



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 41048 OF 2019 (GM-RES)

BETWEEN:

DODDABALLAPUR SPINNING MILLS
A COMPANY REGISTERED UNDER THE
COMPANIES ACT, 1956 AND
HAVING ITS REGISTERED OFFICE AT NO.14,
SRILAKSHMI PRIYA, 8TH "B" MAIN
RMV EXTENSION, SADASHIVANAGAR
BANGALORE 560 080
REPRESENTED BY ITS DIRECTOR
SRI A ABHISHEK

...PETITIONER

(BY SRI. K V SATISH.,ADVOCATE)

AND:

1. THE BANKING OMBUDSMAN
RESERVE BANK OF INDIA
NO.10/3/8, NRUPATHUNGA ROAD,
BENGALURU 560 001.
2. ICICI BANK LTD
M.G. ROAD,
BENGALURU 560 001
REPRESENTED BY ITS CHIEF MANAGER
3. THE CHAIRMAN AND MANAGING DIRECTOR
ICICI BANK LTD
CORPORATE OFFICE
ICICI BANK TOWER
BANDRA KURLA COMPLEX
MUMBAI 400 051.

...RESPONDENTS

(BY SRI. KAVEESH SHARMA.,ADVOCATE FOR R1;
SMT. SREEDEVI K.B., ADVOCATE FOR
SRI. JAI M. PATIL., ADVOCATE FOR R3)





THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR DIRECTIONS IN THE NATURE OF CERTIORARI QUASHING THE IMPUGNED ORDER BEARING CTS NO. 201819002006174 DATED 19.6.2019 PASSED BY THE R-1 (ANNEXURE-H) AND ETC.

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

1. The petitioner is before this Court seeking for the following reliefs;
 - a. *Issue a Writ of Certiorari or directions in the nature of Certiorari quashing the impugned order bearing CTS No.201819002006174 dated 19.6.2019 passed by the Respondent No.1 (Annexure-H);*
 - b. *Consequently issue a writ order or directions in the nature of Certiorari directing the 2nd Respondent to cancel the Demand Draft bearing No.005209 dated 31.03.2010 for Rs.50 lakhs and credit the same to the account of the Petitioner along with interest @ 18% p.a. from the date of submission of DD for cancellation namely 19.7.2018 (Annexure-B) and;*
 - c. *Issue any other appropriate writ, order or direction as this Hon'ble Court deems fit under the facts and circumstances of the case, in the interest of justice and equity.*
2. The petitioner is a current account holder of the respondent No.2-Bank, on 31.3.2010 the petitioner secured/purchased a demand draft for sum of Rs.50



lakhs in the name of one Sri.P.Bache Gowda towards payment to be made to him on account of certain transactions between the petitioner and Sri.P.Bache Gowda. The agreement for sale between the petitioner and the said Sri.P.Bache Gowda having been terminated, the amount received by the Petitioner was sought to be refunded by way of the said demand draft. Sri.P.Bache Gowda did not accept it and a suit for specific performance was filed.

3. After much time taking note that the demand draft had expired the petitioner approached the respondent No.2-Bank, on 19.7.2018 with the original demand draft, requesting the bank to cancel the demand draft and credit the amounts into his current account.
4. The petitioner followed up the said request by email dated 10.8.2018. The respondent-bank in reply, stated that encashment of the demand draft would require confirmations/NOC from the payee.



5. By then Sri.P.Bache Gowda had expired hence the Respondent No.2 bank called upon the Petitioner to furnish no objections from the legal heirs of the payee/Sri.P.Bache Gowda to the satisfaction of the Bank, and in the absence of such confirmation, they would not credit the amount covered under the demand draft into the account of the petitioner.
6. The petitioner, thereafter, repeatedly followed up with the respondents, calling upon the respondent to place on record as to on what basis and under what law the same has been withheld. However, the respondent No.2-Bank was unable to place on record any rules, guidelines or law on which basis the same was being withheld.
7. Left with no alternative, the petitioner was constrained to get a legal notice issued on 5.9.2018, again calling upon the Bank to credit the aforesaid amount. The respondent No.2-Bank replied to the said legal notice, stating that the Demand Draft is in the unpaid status as per the bank records and as per



the process of the bank for cancellation of a demand draft, they would require the original demand draft, No Objection Certificate from the payee, which had earlier been communicated to the petitioner. Since only the original of the demand draft was received and No Objection from the payee was not received, the Bank had reiterated and categorically indicated that the refund of the monies was not possible and if the petitioner was aggrieved by said reply, to approach the respondent No.1-Banking Ombudsman.

8. It is in furtherance of the same that the petitioner lodged a complaint with the Banking Ombudsman on 5.1.2019, which came to be disposed by respondent No.1 on 19.6.2019, wherein the Banking Ombudsman took up the contention that the dispute between the petitioner and the payee was pending before a Court and as such dismissed the complaint filed by the petitioner. It is in that background that the petitioner is before this Court, seeking for the aforesaid reliefs.



9. Sri.K.V.Satish., learned counsel for the petitioner submits that;

9.1. There is no dispute about the demand draft being obtained by the petitioner from the respondent No.2-Bank and the petitioner having submitted the said demand draft to the respondent No.2-Bank for cancellation and crediting of the amount covered under the demand draft into his current account, from which the original demand draft had earlier been taken.

9.2. He submits that the demand draft having been obtained by the petitioner for refund of the consideration to the Sri.P.Bache Gowda. Sri.P.Bache Gowda having refused to accept the same, the petitioner had sought for cancellation of the demand draft.

9.3. His further submission is that there is no suit or proceeding pending between the petitioner and respondent No.2-Bank in any court. The



Banking Ombudsman completely misconstrued the suit pending between the petitioner and Sri.P.Bache Gowda to be one relating to this matter, when it was not so and the respondent No.1 completely abdicated his duties in rejecting the complaint filed by the petitioner without considering the matter on merits.

9.4. Lastly, he submits that the petitioner was constrained to file an application in the Commercial OS No.343 of 2021 seeking permission to deposit the amount in Court which came to be allowed vide order dated 23.12.2021.

9.5. Thereafter the petitioner once again approached the respondent No.2-Bank with a request to issue a demand draft for the very same amount in the name of the Court to enable the deposit thereof.

9.6. Though the respondent No.2-Bank had called upon the petitioner to furnish the indemnity



bond which was also furnished on 13.5.2022, the respondent No.2-Bank continued in withholding the amounts and did not credit the amounts to the account of the petitioner or issue a fresh demand draft.

9.7. His submission is that the respondent No.2-Bank has acted in a completely *malafide* manner retaining the amounts of the petitioner with the respondent No.2-Bank without refunding the amounts and the said amounts have been retained with the respondent No.2-Bank from the year 2010 till now. Though the request made for refund of the money was made by the petitioner in the year 2018.

9.8. He submits that the respondent No.2-Bank has acted dishonestly in a *malafide* manner and retained the money. Respondent No.1-the Banking Ombudsman has abdicated its duties requiring this Court to grant reliefs as sought for in the present petition.



10. Smt.Sreedevi.K.B., learned counsel appearing for respondents No.2 and 3-Bank on instructions from Mr.Rahul., Legal Manager of the Bank who is present before this Court today submits that;

10.1. It is the internal policy of the Bank not to cancel a demand draft of high value without the consent/No Objection of the payee.

10.2.On enquiry as to which law would permit the bank to do so, she reiterates that it is the internal policy of the Bank and is unable to point out any particular law or statute in relation thereto.

10.3.She further submits that there was a change in the name of the petitioner, and it is for that reason also that the amount could not be credited to the account of the petitioner.

10.4.Now the bank is ready to refund the amounts and in this regards she submits that a demand draft has been kept ready for being handed



over to the Petitioner for a sum of Rs. 50,00,000.

11. Sri. Kaveesh Sharma., learned counsel appearing for respondent No.1 today submits that respondent No.1 would be willing to reconsider the matter, if this Court were to so direct.
12. Heard Sri.K.V.Sathish., learned counsel appearing for the petitioner, Sri. Kaveesh Sharma., learned counsel appearing for respondent No.1 and Smt.Sreedevi.K.B., learned counsel appearing for respondents No.2 and 3. Perused papers.
13. Let me first deal with the contention of respondent No.1 that respondent No.1 will be willing to reconsider the matter, if this Court were to so direct. I am of the considered opinion that respondent No.1 having abdicated his duties and having completely misconstrued itself there would be no need for this Court to direct any reconsideration by respondent No.1. Respondent No.1 having been established to assist and protect the interest of a customer vis a vis



a bank in the event of the bank not performing its duties properly. The Banking ombudsman being an independent, impartial, and free person or office that investigates complaints against Banks, it was for respondent No.1 to have acted on the complaint and acted in the interest of the customer rather than dismissing the complaint. There is a duty imposed on the ombudsman to act by considering all the facts and the law applicable in the right perspective. I hope and trust that atleast in future the respondent No.1 will do so.

14. Insofar as respondents No.2 and 3-Bank are concerned the only contention of respondents No.2 and 3 is that they have an internal policy that they will not cancel the demand draft and refund the money to the drawer of a high value demand draft without there being a No Objection from the drawee/payee. No particular law sanctions such a policy. The said policy has also not been placed on



record except oral submissions which have been made in relation thereto.

15. It is therefore for the Reserve Bank of India to look into this matter and to consider whether such a policy by the respondent No.2-Bank is proper and justified and if not to take such action as may be necessary against respondent No.2-Bank.
16. This being so since a Bank cannot on the basis of an internal policy seek to override the law applicable in returning the amount due to a drawer of the demand draft, when the drawer himself seeks for cancellation of the demand draft by producing the original of the demand draft. The matter would have been different if the original demand draft was not available, it was lost and what was requested for was cancellation of a demand draft of which the original was not available.
17. In the present case original of the demand draft having been placed on record, there being no objection raised by the payee at any point of time, the Bank could not contend that without the No Objection from the payee the demand draft cannot be cancelled. The said conduct on part of the



respondent No.2 as rightly contended by Sr.K.V.Satish., learned counsel for the petitioner is not only *malafide* but a completely dishonest act on part of the Bank. The demand draft having expired long ago even if the payee were to present the said demand draft in the year 2018, the bank would not honour it, the validity of the demand draft being for a period of 6 months. The demand draft having been issued on 31.3.2010 the demand draft expired on 30.09.2010, thus when a request was made by the petitioner in the year 2018, the demand draft had expired long before such request being made. It is rather shocking that the bank seeks for the no objection from the payee when even if the payee had presented the demand draft the bank would not have honored the demand draft and paid the monies to the payee.

18. Sri.Rahul, Legal Manager who is present before this again tries to intervene and reiterate that it is the internal policy of the Bank and the bank has acted as per the said policy as regards which no fault can be found. As afore observed such an internal policy is



now to be considered by the Reserve Bank of India and necessary orders passed. In my considered opinion no such internal policy can be framed which is not sanctioned by law or which is contrary to law in force. This internal policy is also suspect since according to the bank it applies only to high value demand drafts and not low value demand drafts, I'am unable to accept such a contention from a bank. Furthermore, if that were to be the policy of the bank, it is not understood as to how the demand draft for a sum of Rs. 50,00,000 has been kept ready today contrary to the so called internal policy.

19. The above only establishes the speculative conduct of the bank, in making the petitioner run from pillar to post, by taking advantage of the delay in disposal of the matter and when the matter was taken up for hearing to hand over the above demand draft to close the matter. Such conduct on part of the bank is deprecated.
20. The demand draft having been accepted by the counsel for the petitioner without prejudice to



receiving the interest and amounts to be awarded under this order.

21. Once the demand draft expired and the demand draft had not been presented for payment, on expiry even if the payee were to present the demand draft, the bank not being in a position to honour it by payment, it was required for the bank to have credited the amount in the account of the petitioner on the expiry of the demand draft without waiting for a request. The demand draft having expired, the cancellation ought to have been automatic.

22. It would be for the Reserve Bank of India to also issue necessary guidelines as regards the status of a demand draft not presented for clearance during its validity and amongst other things, if the amount covered under the demand draft can be automatically credited to the account of the customer on expiry if the demand draft has purchased the same through her bank account.



23. The Demand draft having expired on 30.09.2010, the bank having held the monies with itself from the 31.09.2010 has not returned the monies to the petitioner despite a request having been made on 18.07.2018. The petitioner has in a *bonafide* manner not claimed interest on the said monies from 2010 till 18.07.2018, since the request for cancellation was made only on 18.07.2018 the petitioner has claimed the interest thereafter.
24. The bank having the benefit of these monies from the year 2010 till now which it could not have had if not for the dishonest conduct of holding back the demand draft, I am of the considered opinion that exemplary interest would have to be awarded in favour of the petitioner. However, since the petitioner has only sought for 18% interest, this Court refrains and restricts the interest to 18% per annum. If the Petitioner had claimed interest from 31.09.2010, this court would have granted the same.
25. However, I'am of the considered opinion that the conduct of the respondent-Bank requiring the petitioner to run from pillar to post, issue legal



notice, file complaint before the banking ombudsman and then file the present writ petition, would require punitive costs to be imposed on the respondent-Bank which is quantified at Rs.5 lakhs to be paid within 15 days from today.

26. In the above circumstances, I pass the following;

ORDERS

- i. The Writ petition is ***allowed.***
- ii. A certiorari is issued, the order bearing CTS No.201819002006174 dated 19.6.2019 passed by respondent No.1 at Annexure-H is quashed.
- iii. The demand draft for the principal amount of Rs.50 lakhs, having been handed over to the petitioner. Respondent no.2 bank is directed to credit the interest on the said amount calculated at 18% per annum from the date of submission of the demand draft for cancellation i.e., 19.07.2018 till the date of credit, the same to be done within a period of 15 days from today. If the amounts are not so deposited within the aforesaid period the interest shall stand enhanced to 24% per annum.
- iv. Respondent No.2 bank is also directed to make payment of a sum of Rs. 5,00,000 as punitive costs to the petitioner within 15 days from today, if the said amount is not paid with the time frame fixed, Respondent No.2 Bank would be liable to make payment of interest at 24% per annum.



- v. Registrar (Judicial) is directed to forward a copy of this order to the Deputy Governor RBI incharge of the Board for Financial Supervision (BFS) and the Department of Banking Supervision (DBS), as also to the head of Legal Department of RBI, for compliance with the order more particularly as stated in para 15 and para 22 above.

SD/-
(SURAJ GOVINDARAJ)
JUDGE

SR/List No.: 2 SI No.: 8