S/L 18
30.07.2024
Court. No. 551
Sourav

WPA 672 of 2012

Multiway Dealers Private Limited & Anr.
Vs.
Punjab and Sind Bank & Ors.

Mr. Meghajit Mukherjee
Ms. Sonia Das
... for the petitioners.

Mr. R. C. Prusti
Mr. Sanjib Das
Ms. Sunita Kabi
... for the respondent/Bank.

1. The parties are represented today through their respective learned advocates.
2. In this writ petition as filed under Article 226 of the Constitution of India, the writ petitioner has prayed for issuance of appropriate writ upon the respondent no. 1/Bank to pay the proceeds of the fixed deposits, particulars of which have been mentioned in paragraph 5 of the writ petition with a further prayer for issuance of writ of mandamus directing the respondent no. 3/Reserve Bank of India to investigate by itself or through any other agency as the RBI may think fit and proper along with other ancillary reliefs.
3. At the time of hearing, learned advocate for the writ petitioner at the very outset draws attention of this Court to paragraph 5 of the writ petition. It is contended that during the period 04.08.2009 to 10.08.2009, the writ petitioner had opened six fixed deposits each of Rs. 5,00,000/- with the respondent no. 1/Bank and initially, the said fixed deposits were for a

period of 12 months and 1 day and subsequently, the said fixed deposits were renewed for an identical period. It is submitted further that the writ petitioner by a letter dated 20.04.2011, requested the respondent no. 1/Bank to furnish information regarding the interest accrued on such fixed deposits to which the respondent no. 1/Bank replied to the writ petitioner that all the fixed deposits' receipts have been paid as per the direction of the writ petitioner and thus as on 18.05.2011, no amount is payable to the writ petitioner against those fixed deposits' receipts.

4. By a letter dated 29.06.2011, the writ petitioner raised protest containing that they are still in possession of those fixed deposits' receipts and it was never surrendered with the respondent no. 1/Bank and no instruction was given to the respondent no. 1/Bank for premature encashment etc. and/or discharge of the fixed deposits etc. It is further submitted that even today those original fixed deposits' receipts are lying with the writ petitioner and despite such fact, the respondent no. 1/Bank has failed and neglected to credit the proceeds of the fixed deposits' receipts to the account of the writ petitioner and thus, the writ petitioner has approached this Court for appropriate relief as prayed for in the writ petition since the respondent no. 1/Bank is an authority within the meaning of Article 12 of the Constitution of India.

5. In course of his submission, learned advocate for the writ petitioner further draws attention of this Court to

the affidavit-in-opposition as filed by the respondent no. 1/Bank. It is submitted that in the affidavit-in-opposition, the respondent no. 1/Bank has enclosed photocopies of two resolutions which were never adopted by the writ petitioner company and, therefore, this Court ought not to put much stress upon those resolutions while disposing the instant writ petition.

6. Per contra, the learned advocate for the respondent no. 1/Bank at the very outset draws attention of this Court to the cause title of the writ petition as well as to the prayers made in the writ petition. It is submitted on behalf of the respondent no. 1/Bank that on conjoint perusal of the cause title of the instant writ petition and the prayers made in the writ petition, more specifically, prayer B of the writ petition, it would reveal that the writ petition has practically admitted the availability of alternative remedy i.e., through the Banking Ombudsman of the Reserve Bank of India and thus, the instant writ petition may be dismissed *in limine* on account of the availability of the alternative remedy which creates a bar for invoking a writ jurisdiction.

7. In course of his submission, the learned advocate for the respondent no. 1/Bank draws attention of this Court to the affidavit-in-opposition as filed by the respondent no. 1/Bank, more specifically, to the averments made in paragraph 4 of such affidavits-in-opposition. The respondent no. 1/Bank on affidavit submitted before this Court that the writ petitioner vide its resolution dated 09.08.2009, duly signed by the Director of the

company assigned fixed deposit of Rs. 30 lakhs as security for the purpose of obtaining a loan and accordingly, a credit facility was availed to the tune of Rs. 20 lakhs in favour of the Kumar & Company and Rs. 4 lakhs in favour of Debapriya Banerjee both being the third parties.

8. In support of his contention, learned advocate for the respondent no. 1/Bank draws attention to the Annexure R1/1 i.e., from Page Nos. 16 to 25 being the photocopy of the assigned fixed deposit receipts. It is submitted that even today, those assigned fixed deposit receipts in original are in the custody of the respondent no. 1/Bank. It is further submitted that in such a position, the petitioner cannot possess the original fixed deposit receipts as wrongly claimed in the writ petition.

9. In course of his reply, learned advocate for the writ petitioner draws attention of this Court to the Chapter-IV of the Banking Ombudsman Scheme, 2006. Attention of this Court is also drawn to Clause 8 i.e., grounds of complaint. It is submitted that from the grounds of complaint, it would reveal that the subject matter of the writ petition does not come under any of the grounds as mentioned in Clause 8 of Chapter IV of the aforementioned Scheme.

10. On perusal of the entire materials as placed before this Court, it appears to this Court that there are allegations and counter allegations with regard to the non-deposit and fixed deposit receipts followed by assignment of fixed deposit receipts by the writ petitioner in favour of

the respondent no. 1/Bank. Whether at this moment, the writ petitioner is in possession of the original fixed deposit receipts or the bank is in possession of the original assigned fixed deposit receipts, cannot be decided by this writ Court since the writ Court lacks the machinery to come to a finding with regard to the genuineness of those fixed deposit receipts.

11. In considered view of this Court, the issues involved in the instant writ petition can only be addressed by trial on evidence either by a common law forum or by any other appropriate forum having machinery to record evidence both oral and documentary.

12. In view of such, this Court is of considered view, the relief as sought for in the instant writ petition cannot be extended in favour of the writ petitioner for the reasons as discussed supra.

13. Since at the time of hearing of the instant writ petition, learned advocate for the respondent no. 1/Bank strongly contended that from the instant writ petition it is explicit that the writ petitioner has an alternative remedy which is why he ought to have approached to the Ombudsman of the RBI under the aforementioned Scheme, this Court proposes to look to the Clause 8 of Chapter 4 which is quoted below in verbatim.

"***Grounds of complaint***

(1) Any person may file a complaint with the Banking Ombudsman having jurisdiction on any one of the following grounds alleging deficiency in banking including internet banking or other services.

(a) ....
(b) ....
(c) ....
(d) ....
(e) ....
(f) ....
(g) ....
(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;
(i) ....
(j) ....
(k) ....
(l) ....
(m)
(n) ....
(o) ....
(p) ....
(q) ....
(r) ....
(s) ....
(t) ....
(u) ....
(2) ....
(3) ....”

14. On perusal of the aforementioned Clause, it reveals that Clause 8 of Chapter IV clearly postulates that in the event of delay, non-credit of proceeds to parties' account, non-payment of deposit, the person aggrieved may file complaint with the Banking Ombudsman having jurisdiction in respect of the aforementioned deficiency in service.

15. In view of such, this Court is in agreement with the learned advocate for the respondent no. 1/Bank that admittedly an alternative remedy is available to the writ petitioner for addressing his grievance and thus this Court must refrain itself from granting any relief to writ petitioner as prayed for.

16. In view of the discussion made hereinabove, this Court thus finds no merit in the instant writ petition and accordingly, the instant writ petition being **WPA 672 of 2012** along with all connected application, if therebe any, stands hereby dismissed.

17. Interim order(s), if thereby any, stand(s) hereby vacated.

18. Before parting with, liberty is given to the writ petitioner to address its grievance before the appropriate authority which is the subject matter of the instant writ petition.

19. Parties to act on the server copy of this order.

(Partha Sarathi Sen, J.)