**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**WP(C) No.10541 of 2021**
(Through Hybrid mode)

***Gourishankar Nayak*** .... ***Petitioner***

Mr. Subhransu Bhusan Mohanty, Advocate

*-versus-*

***Banking Ombudsman, RBI and others*** .... ***Opposite Parties***

Mr. Santosh Kumar Nanda, Advocate
(for O.P. nos.2, 3 and 4)

**CORAM: JUSTICE ARINDAM SINHA**

**ORDER**
**19.07.2022**

**Order No.**

08. 1. Mr. Mohanty, learned advocate appears on behalf of petitioner and submits, prayer in the writ petition is for direction upon the Banking Ombudsman opposite party no.1. By impugned order dated 18th January, 2021 the office said that his client's complaint is barred by limitation under clause-9(3)(f) read with clause 13(b) of Banking Ombudsman Scheme, 2006. Clause 9(3)(f) in the Scheme says no complaint to the Banking Ombudsman shall lie unless the complaint is made before expiry of the period of limitation prescribed under the Indian Limitation Act, 1963 for such claims. Sub-clause (b) in clause 13 says the Banking Ombudsman may reject complaint at any stage if it appears

that the complaint is beyond the pecuniary jurisdiction of Banking Ombudsman, prescribed under clause-12.

2. He submits further, in spite of notice, opposite party no.1 has chosen to remain unrepresented. On query from Court Mr. Mohanty points out, annexure-7 at page-28, being letter dated 10th May, 2019, was cause for complaint by his client, made to said opposite party. He submits further, the fixed deposit was not made security for repayment of the tractor loan.

3. Mr. Nanda, learned advocate appears on behalf of the bank. He submits, his client has filed counter. Annexure A in the writ petition and annexure 1 in the counter is the same document. It says that his client had lien over the fixed deposit and as such his client duly rejected the claim made by petitioner.

4. He submits further, the writ petition is not maintainable since the complaint is not on any of the grounds under paragraph 8 of the Scheme. Mr. Mohanty replies, that is for the Banking Ombudsman to decide, on admitting the claim but by impugned letter, the claim was rejected at the threshold. He submits further, financial accommodation was sanctioned for less than Rs.5 lakhs. The Reserve Bank guidelines prohibit banks from taking security on such loans. The bank has taken security of his client's immovable property valued at Rs.30 lakhs, as well as claiming lien on the fixed deposit.

5. Text of letter dated 10th May, 2019 written by the bank to petitioner is reproduced below.

> *"With respect to the subject cited above, you have availed a tractor loan bearing a/c no.419703171400002 on dt. 24/03/2014 for which aforesaid fixed deposit of amount 2,00,000/- has been taken as security. The present value of this fixed deposit is 3,02,630/-.*
>
> *Due to non submission of certain documents and some other issues in the aforesaid loan, case has been filed and the case is under subjudice. The a/c is NPA & the present o/s of your loan is Rs.8,97,155/-.*
>
> *For your information the fixed deposit can not be called back by you till your liability to the bank on account of the aforesaid loan have not been fully liquidated."*

6. So far as limitation is concerned, paragraph 9(3)(f), says that no complaint to the Banking Ombudsman shall lie unless the complaint is made before expiry of the period of limitation. Court has ascertained that the rejection was by impugned letter dated 10$^{th}$ May, 2019 and the complaint made on 20$^{th}$ June, 2019 i.e. just more than a month after the refusal. Further submission of Mr. Nanda is that limitation should be reckoned from date of maturity of the fixed deposit, which was more than three years ago.

7. Petitioner's cause was refusal to call back the fixed deposit proceeds on exercise of lien, which happened by issuance of impugned letter. Cause of action of petitioner arose on the refusal. Court has also obtained satisfaction that the complaint is covered by clause (i) under paragraph 8 of the

Scheme since, petitioner complains that the bank obtained security and is exercising lien on non-observance of the Reserve Bank directives.

8. The writ petition succeeds. Impugned letter is set aside and quashed. Opposite party no.1 will forthwith deal with petitioner's complaint, positively by 4 weeks of communication.

9. The writ petition is disposed of.

***(Arindam Sinha)***
***Judge***

*RKS*