(2025) 04 OHC CK 1337

In the Orissa High Court

Case No : Writ Petition (C) No. 27773 Of 2024

Sita Das APPELLANT

Vs

Axis Bank, Delta Colony Branch, Bhubaneswar Vs RESPONDENT

Date of Decision : 25-04-2025

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2025) 04 OHC CK 1337

Hon'ble Judges : Dr. S.K. Panigrahi, J

Bench : Single Bench

Advocate : S. Das, Sahasransu Sourav

Final Decision : Dismissed

Judgement

Dr. S.K. Panigrahi, J

1. In this Writ Petition, the Petitioner seeks a direction from this Court to compel Axis Bank Ltd. to permit her independent operation of a jointly held “Either or Survivor” account by closing or converting it, citing urgent financial needs, alleged economic abuse, and her status as a senior citizen.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:

(i) The petitioner is a senior citizen and the primary holder of a Burgundy Senior Privilege Joint Account held with Axis Bank Ltd., Delta Colony Branch, Bhubaneswar, wherein her son, Mr.Saswat Das, is the secondary account holder. The joint account was opened in the "Either or Survivor" mode of operation.

(ii) The funds in the joint account were primarily transferred from the account of the petitioner’s husband, Mr.Tanmay Das, who has been in a comatose state since 2015. These funds were intended for the welfare and medical care of the petitioner and her ailing husband.

(iii) Subsequent to the establishment of the account, disputes arose between the petitioner and her son. On 07.10.2021, the petitioner formally requested the bank to impose a debit freeze on the joint account, citing concerns for personal safety and enclosing a copy of an FIR filed against her daughter-in-law and alleging threats to her life, allegedly involving her son.

(iv) Acting upon the petitioner's instructions and in accordance with its internal "Advisory on Customer Disputes", the bank froze the joint account. As per the bank's standard protocol, debit transactions from a joint account under dispute require written consent of both account holders for further operation.

(v) On 19.02.2024, the petitioner withdrew ☐ 20,00,000 from the said joint account for the purpose of her husband's medical treatment. The secondary holder, Mr. Saswat Das, raised objections to the withdrawal and sent a legal notice to the bank. The bank, responding to the notice, sought return of the withdrawn amount. The petitioner, apprehending further complications, re-deposited the amount on 16.03.2024.

(vi) The petitioner thereafter issued a legal notice dated 09.07.2024 requesting the bank to convert the joint account from "Either or Survivor" to "Former or Survivor" to facilitate independent operation. The bank declined the request, citing absence of consent from the secondary holder and adherence to its operational policy that mandates joint authorization for such modifications.

(vii) The account continues to remain in debit freeze mode. The son, Mr. Saswat Das, is stated to be residing abroad (United States of America). He has not been impleaded as a party in the present writ proceedings. The petitioner contends that the denial of access to the account has impaired her ability to meet essential medical and living expenses.

(viii) The petitioner seeks a direction from this Court to the Opposite Party Bank to close the said joint account and allow her to operate and withdraw funds independently, without requiring the consent of the secondary holder.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned counsel for the Petitioner earnestly made the following submissions in support of his contentions:

(i) In an Either or Survivor joint account, both holders have equal rights to operate the account independently. The bank's refusal to permit withdrawals at the instance of the secondary holder is a gross misinterpretation of the account's operational mandate.

(ii) The actions of the secondary holder son, in collusion with the bank, amount to economic abuse of a senior citizen. The son has not only failed to support his parents but is actively restricting the petitioner from accessing funds intended for her welfare.

(iii) By freezing the account at the son's behest and refusing to allow its conversion to Former or Survivor, the bank has arbitrarily deprived the petitioner of her financial autonomy, thereby defeating the purpose of a Senior Privilege Account.

(iv) The bank refused to share the legal notice it received from the son and acted without giving the petitioner a chance to respond, thereby violating principles of natural justice.

(v) The bank, being an entity discharging public functions, is subject to writ jurisdiction under Article 226. Its actions violate the petitioner's right to property and dignity under Article 21 of the Constitution.

(vi) The refusal to convert the joint account to Former or Survivor, especially when the Secondary Holder has abandoned the petitioner, is unjust and against the banking norms designed to protect senior citizens and primary account holders.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

4. The Learned Counsel for the Opposite Parties earnestly made the following submissions in support of his contentions:

(i) Axis Bank is a private entity, and therefore not amenable to writ jurisdiction under Article 226, as it is not a "State" under Article 12. The Bank relies on the Supreme Court's judgment in Federal Bank Ltd. v. Sagar Thomas (2003) 10 SCC 733 wherein it was held that private banks are not performing public functions, and hence writs do not lie against them except in rare circumstances involving enforcement of statutory duties.

(ii) The petitioner has alternative efficacious remedies like filing a civil suit under the Commercial Courts Act, 2015 or approach the Banking Ombudsman under the Banking Regulation Act, 1949, which provides a quasi-judicial forum for grievance redressal.

(iii) The Bank alleges suppression very and suggestion falsi. It claims that the petitioner misled the court by selectively presenting facts and concealing the debit freeze request and FIR.

(iv) Since the secondary holder (son) is not a party to the proceedings, adjudicating the writ in his absence would amount to violation of natural justice. His rights as a joint account holder may be affected by any direction passed without his involvement.

(v) The "Either or Survivor" designation does not override dispute resolution procedures. In case of a dispute between joint account holders, the account can be operated only with written instructions from both parties, per standard policy.

(vi) The relationship between the petitioner and the bank is governed by a private contract, and any dispute or relief related to the operation of such an account must be tested in a civil court, not under Article 226.

(vii) The bank acted solely in accordance with internal compliance mechanisms. There is no malafide or negligence attributable to the bank; it merely followed its procedural manual in handling customer disputes.

IV. COURT'S REASONING AND ANALYSIS:

5. Heard Learned Counsel for parties and perused the documents placed before this Court.

6. Before delving into the factual intricacies, it is imperative for this Court to determine the maintainability of the present writ petition under Article 226 of the Constitution of India. The primary question is whether Axis Bank Ltd., a private banking institution, can be subjected to writ jurisdiction in the facts and circumstances of this case.

7. It is a well-settled principle that for a writ petition to be maintainable against a private entity, it must be demonstrated that the said entity discharges functions of a public nature or is performing public duties akin to those performed by the State or its instrumentalities. A body, private or otherwise, must be shown to have either statutory authority or a legal duty owed to the public in the discharge of such functions.

8. In this context, it would imperative to refer to the case of Federal Bank Ltd. (Supra)where the Supreme Court has dealt with such issue. The relevant excerpts are produced below:

"For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking."

9. Likewise, in the recent case of S. Shobha v. Muthoot Finance Ltd. 2025 INSC 117 has lucidly and authoritatively reiterated the principle that writ petitions are not maintainable against private entities unless it is established that the entity in discharging a public function or performing statutory duties. The Court held as follows:

"It has no duty towards the public. Its duty is towards its account holders, which may include the borrowers having availed of the loan facility. It has no power to take any action, or pass any order affecting the rights of the members of the public. The binding nature of its orders and actions is confined to its account holders and borrowers and to its employees. Its functions are also not akin to Governmental functions."

10. The Supreme Court further underscored the "functionality test" on the basis

of which it could be determined whether a private entity can be brought under writ jurisdiction. The Court unequivocally stated as follows:

“A body, public or private, should not be categorized as ‘amenable’ or ‘not amenable’ to writ jurisdiction. The most important and vital consideration should be the ‘function’ test as regards the maintainability of a writ application. If a public duty or public function is involved, any body, public or private, concerned or connected with that duty or function, and limited to that, would be subject to judicial scrutiny under the extraordinary writ jurisdiction of Article 226 of the Constitution of India.”

11. In the present case, Axis Bank is a privately owned Scheduled Bank. The act of freezing or refusing to alter the operational mode of a joint bank account, particularly one held in "Either or Survivor" mode, does not stem from a public or statutory duty but is governed by the terms of a private contract between the account holders and the bank. The bank’s action, though disputed by the petitioner, is a product of internal compliance policy adopted to resolve customer disputes and is not traceable to any statutory or constitutional obligation. As such, it does not attract the exercise of writ jurisdiction under Article 226.

12. The petitioner has heavily relied upon her status as a senior citizen and the alleged economic hardship caused due to denial of access to the account. This Court is not unmindful of the fact that the petitioner is advanced in age and is the primary holder of the joint account in question. The emotional and financial distress articulated by the petitioner is both genuine and deeply concerning, particularly as it pertains to her ability to fund medical treatment for her comatose husband and to meet her own essential expenses.

13. However, notwithstanding the gravity of the petitioner’s personal circumstances, this Court is bound by the limits of its jurisdiction. Even in compelling cases such as the one before this Court, writ jurisdiction does not extend to disputes that are fundamentally private in character, unless there is a clear element of public law involved.

14. Further, this Court notes that the petitioner has not impleaded the secondary account holder, Mr. Saswat Das, who resides abroad. Any direction by this Court to the Bank without affording the son an opportunity of hearing may result in a violation of principles of natural justice, particularly given his role as a joint holder of the disputed account. The rights and obligations inter se the account holders cannot be adjudicated in a writ proceeding absent necessary parties.

15. In view of the above discussion, this Court finds that the writ petition, as framed, is not maintainable. The petitioner is, however, at liberty to pursue her grievance through appropriate alternate remedies, such as:

a. Filing a civil suit before the competent civil court for declaratory and injunctive relief regarding operation of the joint account;

b. Seeking protection and financial redressal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, if she is facing neglect or financial abuse from her son;

c. Approaching the Banking Ombudsman under the Reserve Bank of India’s Banking Ombudsman Scheme, which provides a quasi-judicial forum for redressal of grievances against banks.

V. CONCLUSION:

16. This Court is constrained by precedent and jurisdictional boundaries, but expresses its sympathy with the Petitioner’s circumstances. While legal relief under writ jurisdiction is unavailable in the present case, this order should not be construed as a reflection on the merits of the petitioner’s claims. The grievance may well be legitimate, but the appropriate forum to test and redress the same lies elsewhere.

17. Accordingly, the Writ Petition stands dismissed as not maintainable. However, the Petitioner shall be at liberty to avail such legal remedies as may be available to her in law.

18. Interim order, if any, passed earlier stands vacated.

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