

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 09th JANUARY, 2023

IN THE MATTER OF:

+ **LPA 735/2022 & CM APPL. 55720/2022**

M/S GKA IMPEX PVT LTD

..... Appellant

Through: Mr. Mukesh M Goel, Ms. Priya,
Advocates

versus

RESERVE BANK OF INDIA AND ORS

..... Respondents

Through: Mr. S K Sharma, Advocate for R-2
Ms. Shivani Khandekar, Mr. Gokul
Holani, Mr. Ishan Bisht, Advocates
for R-4

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SATISH CHANDRA SHARMA, C.J.

1. Aggrieved by the judgment dated 19.10.2022, passed by the learned Single Judge of this Court in W.P. (C). 4295/2018, whereby the learned Single Judge has dismissed the Writ Petition, the Appellant herein has filed the instant appeal.

2. Shorn of details, the facts leading to the instant appeal are that the Appellant herein has a current account with the Respondent No.2 herein/Oriental Bank of Commerce [now known as Punjab National Bank (*hereinafter referred to as 'the PNB'*)]. It is stated that the Appellant through its Director - Mr. Girish Chadha, wanted to transfer an amount of Rs. 15 Lakhs to one M/s JV Capital Services Pvt. Ltd. through Real Time Gross Settlement (*hereinafter referred to as 'the RTGS'*). It is stated that the RTGS form for initiating the said transaction was filled up by the daughter of Mr.

Girish Chadha, who had limited knowledge of bank dealings, and, therefore, she filled in the name of JV Capital Services Pvt. Ltd (*hereinafter referred to as 'the JCSPL'*) as the remitter instead of the Petitioner herein and further wrongly filled in name of beneficiary as "Ficus Securities Pvt. Ltd." (*hereinafter referred to as 'FSPL'*) instead of JCSPL who was supposed to be the beneficiary. It is pertinent to mention here that FSPL is a proprietary concern and the Director of the Appellant herein had dealings with FSPL. It is stated that the transaction has taken place on 04.12.2017 and on 05.12.2017 when the Director of the Appellant herein realised his mistake, he sent a request to the PNB for recalling the transaction. It is stated that pursuant to the request, a sum of Rs.4.5 lakhs was reversed on the same day from FSPL's account, but Rs. 10.5 lakhs could not be recovered. It is stated that the Appellant herein filed a complaint dated 19.01.2018 before the Banking Ombudsman of the Reserve Bank of India (*hereinafter referred to as 'the RBI'*). The contention of the Appellant herein is that PNB has acted in violation of the Real Time Gross Settlement (RTGS) Regulations, 2013 issued by RBI (*hereinafter referred to as 'the RTGS Regulations'*) and more particularly Clause 11.1 and 11.11 of the RTGS Regulations.

3. According to the Appellant herein, Clause 11.1 of the RTGS Regulations provides that the transaction originating member will carry out due diligence while sending the payment request to the RTGS system and the originating member should also ensure two factor authentications by adopting maker-checker principle while originating a payment transaction. It is stated that Clause 11.11 of the RTGS Regulations provides that the participant / member banks have to mandatorily provide Debtor Name (the ordering customer) and Creditor Name (the beneficiary customer). It is the contention

of the Appellant herein that PNB has failed in adhering to the Regulations and had processed a faulty transaction and is, therefore, guilty of wrongful remittance.

4. PNB filed a reply before the Banking Ombudsman stating that a sum of Rs.15 Lakhs was remitted to the beneficiary as per the mandate given by the complainant himself duly signed with all the details of the beneficiary account along with duly signed cheque. It is stated that when the complainant approached the Bank, an attempt was made to reverse the transaction, however, only a sum of Rs. 4.5 Lakhs was recovered because the account of FSPL had been blocked and a sum of Rs.10.5 lakhs had been retained by the National Stock Exchange (*hereinafter referred to as 'the NSE'*).

5. It is pertinent to mention here that FSPL is a NSE trading member and certain amounts were due to be paid by the FSPL to the NSE and because there were specific directions towards independent dealings between NSE and FSPL, the amount which was wrongly credited in the account of FSPL was taken by the NSE. The Banking Ombudsman *vide* a speaking Order dated 19.03.2018 refused to entertain the complaint. The Banking Ombudsman held that in terms of Clause 11.2 of the RTGS Regulations, Credit under customer transactions, received by the RTGS member in its Settlement Account through the RTGS System, has to be ultimately credited to the account of the beneficiary on the basis of the account number in the payment message.

6. The payment message receiving member may put in place a Straight through Processing (STP) mechanism for crediting the beneficiary's account. The beneficiary / receiving bank have to credit the account of the beneficiary customer immediately on receipt of the payment message at their Member Interface. The beneficiary banks should credit the account of the beneficiary

within 30 minutes of the receipt of the message at the Member Interface. Thus the remitting banker is responsible for keying in the right account number and that is the only field being read in the STP mechanism for deciding on the beneficiary account. The Banking Ombudsman further held that in the RTGS message form all the essential information have been provided by the remitter and there is no cutting overlapping/overwriting therein. The Banking Ombudsman, therefore, held that the Bank has acted in a good faith and with full prudence and is not at fault in the transaction.

7. The Appellant, thereafter, approached this Court by filing a Writ Petition, being W.P. (C) NO. 4295/2018, for a writ/order/direction to set aside the Order dated 19.03.2018, passed by the Banking Ombudsman rejecting the complaint of the Appellant. The Appellant also prayed for a direction to the RBI and PNB to strictly comply with the guidelines as formulated by the RBI in public interest and carry out strict due diligence before initiating any financial transaction. The Appellant also prayed for reversing the amount of Rs.10.5 lakhs to its account from the account of NSE.

8. The learned Single Judge *vide* Order impugned herein found that the mistake had occurred because of the negligence of the Appellant and the Appellant cannot be permitted to take advantage of its own wrong and is trying to blame the Bank for his the negligence. The learned Single Judge also held that even though FSPL does not deny that the amount was received by them by mistake but contend that an amount of Rs. 10.5 lakhs was blocked and retrieved from their account by NSE, of which it was a member, and thus they were able to transfer only Rs. 4.5 lakhs to the Appellant herein. The learned Single Judge, therefore, dismissed the Writ Petition.

9. It is this Order which has been assailed by the Appellant in the instant appeal.

10. Learned Counsel for the Appellant has drawn the attention of this Court to Clauses 11.1 and 11.11 of the RTGS Regulations and states that under Regulation 11.1, the originating member has to ensure two factor authentications by adopting maker-checker principle while originating a payment transaction. He further states that under Clause 11.11 of the RTGS Regulations, the member banks have to mandatorily provide Debtor Name (the ordering customer) and Creditor Name (the beneficiary customer). He states that the RBI has provided for Frequently Asked Questions (FAQ) and in answer to a question as to what essential information has to be furnished to the bank by the remitting customer for remittance to be effected, the RBI has answered that the remitting customer has to furnish the following information to a bank for initiating a RTGS remittance:

- “1. Amount to be remitted.*
- 2. Remitting customer's account number which is to be debited.*
- 3. Name of the beneficiary bank and branch.*
- 4. The IFSC Number of the receiving branch*
- 5. Name of the beneficiary customer*
- 6. Account number of the beneficiary customer*
- 7. Sender to receiver information, if any”*

Learned Counsel for the Appellant contends that the RTGS form filled by the Appellant contained wrong particulars of both the ordering customer and the beneficiary customer and despite there being a discrepancy, the transaction was executed by the Bank in a negligent manner. He states that the transaction was not intended to benefit FSPL. He states that the discrepancy arose because the Appellant had business relations with FSPL and due to similarity

in the name of 'Ficus Securities Pvt. Ltd' and 'Ficus Securities' the amount had wrongly been credited to FSPL and, therefore, the balance amount of Rs.10.5 lakhs should be reversed.

11. Heard the Counsels for the parties and perused the material on record.

12. A perusal of the facts reveal that a wrong form had been filled in by the daughter of the Director of the Appellant herein. The name of the remitter is shown as JCSPL instead of the Appellant herein and the name of the beneficiary is shown as Ficus Securities instead of JCSPL.

13. Clause 11.1, 11.2 & 11.11 of the RTGS Regulations which are relevant for this case reads as under:

"11.1. Eligible RTGS member can send / receive customer transactions on behalf of their customers. The transaction originating member will carry out due diligence while sending the payment request to the RTGS system. The originating member should ensure two factor authentications by adopting maker-checker principle while originating a payment transaction. Depending on the risk perception, participants may introduce / implement additional security features in the on-line delivery channels for initiating RTGS transactions by the customers. The originating member should release the payment message from their system to the RTGS central system within 30 minutes of debiting a customer's account. The originating member should have the facility of time stamping of their transactions at various stages for effective grievance redressal mechanism.

11.2. Credit under customer transactions, received by the RTGS member in its Settlement Account through the RTGS System, has to be ultimately credited to the account of the beneficiary on the basis of the account number in the payment message. The payment message receiving member may put in place a Straight Through

Processing (STP) mechanism for crediting the beneficiary's account. The beneficiary / receiving bank have to credit the account of beneficiary customer immediately on receipt of the payment message at their Member Interface. The beneficiary banks should credit the account of the beneficiary within 30 minutes of the receipt of the message at the Member Interface.

11.11. The participant / member banks have to mandatorily provide Debtor Name (the ordering customer) and Creditor Name (the beneficiary customer). The member banks have to furnish name of the beneficiary in the passbook / account statement of originator and name of ordering customer in the passbook / account statement of beneficiary from these field tags.

14. Banking Ombudsman of RBI vide Order dated 19.03.2018 while rejecting the complaint of the Appellant herein has relied on Clause 11.2 of the RTGS Regulations. In terms of Clause 11.2 of the RTGS Regulations, credit under customer transactions, received by the RTGS member in its settlement account through the RTGS system, has to be ultimately credited to the account of the beneficiary on the basis of the account number in the payment message. The payment message receiving may put in place a Straight Through Processing (STP) mechanism for crediting the beneficiary's account. The Beneficiary/receiving bank have to credit the account of beneficiary customer immediately on receipt of the payment message at their member interface. The beneficiary banks should credit the account of the beneficiary within 30 minutes of the receipt of the message at the member interface and the remitting banker is responsible for keying in the right account number and this is the only field being read in the SIP mechanism for deciding on the beneficiary account. The Banking Ombudsman held that in

the instant case, the message form with all the essential information have been provided by the remitter and there is no cutting/overlapping/overwriting therein and, therefore, the Bank acted in good faith and with full prudence and, therefore, the Bank is not at fault in the transaction.

15. When the mistake was pointed out, efforts were made and an application was filled by the Appellant herein for reversing the amount, however, out of Rs.15 lakhs only a sum of Rs.4.5 lakhs could be recovered and the remaining amount of Rs.10.5 lakhs could not be retrieved as the same was blocked by the NSE. *Prima facie*, Respondent No.2 herein is not accountable for the wrongly filled form submitted by the Appellant herein.

16. The question as to whether there is any imperfection/shortcoming on the part of the Respondent No.2 herein and the interplay between Clause 11.1, 11.2 & 11.11 of the RTGS Regulations, etc. are all questions of facts which will have to be substantiated by leading evidence. The Bank has relied on Clause 11.2 whereas the Appellant has relied on Clause 11.1 & 11.11 of the RTGS Regulations. Admittedly there has been mistake on the part of the Appellant in filling up the RTGS form. The Banking Ombudsman which is an expert body which has been created only to deal with the disputes of Bank and customers has held in favour of the Bank. It is for the Appellant to either approach the Consumer Protection Forum or file a Suit to substantiate its case by leading evidence.

17. At the outset, this Court finds it apposite to reiterate the principles governing the exercise of Article 226 when alternate remedies are available. It has time and again been noted that the remedy under Article 226 is not supposed to supersede other equitable modes of obtaining relief, including those available before a civil court. While the discretion accorded to this

Court is by no stretch of imagination limited, this Court is restricted from interfering if an effective alternate remedy is available to the aggrieved person.

18. In this regard, the Apex Court in Swetambar Sthanakwasi Jain Samiti v. Alleged Committee of Management Sri R.J.I. College, Agra, (1996) 3 SCC 11, has observed as under: -

*“We are of the view that the High Court not only fell into patent error but also exceeded its jurisdiction under Article 226 of the Constitution of India. **Though the jurisdiction of the High Court under Article 226 of the Constitution is not confined to issuing the prerogative writs, there is a consensus of opinion that the High Court will not permit this extraordinary jurisdiction to be converted into a civil court under the ordinary law...** Where the civil court has the jurisdiction to try a suit, the High Court cannot convert itself into an appellate or revisional court and interfere with the interim/miscellaneous orders of the civil court. The writ jurisdiction is meant for doing justice between the parties where it cannot be done in any other forum.”* (emphasis supplied)

19. Furthermore, the Apex Court in Ghan Shyam Das Gupta v. Anant Kumar Sinha, (1991) 4 SCC 379, held as under: -

*“8. The principle as to when the High Court should exercise its special jurisdiction under Article 226 and when to refuse to do so on the ground of availability of an alternative remedy has been settled by a long line of cases. **The remedy provided under Article 226 is not intended to supersede the modes of obtaining relief before a civil court or to deny defences legitimately open in such actions...**The High Court,*

in the present case, therefore, ought not to have embarked upon a decision of the writ petition on merits, and should have refused to exercise its special jurisdiction on the ground of alternative remedy before the civil court.”

(emphasis supplied)

20. Recently, the Apex Court has summarised the principles governing this Court’s jurisdiction under Article 226, in Radha Krishan Industries v. State of Himachal Pradesh & Ors., **2021 SCC OnLine SC 334**, as follows:-

“28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be

entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

21. The Banking Ombudsman which is a specialized authority and only deals with the disputes between Banks and customers has held in favour of the Bank and this Court while exercising its jurisdiction under Article 226 of the Constitution of India should not interfere with the decision taken by an expert body unless the decision is perverse. As pointed out earlier, whether Clause 11.2 which has been relied on by the Bank will be applicable in the present case or Clause 11.1 & 11.11 which have been relied on by the Appellant will be applicable has to be decided by leading evidence by both the parties in an appropriate forum. As stated earlier, admittedly there has been an obvious mistake on the part of the Appellant in filling up the RTGS form and what would be the effect of that mistake in the instant case can only be decided after leading evidence. On the basis of the material available before this Court, it cannot be said that the decision arrived at by the

Banking Ombudsman is perverse which requires interference under Article 226 of the Constitution of India. It is well settled that writ courts, in exercise of their writ jurisdiction, do not substitute their own conclusions to the one arrived at by the expert bodies.

22. The question as to whether the NSE is bound to remit Rs.10.5 lakhs to the Appellant herein or not and as to whether there has been negligence on the part of the Appellant, etc. has to be substantiated by leading evidence before an appropriate forum and the Writ remedy cannot be invoked by the Appellant. As stated above and in view of the settled position of law, writ remedy cannot be invoked for deciding disputed questions of facts. This Court, therefore, does not find any reason to interfere with the Order passed by the Banking Ombudsman which has been upheld by the learned Single Judge in the Order impugned herein.

23. Accordingly, the instant appeal is dismissed, along with the pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

JANUARY 09, 2023

Rahul