

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

WP(C).No. 22652 of 2015 (F)

PETITIONER : -

THE KERALA STATE CO-OPERATIVE BANK LTD.,
COBANK TOWERS, PALAYAM,
THIRUVANANTHAPURAM - 695 033,
REPRESENTED BY ITS MANAGING DIRECTOR.

BY ADV.SRI.GEORGE POONTHOTTAM

RESPONDENTS :-

1. KERALA CO-OPERATIVE OMBUDSMAN,
OFFICE OF THE KERALA CO-OPERATIVE OMBUDSMAN,
THIRUVANANTHAPURAM - 695 001.
2. SRI. THULASEEDHARAN N.K.,
GANGOTHRY TC 18/777-7,
KRA 175 - 2, AARAMADA P.O.,
THIRUVANANTHAPURAM - 695 032.

R2 BY ADV.SRI.V.P.PRASAD

R2 BY ADV.SRI.K.R.RAJKUMAR

R1 BY GOVERNMENT PLEADER SRI. G. GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1 : COPY OF THE SANCTION ORDER.

EXHIBIT P2 : COPY OF THE AGREEMENT ENTERED INTO BETWEEN THE PETITIONER AND THE 2nd RESPONDENT.

EXHIBIT P3 : COPY OF THE LETTER DATED 30.01.2008 ISSUED AT THE 2nd RESPONDENT.

EXHIBIT P4 : COPY OF THE LETTER DATED 3.11.2011 ISSUED TO THE 2nd RESPONDENT.

EXHIBIT P5 : COPY OF THE COMPLAINT FILED BEFORE THE FIRST RESPONDENT.

EXHIBIT P5(a) : ENGLISH TRANSLATION OF EXHIBIT P5.

EXHIBIT P6 : COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE THE RESPONDENT.

EXHIBIT P7(a) : ENGLISH TRANSLATION OF EXHIBIT P6.

EXHIBIT P7 : COPY OF THE ORDER PASSED BY THE FIRST RESPONDENT DATED 28.5.2015.

RESPONDENTS' EXHIBITS :

EXHIBIT R1(a) : DATED 29.02.2008, COMPLAINT OF R2 WITH ENGLISH TRANSLATION.

EXHIBIT R1(b) : DATED 01.08.2013, ORDER OF NCDRC, NEW DELHI.

EXHIBIT R1(c) : ORDER DATED 02.11.2011, LETTER OF PETITIONER.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

C.R.

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 22652 of 2015

Dated this the 25th day of November, 2015

JUDGMENT

The petitioner, a Co-operative Bank, through Ext.P1, sanctioned a loan of Rs.6,00,000/- to the second respondent in 2006 to be repaid in ten years. While sanctioning the loan, the petitioner bank entered into Ext.P2 agreement with the second respondent, the borrower. Exhibit P1 sanction order, *inter alia*, provides for resolution of disputes through arbitration proceedings as have been contemplated in Section 69 of the Kerala Co-operative Societies Act (the 'Act').

2. Complaining that the petitioner Bank has periodically raised the rate of interest and has been charging exorbitant interest, the second respondent approached the learned Ombudsman, the first respondent, and invited Exhibit P7 order, which is assailed in the present writ petition.

3. Since the facts are not in dispute, I confine my discussion to the issue of the first respondent's jurisdiction, which is questioned by the petitioner. My discussion, therefore, obviates any reference to the merits of the matter.

4. Initially, at the time when the loan was granted, the rate of interest was fixed at 7.25%. In the course of time, it had been periodically raised to 13% by 2011. The petitioner Bank may have its justifications in that regard, but it is not germane to our purpose.

5. Aggrieved by the periodic upward revision of interest, the second respondent submitted Exhibit P5 complaint before the first respondent. The first respondent eventually, after taking into account petitioner's Exhibit P6 objections, allowed the petition through Exhibit P7 order holding that the charging of interest by the petitioner-Bank over and above the initially agreed rate is illegal and unjustifiable.

6. In the above factual background, the learned Standing Counsel has submitted that in terms of Clause 7 of Kerala Co-operative Ombudsman Scheme (for short the 'Scheme') the first respondent has no jurisdiction to entertain any monetary dispute between the Bank and the debtor who is not a member. He has laid specific emphasis on Clause 7(2)(e) of the Scheme.

7. In elaboration, the learned counsel has submitted that if a remedial mechanism is provided under Section 69 of the

Act, there can be no recourse to the procedure stipulated under the Scheme.

8. The learned counsel has further drawn my attention to Section 69(1)(f) of the Act to contend that the issue raised by the second respondent in Exhibit P5 complaint squarely falls within the ambit of the said provision. He has, therefore, urged this Court to set aside Exhibit P7 order of the first respondent as being *ultra vires* of the said authority.

9. *Per contra*, the learned counsel for the second respondent has submitted that the second respondent is a retired Government employee. According to him, Section 69 of the Act has no application; on the contrary, Clause 7(d) of the Scheme does apply.

10. The learned counsel has also placed before me a hard copy of an extract taken from the website of the petitioner Bank. It concerns the customer policy of the Bank. In the 'Customers' Rights Policy' published on its website, the petitioner Bank has assured the customers that all their complaints will be taken care of. It has, further, provided that if the complaint has not been attended to within thirty days, the aggrieved person can approach the Banking Ombudsman

for the redressal of their grievance.

11. According to the learned counsel, Clause 7(d) read with Customer Rights Policy published by the petitioner Bank, the first respondent is eminently entitled to entertain the petitioner's complaint.

12. The learned counsel has also further submitted that since the second respondent has still been paying the EMIs and the loan has so far not been closed, at this juncture he cannot approach any competent consumer forum. In other words, the learned counsel seems to suggest that unless the entire loan transaction has come to an end, he will not have the necessary cause of action to approach the consumer forum for the alleged deficiency of service.

13. Heard the learned counsel for the petitioner and the learned counsel for the second respondent, as well as the learned Government Pleader, apart from perusing the record.

14. Indeed, the facts are not in dispute. And the singular issue to be considered is whether the first respondent has the jurisdiction to pass Exhibit P7 order.

15. Clause 7(d) of the Scheme on which the learned counsel for the second respondent has relied reads to the

effect that any person may file a complaint before the Ombudsman having jurisdiction if the Bank is not providing or negligent in providing or has inordinately delayed in providing banking facility, including loans and advances for which the complainant is eligible. In the explanation appended to the said sub-clause, it is further stated that where loan application is received by a Society but the loan is not granted on time or there is an inordinate delay in granting the loan or the loan application is rejected without sufficient cause, such a complaint will be treated as a grievance.

16. It is further pertinent to note that Clause 7(2)(e) of the same Scheme mandates that no complaint to the Ombudsman shall lie if the complaint is in the nature of a dispute under Section 69 of the Act or in the nature of an Appeal Petition under Sections 82 and 83 of the Act.

17. There is no gainsaying the fact that under the Customer Rights Policy the Bank has declared that if it has failed to redress a customer's grievance within thirty days, the customer can have recourse to the Banking Ombudsman Scheme for redressal. It is elementary to observe that such an approach under the Banking Ombudsman Scheme, as has been

recognized in the Customer Rights Policy, is always subject to the statutory limitations imposed in that regard. Expressed differently, if any dispute is to fall within the exception provided under Clause 7(2)(e), it is trite to observe, the so-called Customer Rights Policy cannot have any overriding effect. As a natural corollary, it is essential for us to examine Section 69 of the Act.

18. Section 69 of chapter IX of the Act deals with settlement of disputes. In fact, Clause (1)(f) of Section 69 mandates that notwithstanding anything contained in any law for the time being in force, if a dispute arises between the Society and a person, other than a member of the Society, who has been granted a loan by the society or with whom the society has or had business transactions, or any person claiming through such person, the said dispute shall be decided by the Arbitration Court. The statutory sanction is emphatic in its scope as it declares that no other Court or authority shall have jurisdiction to entertain any suit or other proceedings in respect of such a dispute.

19. The learned counsel for the second respondent has not contradicted the submission made by the learned counsel

for the petitioner that the second respondent is not a member of the Bank—he is a borrower. The dispute is concerning the loan granted by the Bank to a non-member. In Exhibit P1 sanction letter issued by the petitioner Bank, Clause 13 is specific to the effect that the borrower/Co-obligant agrees to be bound by the arbitration procedures prescribed in the Kerala Co-operative Societies Act and Rules 1969.

20. In my considered view, a combined reading of Clause 7(2)(e), Section 69 (1)(f) of the Act, and Clause 13 of Exhibit P1 gives rise to an inescapable conclusion that the dispute raised by the second respondent cannot be made the subject-matter of adjudication before the first respondent. As a result, I cannot but conclude that Exhibit P7 is ultra vires of the first respondent.

21. Nevertheless, I make it clear that the second respondent is not remediless. It is entirely open for him to approach the Arbitration Court, as has been provided under Section 69 of the Act.

22. At this juncture, the learned counsel for the second respondent has, however, submitted that this Court may not foreclose the second respondent's options as regards the

forum by specifically mentioning that he should approach the Arbitration Court alone. He has, in fact, contended that there are many instances where a competent consumer forum has decided the disputes.

23. In response to the submission made by the learned counsel for the second respondent, I make it clear that this Court does not intend to restrict the second respondent's right concerning the forum he should approach. Nor can this Court declare that such and such forum alone has jurisdiction. It is axiomatic to observe that if the law permits, it is certainly open for the second respondent to approach whichever forum he feels convenient to him.

24. After all, the principle of *forum conveniens* is an established procedural privilege available to the petitioner so long as it does not come in conflict with any statutory restriction in that regard.

With the above observations, this writ petition stands allowed. No order as to costs.

DAMA SESHADRI NAIDU
JUDGE

DMR/-