IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2019

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.28889 of 2004
and
W.P.M.P.No.35084 of 2004

M.S. Kamala ... Petitioner

Vs.

1. The Deputy Secretary,
   Office of the Banking Ombudsman,
   (Tamil Nadu and Union Territories of
   Pondicherry and Andaman & Nicobar Islands),
   Kuralagam Building,
   3rd floor, 9, Esplanade,
   Chennai 600 108.

2. M/s. Karnataka Bank Ltd.,
   rep. by its Branch Manager,
   Mint Street, Chennai 600 003

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order dated 16.09.2004 in proceedings bearing No. BO(CHN)/3353/PR/314/2003-2004 of the first respondent and quash the same and direct the first respondent to consider the complaint of the petitioner in complaint No.PR-314/2003-2004 afresh by holding a detailed enquiry.

For Petitioner : Mr. J. Rajmohan

For respondents : Mr. T.Poornam, for R1
: Mr. P.ElaiyaRajkumar, for M/s. Ramalingam Associates, for R2

O R D E R

This writ petition has been filed challenging the order passed by the first respondent-Ombudsman rejecting the petitioner's complaint.

2. According to the petitioner, the petitioner's mother one Samundeeswari, originally having a Savings Account with the second respondent bank. Thereafter, she has also opened a fixed deposit showing his son-in-law,namely, R.Sundaresan, as her nominee, and she died on 22.05.2001. Even after the death of the petitioner's mother, the above said Sundaresan was operating the account. That apart, without the knowledge of the petitioner, a fixed deposit has been closed and credited in the name of the mother of the petitioner, after her death, by the said Sundaresan with the connivance of the second respondent. Further, the above said Sundaresan is acting in connivance with the second respondent committed lot of irregularities. Hence, the petitioner has filed a complaint before the first respondent Ombudsman. Now, the first respondent Ombudsman rejected the petitioner's complaint under Clause 13(3)(d) of the Banking Ombudsman Scheme 2002, on the ground that a civil suit is pending between the parties and that the subject matter cannot be decided by the Ombudsman. Now, challenging the same, the present writ petition has been filed.

3. The Second respondent Bank filed a counter affidavit disputing all those averments made in the affidavit stating that only the petitioner's mother Samundeeswari has opened the account . After her death, the amount has been paid to the Sunderasan, who was the nominee and the fixed deposit amount in ACC/293/01, for a sum of Rs.16,853/-, was opened on 23.06.2001 and the same was matured on 23.06.2004 and there is no illegality committed by the Bank.

4. The learned counsel for the petitioner would submit that even after the death of the petitioner's mother, the nominee Sundaresan, has operated the account. That apart, without the knowledge of the petitioner, a fixed deposit has been credited in the name of the mother of the petitioner after her death, by the said Sundaresan illegally. Further the civil suit has nothing to do with the complaint filed by the petitioner.

5. Per contra, the learned counsel appearing for the second respondent submits that there is no illegality committed by the Bank. On the authorization given by the petitioner's mother Samundeeswari only, the said Sundaresan has opened the fixed deposit.

6. The learned counsel for the first respondent would contend that the scope of the Ombudsman, under the scheme is very limited. Now a civil suit is pending between the parties, under Clause 13 (3) (d) of the Banking Ombudsman Scheme, the dispute of the petitioner cannot be decided by the first respondent.

7. I have considered the submissions and perused the materials available on records carefully.

8. The grievance of the petitioner is that after the death of the petitioner's mother Samundeeswari, the petitioner's brother-in-law was operating her account. That apart, without their knowledge he has opened a fixed deposit in her name. It was disputed by the second respondent and submitted that no material is available on record to show that the said Sundaresan was operating the account. That apart, only after the death of the petitioner's mother, based on the authorization given by the petitioner's mother, the amount was disbursed.

9. Considering the above facts, this Court is of the view that as there is a dispute regarding operating of the account as well as opening of the fixed deposit, the same could be proved only by letting evidence. The scope of ombudsman under the scheme is very limited and all these disputes cannot be decided by the ombudsman. That apart, now it is also stated that a civil suit is also pending between the parties. In the above circumstances, the ombudsman rightly rejected the petitioner's complaint and I find no irregularity or illegality in the order passed by this Court. I find no merit in the writ petition.

10. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Deputy Secretary,
Office of the Banking Ombudsman,
(Tamil Nadu and Union Territories of
Pondicherry and Andaman & Nicobar Islands),
Kuralagam Building,
3rd floor, 9, Esplanade,
Chennai 600 108.

2. The Branch Manager,
M/s. Karnataka Bank Ltd.,
Mint Street, Chennai 600 003.

+1cc to Mr.J.James, Advocate Sr.95667
+1cc to Mr.T.Poornam, Advocate SR.95201

W.P.No.28889 of 2004

gmr[co]
srg 18/02/2020