IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8082 OF 2012

Mr. Vivek Vishnu Dixit	}	
and Ors.	}	**Petitioners**
versus		
The Reserve Bank of India	}	
and Ors.	}	**Respondents**

Ms. Manjiri S. Parasnis for the petitioners.

Mr. R. S. Pai with Ms. Radha Ved i/b. M/s.Sanjay Udeshi and Co. for respondent nos.2 to 4.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATED :- DECEMBER 16, 2016

P.C. :-

1. This writ petition challenges the decision of the respondents and particularly respondent nos. 2 to 4 in not implementing the bipartite settlement, but proceeding to enforce the Memorandum of Understanding (MOU), copy of which is at page 108 of the paper book. That is styled as MOU between the ICICI Bank Ltd. and the representative of Sangli Bank Officers' Association.

2. The incidental prayer clauses (b) and (c) would envisage as to how the petitioners' claim to be entitled to the benefit of a bipartite settlement arrived at the industrial level.

3. The petitioners before us are officers of the erstwhile Sangli Bank Limited. It is common ground that the claim of the petitioners is on the footing that petitioner nos. 1 and 2 are pension optees and petitioner nos. 3 and 4 are fund optees. These petitioners, admittedly, were on the roll of Sangli Bank Limited. They continued in the services of respondent no. 2-ICICI Bank Limited. That was because there was amalgamation of Sangli Bank Limited with this bank with effect from 19th April, 2007. Now, the petitioners have retired from the services of ICICI Bank Limited. It is stated that the banking industry and the bank officers are regulated by the first respondent-Reserve Bank of India (RBI). The writ petition proceeds to state that the second respondent having acquired the business of Sangli Bank Limited and carrying on its activities under the control and regulation of RBI, it is equally bound by the arrangements which are evolved by the banks with the Federation of Employees serving them. According to the petitioners, prior to their joining the ICICI Bank Limited and prior to the amalgamation of that bank with ICICI Bank Limited, Sangli Bank Limited was a party to the Indian Banks' Association. That association is the apex body of banks. It has collective powers and rights to negotiate the charter of demands in respect of wage settlement of the banking employees represented by various trade unions and organisations. Before

the amalgamation, the Sangli Bank Limited had given a mandate in favour of the arrangements carved out by Indian Banks' Association with the employees. Hence, there was bipartite settlement and Sangli Bank was a party to it. As on the effective date, namely, 18th April, 2007, the employees of Sangli Bank Limited were getting the benefits of the 8th bipartite agreement as regards wage revision. Once the take over by the ICICI Bank Limited of Sangli Bank Limited is effective, then, even the ICICI Bank Limited was under an obligation to implement the wage revision of the employees as per the bipartite settlement. In addition to the above, the scheme of amalgamation, which is sanctioned by the RBI, envisages, vide clause (8), that upon the coming into effect of this scheme, the employees of the transferor bank, who are in service on the effective date, shall become the employees of the transferee bank on such date without any break or interruption in service and on terms and conditions as to remuneration, emoluments or perquisites not less favourable than those subsisting with reference to the transferor bank on the said date. Therefore, it was the obligation of ICICI Bank Limited to create its own funds and to give effect to this bipartite settlement.

4. However, contrary thereto, what the ICICI Bank Limited has done is to insist upon compliance with the MOU dated 5th May, 2007 with the employees of the erstwhile Sangli Bank Limited. Clause (10) is relied upon to deny the benefits as are due and payable under the settlement with the Indian Banks' Association. On such premise this writ petition is filed.

5. Ms. Parasnis, learned counsel appearing for the petitioners would submit that she is aware of a judgment delivered by the Hon'ble Supreme Court of India in the case of *V. Kannappan and Ors. vs. Additional Secretary, Ministry of Finance and Commercial Affairs and Ors.* passed in Civil Appeal Nos. 10364-10371 of 2014 along with Civil Appeal No. 10372 of 2014 on 18th November, 2014. However, there are distinguishing features and which emerge in this case. Ms. Parasnis relies upon the fact that the business of Sangli Bank Limited, which was also the banking business, was taken over by the ICICI Bank Limited. Petitioner nos. 1 and 2 are voluntarily retired "pension optees", whereas, there was a fund created and petitioner nos. 3 and 4 are beneficences thereof. Hence, they are styled as "fund optees" Relying upon the averments in the writ petition as also the stipulation at page 49 clause (16) titled as "Pension" of the wage settlement with the Indian Banks' Association, it is submitted by

her that there is in place the Bank Employees Pension Regulations, 1995. They will not apply to the employees who joined the services of banks on or after 1st April, 2010 and they shall be covered by a Defined Contributory Pension Scheme. She also relies upon pages 108 and 113 of the paper book, which, according to her, are the stipulations contained in the MOU between ICICI Bank Limited and the representative of Sangli Bank Officers' Association. She relies upon clause (10) to submit that all those officers, who are on the roll of Sangli Bank Limited as on 1st April, 2007, who have duly opted for pension scheme introduced by that bank under its 1995 Regulations, within the time stipulated for exercising such option by the Sangli Bank Limited, would alone be covered by the MOU. It is submitted that no option has been given after the amalgamation. There is distinction between a superannuation fund and that cannot be put on par with what the present scheme intends and seeks to achieve. Ms. Parasnis submits that there are three distinguishing features emerging from the Hon'ble Supreme Court Judgment, inasmuch as this is a case of no option being offered to the employees. The petitioners are not concerned with the MOU, copy of which is at Exhibit 'B' or any such scheme as was under consideration of the Hon'ble Supreme Court of India. She would submit that once there is a provision in bipartite settlement, then, the MOU to the extent it runs counter to it would have to be set aside.

6. She would submit that award of pension and to those who have completed the qualifying service with the bank is nothing but a public and social obligation. Relying upon the judgment in the case of *D. S. Nakara and Ors. vs. Union of India*[1] it is submitted that this writ petition is maintainable.

7. Mr. Pai, learned counsel appearing for the contesting respondent no. 2 firstly contends that this writ petition is not maintainable. The second respondent bank is not a nationalised bank. It is a private bank. The scheme of pension is purely for the benefit of such of the employees who are entitled to it and who are in service either of the two private banks. This is not concerning any public duty or function. This is not a statutory scheme either. In these circumstances, the writ petition would not be maintainable.

8. On merits, he would submit that this case is squarely covered by the judgment in the case of *V. Kannappan* (supra). Mr.Pai, therefore, submits that the writ petition be dismissed.

1 **AIR 1983 SC 130**

9. After hearing both sides, we are of the view that even if we were to hold that the writ petition is maintainable, we cannot brush aside the judgment in the case of *V. Kannappan* (supra). V.Kannappan was also a case of such of the employees who were originally inducted into the service of Bank of Madura. By virtue of a scheme of amalgamation sanctioned by the RBI, the Bank of Madura was merged with ICICI Bank Limited with effect from 10th March, 2003. Consequent upon the merger, the appellants became the employees of the ICICI Bank Limited. They are retirees and their retirement was effective from a particular date. They also claimed pension. That claim for pension emerges from the Bank of Madura Employees' Pension Regulations, 1995, which are on par with the Sangli Bank Employees' Pension Regulations, 1995. There was a identical scheme with identical conditions and stipulations. The question that was framed by the Hon'ble Supreme Court of India for its consideration was, whether the employees are entitled to pensionary benefits under Regulation 35 of the 1995 Regulations? When these regulations were in force or prior to their introduction, the employees were in service of the Bank of Madura. While in employment of that bank, options were invited under the Regulations. Thereafter, the existing employees were required to exercise that option and to indicate whether they would like to draw pensionary benefits

under that voluntary retirement scheme. There was a period prescribed for exercising the option. In all three opportunities, the employees before the Hon'ble Supreme Court of India did not exercise that option. Therefore, no further opportunity was given and post merger they were entirely governed by the ICICI Bank Scheme. The benefits accruing and granted by the Bank of Madura were continued only insofar as those employees who had exercised their option. The obligation pertaining to such employees was taken over post amalgamation by the ICICI Bank Limited.

10. Once the petitioners before us are relying on the settlement with the Indian Banks' Association, then, it was incumbent upon them to have established and proved that this settlement binds the banks such as Sangli Bank Limited. Mr. Pai has brought to our notice that this settlement was applicable only to those member banks whose names appear in a list at page 107 of the paper book. The name of Sangli Bank Limited does not appear in these 46 banks. Therefore, the settlement could not have been relied upon and this is the submission very vehemently canvassed. Then, we find that as far as the MOU, copy of which is at page 108 of the paper book, there as well, the superannuation allowances are set out and as far as pension is concerned, clause (10) reads thus:-

> **"10 Pension**
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> For those Officers who are on the roles of Sangli Bank as on April 19, 2007 and who have duly opted for Pension Scheme introduced by Sangli Bank in terms of Sangli Bank (Employees') Pension Regulations, 1995 within the time set for exercising such option by the Sangli Bank, the Basic Pension will be computed at the time of the respective dates of retirement based on the notionally last drawn Basic Pay as per Sangli Bank salary structure. To elaborate, Basic Pay for this purpose means Basic Pay drawn by the Officer as per Sangli Bank Pay Scales as on April 19, 2007. In addition, annual increments on notional basis, due if any, as per the scale applicable in Sangli Bank will be added to this Basic Pay for computing Basic Pension. Dearness Relief as per applicable rates on such Basic Pension will be paid. However, any revision/change in the formula of computing Basic Pension or Dearness Relief due to any industry level agreement will not be applicable, as ICICI Bank does not follow such settlements/agreements."

11. A bare perusal of clause (10) would denote as to how for those officers who were on the roll of Sangli Bank as on 19th April, 2007 and who have duly opted for Pension Scheme introduced by Sangli Bank in terms of Sangli Bank (Employees') Pension Regulations, 1995 within the time set for exercising such option by the Sangli Bank, the basic pension will be computed at the time of the respective dates of retirement based on the notionally last drawn basic pay as per Sangli Bank salary structure. That is how the benefits would be admissible to them.

12. It is pointed out that if the present petitioners and particularly petitioner nos. 1 and 2 were pension optees and in their case they have retired from service of ICICI Bank Limited,

however, the benefit of clause (10) cannot be availed of by them simply because they could not establish and prove that the option was exercised within the framework of those Regulations of 1995 and in the time set out therein. If they have not been able to establish and prove this fact, then, it is clear that the benefit of clause (10) would not be extended and the employees would only avail of such benefits as are extended by the ICICI Bank Limited.

13. We do not see any distinguishing feature. It is precisely this controversy which was dealt with by the Hon'ble Supreme Court of India and it came to the conclusion that exercise of option within the time expressed in the Regulations of 1995 has to be established and proved. If that is not so, then, one cannot rely upon the scheme and to seek the benefit post take over of the business by another bank. Such obligation does not flow and it cannot be enforced against a distinct bank. It may be that the petitioners' grievance was that they have not been given any option. This was not a question of the option being not given for it was always open for the petitioners to exercise it, but in a given time frame. Secondly, they cannot challenge the MOU for they are aware of the fact that Sangli Bank Limited had its own regulations and it was not a member bank. Therefore, the Indian Banks' Association's settlement with the Bank Employees'

Association and the Trade Union does not bind the Sangli Bank Limited and consequently respondent no. 2. Once the provisions in the bipartite settlement cannot be enforced in the light of the factual position emerging from the record, then, the second respondent was under no obligation to pay the pension or similar benefits to the petitioners.

14. We are of the opinion that if on merits this is the only view which can be taken and we are bound by the judgment of the Hon'ble Supreme Court of India, then, the writ petition deserves to be dismissed. Assuming that we can entertain the writ petition as against respondent no. 2, we cannot grant any relief. The writ petition, therefore, fails, It is dismissed. We clarified that in the view that we have taken on merits, we did not deem it fit to deal with the preliminary objection. All contentions with regard thereto are kept open for both sides.

(B.P.COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**