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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.328/2021

1. RAJ INDIA CORPORATION, registered partnership firm through its partner Raju D'souza, S/o Govind Kodliwada, Age 50 years, Having office at H. No. 168, Torda Waddo, Salvador do Mundo, Bardez, Goa.

2. Raju D'souza, S/o Govind Kodliwada, Age 50 years, R/o H. No. 168, Torda Waddo, Salvador do Mundo, Bardez, Goa. ... PETITIONERS

Versus

1. The Banking Ombudsman, BO MUMBAI II, C/o Reserve Bank of India, 4th Floor, RBI Byculla Office Building, Opp. Mumbai Central Railway Station, Byculla, Mumbai-400 008.

2. Reserve Bank of India, having its main office at 6, Sansad Marg, New Delhi.

3. Punjab National Bank, earlier United Bank of India, having Branch at Kamatnagar, Rua Heliodore, Salgedo, Panaji, Goa.

4. Canara Bank, having office at 18th June Road, Mathias Plaza, Panaji, Goa.

5. Catholic Syrian Bank, Shop No 6, 7, 8, Ground Floor, Rizvi Towers, 18th June Road, Panjim, Goa. ...RESPONDENTS

Mr. P. Kamat, Advocate *for the Petitioners.*
Ms. S. Kakodkar, Advocate *for the Respondent No.5.*

CORAM: M. S. SONAK &
R. N. LADDHA, JJ.
DATED: 14th March 2022

ORAL JUDGMENT: (Per M. S. Sonak, J.)

1. Heard Mr. P. Kamat for the petitioner and Ms. S. Kakodkar for respondent no.5.

2. Since service is complete on the respondents including the contesting respondent no.5, we issue Rule in this petition and with the consent of the learned counsel for the parties and respondent no.5, proceed to dispose of this petition finally, forthwith.

3. The petitioner challenges the decisions dated 15.02.2021 and 18.03.2021 communicated by the Banking Ombudsman rejecting the complaint made by the petitioner in terms of the Banking Ombudsman Scheme 2006 (as amended) which is set out in the notification dated 03.02.2009.

4. The petitioner's grievance concerns the freezing of some of its bank accounts and the alleged non-payment of interest on certain bank accounts/deposits maintained by the petitioner with respondent no.5 Bank.

5. The Banking Ombudsman by communication dated 15.02.2021 has declined to look into the petitioner's complaint by observing the following in paragraphs 3 and 4:

> *"3. As the grievance raised by the complainant has been resolved by the bank or the concerned subsidiary of a bank*

with the intervention of the Banking Ombudsman, accordingly your complaint was closed under Clause 11(3) (a) of BOS-2006 as 'settled by the bank'.

Please note that complaints closed under the aforesaid Clause are not appealable before the Appellate Authority in Reserve Bank of India. Details of BOS-2006 are available at our website www.rbi.org.in/commonman.

4. You may note that despite the rejection of your complaint by the banking Ombudsman, as aforesaid you are at liberty to approach a Civil Court of competent jurisdiction or such other authority in accordance with law for the Redressal of your grievance."

6. This was followed by yet another communication dated 18.03.2021, the relevant extract of which reads as follows:

"............................ We thank you for your complaint No. 202021021014217.

In this connection it is advised that we have examined the same and reject the same under Clause : 13(1)(a) - Clause 13 1.a not on the grounds of complaint referred to in clause 8 of the Banking Ombudsman Scheme 2006."

7. Thus, the complaint of the petitioner has been rejected primarily on the following two grounds:-

(a) That the complaint of the petitioner has been resolved by the bank or the concerned subsidiary of the bank and the complaint is therefore disposed of as "*settled by the bank*";

(b) That the complaint is not on the grounds referred to in Clause 8 of the Banking Ombudsman Scheme 2006.

8. Insofar as the first ground is concerned, Mr. Kamat, with some justification points out that there was no settlement with the Bank. He submits that a settlement essentially is bipartite or based on some mutual agreement between the parties. He points out that there is no such agreement and further, no such agreement was even produced on record.

9. Though the returns have been filed by respondent no.5, there is no reference to any such agreement. Therefore it is not known how the Ombudsman could have declined to look into the complaint of the petitioner based on some settlement of which the petitioner has no knowledge or communication. The first ground is therefore quite unsustainable.

10. Even the second ground based on which the Ombudsman has virtually declined to exercise jurisdiction under the scheme is quite untenable. Upon holistic reading of the petitioner's complaint, it is clear that the petitioner alleges non-payment of interest on the accounts held by them with the bank on deposits in any savings, current, or other accounts maintained with the bank. The complaint is also about the freezing of the bank accounts. The complaint, therefore, at least *prima facie*, is covered under clause 8 of the Scheme, including in particular Clause 8(1)(h) which reads as follows:

> *"**8(1)(h)** – delays, non-credit of proceeds to parties' accounts, non-payment of deposit or non-observance of the Reserve Bank directives, if any, applicable to rate of interest on deposits in any savings, current or other account maintained with a bank;"*

11. The question at this stage is really not whether the bank was justified in freezing the account or in declining the award of interest because the account held by the petitioners was only a current account. That is a matter on merits which the Ombudsman should have inquired into and determined. The Ombudsman, based on the aforesaid two reasons, could not have virtually declined to exercise jurisdiction that was vested in it under the aforesaid Scheme. It is for this reason that the impugned communications/decisions warrant interference.

12. Accordingly, the impugned communications/decisions dated 15.02.2021 and 18.03.2021 are set aside, and the Ombudsman is directed to consider the petitioner's complaint in accord with the law, the Scheme, and on its own merits. All contentions of all parties on merits are expressly kept open. This order should not be construed as an expression or any opinion on the rival contentions or the merits of the matter.

13. The Ombudsman should now try to dispose of the petitioner's complaint as expeditiously as possible and in any case within three months from the date of receipt of the certified copy of this Order.

14. The rule in this petition is made absolute to the aforesaid extent. There shall be no order for costs.

R. N. LADDHA, J. **M. S. SONAK, J.**