

(2008) 11 GUJ CK 0017

In the Gujarat High Court

Case No : Special Civil Application No. 1326 of 2003

Dalsukhbhai Parshottambhai Patel

APPELLANT

Vs

Chief Manager and Another

RESPONDENT

Date of Decision : 27-11-2008

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2009) 1 GLH 85

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Dipak R. Dave and Mr. Ketan I. Acharya, for the Appellant; Pranav G. Desai, for the Respondent

Final Decision : Allowed

Judgement

Mr. Jayant Patel, J.—The short facts of the case appear to be that the petitioner, who is original Indian, was residing at Kuwait since many years and therefore, acquired status of NRI (Non Resident India). In capacity as NRI, he had invested amount in FDRs, which lastly amounted to Rs. 1,98,980/- each, and such receipts were renewed further for period of seven years, and accordingly each was to be matured on 8.5.2001 of Rs. 4,15,500/-. As per the petitioner, in all there were seven such FDRs/TDRS, which were payable on 8.5.2001, each of Rs. 4,15,500/-. The petitioner was desirous to encash the deposits premature, when he was at Kuwait, however the bank insisted for surrendering of the original TDRS, which were reported by the petitioner as lost. Whereas, wife of the petitioner declared before the bank that she was having possession of the original TDRS. Because of such dispute, bank did not permit premature encashment of such TDRS. As per the petitioner, on account of no premature encashment permitted by the respondent-bank, cheques drawn by him were bounced, and he was also put in the prison for some time. It is the case of the petitioner that on account of the same, the petitioner had to return India in February, 1998 and thereafter, he has not returned back to Kuwait and he is

staying in India since then. Therefore, since February, 1998, the petitioner started staying in India. The status at the most as NRI would continue for further period of six months from his entry to India, which would be August, 1998. Hence after August, 1998, the petitioner ceased to have the status of NRI, he stood as deemed as resident Indian for all purposes. Since, the petitioner had to undergo prison and there were disputes between petitioner and the bank, before the consumer forum, ultimately the petitioner had preferred Civil Suit No. 4749 of 2001, in the City Civil Court at Ahmedabad for recovery of the damages/compensation for Rs. 1,38,66,400/- with the interest from the respondent-bank and the said suit is pending even as on today.

2. When the deposits reached to its maturity, the payment of such amount was not made. The petitioner had called upon the respondent-bank vide notice dated 12.8.2002, through his lawyer to make payment and for other prayers. However, the bank vide communication dated 19.8.2002, conveyed to the petitioner that since suit is pending, and the reply is filed in the suit, no further action is required to be taken. It is under these circumstances, the petitioner approached to this Court by the present petition praying the relief inter alia to direct respondent to forthwith release the deposits, which are known as TDRS (Term Deposit Receipts), as they have matured on 8.5.2001 and it is further prayed to direct respondent bank to release the amount dues on such TDRS with the interest at the rate of 24 percent. The petitioner has also prayed to direct respondent bank to take appropriate action against erring officer of the respondent-bank, since the petitioner has been illegally harassed and the officers have violated rules and regulations and the banking laws.

3. Heard Mr. Dave learned Counsel appearing for the petitioner and Mr. Desai learned Counsel appearing for the respondent-bank.

4. The first aspect, which may be required to be considered is whether it was open to the respondent-bank, to deny disbursement of the TDRS on the date of maturity i.e. 8.5.2001, and if yes, to what extent.

5. In order to examine the aforesaid aspect, if the facts of the present case are considered, it appears that it is an admitted position that the petitioner had deposited following TDRS.

Security

No.

Face Value of Security

Rate of Interest

Maturity

Date

Value

745067

Rs. 1,98,980/-

15%

8.5.2001

Rs. 4,15,500

745068

Rs. 1,98,980/-

15%

8.5.2001

Rs. 4,15,500

745069

Rs. 1,98,980/-

15%

8.5.2001

Rs. 4,15,500

745070

Rs. 1, 98, 980/-

15%

8.5.2001

Rs. 4,15,500

745071

Rs. 1, 98, 980/-

15%

8.5.2001

Rs. 4,15,500

745072

Rs. 1, 98, 980/-

15%

8.5.2001

Rs. 4,15,500

745073

Rs. 1, 98, 980/-

15%

8.5.2001

Rs. 4,15,500

6. As stated by the petitioner through his Counsel Mr. Dave due to the litigation filed by the wife of the petitioner against the petitioner, on account of the assurance given in such proceedings, the petitioner is to retain the amount by renewal of the TDRS Nos. 745067 and 745068, and such deposits are to be renewed. Therefore, Mr. Dave learned Counsel for the petitioner stated before the Court that the petitioner is not seeking encashment of the said two TDRS in the present proceedings. Under these circumstances, for the consideration of the Court, out of the aforesaid seven TDRS, the aforesaid two TDRS will be required to be excluded and remaining five TDRS from 745069 onwards, will have to be considered in the present proceedings.

7. The existence of the factum of the deposit invested by the petitioner when he was in Kuwait as NRI is not in dispute. However, the grievance on the part of the respondent-bank appears to be that petitioner had ceased with the status of NRI after entry to India in February, 1998, in any case after August, 1998, therefore it was required for the petitioner to intimate the bank, which has not been intimated. It was also submitted that as per the declaration to be submitted by the deposit holder, while opening NIR Account, it is required for him to declare that he is having status of NIR on the date of the deposit, he has to intimate about his return to India for being permanent resident immediately on arrival. Since the petitioner did not intimate to the bank, as per the bank it was justified in not paying amount on the date of maturity. As per the respondent bank, it came to know about factum of return of the petitioner in India, only when Civil Suit is filed in the year 2001, and the summons of the Civil Court is served upon it.

8. It is not the case of the respondent-bank that on the date, when the amount was invested in TDRS by the petitioner, he was not holding status of NIR. Therefore, if the petitioner was having status of NRI on the date, when the investment was made or TDRS were renewed in capacity as the NRI, it cannot be said that any false declaration was made by the petitioner on the ground as sought to be canvassed. However, even if the contention of the respondent-bank is considered that after entry of the petitioner to India in February, 1998 byway of permanent settlement, it was required for the petitioner to intimate the bank, then also at the most, it can be said as failure on the part of the petitioner to intimate bank about his entry in India. Such can be termed as of lapse on the part of the petitioner for giving intimation to the respondent-bank, but thereby it cannot be said that the benefit already was to be enjoyed by the petitioner as

NRI prior to losing his status as NIR would automatically go away nor any terms of the declaration, copy whereof is produced at page 105, can be read for the abandonment of the benefit of investment as NRI during the period, when the petitioner was actually having status of NRI. At the most, such non-intimation or lapse on the part of the petitioner may result into discontinuation of the benefit of the status of NRI, after such status of NRI has ceased. The petitioner has produced xerox copy of the relevant pages of the passport, showing that he entered India on 6th February, 1998. Further with a view to allay the apprehension on the part of the learned Counsel appearing for the respondent-bank Mr. Desai, the Court had called for the original passport and after verification, the petitioner has been asked to produce xerox copy of all the pages of the passport. None shows that the statement made by the petitioner of his entry in India after leaving Kuwait on 5.2.1998 and entry in India on 6th February, 1998 is incorrect. Therefore, it can be said that there is no other evidence available on record to the contrary produced by the bank, showing that the petitioner had lost status o(sic) NRI prior to 6th February, 1998.

9. Mr. Desai learned Counsel appearing for the respondent-bank has not disputed the proposition that status of NRI will continue for a period of six months and if within the period of six months, person concerned does not leave India, he would cease to have status of NRI upon the expiry of the period of six months from the date of entry in India. Therefore, it can be said that the petitioner has ceased to have the status of NRI after expiry of the period of six months from 6th February, 1998. Therefore, it would be after 5th August, 1998 i.e. from 6th August, 1998, the petitioner can be said as resident Indian and would lose the benefit of NRI status, as may be available in law.

10. Under these circumstances, as the petitioner continued with the status of NRI up to 5th August, 1998, it would be required for the bank to calculate accrued interest of TDRS up to 5th August, 1998, which was 15 percent per annum as mentioned in the TDRS. However, for the period from 6th August, 1998, the petitioner at the most can claim interest at par with the resident Indian and the rate applicable on such FDRs for the remaining period from 6th August, 1998 to 8.5.2001, as per the rate prevailing for the FDRs of more than two years, but less than three years. If any, other prevailing rate is available with the bank on number of days basis, accordingly such prevailing rate of interest may be applied, but bank cannot deprive the petitioner to earn interest on FDR/ TDRS, as of, no interest would accrue, nor it is open to the bank to contend that as the status of NRI had ceased, the interest already accrued prior to August, 1998 as if NIR. would automatically go away.

11. It deserves to be recorded that the investment of money by any citizen with the bank is with the faith with such banking instruction that the money will be returned with the accrued interest on the date of maturity. Such faith is in addition to actual obligation on the part of the bank. Such faith can more in a bank which is a nationalised bank being instrumentality of the Stats within the

meaning of Article 12 of the Constitution, which is otherwise also suppose to act in a ideal manner as if the ideal bank, and expected to honour all its contractual obligation well in time. The bank, which has accepted money from any citizen and more particularly the nationalised bank with the promise to return the same on the date of maturity with the accrued interest is enjoined with the duty to return the accrued money, to the person concerned, on the due date.

12. Had it been a case, where money was returned by the bank upon the cessation of the status of the petitioner as NRI with the accrued interest as that of NRI, the matter may be required consideration differently. However, in the present case, even after the cessation of the status of the petitioner as NRI, the money of TDRS is continued to be retained by the bank. Therefore, the respondent-bank cannot be heard to say that no interest whatsoever shall be payable after cessation of the status of NRI or that the interest already accrued prior to cessation of the status as NRI would automatically go away. If such contention is entertained, it may result into permit the bank to give unfair treatment to its customer, who is petitioner herein.

13. In view of the aforesaid, it is held that the petitioner would be entitled to the benefit of the status of NRI on all aforesaid TDRS up to 5th August, 1998 with the accrued interest of TDRS at the rate of 15 percent per annum. However, after 5th August, 1998 the petitioner would only be entitled to prevailing FDR/TDRS rate as was available to resident Indian, adopted by the respondent State Bank of India.

14. It is true that there is no express communication placed on record about intimation by the petitioner to the respondent bank of his entry to India for permanent settlement after 6th August, 1998. Therefore, bank may be justified in not processing claim of the petitioner just prior to the maturity of the TDRS on account of his status as NIR or cessation of the status of NRI not finalised any either way. But such may at the most can be said as valid circumstance on the part of the respondent-bank to deny timely payment of the matured amount of the FDRs and not beyond that. If there is delay on the part of the respondent-bank to make payment of the accrued amount of the FDRs, fact remains that bank has continued to enjoy the money and it has not parted with. Therefore, even by compensatory measure, for the period during which the delay is made in making payment of the matured amount, it would be required for the bank to pay the interest at the rate of 9 percent per annum by way of compensatory measure.

15. The contention of the bank that no interest whatsoever shall be payable after date of the maturity, if countenanced, would result into not only the bank to take undue benefit of the delayed period may be on the bonafide, but would result into permitting the bank to enjoy the money without reasonably compensating the party, whose money is enjoyed by the bank in its banking business. Therefore, it appears that for the delayed period after date of maturity, it would be required for the bank to pay simple interest at the rate of 9 percent per

annum on the total amount, as may be derived on TDRS on the date of maturity, after (sic)ifurcating rate of interest as accrued in capacity of NRI and by applying prevailing rate of interest applicable to the resident Indian, after August, 1998 till the date of maturity.

16. The attempt was made on the part of the respondent-bank by the learned Counsel that as the suit is pending before the City Court for recovering the damage:, against officers of the bank, this Court may decline to grant further relief to the petitioner, than the interim relief granted pending the petition. It was also submitted that any observations by this Court about the conduct on the part of the bank, or its officers may. prejudice the right of the respondent-bank in such suit proceedings. Therefore, it was submitted that this Court may make suitable observation, so as to protect the interest of both the sides in the civil suit proceedings.

17. The copy of the plaint of civil suit is produced on record and the same shows that damages claimed by the petitioner is qua not permitting the premature encashment, when he was at Kuwait and resulting effect of non-availability of fund, imprisonment etc. The suit is not based on challenging action on the part of the bank declining the payment of the matured amount on the date of maturity or default made therein. Therefore, the aspect of non-permitting premature encashment or the damages on that count, could be said as different than the payment of the FDRs upon the maturity. Further, defence of the respondent-bank in the suit is that since the original FDRs were not surrendered and the petitioner made declaration that original FDRs are lost. Whereas wife of the petitioner was in possession of the FDRs. It would be for the Civil Court to examine, whether there was any default, if yes, whether bonafide or malafide etc. No further elaboration of such aspect is; required to be recorded, but suffice to state that the subject matter of the suit for recovery of the damages on account of nonavailability of the premature encashment cannot be equated with the subject matter; of payment of the maturity of the TDRS. Further, the observations, which are made in the present petition pertains to action on the part of the bank to honour the liability upon the date of the maturity, and none concerning to permissibility of premature encashment, or legality and validity of the said action.

18. Under these circumstances, it cannot be said that if this Court considers the matter for directing payment of the amount to the petitioner by the bank, upon the maturity of the TDRS, this Court would be decided the issues, which are subject matter of the pending suit, or right of either side would be prejudiced in any manner in the suit, which is preferred by the petitioner.

19. It may be recorded that pending the petition this Court on 30.7.2003 had passed the following order:

"Having heard Mr. Dave for the petitioner and Mr. Desai for the respondent Bank it appears that the petitioner has invested in the capacity of NRI with the bank and it is the case of the petitioner that the amount was to be returned on the

date of maturity. However, the case of the bank is that since the status came to be changed of the petitioner from NRI to Resident Indian proper details were not given and it is also the case of the bank that even for the claim of status from NRI no sufficient details were there and as a consequence thereof there is nondisbursement of the amount on the date of maturity. It has also been submitted on behalf of the bank that in the absence of any other arrangement as per the conditions of FDR it has been renewed with interest from the earlier due date upto 2006. It was also submitted that the suit is pending for recovery of damages and the Bank has raised various contentions as defendant in the suit.

2. On behalf of the petitioner, Mr. Dave under the instructions states that the petitioner is desirous of encashing the FDR as on 31.7.03.

3. Therefore, before this court passes further order with a view to see that subsequently effective order can be passed the respondents are directed to encash Five FDRs of the petitioner which were of the original investment of Rs. 1 Lac each. The amount as becomes due as on 31.7.03 shall be deposited by the respondent Bank on or before 11.8.03 treating the petitioner provisionally as resident Indian from the date of deposit for the purpose of calculating the interest and TDS and the amount of such TDS may be retained by the respondent-Bank.

4. However, it is clarified that the aforesaid order of treating the petitioner provisionally as resident Indian and retention of the amount by the bank of the difference of interest between Non-Resident Indian and Resident Indian and also TDS are without prejudice to the rights and contentions of both sides as well as shall be subject to further orders of this court. It is also clarified that this order is without prejudice to the rights and contentions of both sides in the pending Civil Suit No. 4749/01 before the City Civil Court, Ahmedabad. The present interim direction is given with a view to see that at least the undisputed amount can be made available to the petitioner and this order would not mean that the status of the petitioner is decided as resident Indian.

5. Put up the matter on 14.8.03 for reporting of compliance and for further orders. "

20. It has been submitted by the learned Counsel for the petitioner that the respondent Bank by treating the petitioner as resident Indian from the date of inception of the deposit has paid the amount with the interest rate applicable and has ignored the period during which the petitioner was admittedly NRI and has not paid the interest rate as was agreed on TDRS.

21. Whereas on behalf of the respondent Bank, it was submitted that the direction was to treat him as resident Indian subject to the final order, which may be passed by this Court and hence, the amount has been paid as if the petitioner is resident Indian.

22. In view of the observations made by this Court in earlier paragraph and the

entitlement of the petitioner to get the amount as NRI till he was enjoying the status of NRI and after cessation of the status of NRI, the benefits of the interest at the rate as applicable to the resident Indian, it will be required for the Bank to pay the difference to the petitioner of the amount, which is not paid by the Bank upon the TDRS up to the date of maturity.

23. After the date of maturity, it is an admitted position, that the respondent has enjoyed the aforesaid additional amount. Therefore, by way of compensatory measure the Bank would be required to pay the interest at the rate of 9% per annum to the petitioner on the amount, which became due and has not been paid minus the amount which is already paid on a particular date pursuant to the interim order passed by this Court. It will be for the Bank to calculate the amount accordingly and make the payment on the amount of interest as per TDRs read with the observations of this Court and the additional interest by way of compensatory measure. The aforesaid calculation shall be completed within a period of one month from the date of receipt of the order of this Court and the disbursement shall be made within one week thereafter by the Bank together with the details of the calculation shall be forwarded to the petitioner.

24. It would be open to the Bank to deduct TDS on the basis of the status of the petitioner already decided and while calculating the amount, the amount of TDS already deducted shall be given credit of and the necessary certificate for all TDS shall be forwarded with the calculation by the respondent Bank to the petitioner so as to enable the petitioner to give effect in accordance with law in his own accounts. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No order as to costs.