IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.24544 of 2017

M.T.Selvaraj ...Petitioner

Vs.

1.The Branch Manager,
Indian Overseas Bank,
4th Main Road,
Branch Code 2075,
Anna Nagar,
Chennai – 600 040.
2.The Branch Manager,
Oriental Bank of Commerce,
2nd Avenue,
Anna Nagar,
Chennai – 600 040.
3.The Banking Ombudsman,
Office of the Banking Ombudsman,
Reserve Bank of India Building,
IInd Floor, No.16, Rajaji Salai,
Chennai – 600 001. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records in pursuant to the order passed by the 3rd respondent vide

Ref.No.BO(Che)/0001/C-201617006007177/2016-17 dated 21.06.2017 and quash the same and consequently direct the respondents 1 and 2 to realise the cheque dated 08.08.2016 bearing No.126604 drawn on the 2nd respondent's bank within a stipulated time.

For Petitioner : Mr.T.P.Prabakaran

For Respondents : Mr.F.B.Benjamin George [For R1]
Mr.A.S.Balaji [For R2]
No appearance [For R3]

O R D E R

The petitioner challenges the order passed by the Banking Ombudsman, Reserve Bank of India/R3, which rejects his complaint on the ground that it does not make out any of the grounds of complaint set out in clause 8 of the Banking Ombudsman Scheme 2006.

2. The petitioner states that he had entered into a loan agreement with another individual, in terms of which the petitioner had advanced a loan of sum of Rs.10,00,000/- to him. The amount was to be repaid within 11 months from date of the agreement or whenever the demand for repayment is made. The petitioner had made a demand for repayment of the amount along with interest on 08.08.2016 and the individual had handed over a

crossed bank cheque for an amount of Rs.10,00,000/- drawn on the 2nd respondent bank i.e., Oriental Bank of Commerce, Chennai – 600040 (herein after referred as 'drawee bank').

3. The petitioner did nothing further till the fag end of the 90 day period provided for validity of the cheque and lodged it on 07.11.2016 before the 1st respondent Bank ie., Indian Overseas Bank. The 1st respondent Bank had passed the cheque to 2nd respondent bank the next day, the 91st day as a result that, R2 dishonored the cheque by way of slip dated 08.11.2016 on the ground 'Stale/outdated cheque'.

4. It is the petitioner's case that the cheque had been presented by him on the last day of validity, being 07.11.2016 and hence it was incumbent upon R2 bank to have honoured the same. He alleges deficiency of services and states that if at all there was any error, it was on the part of the 1st respondent Bank in failing to have forwarded the cheque for payment before the 2nd respondent bank on the same date that he had presented it, being 07.11.2016.

5. A complaint had been preferred to 3rd respondent i.e., Banking Ombudsman, Reserve Bank of India, praying for the realization of the cheque along with costs, which has came to be rejected by way of impugned

order dated 21.06.2017.

6. The issue that arises for resolution is as to whether the period of 90 days that is provided for validity of the cheque would end as on the date when the instrument was presented before any bank or when presented before the drawee bank which has to honour the same.

7. I had, on 22.12.2022 directed the parties to circulate relevant Instructions/Circulars issued by the Reserve Bank of India that would throw light on this issue. A Circular bearing No.RBI/2011-12/251 dated 04.11.2011 has been placed before me providing a clarification in regard to the payment of cheques/drafts/pay orders/banker's cheques. The Reserve Bank of India has clarified that with effect from 01.04.2012, banks should not make payment of cheques/drafts/pay orders/banker's cheques bearing that date or any subsequent date, if they are presented beyond the period of three months from date of such instrument. This Circular provides no clarity on the actual question that has been crystallized for resolution.

8. Useful reference may be made to judgment of the Hon'ble Apex court in *Shri Ishar Alloy Steels Ltd. Vs. Jayaswals Neco Ltd.,* ((2001) 3 SCC 609) wherein the question that arises was as to the import of the words 'the bank' as set out in clause (a) of the proviso to Section 138 of the

Negotiable Instruments Act, 1881, that reads as follows:-

> *"2.(a) What is meant by, "the bank" as mentioned in clause (a) of the proviso to Section 138 of the Negotiable Instruments Act, 1881?*
>
> *(b) Does such bank mean the bank of the drawer of the cheque or covers within its ambit any bank including the collecting bank of the payee of the cheque?*
>
> *(c) To which bank the cheque is to be presented for the purposes of attracting the penal provisions of Section 138 of the Act?"*

Clause (a) as above, uses the phrase 'the Bank' and, the question that arose before the Hon'ble Supreme Court was whether such phrase connoted the drawee bank upon which the cheque was drawn or all banks where the cheque was presented for collection including the bank of the payee, in whose favour the cheque was issued.

9. The Hon'ble Apex Court considered the views of the Punjab and Haryana, Gujarat and Madras High Courts in the cases of *Om Parkash Vs. Gurcharan Singh* ((1997) 3 Crimes 433 (P&H))*, Arunbhai Nilkanthrai Nanavati Vs. Jayaben Prahladbhai* ((1999) 3 Crimes 252(Guj)) and *A.B.K. Publications Ltd. Vs. T.N. Newsprint & Papers Ltd.(*(1999) 3 Crimes 97(Mad)) respectively*,* endorsing the view that the reference to 'the Bank' would only be to the payee bank and none other. In conclusion and at paragraph 9, the Court states as follows:-

"The use of the words "a bank" and "the bank" in the section is an indicator of the intention of the legislature. The former is an indirect (sic indefinite) article and the latter is prefixed by a direct (sic definite) article. If the legislature intended to have the same meanings for "a bank" and "the bank", there was no cause or occasion for mentioning it distinctly and differently by using two different articles. It is worth noticing that the word "banker" in Section 3 of the Act is prefixed by the indefinite article "a" and the word "bank' where the cheque is intended to be presented under Section 138 is prefixed by the definite article "the". The same section permits a person to issue a cheque on an account maintained by him with "a bank" and makes him liable for criminal prosecution if it is returned by "the bank" unpaid. The payment of the cheque is contemplated by "the bank" meaning thereby where the person issuing the cheque has an account. "The" is the word used before nouns, with a specifying or particularising effect as opposed to the indefinite or generalising force of "a" or "an". It determines what particular thing is meant; that is, what particular thing we are to assume to be meant. "The" is always mentioned to denote a particular thing or a person. "The" would, therefore, refer implicitly to a specified bank and not any bank. "The bank" referred to in clause (a) to the proviso to Section 138 of the Act would mean the drawee bank on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the payee, in whose favour the cheque is issued."

10. The opinions expressed by the Punjab and Haryana and Gujarat High Courts was upheld and that of the Madras High Court, was held to be incorrect. This judgment has been followed by a learned single judge of the

Bombay High Court in *Structures Steel (H.U.F) Vs. R.S.Lath Education Trust & others* (2007 SCC Online Bom 929).

11. The question would thus have an answered in favour of the respondents holding that it is the bounden duty of the holder of the instrument to ensure that the same is presented before the payee bank prior to the expiry of the validity period of 90 days. If at all the instrument has to travel through several banks to reach the payee bank, the holder must ensure that the instrument is presented well in time.

12. This Writ Petition is dismissed. No Costs.

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Index : Yes
Speaking Order

DR.ANITA SUMANTH,J.

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