IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O.No.4193 of 2010 (O&M)
Date of Decision: May 30th, 2016

Punjab National Bank, Branch Office Club Road, Maler Kotla, District Sangrur

...Appellants

Versus

Oriental Bank of Commerce, Delhi Gate, Maler Kotla, District Sangrur & another.

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.R.S.Bhatia, Advocate, for the appellant.

Mr.Raj Kumar, Advocate, for respondent No.1.

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AMIT RAWAL, J. (Oral)

Appellant-Punjab National Bank is aggrieved of the order under challenge, whereby the objections at the instance of respondent No.1-Oriental Bank of Commerce filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act"), have been accepted and the award of the Arbitrator granting compensation in favour of the appellant, has been set-aside.

Mr.R.S.Bhatia, learned counsel for the appellant submits that on account of misuse of draft dated 1.12.1998 for ₹2,40,000/-, suit for recovery of ₹4,05,410/- was filed on 3.12.2001. During the interregnum, the Reserve Bank of India came out with a Scheme, namely, The Banking Ombudsman Scheme, 2002 (for short "Scheme") and as per Chapter 5 of the same, the dispute between a bank and its constituents or between a bank and another bank, was liable to be referred for arbitration. The aforementioned Scheme was notified on 14.6.2002 and the claim was submitted to the Ombudsman on 25.6.2003.

This case has a little chequered history as the impugned order has been passed after the remand by this Court, whereby the order of the Objecting Court dismissing the objections, had been set-aside. He submits that the Objecting Court has completely been swayed away by misreading the provisions of Clause 13 of the Scheme, which pertains to the procedure for filing of the complaint at the instance of private party and not by the Bank and the limitation to file the complaint other than the Bank has been prescribed as one year, thus, there is illegality and perversity.

The Arbitrator, after examining the evidence threadbare, held that the appellant-bank shall be entitled to sum of ₹2,40,000/- along with interest from 1998. He further submits that the objections of the respondent were not within the parameters of Section 34 of 1996 Act, yet the Objecting Court exceeded the jurisdiction by setting-aside the award as there is little scope for interference. The Court should not have accepted the objections when the same were not falling with the provisions of Section 34 of 1996 Act and, thus, urges this Court for setting-aside of the impugned order.

Mr.Raj Kumar, learned counsel for respondent No.1 submits that the principle of doctrine of election would apply, for, once the Bank has already availed the remedy by filing the suit, it should not have invoked the jurisdiction of the Ombudsman through the arbitration in consonance with the Scheme, aforementioned. Clause 13 of the Scheme did not apply to the facts and circumstances of the present case. Having invoked the jurisdiction of the Ombudsman on 25.6.2003, the claim was, *ex-facie,* barred by law of limitation and in case the provisions of Indian Limitation Act are applied, even then the claim is beyond three years. Section 42 of 1996 Act does not oust its applicability and, thus, urges for affirming the findings.

I have heard the learned counsel for the parties and appraised the paper book.

It would be apt to reproduce Clauses 13 and 22 of the Scheme, which read thus:-

"*13. PROCEDURE OF FILING COMPLAINT*

(1) *Any person who has a grievance against a bank relating to the banking services as enumerated under Clause 12 of the Scheme, may himself or through his authorised representative make a complaint to the Banking Ombudsman within whose jurisdiction the branch or office of the bank complained against is located.*

(2) The complaint shall be in writing duly signed by the complainant or his authorised representative (other than an advocate) in a form specified in Annexure-A of the Scheme and shall state clearly the name and address of the complainant, the name and address of the branch or office of the bank against which the complaint is made, the facts giving rise to the complaint supported by documents, if any, that are desired to be relied upon by the complainant, the nature and extent of the loss caused to the complainant, the relief sought from the Banking Ombudsman and a declaration about the compliance of the conditions referred to in sub-clause(3) of this clause.

(3) No complaint to the Banking Ombudsman shall lie unless:-

(a) the complainant had before making a complaint to the Banking Ombudsman made a written representation to the bank named in the complaint and either the bank had rejected the complaint or the complainant had not received any reply within a period of one month after the bank concerned received his representation or the complainant is not satisfied with the reply given to him by the bank;

(b) the complaint is made not later than one year after the cause of action has arisen as per clause (a) above;

(c) the complaint is not in respect of the same subject matter which was settled through the office of the Banking Ombudsman in any previous proceedings whether or not received from the same complainant or along with any one or more complainants or any one or more of the parties concerned with the subject matter;

(d) the complaint does not pertain to the same subject matter, for which any proceedings before any court, tribunal or arbitrator or any other forum is pending or a decree or Award or a final order has already been passed by any such competent court, tribunal, arbitrator or forum; and

(e) the complaint is not frivolous or vexatious in nature.

(4) Notwithstanding the provisions of sub-clause 3(d) of this clause, it would be open to the Banking Ombudsman to entertain a complaint falling under the Scheme provided the Banking Ombudsman is satisfied with the documentary evidence produced before him by the complainant that:

(a) the interests of the complainant has suffered adversely on account of lapse or inaction on the part of the bank or due to connivance on the part of any employee of the bank facilitating the authorised or fraudulent withdrawal from the bank account of the complainant; or encashment, as the case may be;

(b) no interim injunction or stay order or any other direction, either restraining, the bank from making payment

of the amount of claim as made by the complainant or the complainant from agitating his claim simultaneously, before any other forum, has been passed by any court, tribunal or arbitrator or any other such forum before whom the claim of the complainant is pending adjudication and

(c) in the opinion of the Banking Ombudsman the disposal of such pending proceeding is likely to take longer time.

22. ARBITRAL PROCEEDINGS

(1) On reference of a dispute for arbitration as in Clause 21 above, the Banking Ombudsman shall direct his Secretariat to complete the procedural formalities preliminary to arbitration proceedings, as laid down hereunder, within a period not exceeding three months in any case.

(2) The Secretariat of the Banking Ombudsman shall, on being directed as in sub-clause (1) above, call upon the claimant to submit his statements of claims along with the list of documents and list of witnesses, within the period as may be stipulated by the Secretariat subject to the overall period as stipulated by the Banking Ombudsman for completion of the procedural formalities preliminary to arbitration proceedings.

(3) The secretariat shall send a copy of the claim and the documents annexed thereto to the opposite party as mentioned in the claim for his reply."

On conjoint reading of the aforementioned provisions, it would be evident that Clause 13 deals only with the filing of the complaint at the instance of the private party and not by any bank, whereas arbitration clause deals with the initiation of the arbitral proceedings at the instance of one of the bank or its constituents, though it is a matter of record that on 14.2.2004, the suit is stated to have been adjourned sine-die.

I am in agreement with plea of Mr.Bhatia that once parties having submitted to the jurisdiction of the arbitrator without any objection tantamounts to acquiescence to the jurisdiction of the Arbitrator and, therefore, filing of the suit would pale into insignificance. In fact, the parties realising the fact that there is a mistake have filed the respective claim and counter-claim through the office of Ombudsman. The suit should have been disposed of relegating the parties to the arbitration proceedings.

In my view, the claim cannot be said to be barred by law of limitation as has been noticed by the Objecting Court.

For the reasons noticed above, the order under challenge is hereby set-aside and the award of the Arbitrator is restored.

Appeal stands allowed.

May 30th, 2016 **(AMIT RAWAL)**
ramesh **JUDGE**