

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 24.03.2015

Coram:-

The Hon'ble Mr. Justice T.Raja

Writ Petition No.10799 of 2002

Canara Bank,
Srivilliputhur Branch and
rep. by its Senior Manager,
Srivilliputhur 626 125.

... Petitioner

vs.

1. Banking Ombudsman,
(Tamilnadu and Union
Territories of Pondicherry and
Andaman & Nicobar Islands),
"Challa Mall",
(8th Floor),
11/11A, Sir Thegaraya Road,
T. Nagar,
Chennai 600017.

2. Reserve Bank of India,
Rural Planning & Credit Department,
and represented by its Deputy
General Manager,
Central Office,
Central Office Building,
13th Floor,
Mumbai 400 001.

3. S.Mahendran

... Respondents.

Writ Petition under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus calling for the records of the first respondent dt. 31.08.2000, award No.AC-003/99-2000 in complaint No.R5 439/98-99, and quash the same.

For Petitioner : Mr.R.Kannan

For R1 & R2 : No Appearance

For Respondent No.3 : Mr.A.Thiagarajan,
Senior Counsel for Mr.Rameshkumar.

O R D E R

Canara Bank (Srivilliputhur Branch), represented by its Senior Manager, preferred this Writ Petition seeking issuance of a writ of certiorarified mandamus to call for the records of R1/Banking Ombudsman, Chennai, with reference to his Award, dated 31.08.2000, vide Award No.Ac-003/99-2000 in Complaint No.RS-439/98-99 and to quash the same.

2. Learned counsel for the petitioner briefly outlined the core factual aspects by submitting thus:

The third respondent, who is an NRI Customer of the petitioner/Bank, made some FCNR (Foreign Currency Non-Resident) Deposits and availed loans against the same. He had preferred a complaint before the 1st respondent/Banking Ombudsman, Chennai, alleging that the deposits made as security against the loan availed by him were kept unilaterally alive by the Bank without closing the same on the maturity period by appropriating the loan amount and handing over the balance, if any, to the depositor. It was complained that the Bank should have intimated the maturity of deposits and kept the 3rd respondent/loanee informed about the interest debited and also the other relevant details. The unilateral act of the Bank resulted in undue gains in its favour and in great financial loss to the 3rd respondent. So alleging, he claimed a compensation of Rs.3,51,000/- from the Bank. The petitioner/Bank contended that the complainant/R3 himself had expressly waived the necessity of informing the details of renewal and as such, the Bank was under no obligation to adjust the outstanding loan from the Deposit. The Bank also made the position clear that even while availing the loan against deposits, the complainant was very much aware that the loan can be cleared by direct remittance also. In fact, there was an automatic-renewal clause operating in favour of the Bank since such option was allowed to be exercised by none else than the 3rd respondent. In other words, the Bank, while dealing with the deposit/Security against the loan, acted only as per the instructions of the Customer/R3. But, unfortunately, without even considering the terms and conditions of the contract/agreement and other documents as well as the legal submissions made on behalf of the Bank, the Ombudsman unfairly passed the impugned Award to the effect that the Bank shall charge interest on loans against FCNR/NRNR deposits as per the original contracted rate after rectifying the discrepancies pointed out by the complainant/R3 herein as per his letter dated 12.04.2000; that the excess interest charged shall be re-credited with interest at F.D. Rate; and that the Bank shall pay Rs.2,000/- to the complainant/R3 for cost and expenses incurred by him for prosecuting the complaint before the Bank as well as before the Forum/Ombudsman.

In the above factual scenario, learned counsel for the petitioner would submit that there is total non-application of mind by the learned Ombudsman/Forum, in that, even issues were not framed by him. The Forum failed to take note of the crucial aspect that the Bank renewed the deposits from time to time only based on the authorization given by R-3 in the letter of Pledge and as such, the Bank is not even bound to disclose the particulars of renewals, and all of its activities with reference to the transactions were based only on the terms and conditions of contract/letter of pledge. According to him, the Forum misapplied the facts of the decisions relied upon by it to the case on hand, thereby, great prejudice resulted to the petitioner. Further, the 3rd respondent did not give full-fledged details about the continuation or otherwise of his Status as NRI. In other words, had proper information about the change of status was given to the Bank, it would have closed the FCNR deposits on maturity and credited the same against the loan account. By simply acting upon the untenable allegations made by the complainant, the Forum passed the Award without adhering to the mandatory procedure, hence, absolute interference is called for to quash the Award by holding that it does not bind the petitioner/Bank; he pleaded.

3. Per contra, learned Senior Counsel appearing for the complainant/R3, by arguing at the first instance that the writ petition should fall to ground simply on the ground of laches and that the Bank has an alternative remedy of filing appeal before RBA as per the Ombudsman Scheme, would submit on merits that, due to the unilateral action on the part of the Bank in resorting to renewal of deposits even after maturity so as to derive undue benefits, the complainant suffered huge financial loss. He referred to various rules and directions issued by the RBI in his endeavour to demonstrate to what extent the Bank violated the Rules and Circulars as well as the principles of natural justice to derive undue gains. He would add that the act of indefinite renewal beyond the agreed date and the loan-swelling over and above the deposit amount came to be detected by the inspection team during internal inspections which clearly exhibited that the Bank miserably failed in its duty; thereby, total lack of service and diligence is rampant on its part. After passing of the Award, when the Bank insisted upon the 3rd respondent to furnish the proof relating to his NRI Status for arriving at a basis to fix the interest rate so as to calculate the dues, R3 readily complied with the said demand, however, the Bank now endeavours only to divert the judicial attention from its inefficient service to non-compliance of NRI regulations. The claim by the Bank against R-3 about misuse of NRI status by him or suppression of material particulars in that regard at any point of time is totally baseless and fallacious. He also pointed out that, when this writ

petition was taken up for hearing in 2014, owing to the reason that no sum was fixed in the Award, this Court had suggested for a Mediation, in which course, both sides agreed over the excess rate of interest collected as Rs.4,42,551/-, however, the Bank, without applying proper interest rate applicable thereon, either F.D. Rate or the one based on Negotiate Instruments Act, themselves came out with the proposal to pay Rs.10 lacs in full-quit without any basis for such calculation, which attitude prompted R-3 disagreeing with the proposal and resultantly, the mediation became unsuccessful. According to him, excess interest debited from R-3 with cumulative interest at 18% p.a (as provided under the N.I. Act) works out to Rs.90 lacs and for which, a calculation sheet is also submitted. He states that the Bank successfully kept the Award without implementation for over 15 years by making R-3 to run from pillar to post, resulting in mental agony and hardship, for which, a compensation of Rs.50 lacs may have to be awarded. At any rate, according to him, this being an exemplary case where the bank has acted in utter violation of the banking ethics & procedure to derive undue gains and caused loss to the bona fide customer/R3 by its unfair approach, it should be directed to pay the excess sum collected viz., Rs.4,42,551/- together with cumulative interest @ 18% p.a. from the date of appropriation till realisation with costs and compensation.

4. I have carefully considered the rival submissions advanced on either side.

The writ petition is of the year 2002 and it may not be proper at this point of time to go into the technicalities relating to laches or availability of an alternative remedy.

5. The only question that arises for consideration in this writ petition is as to whether the learned Ombudsman is justified in passing the Award against the petitioner/Bank particularly when the act of the Bank was said to be based on the terms and conditions governing both sides and as per the instructions of the Customer/R3 himself?

6. The 3rd respondent was an NRI Depositor with the petitioner and he used to deposit foreign currencies in the form of fixed deposits. Certain loans were advanced by the Bank in his favour on the security of such deposits. The allegation is that the bank kept on unilaterally renewing the deposits from time to time without closing it against the outstanding and ultimately, the 3rd respondent sustained huge monetary loss and the Bank derived undue gains by resorting to unfair business practice.

7. It is the general banking practice that, in respect of a loan granted against the security of deposit, the deposit would be closed on the maturity period and the loan would be automatically appropriated against the deposit and the balance, if any, would be handed over to the depositor. In this case, with regard to the allegation of the complainant that he was never intimated about the rate of interest charged on the loan, the Bank neither chose to whisper anything on that nor clarify its position against the allegation by producing relevant particulars. Above all, the Bank itself is unable to deny that the cause of action in favour of the complainant to file the complaint against the Bank with the Ombudsman arose only from the inspection conducted by the Inspection Committee while scrutinising the Bank Records. The inspection seemed to have brought to light the violation of banking principles and deviation from the terms of contract under the Loan Agreement, in that, the Bank, without closing the deposits on maturity as against the loan, on its own volition, unilaterally kept the deposits alive by renewing the same from time to time. As a result of such wrong practice, the Bank had the effect of postponing the closure of deposits indefinitely suiting to its whims and gains. It seems that the enquiry conducted by the Ombudsman also revealed that the Bank purposely failed to furnish the details of renewal. Even though it is the strong defence of the Bank that the customer himself allowed irrevocable authorization in its favour to renew the deposits from time to time on the due dates with the same terms and conditions and at the rate of interest prevailing at that time without even reference to the customer so long as the same stands as security to the Bank towards the repayment of the advance, as rightly pointed out by the learned Senior Counsel for the 3rd respondent, it is relevant only to instances where the deposit is renewed by the Depositor and consequently, the deposit so renewed shall be held as continuing security for the outstanding accounts. The clauses relating to closure of deposit and appropriation of the amount as well as the clause relied upon by the Bank in respect of irrevocable authorization shall have to be read together and not in isolation.

8. The learned Ombudsman, by pointing out the actual nature of transaction involved viz., R-3 had availed the loan in Indian Rupees against FCNR deposits in foreign currency and the petitioner/Bank was given freedom to charge interest on loans availed in Foreign Currency only and not in Indian Rupees as per the Directive dated 21.10.1997, heavily came down upon the Bank by commenting that it grossly erred in enhancing the rate of interest on loans against deposits which they cannot do so and thereby, violated the Directives issued by the RBI and committed gross deficiency in service to R-3 and further, it did not even give notice of maturity of deposits. A careful reading of the Award passed by the learned Ombudsman does not suggest any irregularity or infirmity or illegality therein and, in fact, it

clearly exhibits the unfair approach on the part of the Bank by clear deviation from the banking ethics and violation of the terms of contract/Rules and Regulations governing its transaction with customers. Banking business is based on good faith, fairness mutuality, transparency and honesty. If the Banking Company is faulted or doubted for deviation from its valued principles, the business would never flourish. It is heartening to note that even though, at the time of mediation, the Bank was agreeable in respect of the excess amount collected, while fixing the interest rate on the same, it could have acted fairly by showing the basis for reaching the ultimate amount (of Rupees ten lacs) and thereby repaired the extent of damage to a great extent, but, once again, it miserably failed in that perspective. Inasmuch as the irregular and unfair approach on the part of the bank being rampant, this Court is unable to subscribe to the submissions put forth on its behalf.

9. Net result, the writ petition fails and it stands dismissed. The petitioner/Bank is directed to calculate the final amount by applying the F.D. Rate, as ordered by the Forum, on the excess sum collected by them and disburse the same along with the costs of Rs.2,000/- as awarded by the Forum to the 3rd respondent within a period of one month from the date of receipt or production of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

JI.

To

1. Banking Ombudsman, (Tamilnadu and Union Territories of Pondicherry and Andaman & Nicobar Islands), "Challa Mall", (8th Floor),
11/11A. Sir Thegaraya Road,
T. Nagar, Chennai 600017.

2. Reserve Bank of India, Rural Planning & Credit Department, Central Office,
Central Office Building, 13th Floor, Mumbai 400 001.

+ 2 ccs to Mr. T.C.A.Srinivasan, Advocate SR.16596
+ 2 ccs to M/s.S. Ramesh Kumar, Advocate Sr.16891

WP No.10799 of 2002.

SAI (CO)
Eu 03.06.15