



lgc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8026 OF 2022

Hiralal H Malu, Legal Heir of
the Late Mrs. Shakuntala Hiralal Malu : Petitioner

Versus

The Deputy Director of Income Tax
(Investigation), Unit 1(1), Pune & ors. : Respondents

Mr Mihir Naniwadekar, a/w Advocate Ruturaj Gujar for the
Petitioner.

Mr Suresh Kumar, for Respondent Nos. 1 to 4.

Ms. Ruchi P Bagwe, i/by Singhi & Co. for Respondent No.5.

Mr. Sanjaykumar Das, Asstt. General Manager of Bank of
Maharashtra present.

CORAM M.S. Sonak &
Jitendra Jain, JJ.

DATED: 04 February 2025

PC:-

1. Upon disclosure that one of us, i.e. Jitendra Jain, J, has shares in the Bank of Maharashtra, the learned counsel for the parties stated that they have no objection to this Bench taking up this matter.

2. Heard Mr. Mihir Naniwadekar for the Petitioner, Mr. Suresh Kumar for Respondent Nos. 1 to 4 (tax department) and Ms. Ruchi Bagwe for Respondent No.5 (Bank of Maharashtra). Mr. Sanjaykumar Das, the Assistant General Manager of Bank of Maharashtra, also appeared in person.

3. The legal representative [husband] of Shakuntala Malu institutes this Petition, and no dispute has been raised.

4. The first Respondent searched Shakuntala Malu's premises, and certain jewellery items, such as bangles, necklaces, etc., were seized, as recorded in the panchanama. The value of the jewellery was recorded as Rs.7,56,640/—in the panchanama and the accompanying inventory at Exhibit A (pages 36 and 37 of the Petition).

5. The tax department conducted proceedings against Shakuntala Malu. Upon conclusion of the assessment proceedings, appeals, etc., it was found that the assessee was not required to pay any taxes and that some refunds were due to her. Again, there is no dispute in this regard.

6. The assessee Shakuntala expired on 29 January 2016. On 22 September 2017, the Petitioner, her husband, wrote to the tax department that he was entitled to receive the jewellery seized on 22 July 2005 and called upon the tax department to return the same.

7. Up to March 2018, some time was spent on account of the tax department requiring the Petitioner to establish that he was the husband and the legal representative of the assessee Shakuntala. On 11 April 2018, however, the second Respondent made an order Under Section 132B of the Income Tax Act directing the release of the seized jewellery to the Petitioner.

8. From 11 April 2018 onwards, the Petitioner has been writing to the tax department to implement its order dated 11 April 2018 and return the seized jewellery. This correspondence is placed on record. On 11 June 2020, the

Petitioner pointed out that he was 84 years old and had a sentimental attachment to the seized jewellery.

9. On 16 July 2020, the first Respondent wrote to the bank stating that the bank should complete the release formalities. There was no action either on the bank or the tax department's part to release this seized jewellery. In the communication dated 12 October 2020 at (Exhibit-N, Page 80 of this Petition), the first Respondent noted that the seized jewellery was deposited with the fifth Respondent bank and **“on visiting the bank for release procedure, the article could not be identified”**.

10. In short, the Tax Department claimed that the seized jewellery was stored in a locker at the Bank, and now the Bank was asserting that no such jewellery could be traced. The Tax Department and the Bank are attempting to hold each other accountable for the loss. The department offers no relief to the Petitioner, claiming that the bank is investigating the matter. The Bank takes no cognisance of the Petitioner, claiming that he is not the Bank's customer and that there is no privity of contract. Neither is clear or candid with the Court. Both have been profoundly insensitive to the Petitioner's plight.

11. On 28 January 2021, the Petitioner's grievance was transferred to the Department of Financial Services. On 23 February 2021, the fifth Respondent bank replied that it had accepted the relevant article from the Income Tax Department, and since the Petitioner was not a customer of the bank, the Petitioner was required to follow up on the issue of release with the tax authorities alone. On 31 December 2021, the Petitioner's further representations to release the seized jewellery items were quite insensitively rejected by the

bank, informing the Petitioner that he should deal directly with the Income Tax Department.

12. The Petitioner, who is over 85 years old, perhaps out of desperation, addressed representations to the bank and to the tax department but, after meeting with gross callousness and insensitivity at both places, has knocked on doors of this Court.

13. When the matter was heard yesterday, the learned counsel for the Bank submitted that since the Petitioner had addressed the complaints to the Prime Minister's Office and the Reserve Bank of India, we should not investigate the matter. We were quite astounded with this submission on behalf of a nationalised Bank. This submission, with respect, is most unfortunate. Out of sheer desperation, since the Petitioner was not being returned his wife's jewellery, it is obvious that he would address complaints and representations to whichever authorities might consider his plight. The circumstance that the Petitioner addressed such representations cannot be a ground for not entertaining this Petition. We feel that such a submission, which smacks of total insensitivity, should never have been made on behalf of the Bank.

14. From the record, it is evident that there is no dispute about the Petitioner being entitled to receive his wife's jewellery. There is an order dated 11 April 2018 made by the third Respondent under Section 132B directing the release of this jewellery. Still, for the last six years, the Income Tax Authorities and the Bank of Maharashtra have forced the Petitioner to literally run from pillar to post to obtain the release. All that the Petitioner has recieved during these last six years and perhaps, in the late evening of his life, are

insensitive responses from the tax department and the bank blaming each other but no jewellery or justice.

15. The tax authorities blamed the bank, and the bank accused the tax authorities. Mr. Das was categorical in stating that the bank is not at all responsible for the contents of the locker, and some formalities that the tax authorities were required to comply with were never complied with by the tax authorities. Mr Suresh Kumar contradicts the bank's position and states that all formalities were complied with and that the bank is responsible for the situation. The blame game continued before us, but neither offered to return the seized jewellery or any cash equivalent [assuming that sentiments can be monetised].

16. In short, the tax department and the bank blame one another. Fortunately, at least before this Court, neither of these two authorities has accused the Petitioner of the unfortunate predicament in which he finds himself. Aside from blaming each other, none of the authorities are willing to take any responsibility. This is most disturbing. The officers of the tax department and those at a nationalised bank like the Bank of Maharashtra are confident that, should any liability arise, it will be settled either through the public exchequer or from the bank's finances, collected from depositors, investors, and so forth.

17. The officers are confident that none of this will affect their prospects for service, promotion, increments, perks, or pension. The officers are utterly convinced that any inquiries into this incident will be conducted by their superiors, who would be reluctant to assign any responsibility to them or, in any way, issue orders for recovery of the amounts that might now have to be paid to the Petitioner personally. Without such

unwavering confidence, the officers, who have repeatedly treated the Petitioner with utmost insensitivity, would likely not have treated a senior citizen of this country so shabbily and insensitively.

18. From the seizure memo/panchanama placed on record by the Petitioner and not disputed by any of the Respondents, the gross weight of the jewellery (gold and diamonds) seized from the assessee Shakuntala was 901.98 grams, and the net weight was 727.39 grams. Even if the net weight of the gold in the seized jewellery is taken conservatively at 700 grams, then, by today's rate of Rs.8000/- per gram, the value, even on a very conservative basis, would come to Rs.56,00,000/-.

19. The Income Tax Authorities and/or the Bank of Maharashtra are prima facie responsible for paying this amount to the Petitioner, even if we ignore the compensation aspect for harassment and ignore the sentimental value of the items that the Income Tax Department and the bank now claim are lost. Some directions may have to be considered requiring the Income Tax Authority and/or the Bank of Maharashtra to immediately secure this amount because the Petitioner, a senior citizen now aged 88, cannot be made to wait any longer.

20. We may also consider issuing directions to the Income Tax and Bank of Maharashtra authorities to investigate this matter. In this case, the question is not merely about the Petitioner's wife's jewellery but about fair tax governance and the security measures adopted by nationalised banks.

21. In **Amitabha Dasgupta vs United Bank of India and others**¹, the Hon'ble Supreme Court has discussed the

¹ (2021) 14 SCC 177

independent duties of banks concerning diligent management and operation of lockers separate from their contents. The Court held that duty of care is to be exercised irrespective of applying the laws of bailment or any other liability regime to the locker's contents. The banks, as custodians of public property, cannot leave the customers in the lurch merely by claiming ignorance of the contents of the lockers.

22. The Court noted that the present state of regulations on locker management is inadequate and muddled. Further, the banks appeared to have the mistaken impression that not knowing the locker's contents exempts them from liability for failing to secure the lockers themselves. The Court noted that as the highest Court in the country, it could not allow the litigation between the bank and locker holders to continue in this vein. This would lead to a state of anarchy wherein the banks would routinely commit lapses in proper management of the lockers, leaving it to the hapless customers to bear the costs. Accordingly, in paragraph 16, the Court issued directions concerning locker management.

23. Before concluding, the Hon'ble Supreme Court made crucial observations on the importance of the subject matter of appeal, i.e., locker management and the responsibility of the banks. The Court observed that with the advent of globalisation, banking institutions have acquired a very significant role in the common man's life. Both domestic and international economic transactions within the country have increased multiplefold. Given that we are steadily moving towards a cashless economy, people are hesitant to keep their liquid assets at home, as was the case earlier. Thus, as is evident from the rising demand for such services, lockers have become an essential service for every banking institution.

Citizens and foreign nationals may avail of such services. Moreover, we are now transitioning from dual key-operated lockers to electronically operated lockers due to rapid technological gains. In the latter system, though the customer may have partial access to the locker through passwords or ATM pins, etc., they are unlikely to possess the technological know-how to control the operation of such lockers.

24. The court added that, on the other hand, there is the possibility that miscreants may manipulate the technologies used in these systems to gain access to the lockers without the customers' knowledge or consent. Thus, the customer is entirely at the mercy of the bank, which is the more resourceful party, to protect their assets. In such a situation, the banks cannot wash off their hands and claim that they bear no liability towards their customers for the operation of the locker. The very purpose for which the customer avails of the locker hiring facility is so that they may rest assured that their assets are being properly taken care of. Such actions by banks would violate the relevant provisions of the Consumer Protection Act, damage investor confidence, and harm our reputation as an emerging economy.

25. Even the Tax Department cannot rest content by blaming the Bank. The department should have pursued the matter vigilantly. The department must be conscious that it does not own the money it collects from taxpayers or the jewellery and other valuables that it seizes from taxpayers by exercising the powers that the law may have vested in it; it is only a trustee. Therefore, if it sincerely believes that the Bank was at fault, it should have taken vigilant and proactive steps. Such prima facie indolence coupled with insensitivity to the

rights and concerns of senior citizens does not augur well for fair tax governance regime.

26. Ms. Bagwe, the learned counsel for the Petitioner and Mr. Sanjaykumar Das – the Assistant General Manager, state that an affidavit will be filed on behalf of the Bank of Maharashtra latest by 06 February 2025. They state that a copy of this affidavit will be served upon Advocate Mr Suresh Kumar by email on 06 February 2025 without any delay. The Principal Commissioner of Income Tax (Central), Pune – the third Respondent is also directed to file his affidavit stating the tax Department’s final version and, if possible, indicating the persons responsible for this by 10 February 2025.

27. Under no circumstances should the filing of affidavits be delayed in this matter. We propose to hear this matter further on 11 February 2025.

28. We direct that a copy of this order should be immediately placed before the Chairperson of the CBDT at the following e-mail address provided by Mr Suresh Kumar. The E-mail ID is chairman.cbdt@incometax.gov.in

29. Similarly, a copy of this order must also be placed before Mr Nidhu Saxena – the Chairman and Managing Director of the Bank of Maharashtra, at the E-mail ID provided by Mr Das. The E-mail Id is mdceo@mahabank.co.in

30. Though the amounts involved in this Petition may not appear to be significant to either the CBDT or the Chairperson and Managing Director of a nationalised bank, we still believe that the issue raised is substantial. If the Petitioner, a senior citizen aged 88 years, can be treated like this, we are

concerned about the plight of similarly placed citizens and senior citizens.

31. We suspect that, in all probability, these matters do not reach the level of the CBDT or the Chairperson and Managing Director of the nationalised bank, or that they do not consider such issues serious enough to warrant any action. Therefore, we are directing that this order be placed before them, and for the present, we would greatly appreciate some immediate action from their end.

32. Immediate action will significantly enhance the tax governance system and the public's trust in this country's banking system. This is particularly true considering the efforts reported by the Government to improve tax governance and strengthen confidence in our banking system. If these measures fail to reach ordinary citizens, then reflection at the highest levels is crucial. For this, such issues must be brought to the notice of the CBDT and the CMD of the Bank.

33. The Registrar (Judicial-1) is to immediately e-mail this order to the Chairperson of the CBDT and the Chairperson and Managing Director of the Bank of Maharashtra on their respective e-mail addresses referred to above and immediately place a compliance report to this Court in the file.

34. List this matter on 11 February 2025, First on Board.

(Jitendra Jain, J)

(M.S. Sonak, J)