THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2019

CORAM
THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P.No.15754 of 2010

Ashok P. Samtani
S/o. Purushotam Das Samatani,
residing at ÄRK"Soul # 802,
IZUMI Cho,2-4-9, Chuo Ku
Osaka, Japan
and represented by his
General Power of Attorney Agent
Mr. Suresh Uttam,
Son of R.C.Uttam,
Ëbony" Flats, 18-19, 4th Main Road,
Gandhi Nagar, Adyar,
Chennai 600 020 ... Petitioner

/vs/

1. The Banking Ombudsman,
Office of the Banking Ombudsman,
(Tamil Nadu and Union Territories
of Pondicherry and Andaman
and Nicobar Island)
Reserve Bank of India Buildings,
(II FLoor), Post Box No.16,
Rajaji Salai, Chennai 600 001.

2. Bank of India,
Mylapore Branch,
1/63-A, Luz Church Road,
P.O. Box, 643,
Mylapore, Chennai 600 004.
rep. herein by its Manager
... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent's order dated 15.04.2010 under Ref.No.Bo(CHE)/21333/C 9542/2009-2010, and to quash the same as illegal and invalid and to direct the 2nd respondent to pay the petitioner, the money due to the petitioner under Double Benefit Certificate Deposit being DBD/FCNR/8002 USD 32/36 bearing No.0096208 dated 24.11.1994.

For Petitioner : Mr. Ashok Menon

For Respondents : Mr. T.Poornan,
for R1

: Mr. Jayakumar,
for R2

ORDER

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

2. According to the petitioner, he is a Non-resident of Indian. Earlier he has deposited various amounts in a fixed deposit in the second respondent Bank and among those deposits, two deposits were made by the petitioner on 30.09.1994 and 05.10.1994 for the value of U.S. Dollars U.S.$8604.75 each, for a period of 35 months, for that the second respondent also issued two fixed deposit receipts, and the date of maturity was on 30.09.1997 and 05.10.1997 respectively. When the petitioner wants to withdraw the fixed deposits, the second respondent informed that only one amount to the value of U.S.$ 8604.75 has been deposited by the petitioner, and the second respondent Bank mistakenly had issued two certificates for the same deposit, and refused to pay the amount deposited by the petitioner. Being aggrieved over the same, the petitioner filed a complaint before the first respondent,the first respondent rejected the petitioner's complaint on the ground that the petitioner has failed to produce evidence for the source of his funds in respect of the fixed deposits. Now, challenging the same, the present writ petition has been filed.

3. The second respondent bank filed a counter affidavit stating that, against the order passed by the first respondent, the petitioner can prefer an appeal before the Appellate authority under clause 20 of the Banking Ombudsman Scheme 2006. Without availing the opportunity, the petitioner cannot maintain the writ petition.

4. The learned counsel appearing for the petitioner would submit that the petitioner has materials to show that he has made two fixed deposits on two different dates, for which only two fixed deposit receipts had been issued by the second respondent Bank. The account books maintained by the petitioner clearly establish that the petitioner has deposited the amount twice on different dates. But, the first respondent mechanically rejected the application. The petitioner, being a Non resident of Indian having sufficient

income, that apart, for deposit of the amount, no proof for source of fund is required. Further submitted that he is ready and willing to produce all the materials before the first respondent enabling them to consider his grievance.

5. The learned counsel for the second respondent would submit that they are also ready and willing to produce material relating to the above said fixed deposit made by the petitioner, including the accounts maintained by the Bank.

6. The learned counsel appearing for the first respondent would submit that the power of first respondent under the Banking Ombudsman scheme is so limited, and the first respondent cannot consider the oral and documentary evidence elaborately while considering the complaint. However, the petitioner and the second respondent may be directed to produce the relevant documents before the first respondent for conducting an enquiry on the petitioner's complaint, and after considering the same, suitable orders will be passed on merits.

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

8. The grievance of the petitioner is that the petitioner has deposited the amount twice on two different dates and for that, two fixed deposit receipts have been issued by the second respondent Bank. But the second respondent bank contended that they have received only one deposit from the petitioner and erroneously two fixed deposit receipts have been issued to the petitioner. The second respondent also stated that they have also having accounts to substantiate the same.

9. The only issue to be decided in this petition is whether the petitioner has made two deposits, or only one deposit, for which two fixed deposit receipts had been issued to the petitioner by the Bank. It can be decided based on the accounts maintained by the second respondent Bank and the petitioner and also by the other related materials produced by the parties. Under Clause 8, of the Banking Ombudsman Scheme, the non-payment of deposit amounts by the banks is one of the grounds for receiving complaint. That apart, under Clause 10 of the scheme, the first respondent has power to call for any information from any bank relating to the complaint. But the first respondent without considering the materials placed by the parties, simply rejected the complaint stating that, the petitioner failed to prove the source of his fund to make deposit; which is not relevant to decide the issue. The first respondent is only expected to decide whether there is only one deposit or two separate deposits made by the petitioner, but that issue was not decided by the first respondent based on the materials placed before him. In the above circumstances, I am inclined to set aside the order passed by

the first respondent, and remand the matter to the first respondent to consider the complaint afresh and decide the issue on merits and in accordance with law.

11. Accordingly, the order passed by the first respondent is set aside and the matter is remanded back to the first respondent, the petitioner and the second respondent are directed to produce the materials available with them to substantiate their claim and on filing such documents, the first respondent is directed to conduct a fresh enquiry, and pass suitable orders on merits and in accordance with law within a period of 3 months from the date of receipt of a copy of this order.

12. With the above directions, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mrp
To

1. The Banking Ombudsman,
Office of the Banking Ombudsman,
(Tamil Nadu and Union Territories
of Pondicherry and Andaman
and Nicobar Island)
Reserve Bank of India Buildings,
(II FLoor), Post Box No.16,
Rajaji Salai, Chennai 600 001.

2. The Manager,
Bank of India,
Mylapore Branch,
1/63-A, Luz Church Road,
P.O. Box, 643,
Mylapore, Chennai 600 004.

+2ccs to Mr.Ashok Menon , Advocate SR.No. 80936
+1cc to Mr.T.Poornan,Advocate SR.No. 86032
W.P.No. 15754 of 2010
A.SK(20/01/2020)