A ANUMATI

v.

PUNJAB NATIONAL BANK

OCTOBER 25, 2004

B [RUMA PAL AND ARUN KUMAR, JJ.]

Banking :

Fixed deposit—Jointly owned with an 'either or survivor' clause—
C *Pledge by one of them to bank for a loan—Adjustment by bank against that loan—Correctness of—Held: 'Either or survivor' clause was a tripartite agreement between joint account holders* **inter se** *and bank that it may be paid on maturity only to either of them—It could not be bilaterally modified by one of them by pledging with any third party including the Bank itself*
D *in its capacity as creditor, so that the amount becomes payable to such third party, without the authority, knowledge or concurrence of other account holder—Parties to a joint account are not automatically authorised to pledge each others credit.*

Appellant and her husband had a fixed deposit with respondent bank.
E **Amount covered by this deposit was adjusted by the respondent Bank against a loan taken by a proprietary firm of the husband on the ground that receipts of the deposit were mortgaged as security towards that loan. On complaint being filed by appellant to District Consumer Forum, it was held that she was entitled to half of the amount of fixed deposit along with interest because she**
F **never mortgaged her share of the fixed deposit. Appeal of respondent to State Commission was allowed on the ground that the husband had validly pledged the fixed deposit receipts with respondent, and as it was payable to 'either or survivor', respondent could give discharge thereof by making payment to either of the account holders. Therefore, respondent was at liberty to accept mortgage thereof without consent of other depositor, *viz.* the appellant. National**
G **Commission rejected the appeal of appellant. Hence the present appeal.**

Allowing the appeal, the Court

HELD: 1. The District Forum was correct in accepting, and the State Commission and National Commission erred in rejecting the appellant's
H **complaint. [618-F-G]**

2. A fixed deposit in the joint names of two persons is nothing but a joint account which, as the name itself suggests, is repayable on the expiration of the agreed period. The fixed deposit receipt is merely a written acknowledgment by the Bank that it holds a certain sum to the use of its customers. The bank is thus a debtor to the account holders in respect of the amount deposited—a debt which is repayable by the bank to account holders with interest on the expiry of an agreed period. An 'either or survivor' clause in such an account means that the amount payable by the Bank on maturity of the fixed deposit may be paid to either of the account holders by the Bank in order to obtain a valid discharge. In other words under a tripartite agreement between the joint account holders *inter se* and the Bank, the Bank may, on maturity, make payment only to either of them. This tripartite agreement cannot be bilaterally modified by one of the joint account holders by pledging the account with any third party including the Bank itself in its capacity of creditor, so that the amount becomes payable to such third party, without the consent of the joint account holders. [616-D-F]

Punjab National Bank v. *Surendra Prasad Sinha,* [1993] 1 SCC 499, held in applicable.

Simla Banking and Industrial Company Ltd. Ambala City v. *Mt. Bhagwan Kaur,* AIR (1928) Lahore, 316 and *Nath Bank Ltd.* v. *Sisir Kumar Sarkar*, AIR Cal. 303, approved.

Hirschorn v. *Evans (Barclays Bank Ltd., Garnishees),* [1938] 2 KB 801 (L), referred to.

Tannan's Banking Law and Practice in India, (20th Edn.) [2001] Volume 1, Chapter VIII page 259, referred to.

3.1. Parties to a joint account are not automatically authorised to pledge each others credit. A banker should not lend money to the parties to a joint account, either by means of an overdraft or in any other way, without obtaining from each of the parties an undertaking to be severally as well as jointly liable to pay the loan. The Banker has no right to set off the credit balance in the joint account of the same parties. The difference between the joint savings, Current or other account is, that there is no right in the depositors to operate such account and withdraw the moneys except upon maturity. [616-B-C]

Sheldon and Fidler's Practise and law of Banking, 11th Edition, page 7, referred to.

A **3.2. In the present case the contract in respect of the joint account was between the respondent bank and the husband and wife. The fixed deposit was not a debt due by the bank to the husband alone which could be set off by the bank against any claim that the bank may have had against him. Besides his right was to receive the money deposited only after it matured, if he survived.**
B **Supposing he had died before the fixed deposit matured, the only person entitled to get the money would be the appellant. This right of the appellant could not have been taken away without her consent. [617-H; 618-A-B]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6945 of 2004.

C From the Judgment and Order dated 15. 4. 2002 of the National Consumers Disputes Reddressal Commission, New Delhi in R.P. No. 1916 of 2001.

M.N. Krishnamani, Anil Karnwal, Sushil Balwada and Debasis Misra with him for the Appellant.

D M.T. George for the Respondent.

The Judgment of the Court was delivered by

RUMA PAL, J. Leave granted.

E This appeal raises the issue whether a fixed deposit jointly owned with an "either or survivor" clause can be pledged by one of the account holders with the Bank and whether the Bank can adjust the amount of fixed deposit against such pledge, without the authority, knowledge or concurrence of the other account holder.

F The appellant and her husband Mam Chand made a fixed deposit of Rs. 20,000 with the respondent bank on 31st May, 1988 for a period of 84 months (i.e. seven years). The fixed deposit would have matured on 31.5.1995 and the amount payable on maturity was Rs. 39,930. According to the appellant half of the deposited amount belonged to her and the other half belonged to her husband. On 24th June, 1988, a loan was taken by one Khem Chand in
G his sole proprietary business of M/s. Verma Agro Industries. In 1991 the respondent bank filed a suit against M/s. Verma Agro Industries, Khem Chand and the appellant's husband Mam Chand. In the suit it was alleged that M/s. Verma Agro Industries and Khem Chand had executed various agreements with regard to the loan and credit facilities made available by the Bank to them. It was also pleaded in the suit that Khem Chand and Mam
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Chand had secured the amount of the loan by creating a mortgage in respect of immoveable property consisting of agricultural land. According to the plaint a total sum of Rs. 2,57,625 inclusive of interest was payable by M/s. Verma Agro Industries and Khem Chand to the respondent Bank. It was further pleaded that Mam Chand and one Nanak Chand had executed guarantee agreements on 24th June, 1988. The Bank prayed for a decree for Rs. 2,57,625 together with the additional interest and for enforcement of the claim against the hypothecated and the mortgaged properties with a further prayer that if the aforesaid securities were found insufficient for realization of the amount payable under the decree, it be given the liberty to recover the balance from the persons and other properties of the defendants.

While the suit was pending, a legal notice was given on 28th November, 1992, to the respondent Bank by the appellant and Mam Chand through their Advocate, asking for premature encashment of the fixed deposit receipt. It was alleged in that letter that the Bank had kept the original receipt and only issued a photo-copy of the same to Mam Chand and the appellant with the assurance that the amount deposited would be encashable whenever required. It was also stated that both Mam Chand and the appellant were illiterate and had relied upon such representation made by the Bank. It does not appear that the Bank had responded to this notice. A second notice was sent through an Advocate by Mam Chand and the appellant on 26.5.1995, again demanding the amount payable on maturity of the fixed deposit stating that the original FDR receipt had been lost by the appellant and her husband. This letter also does not appear to have been replied to by the respondent Bank.

On 3rd July, 1995 the respondent Bank filed an application in the Court before which the suit was pending seeking to inform the Court that the fixed deposit receipt had been "mortgaged" as security towards the disputed loan and that it had "after taking permission of higher officials" deposited the amount covered by the fixed deposit in the disputed loan account. Mam Chand filed an objection to the Banks' application saying that he had never given any such guarantee and that the fixed deposit receipt had never been mortgaged to the Bank.

The Trial Court allowed the Bank's application holding that the amount of fixed deposit account had rightly been adjusted in the account of the disputed loan. Mam Chand challenged this order by way of a revision application under Section 115 of the Code of Civil Procedure. The Revisional Court held that the application was not maintainable under Section 115 of the

A Code of Civil Procedure as amended by UP Act No. 31/1978. It was held by the Revisional Court that it was open to Mam Chand and his wife to initiate legal actions/proceedings for the recovery of the amount deposited, against the Bank. It was further held that the order of the Trial Court would not in any way inhibit the appellant from initiating such proceedings since she was not a party either in the suit or to any other proceedings initiated by Bank. B The Revisional Court found as a fact that the fixed deposit receipt did not bear the thumb impression of the appellant and the only thumb impressions appearing thereon were that of Mam Chand. It was also held that since the FDR was not mortgaged as guarantee for the loan taken by Verma Agro Industries or Khem Chand, the dispute regarding the FDR was not in issue C in the suit filed by the Bank. It was therefore held that the Trial Court should not have passed any order regarding the right of the Bank to adjust the amount of the fixed deposit towards the recovery of the loan alleged to have been taken by M/s. Verma Agro Industries and Khem Chand. Despite having come to the conclusion that the Trial Court's order was without jurisdiction, "totally irrelevant and unwarranted", the Revisional Court did not interfere D with the order of the Trial Court on the basis of the UP Amendment to Section 115 of the Civil Procedure Code.

The appellant then filed a complaint before the District Forum under the Consumer Protection Act. It was contended by the respondent Bank before E the District Forum that both the Trial Court as well as the Revisional Court had held that the fixed deposit receipt had been mortgaged by Mam Chand as security for the loan granted by the Bank to M/s. Verma Agro Industries and that Mam Chand was entitled to do so because the fixed deposit receipt had specified that it was payable to "either or survivor". The District Forum, however, came to the conclusion that the appellant was entitled to recover F half of the amount of the FDR i.e. Rs. 19,965 together with interest from 1.6.1995 because she had never mortgaged her share of the fixed deposit in favour of any party. It was held that since the receipt was in the joint name of the appellant and her husband, the respondent Bank should not have accepted any pledge of the account without informing the appellant and G getting her consent. Since it had not done so, the service rendered by the Bank to the appellant was deficient. The Bank was therefore directed to pay the appellant a sum of Rs. 19,967 together with interest at 17% per annum thereon as well as Rs. 3,000 towards mental agony suffered by the appellant and costs of Rs. 1,000.

H The Bank preferred an appeal to the State Commission. The State

Commission proceeded on the basis that Mam Chand had validly pledged the FDR with the respondent-Bank. It held that since the fixed deposit receipt was payable to "either or survivor" it showed that the Bank could have got discharge by making payment to either of the account holders. According to the State Commission when payment could have been made to a single individual in terms of the directions of the depositors then the Bank was at liberty to accept mortgage of the fixed deposit receipt on behalf of one of the depositors and the consent of the other depositor was not necessary. The appeal was accordingly allowed and the complaint of the respondent was rejected. The National Commission merely reproduced the view of the State Commission with which it concurred. It also held that financial institutions had every right to protect their interest by taking "conscious decisions". Since the Bank had taken a "conscious decision" in this case, it could not be faulted and there was no deficiency of services.

Before us learned counsel for the appellant has claimed that the Bank had no right to adjust the amount of the fixed deposit receipt when there was no claim with regard thereto and when the liability of the defendants in the suit was yet to be quantified. It is further submitted that the Bank had in any event no claim against the appellant and could not have acted on the basis of any pledge alleged to have been created by the husband of the appellant of the fixed deposit receipt without the knowledge, concurrence or consent of the appellant. The decision of the Division Bench of the Lahore High Court in *Simla Banking and Industrial Company Ltd. Ambala City* v. *Mt. Bhagwan Kaur,* AIR (1928) Lahore 316 and a passage from *Tannan's* Banking Law and Practices in India have been cited as authorities in support of this submission.

The respondent has submitted that since the account was admittedly an "either or survivor" one, it was open to Mam Chand to pledge the account with the Bank and the consent of the appellant was unnecessary. It is submitted that the appellant had come with an inconsistent case with regard to the loss of the original fixed deposit receipt. It is further submitted that Mam Chand had created the pledge by executing a discharge on the fixed deposit receipt on the same date that the fixed deposit was pledged by Mam Chand with the Bank. Although it is admitted that the fixed deposit had not been mentioned in the plaint as one of the Banks' securities nor any claim raised in respect thereof, it is contended that this was not necessary in view of the discharge granted by Mam Chand on the fixed deposit receipt. On the question of legality of the adjustment of the fixed deposit account, it is submitted that it had already been decided by the Civil Courts that this was validly done. The

A respondent Bank relied upon the decision of this Court in *Punjab National Bank and Ors.* v. *Surendra Prasad Sinha,* reported in [1993] 1 suppl. SCC 499 to contend that the Bank had a general lien on the account.

Parties to a joint account are not automatically authorized to pledge each others credit. According to *Sheldon and Fidler's Practice and Law of* B *Banking*[1] , a Banker should not lend money to the parties to a joint account, either by means by an overdraft or in any other way, without obtaining from each of the parties an undertaking to be severally as well as jointly liable to pay the loan. The Banker has no right to set off the credit balance in the joint account except in respect of another joint account of the same parties (ibid). C The difference between the Joint Fixed Deposit account and a joint Savings, Current or other account, is that there is no right in the depositors to operate such account and withdraw the moneys except upon maturity.

A fixed deposit in the joint names of two persons is nothing but a joint account which, as the name itself suggests, is repayable on the expiration of D the agreed period. The fixed deposit receipt is merely a written acknowledgement by the Bank that it holds a certain sum to the use of its customers. The Bank is thus a debtor to the account holders in respect of the amount deposited a debt which is repayable by the bank to the account holders with interest on the expiry of an agreed period. An "either or survivor" clause in such an account means that the amount payable by the Bank on E maturity of the fixed deposit may be paid to either of the account holders by the Bank in order to obtain a valid discharge. In other words under a tripartite agreement between the joint account holders *inter se* and the Bank, the Bank may, on maturity, make payment only to either of them. This tripartite agreement cannot be bilaterally modified by one of the joint account holders for example F by pledging the account with any third party including the Bank itself in its capacity of creditor, so that the amount becomes payable to such third party, without the consent of the joint account holder. Thus in *Tannan's Banking Law and Practice in India*[2] the legal position has been summarized thus: "On the view that the terms of operation of a joint account constitute a term of the contract of deposit, any variation or revocation of instructions in a joint G account, whether the operation is by 'either or survivor' or 'former or survivor' can be effected only under the joint signatures of all persons entitled to operate the joint account. One of the joint account holders thus cannot

[1] 11th Edition Page 71.

H [2] (20th Edn.) 2001 Volume 1, Character VIII page 259.

unilaterally instruct the Bank not to honour cheques signed by the others, issue duplicate deposit receipt, premature repayment or loan against Fixed Deposit". This was also held by a Division Bench of the Lahore High Court (Shadi Lal, C.J. and Broadway, J.) in *Simla Banking and Industrial Company Limited, Ambala City* v. *Mt. Bhagwan Kuar,* AIR (1928) Lahore, 316. In that case Bhagwan Kuar and her son Raghunandan Singh had deposited an amount with the Bank against a Fixed Deposit Receipt which was payable to "either or survivor". Raghunandan had borrowed money from the Bank. The Bank credited the amount due under the Fixed Deposit Receipt to the overdraft account of Raghunandan. Bhagwan Kuar thereupon filed a suit against the Bank for recovery of the amount due. The Bank pleaded a general lien and claimed to have acted within its rights in appropriating the amount as it had done. The Division Bench was of the view that the action of the Bank was neither supported by authority nor in law nor in equity.

The decision in *Simla Banking and Industrial Company Ltd.* v. *Mt. Bhagwan Kaur* (supra) was followed by the Calcutta High Court in the case of *Nath Bank Ltd.* v. *Sisir Kumar Sarkar,* AIR (1954) Cal. 303. In that case, there was a fixed deposit made by two persons, one of whom was indebted to the plaintiff-company. The fixed deposit receipt was repayable after a period of 12 months to either or survivor. The Calcutta High Court was of the view that during the joint lives of the two account holders or at least until due demand for repayment of the money was made by the Bank to the debtor-account holder the debt in the form of a fixed deposit receipt was that of the bank to the joint account holders and the bank could not set off a debt due from one of the joint account holders against such a joint debt.

In *Hirschorn* v. *Evans (Barclays Bank Ltd., Garnishees),* (1938) 2 KB 801 L a joint deposit account was opened by A and B (who were husband and wife) and the bank was authorized to accept the signature of either A or B or of the survivor as a sufficient discharge for the repayment of the moneys deposited. This debt was attached by a third party in execution of a decree against A, the husband. Pursuant to the garnishee summons, the Bank paid A's decretal debt to the decree holder. The Court of Appeal held that inasmuch as the debt which the bank owed was not a debt due to the husband alone, but to him jointly with his wife, it could not be attached to answer the judgment against the husband.

In our view, these decisions correctly set out the law. In the present case the contract in respect of the joint account was between the respondent

A bank and the husband and wife. The fixed deposit was not a debt due by the bank to Mam Chand alone which could be set off by the bank against any claim that the bank may have had against Mam Chand. Besides the right of Mam Chand was to receive the money deposited only after it matured, if he survived. Supposing Mam Chand had died before the fixed deposit matured, the only person entitled to get the money would be the appellant. This right
B of the appellant could not have been taken away without her consent.

The decision cited by learned counsel on behalf of the respondents i.e. *Punjab National Bank* v. *Surendra Prasad Sinha* [1993] 1 SCC 499 was not rendered in connection with a joint fixed deposit account in which only one
C of the account holders was a debtor. In that case, both the account holders stood guarantors to the principal debtor and had jointly executed the security bond and entrusted the fixed deposit receipt as security to adjust the outstanding debt from it at maturity.

We have our doubts regarding the validity of the order of the Trial
D Court allowing the Banks "information" application. But it is unnecessary to pronounce on it as it does not bind the appellant as was correctly held by the Revisional Court. Nor does anything turn on the supposedly shifting stances taken by the appellant in the two legal notices as there is no dispute that there was in fact a fixed deposit.

E The State and National Commission both erred in proceeding on the basis that the Civil Court's decision was that the FDR had in fact been pledged by Mam Chand to the bank. We have already quoted the observation of the Revisional Court earlier. In fact, the Revisional Court also held that the decision of the trial Court did not in any fashion bind the appellant. There
F is no independent finding by any of the fora that the pledge had indeed been created of the fixed deposit receipt by Mam Chand as claimed by the bank.

In the circumstances, the Bank had no right to refuse payment of the amount deposited to the appellant. The refusal as disclosed to this Court, was contrary to banking norms. We are therefore of the view that the District
G Forum was correct in accepting, and the State Commission and the National Commission erred in rejecting, the appellant's complaint. The appeal is accordingly allowed and the decisions of the State Commission and the National Commission are set aside and the order of the District Forum is confirmed with costs.

H VS. Appeal allowed.