vs. Union of India and others reported in (2011) 7 SCC 69, the Hon'ble Supreme Court deprecated the litigants who intend to deceive and mislead the court without full disclosure of facts and further held that it is one of the fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings. For pleading falsehood, suppressing material facts and attempting to mislead and prevent this Court from rendering justice properly, the second respondent bank which is expected to place the facts properly before this Court, should not be allowed to go scot free. Therefore, this court slaps an exemplary costs of Rs.50,000/- as a deterrent measure. Otherwise for every mistake committed by the bank officials, the depositors would be denied of their amounts, which will not be in the interest of public as found in this case. If this happens to a celebrity like the petitioner who is a world famous Tennis Player, what will be the fate of layman depositor?

33. In fine the writ petition is allowed with the following directions: 1) The second respondent bank is directed to pay the amount payable to the petitioner under 7 fixed deposit receipts treating the said amount as if it is continuing in fixed deposits till date with the same rate of interest till the amount is paid by the bank within two weeks from the date of receipt of the copy of this order and the petitioner is directed to hand over the seven FDRs in originals viz.

No. FDR No. Deposit Amount 0909401003525/2 95,00,000.00 0909401003525/3 95,00,000.00 0909401003525/4 95,00,000.00 0909401003525/5 95,00,000.00 0909401003525/6 95,00,000.00 0909401003525/7 95,00,000.00 0909401003525/8 65,00,000.00 Total 6,35,00,000.00 and to furnish his indemnity bond to the value of the amount paid by the second respondent bank within two weeks thereafter.

2) The second respondent bank is slapped with exemplary costs of Rs.50,000/-(Rupees fifty thousand only) payable to the "Chief Justice Relief Fund" within two weeks from the date of the receipt of a copy of the order. Consequently the connected M.P.No.1 of 2011 is closed.

vk To

1.Reserve Bank of India For Glacias P.Box N.40, No.16, Rajaji Salai, Chennai-600 001 throughThe office of Banking Ombudsman

2.Canara Bank Guindy Branch Anna Salai Guindy Chennai-600 032 Rep. By its Chief Manager.

3.Canara Bank Circle Office, Anna Salai, Teynampet Chennai-600 018, Rep. by its General Manager