IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 369

Suit 1292/1992

Between

Damayanti Kantilal Doshi

… Plaintiff

And

Indian Bank

… Defendant

GROUNDS OF DECISION

Banking — Deposit taking

Version No 1: 29 Oct 2026 (23:45 hrs)

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Damayanti Kantilal Doshi v Indian Bank

[1998] SGHC 369

Suit 1292/1992
Chao Hick Tin J
11 November 1998

1 **Judgment:**

2 **CHAO HICK TIN J**

3 This is an action by the plaintiff (Damayanti) against the defendants, an Indian bank, for an account and for losses which she allegedly suffered due to the refusal of the defendants` branch in Singapore in paying to her moneys which were placed on fixed deposits (FD) in US dollar and Indian Rupee denominations in various branches in India of the defendants under the joint names of her husband, one Kantilal P Doshi (KPD), and herself. Those deposits were made by KPD under a special scheme (FCNRD or NRE) whereby Indian nationals resident abroad or persons abroad of Indian origin were encouraged to place moneys in India on attractive interest rates, rates which were higher than the prevailing international rates for the currency in question. This action is only concerned with such fixed deposits. For convenience, I shall hereinafter refer to the defendants as `IB` and their Singapore branch as `IBS`.

4 2.KPD was a Malaysian and resided in Johore Bahru. On 1 July 1991 he was killed under tragic circumstances. He was a customer of IBS for many

years. He placed numerous sums on fixed deposits in various branches of IB in India under the joint names of himself and his wife, Damayanti, and also under his sole name. These FDs were under the special scheme.

5 3.Upon the death of KPD, Damayanti and her youngest son, Rogesh, became the executrix and executor respectively of the estate of KPD (the estate). Damayanti has two other sons. Jigarlal is the oldest and the second is Tilaklal. In this action Damayanti is suing in her personal capacity and not in her representative capacity as the executrix of the estate of KPD. She claims under the principle of survivorship in respect of those FDs which were in the joint names of her husband and herself.

6 4.Before his death, KPD was operating his business from Johore Bahru and one of his companies was Overseas Industries Sdn Bhd (OISB), in which he and his eldest son, Jigarlal, were the substantial shareholders. Unfortunately for the Doshi family, following KPD`s death a very serious dispute arose among them, with Jigarlal seeking to obtain control of OISB, which was KPD`s main business. Jigarlal obtained an injunction in Johore Bahru against his mother and siblings. Because of the injunction, Damayanti could not gain access to KPD`s Johore office and the documents kept therein, including the FD receipts.

7 5.At the death of KPD there were the following FDs in the joint names of KPD and Damayanti which IB say were charged to IBS for facilities granted by IBS to KPD and his associated firms:

No	Date	FD No	Branch	Amount
1	30.08.85	002346 issued in substitution for 158286. Renewed to FDR 401849 and then	Richmond Circle	US$306,033.87

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		to 406019 for US$319,805.38		
2	06.12.85	037735Renewed to FDR 003777 dated 6.12.90 for US$1,030,000.00 and then to FDR 164612 dated 8.8.94 for US$1,417,102.86	Harbour	US$1,030,000.00
3	10.12.85	533786Renewed to FDR 433953 dated 6.12.90 and then to FDR 000018 dated 1.2.94 for	Adyar	US$500,000
4	20.12.85	153575Renewed to FDR 585753 dated 28.12.90 for the sum of US$102,033.82	Ballygunge	US$102,033.82
5	10.01.86	154042Renewed to FDR 585785 dated 19.1.91 for the same amount	Ballygunge	US$96,436.12
6	01.04.86	031998Renewed to FDR 190216dated 3.4.91	Ernakulam	US$203,194.67
7	14.11.86	061110Renewed to FDR 72022 dated 23.11.89 US$16,695.91 and then to FDR No. 72066 for US$18,198.54	Rajkot	US$13,146.39

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		dated 18.11.90 and then to FDR No. 72113 for $19,017.47 dated 9.5.91		
8	24.11.88	302995Renewed to FDR 430439 dated 15.11.89 in the name of KPD. Renewed to FDR 115262 dated 13.11.90 in the name of KPD	Panaji	US$1,751,770.41

8 6.While in the various documents, including the stamps placed on the FD receipts, the words `pledge` or `lien` were used, it is clear that what was intended was that those FDs would be charged for the repayment of the facilities granted by IBS. I shall hereinafter refer to these eight FDs as `the eight charged FDs`. I should also add that besides these eight charged FDs there were four FDs in the name of OISB which were similarly charged to secure those facilities.

9 7.At the time of KPD`s death, there were also other FDs which were placed at various branches of IB in India but which were not charged to IB. In respect of those, IBS say they did not maintain any proper record thereof, though most of them were probably placed through IBS. Pursuant to the request of Damayanti, and following inquiries, IBS eventually obtained the particulars thereof as follows. I shall hereinafter refer to these FDs as `the free FDs`.

No	Date	Number	Branch	Amount
1	30.01.84	052173Renewed to FDR 520115 dated 28.1.89	Cumballa Hill	Rs 34,410

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2	12.12.91	72153Renewed to FDR 72081 dated 10.12.91	Rajkot	US$514,323.74
3	21.12.91	149176	Richmond Circle	US$12,579.52
4	03.01.92	462894061175 renewed to FDR 72158 for US$14,035.30	Harbour	US$1,971.83
5	21.01.92	Rajkot	US$10,323.00	
6	01.06.92	004139	Harbour	US$7,244.62
7	21.06.92	242781	Harbour	US$36,195.14
8	06.09.92	540806	Harbour	US$2,396.33
9	11.02.93	72006 renewed to FDR2144442 to FDR $2,774.31	Rajkot	US$2,100.00
10	11.02.93	72034 renewed to FDR214471 for US$6,709.79	Rajkot	US$5,078.97
11	23.09.93	72095 renewed to FDR214535 to same unit	Rajkot	US$2,789.70
12	16.01.94	171742	Rajkot	Rs 1,541.21
13	30.01.94	457871	Rajkot	Rs 1,640.00
14	09.08.94	171951	Rajkot	Rs 9,678.94
15	08.10.94	171985	Rajkot	Rs 9,601.72
16	15.03.95	457563	Rajkot	Rs 115,299.93
17	29.04.93	457624	Rajkot	Rs 7,103.15
18	01.05.95	32330	Rajkot	Rs 6,720.00
19	26.02.96	171695	Rajkot	Rs 1,860.08
20	13.04.96	323291	Rajkot	Rs 10,743.60

10 8.It will be noted that except for one deposit which was for more than US$500,000, the other free FDs were all for relatively small sums. As at the

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date of commencement of this trial, most of those free FDs had been paid out to the plaintiff except for three small deposits listed at items 4, 6 and 8 above (all maintained at Harbour Branch). Damayanti has not applied to have them paid out presumably because she did not want to do so. It is also possible that she does not have the FD receipts in question. Even if it were true that she did not have the FD receipts, that could not be the reason Damayanti did not withdraw them if she had wanted to because she had withdrawn many such free FDs without producing the relevant receipts by executing indemnities.

11 9. ***Main complaints***

12

13 A large amount of details (documentary and otherwise), including accounts, were placed before me. The figures as presented by IBS were accepted by Damayanti in the course of trial as being in order. As I see it, there are essentially two main complaints in this action. The first is that IBS failed to provide her with the information on all the FDs placed by KPD with the various branches in India, particularly the free FDs, and failed to carry out her instructions in relation thereto. This in turn raises the question whether there was, as alleged by Damayanti, a special arrangement/agreement reached between KPD and IBS as to the obligations of IBS in relation to the FDs placed through IBS, and if so what was the scope of those obligations.

14 10.The second main complaint in this action concerns three of the eight charged FDs which were maintained at Panaji, Harbour and Adyar branches (Nos 2, 3 and 8 of the charged FDs listed above). It is not in dispute that they were originally placed in the sole name of KPD. Damayanti`s name was added thereto as a co-depositor much later (in January 1991), by which time the three

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FDs had already been charged to secure facilities offered by IBS to KPD and his associated firms. In respect of the deposits at Harbour and Adyar branches, besides executing a security letter for each deposit in favour of IBS, KPD had also discharged the two FD receipts by signing them. However, when Damayanti`s name was added onto the two FD receipts, no fresh security letters were obtained from KPD and Damayanti jointly or from Damayanti alone. In the case of the Panaji FD, no specific security letter was obtained from KPD but there was correspondence evidencing a charge. The position taken by IB is that the addition of Damayanti as a joint depositor did not affect the charge already existing in favour of IBS. Before me, both parties are in agreement that the charging of the FDs to secure facilities granted by IBS was governed by Singapore law.

15 11. ***Duty to account or maintain list of FDs***

16

17 I will now consider the first main issue and in reality it concerns primarily the free FDs. This is because as regards the eight charged FDs as early as 1 August 1991 (3DB426-8) Damayanti was informed about them. Nevertheless, the question here is a general one. Did IBS assume any additional obligations when they accepted moneys from KPD and placed them on his behalf in the various branches in India? Did IBS assume a duty to render an account to KPD in respect of the deposits so placed (or renewed) through IBS?

18 12.It is settled law that a bank is a debtor of a customer who has placed a sum on fixed deposit with the bank and the bank is not a trustee of the customer in respect of the money so placed: see **Foley v Hill** [1848] 2 HL Cas 28 and ***Poh Chu Chai on Law of Banking*** Vol 1 (3rd Ed) at pp 35-36. It is also settled

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law that a customer has no cause of action against a bank in respect of any money in a current or deposit account until a demand for payment has been made at the branch where the account is maintained: **Joachimson v Swiss Bank Corporation** [1921] 3 KB 110. For this purpose, branches of a bank are treated as separate entities: **R v Lovitt** [1912] AC 212 at 219 and **Clare & Co v Dresdner Bank** [1915] 2 KB 576.

19 13.Furthermore, in the case of a fixed deposit, repayment is subject to the terms of the contract. As stated by Poh Chu Chai (at p 40):

> *When money is placed in a deposit account by a customer, the money deposited is usually repayable by the bank subject to the fulfilment by the customer of the terms and conditions of the deposit. Until the conditions for the withdrawal of the deposit are complied with by the customer, the money deposited does not become payable. Thus, the fulfillment of the conditions of deposit constitutes a condition precedent to the liability of the bank to make repayment of the deposit. Time begins to run against a customer only after the customer has fulfilled the conditions of his deposit and the bank comes under a liability to make payment. When money is placed in a deposit account for a fixed period or term, the deposit is normally only repayable at the end of the fixed term.*

20 14.In the present case it was clearly stated on each FD receipt that the production of the receipt was a pre-condition for payment and under such a contract no payment should be made on that deposit unless the FD receipt was produced: **Voo Foot Yiu v OCBC** [1936] MLJ 169 . But if it is shown to the satisfaction of the bank that a FD receipt is lost or destroyed the bank could effect payment against an indemnity or an acceptable guarantee.

21 15.What Damayanti averred is that by virtue of a special agreement or arrangement, which was to be implied from the correspondence between KPD and IBS, and from the correspondence between Damayanti/her solicitors and IBS/IBS` solicitors, KPD and/or Damayanti were/was entitled to operate or deal

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with the FDs maintained with IB`s branches in India through IBS. She says that under that agreement/arrangement, IBS would:

> (i) give effect to or ensure that the defendants` relevant branches in India would give effect to the instructions of KPD and/or Damayanti relating to the operations of the FDs;
>
> (ii) timeously effect payment or procure the relevant branches in India to effect payment of the monies in the said FD accounts upon demand by KPD and/or the plaintiff being made at IBS; and
>
> (iii) account to KPD and/or Damayanti in respect of the said FD accounts and the moneys maintained therein.

22 16.Damayanti told the court that she did not know how many FDs were placed by KPD with IB; neither of the branches in India they were placed with. Her husband never told her. Those deposits were entirely her husband`s money. She had no clue what was happening though she was told by her husband that her name was being added onto the FDs, but which FDs she did not know. Everything relating to the FDs was done entirely by KPD, including charging the same for facilities.

23 17.Damayanti would just sign whatever was asked of her by her husband. She did not know what she signed. Neither did she know how her husband would renew each FD placed with a branch in India. She admitted not knowing what was agreed between KPD and IBS with respect to the conduct of those FDs. But she said IBS would oblige him on his instructions:

> Q: When your husband wanted IBS to collect the fixed deposit he would give receipts?
>
> A: I do not know what was the practice.
>
> Q: Put - there was no special arrangement between your husband and the Indian Bank under which he was entitled to

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> operate the fixed deposit accounts at the branches in India through IBS?
>
> A: My husband dealt through IBS. They were helping him out.`

24 18.As an indication of the understanding/arrangement reached between KPD and IBS, Damayanti`s counsel referred to the FD of US$514,323.74 which was a free FD and where pursuant to a demand dated 24 June 1992 made by the plaintiff on IBS, the latter liaised with their Rajkot Branch and made payment to the plaintiff a total sum of US$536,411.47, which included a further sum of US$25,717.14 being accrued interest on FD 72081 and FD 242781 maintained at Harbour Branch.

25 19.The position taken by IB on this issue is that they were not in any fiduciary relationship with KPD/Damayanti and were never under any obligation to keep a list or account to them in respect of the free FDs in their joint names. IBS never kept such a list. Nor did they monitor the position on each such free FD. Thus, there is no basis for an order for accounting or inquiry. But IB said that in any case IBS had, upon KPD`s death and upon request, on a purely voluntary basis, provided Damayanti with whatever information they had in their possession or could obtain. IB stated that Damayanti, as the surviving joint account holder of the free FDs, was entitled, upon the due date and production of the FD receipt at the branch (or delivery of receipt to the branch) where each fixed deposit was maintained, to apply for payment in accordance with the terms of that fixed deposit and the laws and customs prevailing at that branch. And in so far as the charged FDs were concerned, Damayanti`s entitlement to receive payment in respect of those FDs would be subject to the charge and the right of set-off of IBS.

26 20.There is no specific document evidencing any special arrangement/agreement between IBS and KPD. Damayanti has no personal

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knowledge of any such special arrangement. Her case is largely based on the fact that in respect of all the FD transactions with the IB branches in India, KPD only dealt through IBS. IBS would assist whenever asked of by KPD. KPD never visited India to carry out those transactions. Though Jogesh had on a few occasions followed his father to IBS, he really did not know much of what was being transacted or the arrangement his father made with IBS. Though Jogesh knew his father took loans from IBS, he did not know how they were being secured.

27 21.Damayanti`s counsel submitted that there was no conceivable reason why KPD would want to have the deposits placed in branches all over India unless IBS had agreed to give effect to her husband`s (and consequently hers too) instructions in respect of the deposits. In other words, KPD could demand payment on the FDs at IBS. Once demand for payment was made at IBS, the latter were obliged to effect payment or procure their relevant branches to effect payment. Reliance was placed on the evidence of DW1 which suggested that KPD did at times leave it to IBS to determine at which branch to maintain the deposit. Counsel contended that there was no earthly reason why KPD would want to place the FDs at various branches unless he was assured that he would not be inconvenienced and that he could deal through IBS. He also relied upon the following evidence of DW1 (NE53):

> *Bank managers in India get promoted on the business (they) generate. So if in a particular case KP Doshi did not specify the branch, IBS manager could give it to a branch whose manager may be his friend.*

28 22.However, there is evidence that KPD did write directly to the branches in India (where the FDs were maintained) on numerous occasions to make inquiries, requests and complaints about interest, in some instances because he did not obtain satisfactory answers through IBS. And there were

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instances where a branch would forward a FD receipt (not charged to IBS) directly to KPD and vice versa. The branch at which KPD kept the largest number of deposits (and in terms of value too) was Rajkot and that branch is located in a State from where he hailed. Thus, he had a special affinity with that branch.

29 23. ***My findings***

30

31 Having carefully reviewed all the matters as aforesaid, while I would be inclined to think that some of the deposits placed at some `far flung` branches were at the suggestion of the manager of IBS, with whom KPD must have had a close working relationship, those placements were agreed to by KPD. In all probability what really transpired was that, as the manager of IBS was rendering full assistance to KPD in relation to the placing of FDs, and in the various accounts maintained by KPD at IBS, KPD did not mind where a particular deposit was placed. He did not mind allowing the manager of IBS to do a favour for a friend who was the manager of a branch in India. If he had minded, he would have objected. To him it would make no difference so long as IBS would continue to assist him in relation to those deposits, such as conveying instructions of KPD or despatching the FD receipts for payment or renewal, etc. It was really a case of mutual help. But KPD, being an experienced businessman that he was, would have known that the control in relation to each deposit would be with the branch in question. He knew this special scheme was an Indian scheme in operation in India. He could not have been under any misimpression that IBS could effect the payment or renewal. He would have known how the special scheme worked. IBS were willing to be a post-box and I find KPD knew full well that that was the extent of the role of IBS. Indeed, KPD could have

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placed the deposits with any branch of IB in India through any bank in Singapore. Presumably, he chose IBS because he thought that might speed things up a little, IBS being of the same bank as the branch which received and maintained each deposit. If KPD had thought that he was only dealing with IBS, though a deposit was placed in a branch in India, he would have dealt wholly with IBS and would not have had on occasions taken matters up directly with the branch concerned.

32 24.Furthermore, I do not find anything which suggests that IBS agreed to keep, on KPD`s behalf, a proper recording of all deposits placed through them. KPD would have kept his own records, as he was holding the free FD receipts, and I find he did keep such records. I see that in many of KPDs letters to IBS, KPD mentioned of his files. Each time he needed something he would approach IBS who would assist wherever possible. KPD would tell IBS what he wanted be done. And if he had wanted payment on a FD which had matured, he would produce the FD receipt. IBS would oblige in forwarding the receipt to the relevant branch. That would be promoting good customer relationship. If IBS had refused, KPD could take his money and place it with another Indian bank and deal through another Singapore bank.

33 25.In my view, Damayanti is seeking to convert voluntary services, rendered as a matter of goodwill, into legal obligations. Damayanti sought to impose additional legal burden on IBS just because there were squabbles within the Doshi family and she could not obtain the records and the FD receipts which were kept at KPD`s Johore Bahru office and which office was and is presently occupied by Jigarlal, her estranged son. From the correspondence one can see that KPD was a meticulous person. He calculated everything carefully.

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34 26.To sum up, first, not all the FDs were placed through IBS. Second, I do not think it has been shown that IBS had agreed with KPD that they would maintain a proper record of all FDs placed through IBS. The receipts were with KPD. IBS were entitled to expect KPD to keep his own record and KPD did, in fact, do so. However, IBS would, as KPD was a good customer, render every assistance possible to KPD with regard to those FDs, including forwarding receipts for payment/renewal. Third, KPD placed money on deposit on that special scheme in operation in India for his own benefit, namely, to earn that extra interest on his money and he knew how the scheme operated. Fourth, on each occasion on which KPD would wish to obtain payment on a FD which was due, he would present the receipt at or have the receipt delivered to the branch concerned. In the case of a charged FD, the receipt would be with IBS and he would instruct IBS what to do subject to a satisfactory arrangement for that security. Lastly, there was no special contractual arrangement which enabled KPD to demand payment on the FDs at IBS.

35 27. ***Scope of plaintiff`s request***

36

37 I will now turn to consider what exactly Damayanti wanted IBS to do on her behalf and what IBS, in fact, did. In July 1991, soon after the death of KPD, Jogesh and Tilaklal met with officers of IBS to ask for an account of the various FDs placed by KPD with the branches of IB in India. There is a dispute as to whether Jogesh and Tilaklal had also asked for payment out of the FDs. In his evidence Jogesh said that he did ask for payment. Interestingly, in Damayati`s letter of 30 July 1991 addressed to IBS, she only asked for an `up to date and complete list of all assets, fixed deposits ... held in the name of my late husband (KPD) singly or in our joint names, both locally and overseas.`

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38 28.On 1 August 1991, IBS replied to Damayanti and Rogesh (in their capacity as personal representatives of the estate of KPD) giving an account of the facilities granted by IBS to KPD and his associated firms (namely, OISB, Tino Industries and P Lal and Sons) and the FDs (including the four FDs in the name of OISB) which were charged to secure the facilities. IBS further informed Damayanti that Lloyd Bank had made a claim from IBS for US$1,748.739.32 in respect of a guarantee issued by IBS and Pacific Bank Bhd had also made a claim for M$3 million under a standby letter of credit issued by IBS, and that both those facilities were issued by IBS at the request of KPD. IBS requested Damayanti to advise on the arrangements she proposed to make to settle the liabilities of KPD.

39 29.On 2 August 1991, Damayanti wrote to say that `we` (presumably in her representative capacity) would like the FDs (in the joint names of KPD/Damayanti) to be transferred `to a bank overseas of our choice upon maturity.` She also asked for information on the procedures for effecting the transfer. She further stated `similarly we would like to transfer other fixed deposits as and when they mature.` She did not expressly dispute the liabilities of KPD enumerated in IBS` letter of 1 August 1991, but she failed to address how the estate of KPD proposed to discharge the liabilities of KPD to IBS which were secured by the charged FDs. I should observe that this reply of 2 August 1991 is significant in one other aspect. It will be seen that Damayanti was not anxious to break the FDs and take the money out immediately. She wanted to preserve the interest earned and to take them out only upon maturity. This is consistent with IBS`s assertion that Damayanti and her sons did not at that point ask for immediate payment. It seems to me that they were then anxious only to obtain information.

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40 30.On 27 August 1991 IBS informed Damayanti and Jogesh that they had utilized the proceeds from the four charged FDs of OISB and the charged FD of KPD/Damayanti maintained at Panaji branch to meet the claims of Lloyd Bank and Pacific Bank Bhd.

41 31.Then on 10 September 1991, M/s Manjit Darshan & Partners (MDP) wrote two letters (separately on behalf of Damayanti and the estate of KPD respectively) to IBS asking for information on the joint deposits of Damayanti and KPD maintained at the various branches of IB. A reminder was sent by MDP on 17 October 1991. On 22 October 1991, IB`s solicitors replied to MDP clarifying a matter of capacity. On 8 November 1991 IBS wrote to the estate setting out, inter alia, the FDs pledged to IBS.

42 32.I will now pause to examine what were the documents/information requested by the estate of KPD and/or Damayanti from IBS. In the request of 10 September 1991, MDP writing for the estate asked for, inter alia, true copies of:

> 1 A summary of the breakdown of the fixed depositions maintained under the different names and the amounts thereafter (sic).
>
> 2 ***All*** fixed deposit receipts ***since commencement*** of the placement to present position.
>
> 3 ***All*** bank statements whether on a monthly basis or otherwise reflecting the state of the deceased`s accounts ***from commencement*** of placement to present position.
>
> 4 A summary of the total interest earned over the years ***from the commencement of placement*** to present position. [Emphasis added.]

43 and confirmation that (among others):

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> 1 … all the fixed deposit receipts you will be forwarding are exhaustive.
>
> 2 There are no other accounts maintained by the deceased with your Bank. This expression `Bank` herein refers to your Bank ***throughout all jurisdictions*** .` [Emphasis added.]

44 33.In the second letter of the same date, MDP writing for Damayanti requested IBS to give immediately a breakdown of all joint fixed deposit accounts opened by KPD in several jurisdictions in the name of both KPD and Damayanti and to provide true copies of the receipts.

45 34.It will be seen that the requests in both letters were very extensive, requiring IB to trace records of many previous years, not only at IBS but also at other branches in India. There is no evidence that KPD, while he was alive, ever made such an extensive request or demand. Of course he would have no reason to as he would have his own records. But, as I have ruled above, while IBS would, as a matter of good business practice, assist a customer wherever they could, I do not think they were under a legal obligation to furnish Damayanti with documents/information which IBS did not have, failing which a cause of action would arise. This would be to convert an act of assistance into a legal obligation.

46 35.At this juncture I should refer to a statement in IBS` reply of 8 November 1991 which was alleged to be misleading (at 3DB468):

> *As informed earlier all the deposits in the name of KP Doshi are pledged to us and some of them have been foreclosed towards adjustment of dues as detailed in our letter dated 27.8.91 …*

47 But I think this statement, though not happily worded, should not be read in isolation. It should be read in conjunction with an earlier statement in that reply, which reads:

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> *As regards to your request to confirm that the details of the FD (receipts) are exhaustive, we regret to inform you that* ***we can only confirm to this extent for deposits placed with our Singapore Branch****. [Emphasis added.]*

48 By this statement what IBS were saying was that they could only confirm the FDs, the receipts of which were kept with IBS. They left entirely open the question of the existence of FDs which were not charged.

49 36.If there was any doubt remaining as to whether IBS were only replying in relation to the charged FDs, IBS` letter of 16 December 1991 addressed to the estate for the attention of Damayanti and Rogesh should have removed all that as in it IBS also explained why they could not confirm whether KPD held any other FDs (which were not charged to IBS):

> *Kindly note that by our letter 8.11.91 we had furnished you with a list giving details of all deposits at our Singapore Branch or any of our other Branches in India in the name of KP Doshi and/or others which are held as security for facilities granted to KP Doshi and/or his associates.*
>
> *...*
>
> *We were and are unable to confirm however that there are no fixed deposits in the name of KP Doshi alone or jointly with others, apart from those included in the said list, at our Branches in India or with any other Banks, for the following reasons:*
>
> (i) Mr KP Doshi did not inform us or seek our advice with respect to any other deposits apart from those set out in the said list.
>
> (ii) We do not have knowledge of Mr KP Doshi`s financial affairs with our Branches or with other Banks.
>
> (iii) Although information relating to other deposits of KP Doshi could come into our possession in connection with remittances and other transactions from time to time, the Bank handles numerous remittances and other transactions on a daily basis and the departments handling such remittances and other transactions would not be aware of the relevance of such information which might accordingly not be noted.

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> *Kindly note that on or about the 9th day of December 1991, an interest payment was made into the account of KP Doshi, and the advice relating to such payment indicates that there is a fixed deposit account no. 72081 in the name of KP Doshi with our Rajkot Branch.*
>
> *Kindly note that the accounts set out in the list enclosed in our letter dated 8.11.91 together with the abovementioned fixed deposits accounts, are all the fixed deposit accounts in the name of KP Doshi of which we are presently aware.*
>
> *If the executors wish to confirm that Mr KP Doshi had or had not any other deposits apart from the same, they should make appropriate inquiries. We believe that we have cooperated to the fullest extent that could reasonably be expected of us in providing you with all relevant information of which we are aware.*

50 37.One other letter which I would like to refer to is that of 21 February 1992 from IBS to the estate of KPD where the estate was informed, inter alia:

> *Kindly note that since our letter of 16.12.91, it has come to our attention that there are various fixed deposits in the name of KP Doshi and Damayanti K Doshi with our Rajkot Branch. Copies of the documents relating thereto are annexured herewith for your information.*

51 38.Indeed in an earlier letter of 31 January 1992 Rajkot branch informed Damayanti of the deposits held there and the standing instructions given by KPD in relation thereto. In fact, even from November 1991, Damayanti knew that there were free FDs which KPD had placed with IB`s branches in India. She was in communication with some branches - see 3DB481, 490, 491-2, 495, 496-7. In January 1992, Damayanti appointed American Express Bank in India (AMEX) to collect moneys due on the free FDs which she came to know. On 2 April 1992 IBS furnished to the estate additional information which came into their possession.

52 39.By the time this writ was instituted at end June 1992, she clearly knew the position. There was no question of Damayanti being misled at that point in time. There was also no question of IBS refusing to help her collect the

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moneys due on the known free FDs as she had by then appointed AMEX as her agent for that purpose. I sense that she no longer had complete faith in IBS, having in November 1991 complained against IBS to the Monetary Authority of Singapore. As regards the free FD for US$514,323.74 maintained at Rajkot branch, referred to in para 18 above, in fact Damayanti applied directly to the branch in January 1992 for payment out. The cheque in payment was handed over to AMEX`s representative in about September 1992, (3DB567). In any case, even if it were true that IBS forwarded the demand for payment, that would be in line with the sort of assistance which IBS had rendered to KPD.

53 40.One final point. It was only on 17 February 1993 that Damayanti specifically requested IBS to write to the relevant IB branches in India. IBS obliged. On 16 March 1993 IBS, having obtained the information from the branches, conveyed the same to the plaintiff. All in all, the picture that emerged before me was not of a bank which was uncooperative but of a bank which was trying its level best to assist a difficult customer.

54 41. ***Was there a proper charge***

55

56 I now turn to the second main issue which is whether there was a proper charge of the three allegedly charged FDs maintained at Harbour, Adyar and Panaji branches. The contention made by the plaintiff in relation to these three FDs is that where a joint FD is offered or taken as security, the consent of all the depositors should be expressly obtained. There was no provision in each of the contracts of deposit which permitted either KPD or Damayanti to singly grant a charge over the deposit.

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57 42.However, as mentioned before, these three FDs were originally placed in the sole name of KPD who had executed security letters granting a contractual right of set-off to IBS over two of the three deposits (maintained at Harbour and Adyar branches). In the case of the deposit at Panaji branch, while KPD had not executed any security letter in respect thereof, the correspondence between IBS and KPD clearly evinced an intention on the part of the latter to grant IBS a charge over the said deposit for the various facilities granted by IBS to KPD and his associated firms.

58 43.On 22 December 1990, KPD wrote three identical letters to IBS, asking IBS to inform the three branches that the three FDs should be made payable to `KP Doshi and/or Mrs Damayanti K Doshi either or survivor.` (This again shows KPD treated IBS as a post-box.) On 19 January 1991, IBS forwarded fresh account opening forms to be signed by both KPD and Damayanti in respect of each of the said deposits and the forms were duly executed by both of them. The three branches accepted the amendment and altered their records to reflect that and the branches concerned also authorized IBS to amend on their behalf the FD receipts accordingly.

59 44.Therefore, what was the effect of this change? Damayanti`s counsel submitted that this amounted to KPD offering to discharge the FDs in his sole name and offering, together with the plaintiff, a placement of the identical sum on deposit under the joint names of KPD and Damayanti. A new contract accordingly came into being between KPD/Damayanti and each of the three branches, replacing the earlier contracts between KDP and the three branches though in each case the amount of the deposit, the period of deposit and the interest payable, remained the same as the earlier contract. With the deposits being placed in the joint names of KPD and Damayanti, IBS had lost the right

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of set-off which they had against the FDs which were in the sole name of KPD. Counsel for Damayanti put the argument thus:

> *Whilst the defendants may have had a charge or right to set-off over the earlier choses in action which accrued in favour of KP Doshi alone, this charge/right of set-off was lost when the Singapore branch instructed the various branches to deal with the deposits as requested by KP Doshi.*
>
> *When the defendants` branch in Singapore requested their three branches concerned to give effect to the request of KP Doshi, they were in essence consenting to the three branches repaying the debt (chose in action) owed to KP Doshi. The fact that the plaintiff and KP Doshi subsequently placed a similar amount as a deposit with the branches concerned does not alter the fact that the original debt owed by the three branches to KP Doshi was for all intents and purposes repaid and thereby extinguished.*
>
> *It is not open to the defendants to contend that the charges effected by the three branches were effected subject to their existing charges or rights of set-off. This is because the changes that were effected by the three branches were so fundamental that it extinguished the very subject matter of the Singapore branch`s charge or right of set-off. The subject matter of the charge/right of set-off having been extinguished, there was nothing to which IBS`s charge/right of set-off could properly reattach to.*

60 45.Counsel further contended that nowhere was it stated that the change effected was subject to the existing charge in favour of IBS. Neither was any consent to the continuation of the charge obtained from the proposed joint depositors before the change was effected. Nor was any fresh security letter obtained from KPD and Damayanti.

61 46.The defendants` submission is that upon the addition of Damayanti`s name, the contractual obligation of the three branches was varied so that the moneys became payable to KPD and/or Damayanti (either or survivor), but subject always to IBS security rights. Emphasis was placed on the fact that no new receipt was issued. The three receipts continued to be marked `under lien to the Singapore branch` and held by IBS. Counsel for the defendants stressed

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that the relevant correspondence shows that upon Damayanti`s name being added onto the FD receipts it was not the intention of any of the parties that thereafter KPD and Damayanti would be entitled to payment of the deposits on an either/or survivor basis, free of any security rights existing in favour of IBS. In so far as Damayanti was concerned, she had no clue what her husband did and had no objection and could not have objected to whatever he did. She was a wholly passive party. She relied entirely on him. Her evidence clearly shows that KPD was authorised by her to act on her behalf on all matters relating to the joint deposits. She accepted what he did.

62 47.B contended, in the alternative, that even if it were correct to aver that upon the insertion of Damayanti`s name onto the FD receipt, a new contract came into being as she signed a new opening form with KPD, it was still subject to the charge in favour of IBS because that was the intention of all parties and thus the receipt continued to bear the endorsement `under lien to Singapore Branch.` Furthermore, the receipts continued to be held by IBS. There was no objection by KPD and/or Damayanti to the receipts being so marked (a photocopy of each receipt was given to them) or held by IBS, or that no new receipts were issued.

63 48.I do not propose to go into the question whether on the insertion of the name of Damayanti into each FD receipt a new contract had come into being. I shall assume that it was so and proceed to determine whether there was in the circumstances an equitable assignment by way of a charge or an equitable mortgage of the FDs. An affirmative answer to this question would defeat the contention of Damayanti.

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64 49.In law, an equitable assignment can be effected either orally or in writing provided the intention is clear. 6 ***Halsbury`s Laws of England*** (4th Ed) para 30 sets out the position as follows:

> *No form of words is required for an equitable assignment; the only thing that is necessary is to make the meaning plain. The assignment may be by word of mouth, unless in the particular case writing is required by law, and no particular form of words is necessary so long as the words clearly show an intention that the assignee is to have the benefit of the chose in action. There must, however, be some act by the assignor showing that he is passing the chose in action to the supposed assignee. An actual intention not to assign an interest will not prevent an assignment being effective if the parties have contracted to do an act which in law constitutes an assignment. The assignment may be addressed either to the debtor or to the assignee. An agreement amounting to an equitable assignment may be express and written or may even be made out from a course of dealing between the parties.*

65 50.A fixed deposit is a chose in action and may accordingly be assigned: see ***Ellinger & Lomnicka on Modern Banking Law*** (2nd Ed) at pp 273-274 and ***Lingard on Bank Security Documents*** para 18.21. But a fixed deposit receipt is not a negotiable instrument and thus delivery is not effective for the purpose of an assignment. However, the delivery could constitute an equitable assignment or mortgage. It was held in **Harrold v Plenty** [1901] 2 Ch D 314, where there was a deposit of a share certificate (which is a chose in action) by way of security without the execution of any blank transfer form, that it constituted an equitable mortgage. An equitable mortgage of a chose in action is effectively an equitable charge. What is a charge and here I would quote the words of Atkin LJ in **National Provincial Union Bank of England v Charnley** [1923] 1 KB 431 at p 449:

> *It is not necessary to give a formal definition of a charge, but I think there can be no doubt that where in a transaction for value both parties evince an intention that property, existing or future, shall be made available as security for the payment of a debt, and that the creditor shall have a present right to have it made*

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> *available, there is a charge, even though the present legal right which is contemplated can only be enforced at some future date, and though the creditors get no legal right of property, either absolute or special, or any legal right to possession, but only get the right to have the security made available by an order of court.*

66 51.The fact that in this case the debts (FDs) were owing by IB to KPD/Damayanti would not preclude the depositors from creating an equitable mortgage or charge in favour of IB: see s 9A of our Civil Law Act (Cap 43, 1994 Ed). This provision has removed the doubt expressed by Millett J in **Re Charge Card Services Ltd** [1987] Ch 150 where he held that a creditor could not create in favour of a debtor a charge over the debtor`s own indebtedness to the chargor.

67 52.In the light of the facts which I have adverted to above, I have no difficulty in finding that KPD/Damayanti, in allowing IBS to retain the three FDs in their possession, intended to create an equitable mortgage or charge in favour of IBS as security for their continuing to grant the facilities to KPD and his associated firms. This was further confirmed by the FD receipts which continued to bear the endorsement `under lien to Indian Bank` and copies thereof were given to KPD/Damayanti and no objection whatsoever was received from either or both of them.

68 53.The argument in response made by counsel for Damayanti is that the assignment or mortgage should be in writing. Here, he relied upon s 6B(2) of the Civil Law Act which provides that:

> *A disposition of an equitable interest or trust subsisting at the time of the disposition must be in writing signed by the person disposing of the same or by his agent lawfully authorized in writing or by will.*

69 54.I have stated earlier that the relationship between a bank and a customer who pays money into the bank on fixed deposit is that of debtor and

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creditor. The bank is not, vis-a-vis the customer, in the fiduciary position of a trustee or quasi-trustee: see ***Foley v Hill*** , supra and Poh Chu Chai at p 35. As a FD is a debt simpliciter, there is no question of it being an `equitable interest or trust.` It follows therefore that s 6B(2) can have no application to the equitable mortgage of the three FDs by KPD/Damayanti to IBS.

70 55.Accordingly, I hold that IBS were entitled to offset the liabilities of KPD and his associated firms against the three charged FDs.

71 56. ***Delay in paying out the balance of the charged FDs***

72

73 A related complaint of Damayanti is that there was considerable delay on the part of IBS in paying over to her the balanced amount from the charged FDs, after offsetting the liabilities of KPD. Reference was made to the two reversals of position taken by IBS over the four FDs of IOSB which were also charged to secure the debts of KPD. To deal adequately with this point, it is necessary to bear in mind the prevailing circumstances, which I shall now briefly recount.

74 57.On 1 August 1991, pursuant to a request of Damayanti, IBS informed Damayanti and her son, Jogesh (being the executrix and executor of the estate) about the charged FDs and the liabilities of KPD to IBS and also notified them of the demands for payment received from Lloyds Bank and Pacific Bank. Damayanti replied on 2 August 1991 stating that she wanted the moneys in the FDs, in the joint names of herself and her husband, be transferred to `a bank overseas of (their) choice upon maturity,` without alluding to the question of discharging the liabilities of KPD to IBS. Damayanti objected to any offsetting.

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Indeed, she maintained that stand until the commencement of this trial when she admitted that IBS could offset KPD`s liabilities and those of his associated firms (except Tino Industries) against five of the charged FDs.

75 58.As indicated before, at the time there was a bitter dispute between Damayanti, Jogesh and Tilaklal on the one hand and Jigarlal and his wife on the other. The eight charged FDs in the joint names of KPD and Damayanti were not adequate to meet the total liabilities of KPD. Initially, following the demands for payment by Lloyd Bank and Pacific Bank Bhd, IBS utilized the four charged FDs of OISB and the charged Panaji FD to discharge the liabilities of KPD to IBS. This utilization of the four OISB`s FDs to discharge KPD`s liabilities was subsequently reversed because IBS was having second thoughts whether it was proper, in view of the Doshi family dispute, to first utilize OISB`s FDs to discharge KPD`s liabilities. However, it was pointed out that this was not the reason given in IBS`s communication to Damayanti or the estate, as on 8 November 1991 IBS merely stated that:

> *on scrutiny of Mr Doshi`s accounts we have noted that we are still holding additional pledged deposits in Mr Doshi`s name which should first have been exhausted prior to utilization of the deposits pledged by (OISB). In view of this we have rectified the same and re-instated the liabilities that were reversed with OISB deposits.*

76 59.In IBS`s letter of 16 December 1991, they referred to this matter again as follows:

> *We further wish to state that as explained in our letter of 8.11.91 corrections have to be made to rectify mistaken credits (proceeds of the company`s funds which need not be credited to the personal account) as per our solicitor`s advice. It was in view of this that the rectification were made and the liabilities re-instated.*

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77 60.While admittedly the family feud was not expressly stated to be the reason for the reversal, I have no doubt that it caused it. The family feud was noted in the letter of 16 December 1991. In it IBS stated that following KPD`s death `several parties/members of your family have claimed/counter claimed the assets/interests (known/unknown), of Mr KP Doshi.` The reversal was made pursuant to advice and here I would also like to quote this paragraph from the letter:

> *In view of the bank`s close association with the late Mr KP Doshi the bank had had discussion with various family members. However, as there appeared to be no likelihood of an amicable resolution of the disputes among family members, we referred the matter to our solicitors for their advice and responded to the above letter by our letter dated 8.11.91.*

78 61.There was some suggestion that this reversal was not made in good faith but to punish the plaintiff. I do not think there is any basis for me to come to that conclusion just because DW1 said to this court that they felt harassed by Damayanti and her two children and did not want to give them additional overdraft beyond $200,000. It was not unreasonable for IBS to first utilize the charged FDs belonging to KPD and Damayanti jointly to discharge KPD`s liabilities before using charged FDs belonging to OISB, especially when there was a dispute then within the family to gain control of OISB. In the meantime, Damayanti/the estate continued with her/its stance of objecting to any offsetting by IBS of KPD`s liabilities against the eight charged FDs.

79 62.Sometime in April/May 1995, IBS received a demand from the estate for payment of the four FDs of OISB as it had obtained a default judgment declaring that the FDs of OISB belonged to KPD. In view of that and the demand for payment by the estate, IBS decided to revert to the original position and utilized the four OISB` FDs, and then the eight charged FDs, to offset the liabilities of KPD and his associated firms, leaving a net balance of

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US$1,074,042.80 due to Damayanti. As computed, the surplus came from the charged FD maintained at Harbour Branch. Though the offset was made in 1995, it was treated by IBS as having been effected from August 1991, on the various dates on which the proceeds from the charged FDs, including the four charged FDs of OISD, were received by IBS. The details on how this figure was arrived at were given to Damayanti`s solicitors. She was placed in exactly the same position as if the offset had in fact been made from August 1991 and there was no reversal. Therefore, the delay in offsetting and paying out of the excess was put right. Damayanti has suffered no loss.

80 63.All considered, it seems to me that the delay in paying out was caused to a considerable extent by the family feud and the stance adopted by Damayanti and/or the estate in objecting wholly to any offsetting. Putting it at the lowest, they certainly contributed to the delay. In any event, as Damayanti has suffered no loss, this question is quite academic.

81 64.Damayanti has contended that, following the death of KPD, she desparately needed money to pay for funeral and other expenses of the family. The fact that on 30 July 1991, Jogesh and Tigarlal applied to IBS for an overdraft of S$200,000 would evidence that need. But it is important to bear in mind that on 2 August 1991 Damayanti indicated that she would only withdraw the FDs on maturity. Her stand on this was clear - the family`s temporary need for money could be met by way of an overdraft and not at the expense of breaking the FDs. In September 1992 when the Rajkot branch paid out to Damayanti a sum of more than US$500,000 (under one of the free FDs) she gave the money to her grandchildren. This shows that three months after the institution of this action she was quite comfortable in terms of her cash position.

82 65. ***Debts of Tino Industries***

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84 I now turn to a couple of subsidiary matters raised in this action. The first is whether the debts of Tino Industries, a firm in which KPD and Jigarlal were partners, could be offset against the sum available under the charged FD of Harbour Branch (which was no longer required to offset the liabilities of KPD and his associated firms), which IBS sought to do. It would appear that there was an agreement between IBS and KPD that the debts of Tino Industries were to be unsecured and this was evidenced by an internal memorandum of IBS (2DB219):

> *Thus only the lines under Tino Industries will technically be unsecured for which we shall be holding personal guarantees of partners.*

85 66.It is true that on 1 October 1987 (1DB97) the Harbour Branch deposit was one of those charged to IBS to secure the debts of Tino Industries. But sometime in late 1988 it was decided that the debts of Tino Industries would no longer be so secured. Thus, in a letter of 24 April 1989 from IBS to KPD the debts of Tino Industries were omitted to be secured against the charged FDs. Therefore, the debts of Tino Industries should not be offset against the charged FD of Harbour Branch or any other charged FDs which were in the joint names (and/or basis) of KPD and Damayanti as upon the death of KPD, Damayanti would be solely entitled to the proceeds under the principle of survivorship.

86 67. ***Legal charges***

87

88 The second subsidiary matter concerns IBS`s offsetting legal fees amounting to US$20,529.07 and telex charges of US$481.59 incurred by them

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in S.2526/92, from the same charged Harbour Branch FD. In that suit, the plaintiffs were the estate of KPD and Tilaklal and the defendants were OISD, Jigarlal and his wife, Shobhana J Doshi. At the trial, the learned judge made various orders for disclosure against Jigarlal and Shobhana and in turn Jigarlal asked IBS for them. Damayanti`s contention is that if IBS had incurred any costs in connection therewith they should recover the same from Jigarlal and not Damayanti.

89 68.IBS further sought to offset legal charges which they had incurred for the present action from the same charged FD.

90 69.IBS relied upon the following terms in the various letters of offer to justify the offset:

> *We reserve the right to debit your account with all interest, commission, charges (inclusive of abortive and incidental) and expenses arising from granting or otherwise of the above facilities.*

91 70.IBS contended that these legal charges arose out of the grant of facilities by IBS to KPD and the taking by IBS of the FDs as security thereof. I have serious doubts if such a provision was intended to cover the sort of legal costs which IBS now seek to recover from Damayanti. The provision did not give IBS a blank cheque. Those expenses did not arise from the grant of the facilities. The problem in the provision is with the word `otherwise`. What does it mean in the context? Clearly the legal charges, which IBS sought to make Damayanti pay, were not expenses arising from the granting of facilities, or from the facilities as such. I fwould have thought that costs reasonably incurred by a non-party to a legal proceeding as a witness or otherwise, should be reimbursed by the party/parties to that proceeding or could be the subject of a court order in that proceeding. To construe the provision in the manner

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contended for by IBS would be too wide and could lead to a wholly unjust result or abuse.

92 71.With regard to the legal costs incurred by IB in relation to the present action the same observation will apply. IBS cannot unilaterally offset their legal costs against moneys due to Damayanti. Their entitlement, if any, to such costs must await the order or orders to be made herein.

93 72. ***Conclusion***

94

95 In the light of the foregoing, no reliefs prayed for by Damayanti should be granted. IBS will no doubt recompute the amount due to Damayanti in the light of my views above on the offsetting of the debts of Tino Industries and the legal charges. There will be liberty to apply on this.

96 73.As Damayanti has substantially failed in this action, costs should therefore go to IB. Taking into account the course of this action and bearing in mind that Damayanti has succeeded only on two minor points (offsetting of debts of Tino Industries and of legal charges), I will award IB 75% of the costs.

97 74.I would conclude by observing that in my view this action would not have arisen but for the squabbles within the Doshi family. If not for the family dispute, all the members thereof would be in a position to inform IBS how they proposed to discharge the liabilities of KPD and deal with the charged FDs, including those of OISB. Damayanti would also have known what were the free FDs placed by KPD with the various branches of IB as she would have access to the files of KPD and the FD receipts. IBS was, unfortunately, caught in the

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middle. They cooperated as much as they could. I sense that some of the actions taken by Damayanti (including complaining against IBS to the Monetary Authority of Singapore in November 1991) were due, inter alia, to a failure on her part to appreciate that the Bank must not, in a family squabble, favour one side or the other. It also seems to me that her stance of objecting to any offsetting by IBS, even with respect to those charged FDs where there were proper security letters executed by both KPD and Damayanti, was similarly due to the family feud. Presumably she feared that any offsetting might one way or another benefit the other side.

Chao Hick Tin J

Samuel Chacko and Sharanjit Kaur (Manjit Samuel & Partners) for the plaintiff
Deborah Barker and Wong Rin Rin (Khattar Wong & Partners) for the defendants

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