IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 07.01.2016

Judgment Pronounced on : 02.02.2016.

CORAM

THE HON'BLE MR.JUSTICE SATISH K.AGNIHOTRI

AND

THE HON'BLE DR.JUSTICE P.DEVADASS

Writ Appeal No.1698 of 2015
and MP.No.1 of 2015

Canara Bank
Srivilliputtur Branch
Rep. By its Senior Manager
Srivilliputtur-626 125 ..APpellant/Petitioner

..Vs..

1.Banking Ombudsman
(Tamil Nadu and Union Territories
of Pondicherry and Andaman & Nicobar Islands)
"Chella Mall" (8th Floor), 11/11A Sir Thegaraya Road
T.Nagar, Chennai-17.

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/Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 24.03.2015 made in W.P.No.10799 of 2002 on the file of this Court.

Writ Petition filed under Art 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent dated 31.08.2000 award NO.AC-003/99-2000 in complainant No.R5/439/98-99 and quash the same.

For Appellants : Mr.P.Raghunathan for
M/s.T.S.Gopalan & CO

For Respondents: Dr.A.Thiagarajan, SC
for Mr.S.Ramesh Kumar for R3

JUDGMENT

(JUDGMENT OF THE COURT WAS MADE BY DR.P.DEVADASS, J.)

This writ appeal at the instance of the writ petitioner, namely, Canara Bank, Srivilluputhur has been directed as against the order of the Writ Court dated 24.03.2015 passed in WP.No.10799 of 2002.

2.Mahendran, an NRI in Singapore, deposited certain sum of money for a certain period in Canara Bank, Srivilliputhur Branch. He had also availed of loan from the Bank. His Fixed Deposit Receipt has been held as security for the loan. The Bank renewed the deposit without any intimation to the depositor. The loan dues rose to more than the amount in deposits made by the third respondent. The depositor requested the Bank to adjust the matured value of the deposit towards the loan amount. However, the Bank refused to do so.

3.In the circumstances, the third respondent complained to the Banking Ombudsman, Chennai (first respondent). The Ombudsman issued notice to the Bank. The Bank contended that as per the letter of pledge executed by the third respondent, the Bank is entitled to renew the deposit without further reference to the depositor.

4.On 31.08.2000, the Banking Ombudsman passed award directing the Bank to charge the contract rate of interest to the loan availed of by the third respondent and the excess interest charged shall be recredited and a cost of Rs.2,000/- also directed to be paid to him. The third respondent has accepted the award, but, not the bank.

5.Aggrieved, the Bank has filed writ petition in WP.No.10799 of 2002.

6.The Writ Court affirmed the award of the Banking Ombudsman, directed the Bank to calculate the final amount by applying the fixed deposit rate and directed the excess amount to be paid to the third respondent along with a cost of Rs.2,000/- within one month from the date of receipt of a copy of its order.

7.Aggrieved, the Bank has appealed to this Court.

8.The learned counsel for the appellant contended that as per Clause 10 of the letter of pledge executed by the third respondent, the Bank is entitled to renew the deposit without further reference to him and in exercise of the same, the Bank has renewed the deposit. The learned counsel for the appellant also contended that the third respondent availed of loan from the Bank, he is bound to pay the loan amount directly to the Bank, he did not do so, that is how the loan dues increased. The learned counsel for the appellant further submitted that there is no duty cast upon the Bank to adjust the deposit amount towards the loan and these aspects were missed by the Banking Ombudsman as well as by the writ Court.

9.Dr.A.Thiagarajan, learned senior counsel appearing for the third respondent contended that the third respondent has deposited his money with the appellant Bank with the hope that his amount will be administered in a more proper and beneficial way. However, the Bank had acted as against the interest of the depositor. The learned senior counsel further submitted that in the terms and conditions of the term deposit application it has been clearly mentioned that only upon the request of the depositor the matured deposit will be renewed by the Bank, but the Bank has disregarded it, it had simply renewed the matured deposit continuously without adjusting the amount towards the loan account and such an unilateral action of the Bank is against the terms and conditions of the term deposit and also against the law.

10.We have anxiously considered the rival submissions, perused the impugned award of the Banking Ombudsman dated 31.08.2000 and the order of the writ Court dated 24.03.2015 and the materials on record.

11.The Reserve Bank of India has been empowered to constitute Banking Ombudsman to redress complaints of deficiency in services and the grievances of the account holders as against the banks. The said Ombudsman has been constituted under the Banking Ombudsman scheme, 1995.

12.In the present case, third respondent had made a term deposit with the appellant bank. He has also availed of loan from the very same Bank. His term deposit has been held as security for the same. The deposit has been made for a fixed term and it had carried interest. On maturity had the deposit amount has been adjusted towards the loan amount, the loan would have wiped out or the loan amount would have been reduced.

13.In this case, the Bank had continuously renewed the third respondent's deposit without giving him notice and also charged excess rate of interest on the loan amount also without notice to him. Resultantly, the loan dues were increased and the third respondent has been asked to pay more amount towards the loan.

14.Clause-10 of letter of pledge executed by the third respondent/depositor enables the Bank to renew the deposit from time to time on the due dates at the prevailing rate of interest without further reference to the depositor. For the renewal of the deposit the Bank takes umbrage under this clause.

15.However, the term deposit application, the first document between the depositor and the Bank, mentions that the renewal of the deposit shall be at the request of the depositor on the same condition of repayment and interest. But this clause has been overlooked by the Bank.

16.The Bank should not act like a private financier. It is a Nationalised Commercial Bank, it is not to fleece the depositors. It must conduct its business to the best interest of its depositors, account holders and clients. Further, in this case, as per the terms and conditions of deposit, the matured deposit can be renewed only upon the request of the depositor. But, without doing so, the Bank has unilaterally renewed the matured deposit and also without notice increased the rate of interest.

17.If the Bank had asked the third respondent about the renewal of his matured deposit he would have requested the Bank to adjust the accrued amount towards the loan amount and in that event, the loan amount would have wiped out or atleast his burden would have been lessened. But, the Bank did not do so and on the other hand it had simply acted like a private financier and acted against the interest of its client.

18.The Banking Ombudsman after giving due opportunity to both sides passed the impugned award dated 31.08.2000 directing the Bank to appropriate the matured deposit towards the loan dues and also charge agreed rate of interest and this has also been rightly upheld by the writ Court. In the circumstances, we have no occasion here to interfere.

19.In view of the foregoings, this Writ Appeal fails and it is dismissed. Costs made easy. The exercise as directed by the Writ Court shall be carried out within one month from the date of receipt of a copy of this judgment. Consequently, connected miscellaneous petition is also dismissed.

sd/-
Assistant Registrar(Cs-VI)

/TRUE COPY/

Sub-Assistant Registrar

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To

1.The Deputy General Manager,
Reserve Bank of India,
Rural Planning & Credit Department,
13th Floor,
Central Office Building,
Mumbai-400 001.

2.Banking Ombudsman,
"Chella Mall" (8th Floor),
No.11/11A Sir Thegaraya Road,
T.Nagar, Chennai-17.

3.Manager,
Canara Bank,
Srivilliputtur-626 125
Virudhunagar District.

+2 CC to MR.S.Ramesh Kumar Advocate. SR.NO.6670
+1 CC to MR.T.S.Gopalan & CO Advocate. SR.NO.6732

Pre – Delivery Judgment in
Writ Appeal No.1698 of 2015.

CO-CTK
JD 12/02/2016