

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2016

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and

THE HON'BLE Mr.JUSTICE M.M.SUNDRESH

W.A.No.1357 of 2006

- 1.The Regional Manager,
Central Bank of India,
"Raheja Complex" Third Floor,
834, Anna Salai, Chennai-600 002.
- 2.The Senior Manager,
Central Bank of India,
2, Kasturba Nagar First Main Road,
Adyar, Chennai-600 020. Appellants/Respondents
4 & 5

Vs.

- 1.Viswapriya Financial Services & Securities Ltd.,
"Viswapriya", Kasturba Nagar, Adyar,
Chennai-600 020.
- 2.The General Manager,
Reserve Bank of India,
Department of Supervision,
Fort Glacis, Chennai.
- 3.Banking Ombudsman,
"Challa Mall", 8th Floor,
11/11A, Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.
- 4.The Chairman & Managing Director,
Central Bank of India, Central Office,
"Chandarmukhi" Nariman Point,
Mumbai-400 021. Respondents/Petitioners
Respondents 1 to 3

Writ Appeal is filed under Clause 15 of Letters Patent Act against the order dated 24.07.2006 made in W.P.No.17582 of 1998 by the learned single Judge.

W.P.No.17582 of 1998 : Petition presented under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the Respondents 1 to 3 to ensure the Compliance with the Award 002/97-98 dated 12.03.1998 passed by the Second Respondent.

For appellant : Mr.T.M.Hariharan

For Respondents : Mr.P.Prakash Goklaney for
M/s Menon & Goklaney
Associates for R1
Mr.T.Poornam for R2
Mr.K.Sivasubramaniam for R4
R3-Not ready in notice

JUDGMENT

(Judgment of Court was made by M.M.Sundresh,J.)

Challenging the order dated 24.07.2006 made in W.P.No.17582 of 1998, by which, the writ petition filed by the first respondent was allowed by directing the appellants and the other respondents to ensure the compliance of the award in Award No.002/97-98 dated 12.03.1998 passed by the third respondent, the present writ appeal has been filed.

2. The first respondent has made a complaint against the appellants for the unauthorised/excessive debit. By a reasoned order and after affording opportunity of hearing, the award was passed directing the appellants to pay aggregate sum of Rs.3,01,248/- together with interest. In pursuant to the said award, the first respondent made a request to the appellants to comply with the same. As the request having not been acceded to, the first respondent has filed the writ petition before this Court seeking to implement the same.

3. The learned Single Judge has allowed the writ petition on the ground that the defence sought to be put up by the appellants and the second respondent on the merits of the award cannot be accepted in a writ petition filed by the first respondent without challenging the same in the manner known to law. Aggrieved over the same, the present writ appeal has been filed.

4. The learned counsel appearing for the appellants submitted that a request has been made seeking permission from the second respondent to challenge the award passed. The award is not in consonance with the normal banking practice and the

guidelines of the Reserve Bank of India. The Reserve Bank of India viz., second respondent has also filed a counter affidavit to that effect. The appellants could not proceed further in view of the pendency of the writ petition. Therefore, the writ appeal has to be allowed.

5. The learned counsel appearing for the first respondent submitted that as rightly held by the learned single Judge, the appellants cannot be permitted to question the award indirectly. The order was passed by the learned single Judge only on 24.07.2006. Till such time, the appellants have not obtained permission. As the award stands as of now, the appellants do not have any case on merit.

6. By way of a reply, the learned counsel appearing for the appellants submitted that as per the Banking Ombudsman Scheme, 2006, the appellants are entitled to file an appeal under Clause 14. Therefore, liberty may be given to the appellants to exhaust such a remedy to challenge the award before the Appellate Authority.

7. The learned single Judge has rightly held that the award having become final, it is not open to the appellants to contend to the contrary in a writ petition filed seeking to implement the same. A mere application made to the second respondent seeking permission per se would not be sufficient. Such an action would not have the effect of either keeping the award in abeyance or setting aside the same. Therefore, the decision of the learned single Judge cannot be found fault with. Clause 17 of the Banking Ombudsman Scheme, 2006, does not provide for an appeal to an adjudication resulting in an award being appealed against the Banking Ombudsman Scheme, 1995. Even otherwise, the appellants have slept over the matter from 1998 onwards till date. Therefore, looking from any angle, we are not inclined to allow the writ appeal.

8. Accordingly, the writ appeal stands dismissed. However, we make it clear that all the legal issues on the guidelines of the Reserve Bank and normal banking practice are left open to be decided in the appropriate case. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The General Manager,
Reserve Bank of India,
Department of Supervision,
Fort Glacis, Chennai.

2.Banking Ombudsman,
"Challa Mall", 8th Floor,
11/11A, Sir Thyagaraya Road,
T.Nagar, Chennai-600 017.

3.The Chairman & Managing Director,
Central Bank of India, Central Office,
"Chandarmukhi" Nariman Point,
Mumbai-400 021.

+1cc to Mr.T.M.Hariharan, Advocate, S.R.No.6989

+2cc's to Mr.P.Prakash Goklaney, Advocate, S.R.No.7490

+1cc to Mr.T.Poornam, Advocate, S.R.No.7340

W.A.No.1357 of 2006

TEJ(CO)
CA(12/02/2016)



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