IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.06.2019

CORAM:

THE HON'BLE MR. JUSTICE P.D.AUDIKESAVALU

W.P. No. 15492 of 2019
and
W.M.P. Nos.15420 and 15421of 2019

Sri Ramalinga Choodambikai Mills Ltd.,
Represented by its Managing Director,
Mr. K. Murali Krishna,
No. 3/220, Flat No. 403, Gokul Apartments,
YMR Colony, Proddatur,
Kadappa District,
Andhra Pradesh - 516 360. ... Petitioner

-vs-

1. The Banking Ombudsman,
Reserve Bank of India,
Chennai.

2. The Branch Manager,
IndusInd Bank Ltd.,
Tiruppur Branch,
132-A, K.M.A. Buildings,
Eswaran Koil North Street,
Tiruppur - 641 604.

3. S. Duraisamy ... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the entire records pertaining to issuance of order dated 13.07.2018 passed by the First Respondent and quash the same and consequently direct the Second Respondent to include the name of the Petitioner Mr. Murali Krishna in the place of Mr. K. Naganna in fixed deposit receipt No. 689403 dated 30.06.2006 in IndusInd Bank Ltd., Tiruppur Branch, Tiruppur - 641 604 and grant such other suitable relief.

For Petitioner : Mr. C. Umashankar

O R D E R

Heard Mr. C. Umashankar, Learned Counsel for the Petitioner and perused the materials placed on record, apart from the pleadings of the parties.

2. A term deposit deal reference No. TDR-TICOM42721002 dated 30.06.2006 for a sum of Rs. 30,00,000/- was invested by one K. Naganna and the Third Respondent, viz., S. Duraisamy for a period of five years at the rate of interest 7.05% per annum payable at maturity with the Second Respondent, viz., IndusInd Bank Limited. According to the Petitioner, viz., Sri Ramalinga Choodambikai Mills Limited represented by its Managing Director, K. Murali Krishna, in the affidavit filed in support of the Writ Petition, the said K. Naganna was its erstwhile Managing Director and he died on 09.06.2011. After his demise, one of his sons, viz., Kanta Murali Krishna is now the Managing Director of the Petitioner. A claim appears to have been made that the said of sum or Rs.30,00,000/- invested in term deposit form part of the sale consideration paid by the Third Respondent for the purchase of the property of the Petitioner and the said amount had been kept in the aforesaid deposit awaiting settlement of dispute relating to arrears of tax payable to Tiruppur Municipality. Claiming that the Tiruppur Municipality has lost in the dispute and the said sum of Rs.30,0,000/- belongs to the Petitioner, a notice dated 08.08.2015 had been issued to the Second Respondent. In the letter dated 11.07.2018, the Second Respondent informed that at the request of late K. Naganna and the Third Respondent, the aforesaid term deposit for a sum of Rs.30,00,000/- was pre-closed by them on 27.05.2011 and the proceeds credited to the Saving Bank Account No. 100014012647 of the Third Respondent before the death of the said K. Naganna. In view of the dispute raised, the Second Respondent had marked a lien over the said Savings Bank Account of the Third Respondent for the sum of Rs.41,60,983.80, which are the proceeds of the said term deposit as a precaution.

3. The said K. Murali Krishna lodged a complaint with the First Respondent, viz., the Banking Ombudsman, against the Second Respondent in this regard. The First Respondent in its reply dated 13.07.2018 on the advice of the Second Respondent, treated the matter as settled and closed under clauses 11(1) and 11(3)(a) of the Banking Ombudsman Scheme, 2006, which reads as follows:-

"11. Settlement of Complaint by Agreement:-
(1) As soon as it may be practicable to do, the Banking Ombudsman shall send a copy of the complaint to the branch or office of the bank named in the complaint, under advice to the nodal officer referred to in Sub-Clause (3) of Clause 15, and endeavour to promote a settlement of the complaint by agreement between the complainant and the bank through conciliation or mediation.
....
(3) The Banking Ombudsman may deem the complaint as resolved, in any of the following circumstances:-

a. Where the grievance raised by the Complaint has been resolved by the bank or the concerned subsidiary of a bank with the intervention of the Banking Ombudsman; or
...."

It was held that the proceeds of the Fixed Deposit in the Savings Bank Account of the Third Respondent was joint deposit and that it was decided to settle the same with the legal heirs of the deceased K. Naganna along with the Third Respondent. In such circumstances, all the legals heirs of the deceased K. Naganna along with the Third Respondent were required to jointly request the Second Respondent for release of proceeds/funds lying in that account along with certain specified documents.

4. The Petitioner has filed this Writ Petition challenging the aforesaid e-mail dated 13.07.2018 sent by the First Respondent and for consequential direction to the Second Respondent to include the name of said K. Murali Krishna in the place of deceased K. Naganna in the term deposit receipt.

5. It requires to be pointed out at the outset that the present Writ Petition has been filed by the Petitioner, which is a Company in which the said K. Murali Krishna is the Managing Director, but in all the claims made for the term deposit with the Second Respondent, the said K. Murali Krishna sought to include his name in that term deposit in his personal capacity. The First Respondent had closed the complaint filed by said K. Murali Krishna in his personal capacity and it is not explained as to how the Petitioner, which is a Company could challenge the same merely because the said K. Murali Krishna is its Managing Director. The Second Respondent has claimed that it has been decided to treat the amount as belonging to the legal heirs of the deceased K. Naganna, which includes the said K. Murali Krishna, apart from others, along with the Third Respondent. This would obviously mean that the question as to whether the

amount belongs to the Petitioner, viz., Sri Ramalinga Choodambikai Mills Limited, or to the legal heirs of the deceased K. Naganna jointly, arises for adjudication. A Family Member Certificate dated 18.07.2011 has been produced in the typed-set of the Writ Petition, which shows that apart from Kan Murali Krishna, deceased Kanta Naganna has four other legal heirs, viz., Kanta Subba Rao (son) and Pothineni Annapurna, Byragani Jyothi and V. Anuradha (daughters), who have not been made as party in any of the earlier correspondence or in this Writ Petition. It is evident from the aforesaid sequence of events that the nature of dispute sought to be agitated by the Petitioner in the Writ Petition involves various disputed question of facts which require recording of evidence of the parties on their respective claims, which are absolutely private in character and it does not have any element of public law involved which could be decided in summary proceedings under Article 226 of the Constitution.

6. In that view of the matter, it would not be desirable to entertain this Writ Petition filed by the Petitioner, when the matter has to be adjudicated before the jurisdictional Civil Court after impleading all necessary parties including the Second and Third Respondents and the legal heirs of the deceased K. Naganna apart from the Petitioner and its Managing Director, K. Murali Krishna in his personal capacity. The conclusion arrived in this regard is fortified by the decision of the Division Bench of this Court in Sarda Precesion Products Private Limited -vs- Banking Ombudsman Tamil Nadu and Union Territories of Pondicherry and Andaman & Nicobar Islands [(2005) 4 LW 117], where the Writ Petition against the order passed by the Banking Ombudsman was declined to be entertained by this Court on the ground of availability of alternative remedy of filing civil suit.

7. In the light of the aforesaid position of law, it would not be possible to effectually determine the dispute raised by the Petitioner in a Writ Petition and the parties would have to be necessarily relegated to the Civil Court for that purpose. It is needless to add here that the refusal of this Court to entertain this Writ Petition does not preclude the right of the Petitioner to agitate his claim before the competent forum uninhibited and uninfluenced by any of the observations made in this order, which does not touch upon the merits of the contentious issues between the Petitioner and the other parties.

In the upshot, the Writ Petition, which cannot be admitted, is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

vjt
To

1. The Banking Ombudsman,
   Reserve Bank of India,
   Chennai.

2. The Branch Manager,
   IndusInd Bank Ltd.,
   Tiruppur Branch,
   132-A, K.M.A. Buildings,
   Eswaran Koil North Street,
   Tiruppur - 641 604.

W.P. No. 15492 of 2019

aa04/11/2019