

HONOURABLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.17352 of 2009

ORDER:

Heard the learned counsel for the petitioner and the learned Standing Counsel for the first respondent-Bank.

2. The prayer of the writ petition is as under:

“For the reasons stated in the accompanying affidavit, it is hereby prayed that this Court may be pleased to issue any appropriate writ, order or direction more particularly in the nature of writ of mandamus declaring the action of the 2nd respondent in rejecting the complaint of the petitioner in his proceedings LR No.BO(H)(RLS/7885/C.3935/2008-09, dated 06.05.2009 as illegal, arbitrary, intentional, mechanical without application of mind and consequently set aside the same as illegal by directing the 2nd respondent to enquire into the complaint afresh in the interest of justice and pass all necessary orders for the said purpose.”

3. The case of the petitioner is that he is having proprietary concern under the name and style of Shashikanth Enterprises in Mirchi business. The 3rd respondent entered into the business of the said proprietary concern with an understanding that he has to pay Re.1/- as royalty every year on the turnover. Accordingly, they have entered into terms of understanding/contract on 01.01.2005. Subsequently, the petitioner gave authorization to the 3rd respondent on 17.03.2005 with a copy to the 1st respondent. However, the 3rd respondent on the basis of the said authorization letter dt.17.03.2005 had swindled huge amount of Rs.75,97,666/-. Therefore, the petitioner was constrained to cancel the said authorization on 14.11.2008. However, the petitioner specifically stated in the affidavit that he can not blame the first respondent for the loss sustained by him. But, he finds fault with the officials of the first respondent to the extent of allowing the third respondent to

operate his account in the absence of any specific authorization. Therefore, he lodged a complaint with the first respondent on 02.02.2009. The said complaint said to have been referred to the second respondent. However, the second respondent rejected the complaint of the petitioner by orders dated 06.05.2009. Aggrieved by the same, the present writ petition is filed.

4. Learned counsel appearing for the petitioner strenuously contended that he is not finding fault with the first respondent bank with regard to the loss sustained by him. But, the second respondent ought to have appreciated and held asto under what authority the officials of the first respondent allowed the third respondent to draw all the amounts belonging to him without any authorization.

5. Per contra, learned Standing Counsel appearing for the first respondent filed a counter-affidavit denying the averments made in the affidavit filed in support of the writ petition and contended *inter alia* that the petitioner was carrying on business under the name and style of Shashikanth Enterprises and opened current account in the first respondent-bank. The first respondent-bank is not aware of the business transactions of the petitioner and the 3rd respondent. It is also stated in the counter that the petitioner issued a letter of authority dated 17.03.2005 in favour of the 3rd respondent to operate his account. However, it is specifically denied that the first respondent has colluded with the 3rd respondent in operating the bank account of the petitioner. It is also stated that the petitioner verified his bank account from time to time by submitting his returns to the sales tax and income tax departments every year

by showing the bank account. In those circumstances, the petitioner got issued a legal notice dated 05.01.2009 to the first respondent to furnish information regarding the issuance of first cheque book with cheque numbers and copy of authorization given in favour of the 3rd respondent and the cancellation of authorization letter. The first respondent-bank gave reply dated 27.01.2009 stating that the required information is available at the office of the firm and the same can be obtained from the said office. He also submitted that the grievance expressed by the petitioner would not fall within the scope of para 8 of the Banking Ombudsman Scheme, 2006. Para 8 contemplates the grounds of complaint. None of the grounds mentioned therein would satisfy and come within the ambit of the grievance raised by the petitioner. Therefore, the second respondent rejected the complaint lodged by the petitioner.

6. Having heard both the learned counsel and from the perusal of the material on record, the admitted facts are that the petitioner filed a complaint with the second respondent on 02.02.2009 seeking information relating to the misappropriation of funds from the current account belonging to Shashikanth Enterprises and the role played by the officials of the first respondent-bank during the said alleged misappropriation of the amounts. The second respondent, in the impugned orders stated that the Banking Ombudsman is not the appropriate forum to adjudicate the matter of the alleged misappropriation of funds of the petitioner by his authorized representative. To the extent, the bank has now provided copies of

the account statement and details of cheque book issued in their account, the specific requirement of the petitioner has been redressed. In fact, basing on para 8 of the Banking Ombudsman Scheme, the second respondent has stated that no case of deficiency of service against the bank coming under the scope of the said Scheme is substantiated. Therefore, the complaint was closed. From the perusal of the said para, it is revealed that the complaint/grievance raised by the petitioner would not fall within the scope of para 8 of the Scheme. Therefore, this Court is of the opinion that there is no irregularity or illegality in the orders passed by the second respondent. Thus, there are no merits in the writ petition and the same is liable to be dismissed.

7. Accordingly, the writ petition is dismissed. At this stage, the learned counsel appearing for the petitioner seeks permission of this Court to grant liberty to pursue the remedies available to him as per law. Acceding to the said request, the petitioner is given liberty to pursue remedies, if any, available to him as per law.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHAVA RAO, J

Date: 02.11.2018
ccm

HON'BLE SRI JUSTICE P. KESHA RAO



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Date:02.11.2018

ccm