IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

WA.No. 1486 of 2015 () IN WP(C).19173/2007

AGAINST THE ORDER/JUDGMENT IN WP(C) 19173/2007 of HIGH COURT OF KERALA DATED 11-12-2014

APPELLANT(S)/WRIT PETITIONER:

V.MURALEEDHARAN AGED 47 YEARS
S/O.KUNHIRAMAN NAIR, PROPRIETOR, M/S.SHEETAL HANDLOOMS
AZHIKODE, KANNUR.

BY ADVS.SRI.V.R.KESAVA KAIMAL
SRI.N.M.MADHU

RESPONDENT(S):
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1. THE BANKING OMBUDSMAN
KERALA AND LAKSHADWEEP
RESERVE BANK OF INDIA BUILDING, BAKERY JUNCTION
THIRUVANANTHAPURAM-695033.

2. THE VIJAYA BANK
REPRESENTED BY ITS BRANCH MANAGER, FORT ROAD
KANNUR-670001.

BY SRI.D.KRISHNA PRASAD

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, CJ
&
A.M.SHAFFIQUE, J

W.A.No. 1486 of 2015

Dated this the 13th July, 2015

JUDGMENT

Shaffique, J.

Petitioner in W.P(C).No.19173 of 2007 is the appellant, who challenges the judgment dated 11.12.2014, by which the Writ Petition filed by the appellant has been dismissed.

2. The appellant challenged Exhibit P14 order passed by the Banking Ombudsman by which the appellant's application had been rejected as per clause 19.1(b) and 13.3(c) of the Banking Ombudsman Scheme, 2002. In fact the appellant's contention was that the appellant being a proprietor of a small scale handloom fabrics exporting unit under the name and style 'Sheethal Handlooms' at Kannur, opened a Packing Credit Account with the second respondent Bank. The appellant exported handloom goods

worth ₹21,13,525/- during the year 2001-02 and is entitled for a Duty Entitled Pass Book (DEPB) for ₹1,69,083/- from the Joint Director General of Foreign Trade (JDGFT), Kochi. In order to avail the said benefit, the Bank had to attest the Bank Certificate evidencing the export realisation. Only thereafter the appellant is entitled to submit the same along with the connected documents to the competent authority. The appellant realised the entire export proceeds through the account maintained with the second respondent alone and the entire proceeds were credited to the account of the appellant maintained with the second respondent. According to the appellant, it was for the second respondent to certify the export realisation.

3. The appellant submits that he had submitted necessary forms for issuing the Bank Realisation Certificate to the second respondent. There was delay on the part of the Bank in processing the papers. The same was attested only on 12.12.2003. Thereafter it took some

time for the appellant to submit the documents, which had to be done on or before 31.3.2004. The appellant could submit the documents only after the said period. Under such circumstances, the appellant filed a complaint before the Banking Ombudsman on 28.7.2004, which came to be rejected as per Exhibit P6 proceedings dated 29.4.2005 stating that since the appellant's application for certification was disposed of in December, 2003 by the Bank and the claim was submitted by the appellant only on 21.6.2004, there was no lapse on the part of the Bank.

4. The appellant thereafter submitted Exhibit P10 review petition seeking for review of the matter and since the matter had not been considered by the Banking Ombudsman, the appellant filed a Writ Petition being W.P (C).No.11819 of 2007. This Court by judgment dated 4.4.2007 directed the Banking Ombudsman to consider the matter afresh and pass final orders. It is pursuant to the said direction that the matter had been disposed of as per Exhibit P14 order dated 21.5.2007 stating the very

same reason and that there were several other reasons attributed by DGFT for rejection of the claim of the appellant, for which the appellant was responsible, therefore, the appellant's complaint was without sufficient cause.

5. The learned Single Judge, after considering the claim of the appellant, observed that the first respondent having expressed inability to intervene in the matter because the contributory delay on the part of the appellant, there was no reason for consideration of the matter. It was also observed that the appellant had not produced any additional material other than what had been stated earlier and therefore there is no reason to interfere with Exhibit P14.

6. Learned counsel for the appellant/writ petitioner, while impugning the aforesaid judgment, submitted that in Exhibit P10 the appellant had submitted various additional materials seeking review of the earlier order. It is contended that the explanation offered by the appellant

was not considered by the Banking Ombudsman while passing Exhibit P14 order. It is also argued that by virtue of the judgment dated 4.4.2007 in W.P(C).No.11819 of 2007 the Banking Ombudsman was under obligation to reconsider the entire issue and satisfy itself as to whether the explanation offered by the appellant in Exhibit P10 was justified or not. Having not complied with the judgment of this Court, Exhibit P14 ought to have been interfered with by the learned Single Judge.

7. After hearing the learned counsel for the appellant and perusing the records, we do not think that the learned Single Judge has committed any error in dismissing the Writ Petition. Even according to the averments in the Writ Petition, it is evident that the Bank had given the records on 12.12.2003, but, according to the appellant, there were some defects which were got rectified later. In such circumstances, according to the Banking Ombudsman, there cannot be an attribution of negligence on the part of the Bank. Even according to the appellant, the application

was filed after the stipulated date. The appellant, of course, has some explanation about the delay caused by their agent as well. Whatever that might be, we do not think that there was any scope for exercising the power of judicial review as far as Exhibit P14 order is concerned.

8. We also find that the appellant had valid right to prefer an appeal against the order passed by the Banking Ombudsman. At any rate, we do not intend to interfere with the order passed, in this proceedings. However, it shall be open for the appellant to take appropriate alternative remedy or other proceedings in accordance with law.

With the above observation, the Writ Appeal is dismissed.

ASHOK BHUSHAN
CHIEF JUSTICE

A.M.SHAFFIQUE
JUDGE

vgs13/7/15