IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2018

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THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.23059 of 2018
and W.M.P.No.26949 of 2018

V.Vignesh ..Petitioner

Vs

1.The Banking Ombudsman,
Reserve Bank of India Building (2^{nd} Floor),
Fort Glacis, Post Box No.40,
16, Rajaji Salai,
Chennai - 600 001.

2.M/s.Indusind Bank,
5/132 Main Road,
Tirupur Circle,
Avanashi - 641 654. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus, to call for the records of the 1^{st} respondent leading to the order dated 14.08.2018 passed by the 1^{st} respondent in BO(Che)/C-571/2018-19 and thereby quash the same and further direct the 2^{nd} respondent herein to close the fixed deposit # 300712596922 and payout the sum.

For Petitioner : Mr.S.V.Pravin Rathinam

For Respondents : No appearance for R1
M/s.K.Premavathi for R2

O R D E R

The prayer sought for in this writ petition is to quash the impugned order dated 14.08.2018 issued by the first respondent and consequently direct the second respondent to close the fixed deposit.

2. It is the case of the petitioner that he issued a bank guarantee for a sum of Rs.2,10,000/- in the year 2001 through the second respondent Bank to the Customs and Excise Department and a lien was granted by the Bank on the fixed deposit of Rs.2,10,000/-, which was made by the petitioner. Subsequently, the petitioner has closed his business in the year 2009 and the bank guarantee was also expired on 06.11.2010. However, the Customs and Excise Department has

not raised any claim against the petitioner till date. It is the further case of the petitioner that the petitioner has submitted a letter dated 13.06.2018 to the second respondent Bank, to release the lien and close the fixed deposit and he has also executed an indemnity bond to that effect, but, the said letter has not been considered by the second respondent Bank. Hence, the petitioner preferred an online complaint before the first respondent, which rejected the same without giving any opportunity of hearing to the petitioner and without following due procedure under the Banking Ombudsman Scheme (for brevity 'the Scheme'). Aggrieved over the same, the petitioner is before this Court.

3. The learned counsel for the petitioner submitted that the Fixed Deposit was created only to safeguard the interest of the Bank as well as the Customs and Excise Department. He further submitted that the bank guarantee itself was expired on 06.11.2010 and no further claim was raised against the petitioner by the Customs and Excise Department. In such circumstances, the request of the petitioner seeking release of lien, ought to have been considered by the second respondent Bank and the denial of the same, is arbitrary, illegal and against the principles of natural justice. The learned counsel also submitted that the first respondent, without any application of mind, rejected the claim of the petitioner against the Scheme. Hence, the learned counsel sought appropriate relief in this writ petition.

4. Heard, the learned counsel appearing for the second respondent, who has not refuted the submissions so raised by the learned counsel for the petitioner.

5. Depsite the service of notice and the name of the first respondent having been printed in the cause list, there is no representation on behalf of the first respondent either in person or through its counsel.

6. Admittedly, the Customs and Excise Department received the bank guarantee to the value of Rs.2,10,000/- from the petitioner and the guarantee period was one year, which was expired on 06.11.2010. However, there is no communication from the Customs and Excise Department to the petitioner with regard to the liabilities, if any. Hence, the petitioner has rightly moved the second respondent indicating that the bank guarantee was expried earlier and sought to release the lien created on the Fixed Deposit made by him. The said request made by the petitioner was negated and the dispute/ complaint raised by the petitioner was negatived by the first respondent, which is against the provisions of the Scheme.

7. At this juncture, be it noted that Section 10(2) of the Scheme provides for a copy of the reply furnished by the Bank in relation to a complaint; and Section 12(1) provides for an opportunity of personal hearing if sought for, before disposal of the complaint. Without complying with the aforesaid provisions, the first respondent rejected the petitioner's complaint stating that the same is not on the grounds as provided under Clause 8 of the Scheme, which is arbitrary and illegal. Further, the second respondent has also violated the directions issued by the RBI, as per the provisions of the Banking Ombudsman Scheme.

8. In such view of the matter, there is no justifiable reason for withholding the Fixed Deposit made by the petitioner. Hence, the impugned order is set aside and the second respondent is directed to close the Fixed Deposit made by the petitioner.

9. Accordingly, the writ petition stands allowed in the above terms. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS XI)

//True Copy//

Sub Assistant Registrar

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To
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+1cc to Mr. S.V.Pravin Rathinam, Advocate SR.No. 71848

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ASK(17/12/2018)