IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

WP(C).No. 34302 of 2009 (G)

PETITIONER(S) :

S.JAYASREE, D/O.LATE RAJASEKHARAN NAIR,
TC 20/1181, SREEBHAVAN, MELARANNUR,
KARAMANA POST, THIRUVANANTHAPURAM-695 002.

BY ADV. SRI.R.SREEHARI

RESPONDENT(S) :

1. **UNION BANK OF INDIA, CHALAI BAZAR BRANCH, THIRUVANANTHAPURAM REPRESENTED BY ITS BRANCH MANAGER.**
2. **THE BANKING OMBUDSMAN (KERALA AND LAKSHADWEEP) R B I BUILDINGS, BAKERY JUNCTION, THIRUVANANTHAPURAM-33.**
3. **THE DEPUTY GOVERNOR (IN CHARGE OF CUSTOMER GRIEVANCES) RESERVE BANK OF INDIA, CENTRAL OFFICE, 1ST FLOOR, AMAR BUILDING, SIR P M ROAD, FORT, MUMBAI-400 001.**

R1 BY ADV. SRI.A.S.P.KURUP, SC, UBI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 34302 of 2009 (G)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: **PHOTO COPY OF NOTICE SENT U/S 13(2) OF SARFAESI ACT DATED 26.01.2005 IN RESPECT OF THE ACCOUNT OF M/S.JYOTHIS**

EXHIBIT P2: **PHOTO COPY OF NOTICE SENT U/S.13(2) OF SARFAESI ACT DATED 26.04.2005 IN RESPECT OF THE ACCOUNT OF M/S.ASSOCIATED ENTERPRISES.**

EXHIBIT P3: **PHOTO COPY OF STATEMENT OF ACCOUNT FROM 12.10.2003 IN RESPECT OF THE ACCOUNT OF M/S.JYOTHIS.**

EXHIBIT P4: **PHOTO COPY OF STATEMENT OF ACCOUNT FROM 12.10.2003 IN RESPECT OF THE ACCOUNT OF M/S.ASSOCIATED ENTERPRISES.**

EXHIBIT P5: **PHOTO COPY OF THE LETTER DATED 18.04.2007 SENT BY THE FIRST RESPONDENT.**

EXHIBIT P6: **PHOTO COPY OF THE PETITION DATED 06.03.2007 FILED BEFORE THE 1ST RESPONDENT.**

EXHIBIT P7: **PHOTO COPY OF THE REMINDER DATED 11.05.2007 SENT TO THE 1ST RESPONDENT.**

EXHIBIT P8: **PHOTO COPY OF THE COMPLAINT FILED BEFORE THE 2ND RESPONDENT.**

EXHIBIT P9: **PHOTO COPY OF THE ORDER DATED 16.07.2007 OF THE 2ND RESPONDENT COMMUNICATED TO THE PETITIONER.**

EXHIBIT P10: **PHOTO COPY OF THE ORDER DATED 12.08.2009 PASSED BY THE 3RD RESPONDENT COMMUNICATED TO THE PETITIONER.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.M. SHAFFIQUE, J.
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W.P. (C) No. 34302 of 2009
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Dated this, the 27th day of November, 2015

J U D G M E N T

Petitioner challenges Exts.P9 and P10 by which the Ombudsman as well as the appellate authority refused to entertain the complaint of the petitioner in which allegation was raised regarding the manner in which the two accounts of M/s. Jyothis and M/s Associated Enterprises were operated. Petitioner is a guarantor to the aforesaid borrowers. When the accounts became sticky, Bank had declared the accounts as Non Performing Accounts (NPA) on 30/3/2004. Thereafter, the Bank issued SARFAESI proceedings and ultimately the entire liability due to the Bank had been settled by payment.

2. Thereafter, according to the petitioner, she obtained a copy of the accounts in which she found that there was a debit of ₹1,00,000/- after the Bank had declared the account as NPA and even after issuance of notice under Section 13(2). Though the petitioner sought for explanation from the Bank, satisfactory explanation was not received whereas the Bank took up a

contention that a cheque issued by the borrower had been honoured by the Bank and necessary debit has been made into their account. Bank also took up a contention that though the account was treated as Non Performing Account, the cash credit facility was not recalled. Alleging mal administration on the part of the Bank in maintaining the account, petitioner, being a borrower, approached the Ombudsman, who had rejected the claim on the basis that the proceedings were already pending before the Debts Recovery Tribunal and the High Court in regard to the issue with reference to the Bank.

3. It is submitted by the learned counsel for the petitioner that the complaint of the petitioner was not with reference to any pending proceedings with the Bank whereas it was with reference to a particular debit entry made by the Bank in the accounts, which should have been adjudicated by the Ombudsman rather than rejecting the complaint on flimsy reasons.

4. Learned counsel appearing of the Bank would however submit that after initiating SARFAESI proceedings, the entire issue had been settled after giving sufficient concession to the petitioner to the tune of ₹3,57,838/-. At the relevant time, the

petitioner did not attempt to verify the accounts nor any claim was raised in that regard. It is after settling the entire loan account that this issue has been taken and therefore there was justification on the part of the Ombudsman to have rejected the complaint.

5. Having heard the learned counsel on either side and having perused the record, I do not think that there is anything wrong on the part of the Ombudsman to have rejected the complaint at the threshold. First of all, sufficient opportunity was available to the petitioner to challenge the debit entry. Even assuming that the same was wrongly done, before settlement of the entire case, petitioner was given sufficient concession to the extent of more than ₹3,57,838/- by the Bank. Under such circumstances, after settlement of the entire accounts and settlement of the liability towards the Bank, it was not open for the petitioner to have reagitated the claim and sought for refund of a debit, alleging that it was wrongly done. Even according to the Bank, they have only honoured a cheque issued by the borrower which fact was very much in existence even at the time when the account had been settled.

Under such circumstances, I do not think that any legal ground had been raised to challenge the orders passed by the Ombudsman and the Appellate Authority and accordingly, the writ petition is dismissed.

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp27/11/2015

//True Copy//

PS to Judge