(1995) 11 MP CK 0035

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1533 of 1995

Kamal Chand Jain — APPELLANT

Vs

Banking Ombudsman and Others — RESPONDENT

Date of Decision : 03-11-1995

Acts Referred:
Banking Regulation Act, 1949 — Section 20

Citation : AIR 1996 MP 180 : (1998) 91 CompCas 410

Hon'ble Judges : Tejinder Singh Doabia, J

Bench : Single Bench

Advocate : A.M. Naik, for the Appellant; O.P. Sharma, for the Respondent

Judgement

T.S. Doabia, J.—The refusal on the part of the Banking Ombudsman to proceed with the complaint preferred by the petitioner, is the subject-matter of this writ-petition. The brief facts for the purpose of this petition be noticed.

2. According to the petitioner his entire business, stock, furniture and even domestic appliances were lost in a fire. The petitioner submits that the Andhra Bank, Kampoo Road, Gwalior was requested to give financial assistance. An application was submitted in the month of September, 1993. According to the petitioner as action was not taken, he preferred a complaint before the Banking Ombudsman. This has not been looked note for reason indicated in the order (Annexure p/1). The reason given isa suit stands filed by the Bank on the same subject matter. Recovery of amount advanced to the petitioner is sought to be made.

3. Notice of motion was issued.

Appearance has been put on behalf of Andhra Bank. In addition to the reasons given in Annexure P/1, one more objection has been taken. This objection is to the effect that complaint in terms of para 16(3)(a) of the scheme framed by Reserve Bank of India, copy whereof is Annexure P/6, has not been made. It is further submitted that the complaint which was made in September, 1993 cannot be looked into. This is because it is barred by limitation of one year. Reliance has been placed on Sub-clause (b) of the same clause referred to above. This is another provision in Sub-clause (d). It is to the effect that if the subject-matter of this complaint is the same regarding which any proceedings are pending before any of the authorities referred to therein then the same would not be entertained by Ombudsman. Para 16(3) is relevant and is quoted :--

"(3) No complaint to the Banking Ombudsman shall lie unless

(a) The complainant had before making a complaint to the Banking Ombudsman made a written representation to the Bank named in the complaint and either the bank had rejected the complaint or the complainant had not received any reply within a period of two months after the bank concerned received his representation or the complainant is not satisfied with the reply given to him by the bank

(b) The complaint is made not later than one year after the bank had rejected the representation or sent its final reply on the representation of the complainant.

(c) The complaint is not in respect of the same, subject-matter. which was settled through the office of the Banking Ombudsman in any previous proceedings whether received from the same complainant or any one of more of the parties concerned with the subject-matter.

(d) The complaint is not the same subject-matter, for which any proceedings before any court, tribunal or arbitrator or any other forum is pending or a decree or award or order of dismissal has already been passed by any such Court, tribunal, arbitrator or forum.

(e) The complaint is not frivolous or vexatious in nature.

4. According to the counsel for the Andhra Bank, as the suit has been filed the order Annexure P/1 has been rightly passed.

5. I am of the view that the objection taken by the Bank that before a complaint can be entertained the petitioner is to prefer a representation must be sustained. This is mandatory. In this case, no such representation has been filed. The representation filed in the year 1993 cannot be looked into because this was filed more than a year before the application was preferred before the banking Ombudsman. Bar of limitation indicated in Clause 16(3)(b) would be attracted.

6. Objection as to pendency of proceedings based on Clause 16(3)(d) be noticed.

7. The petitioner wanted some financial assistance. For thus an application was submitted in 1993. The suit which has been filed by the Artdhra Bank is for the recovery of some amount. The two matters are different. Apart from this, the reading of para 16(3)(d) when read along with para 16(3)(c) indicated that the proceedings which would come in the way of the Ombudsman in dealing, with the complaint should be such which are at the instance by the complainant. Any other interpretation would make the scheme ineffective. The idea is that

complainant should have only one remedy at a time. No doubt there is slight ambiguity in the wording but this has to be corrected with a view to make the scheme workable and effective.

8. As the representation was not filed within a year it cannot be considered. However, the petitioner would be at liberty to file a fresh representation, which shall be decided by the respondent-banking.

9. Let a copy of this order be sent to the Reserve Bank of India, Bombay so that what is implicated in Clause 16(3)(d) is made explicit.

10. Disposed of accordingly.