(2014) 10 OHC CK 0015

In the Orissa High Court

Case No : W.P.(C) No. 5132 of 2005

Sushama Rana APPELLANT

Vs

The Chief Post Master General and Others RESPONDENT

Date of Decision : 20-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 20

Citation : (2015) 119 CLT 209

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Advocate : B.K. Parida, Advocates for the Appellant; P.K. Jena, Additional Standing Counsel and R.C. Swain, Central Government Counsel, Advocates for the Respondent

Judgement

Biswanath Rath, J.

1. Facts as borne in the Writ Petition are that after the death of the husband of the Petitioner on 14.7.2001, the Petitioner & her step son, namely, Ramakrishna Rana, opened MIS accounts jointly in Joint ''B'' type of account bearing Pass Book Nos. (i) 71169 for Rs. 48,000, (ii) 71170 for Rs. 48,000 & (iii) 71171 for Rs. 12,000. When the Petitioner''s step son was going to withdraw the deposits under M/s. accounts on premature without consent of the Petitioner, the Petitioner made a representation to the Opp. Party Nos. 2 & 3 on 30.3.2002 requesting them not to allow withdrawal of the amount from the joint accounts. The Petitioner further averred that in response to her such request, she was intimated by the department through letter dated 5.6.2002 that the concerned MIS accounts are jointly standing in the names of the Petitioner as well as her step son & as per the prevailing Rule, the accounts can be operated by anyone of the depositors & in view of the terms & conditions of the deposit, they cannot prevent the other signatory from withdrawing the amount from the MIS accounts. The Petitioner has further alleged that despite her pleader notice & repeated request, the amount was allowed to be withdrawn by her step son from

the joint account deposits. Following no positive response from the Opp. Party Nos. 2 & 3, she is compelled to file the Writ Petition seeking a direction to the Opp. Parties to make payment of the deposited amount in MIS Accounts bearing Pass Book Nos. 71169, 71170 & 71171 total worth of Rs. 1,00,000 with 18% penal interest accrued thereon within a stipulated period. Per contra, the Opp. Parties, i.e. Opp. Party Nos. 1 to 3 originally in the Writ Petition filed a joint counter affidavit indicating therein that though they have received the request of the Petitioner for not allowing withdrawal in favour of the other account holder, but since the accounts were joint ''B'' type accounts, any of the account holders was permissible to withdraw the amount involved following the provisions contained in Savings Bank General Rules 1981 & the Post Office Savings Bank Account Rules, 1981. The Opp, Parties have also further averred that there appears to be a dispute between the account holders due to personal rivalry & such dispute cannot be looked into by the postal authorities. In paragraph-10 of the counter affidavit, the Opp. Parties have categorically submitted that the premature amount along with accrued interest vide MIS Account Nos. 71169, 71170 & 71171 amounting to Rs. 1,08,000, has already been withdrawn on 15.10.2003 on premature closure by the joint depositor Sri Ramakrishna Rana after observing due formalities. In justifying their plea, the Opp. Parties have also filed the document vide Annexure-C/2, which clearly discloses that the amounts involved were in joint accounts. In support of their claim, so far as provisions contained in Savings Bank General Rule, 1981, the Opp. Parties have also filed relevant portion of the Rule. Rule 29(2)(1) reads as follows:

"1. Single & Joint Accounts:- Single accounts can be opened by an adult or a minor or on behalf of a minor or a person of unsound mind by a guardian. Joint accounts can be opened by two or three adults to be operated by them (a) jointly or by the survivors/survivor which is called Joint-A type account (b) either of them/any of them or either of the survivors or survivor which is called Joint-B type account. Any number of accounts can be opened by the depositor(s) but NOT more than one single & one joint account can be opened in each post office. The maximum limit of balance in single & Joint account is Rs. 50,000 & Rs. 1,00,000 respectively. When the maximum balance is reached in the account, no further deposits should be accepted.

If the depositor has more than one account, the total balance of all accounts together with his share in a Joint account, if any, should not exceed Rs. 50,000 at anytime."

2. From the pleadings & submissions of the parties, there is no dispute that the accounts opened by the Petitioner are in nature of joint ''B'' type. The opening of the aforesaid accounts are in nature of contract between the Petitioner.& the joint account holder with Opp. Party Nos. 1 to 3. As per the contract following the provisions contained in Rule 29 of the aforesaid Rules, as quoted hereinabove, all the joint account holders are authorized to withdraw the amount involved with accrued interest on premature or on maturity. As it appears, there is some

personal dispute between the Petitioner & Opp. Party No. 4, who is subsequently added as Opp. Party to the Writ Petition on being directed by this Court by Order Dated 8.2.2010. Following impletion of Opp. Party No. 4 to the Writ Petition, notice was issued to him. As it appears from the order-sheet, despite notice under Order 5, Rule 20 of the Code of Civil Procedure, the Opp. Party No. 4 did not appear. By Order Dated 5.2.2013, the Division Bench of this Court issued non-bailable warrant of arrest as against the Opp. Party No. 4, which was required to be executed through Superintendent of Police, Nayagarh fixing date of appearance to 19.2.2013.

3. In course of hearing, Learned Counsel for the State appearing on behalf of Superintendent of Police, Nayagarh filed a memo indicating therein that as the whereabouts of the Opp. Party No. 4 could not be known, the non-bailable warrant of arrest could not be executed. In another development, by Order Dated 25.6.2010, the Opp. Party Nos. 1 to 3 were directed to deposit the amount in the concerned MIS accounts by recovering the same from the Opp. Party No. 4 or from the Government Exchequer, which amount was deposited in the MIS accounts by the Opp. Parties 1 to 3 in compliance of the order of this Court.

4. Be that as it may, since the concerned accounts were joint account, with condition attached there under authorizing either of the account holder to withdraw the account prematurely or on maturity after certain block period, further, as per the provision contained in the Rule 29(1) of the Rules referred to herein above authorizing withdrawal of money jointly or by either of them/any of them or either of survivors or survivor of joint ''B'' type account, the Petitioner''s request to the Opp. Party Nos. 2 & 3 not to release the amount involved in deposit in favour of the other joint account holder could not have acted upon. In view of contract involved in the deposit & further in view of the provisions made in the Rules authorizing any of the account holders to withdraw the amount involved in the MIS accounts including interest accrued thereon, there is no illegality committed by the Opp. Party Nos. 1 to 3 in allowing the withdrawal in favour of the Opp. Party No. 4.

5. So far as the amount deposited by the Opp. Party Nos. 2 & 3, pursuant to the direction of this Court on 25.6.2010. It is not clear as to whether the amount so deposited is the amount belonging to Central Government or it is recovered from the Opp. Party No. 4. Be that as it may, since the Writ Petition bears no merit & stands dismissed, the amount so deposited following the direction of this Court dated 25.6.2010 be returned to the owner of the amount. Under the circumstances, the Writ Petition stands dismissed. However, there is no order as to cost.