

(2023) 11 CAL CK 0015
In the Calcutta High Court

Case No : M.A.T. No. 1769 Of 2023, IA No. CAN 1 Of 2023

Bank Of India & Anr.

APPELLANT

Vs

Amit Kumar Kejriwal & Anr.

RESPONDENT

Date of Decision : 16-11-2023

Acts Referred:

Citation : (2023) 11 CAL CK 0015

Hon'ble Judges : T.S. Sivagnanam, CJ;Hiranmay Bhattacharyya, J

Bench : Division Bench

Advocate : Anuj Singh, Varun Kothari, Niharika Singh, Rupal Singh, Ashok Kr. Singh, Noella Banerjee, Dipak Dey, Avidipta Tarafder

Final Decision : Partly Allowed

Judgement

T.S. Sivagnanam, CJ

1. Affidavit of service filed in Court today is taken on record.
2. This intra-Court appeal by the Bank of India, respondent in W.P.A. 16291 of 2023 is directed against an order dated 8th July, 2023, largely focused on certain directions and observations made by the learned Single Bench in the impugned order. The writ petitioner was the erstwhile Director of Swati Mining Private Limited, which had availed certain financial facilities from the appellants/bank and ultimately, branded as a fraudulent transaction. The company in question is under liquidation pursuant to the orders passed by the National Company Law Tribunal in a proceeding initiated by the appellant/bank. The writ petitioner, who is the erstwhile Director of the company filed the writ petition challenging the classification of the writ petitioner's account from the status "fraud" in the website of the CRILC and for consequential reliefs. The primary ground on which the writ petition was filed is by contending that the procedure prescribed under the Master Circular issued by the Reserve Bank of India of the year 2016 has not been followed. There has been violation of principles of natural justice and the rule of audi alteram partem has been breached. In addition, it was contended

that the forensic audit report, which was placed before the NCLT, does not conclusively state that the transaction done by the company/borrower /guarantor is fraudulent. The learned Single Bench had disposed of the writ petition without calling for affidavits. The learned Single Bench was convinced that there has been violation of the procedure contemplated in the Master Circular issued by the Reserve Bank of India of the year 2016.

3. The learned advocate appearing for the respondent/writ petitioner has elaborately referred to various clauses in the 2016 circular and would point out that there has been gross, blatant violation of the procedure and consequently, the action of the appellants/bank in branding the respondent/writ petitioner as a fraudulent entity is illegal.

4. The learned advocate for the writ petitioner seeks to support the order passed by the learned Single Bench by contending that the learned writ Court having been satisfied that the proceedings initiated by the appellants/bank describing the status of the writ petitioner as "fraud" being bad in law, was justified in issuing consequential directions by directing the appellants/bank to reverse all actions, which have been initiated. The appellants/bank being aggrieved by certain observations and directions issued are on appeal before this Court.

5. The Hon'ble Supreme Court in *State Bank of India & Ors. vs. Rajesh Agarwal & Ors.*, (2023) 6 SCC 1 was deciding a bunch of appeals challenging the Master Circular issued by the Reserve Bank of India of the year 2016 primarily on the ground that no opportunity of being heard is envisaged to borrowers before classifying their accounts as fraudulent. The Hon'ble Supreme Court clarified that principles of natural justice are not applicable at the stage of reporting a criminal offence, which is a consistent position of law adopted by the Hon'ble Supreme Court. Thereafter the Hon'ble Supreme Court considered several of its earlier decisions and held that the decision taken by the lending institution while classifying an account as fraud is an administrative decision and therefore, principles of natural justice have to be read into the same. Ultimately, the Hon'ble Supreme Court held that classification of the borrowers' account as fraud was in violation of the principles of natural justice and granted liberty to the banks to take fresh steps in accordance with the decision of the Hon'ble Supreme Court in *Rajesh Agarwal* (supra).

6. So far as the findings recorded by the learned Single Bench with regard to the procedural irregularity is concerned, we find that the appellants/bank have not made out any case for interference with the said order. However, since the Court has come to the conclusion that there has been violation of principles of natural justice, liberty ought to have been granted to the appellants/bank to proceed afresh in accordance with law, if they so desire. We make such observation because it is not as if the appellants/bank lacked jurisdiction to declare an account as "fraudulent". In fact, the case of the writ petitioner itself is that there has been procedural violations, leading to violation of principles of natural justice. Therefore, while setting aside the classification of the account of the writ

petitioner/borrower as fraudulent, liberty ought to have been granted to the appellants/bank to initiate fresh action in accordance with law, if they so desire. Therefore, to that extent the order and direction issued by the learned writ Court requires to be modified.

7. In page-8 of the impugned order, the learned writ Court has directed the appellants/bank to take immediate steps for reversal of the impugned action by intimating the concerned authorities including investigating agencies concerned, the gist of the order passed by the Court to enable such agencies to de-classify the writ petitioner as well as the company as fraud.

8. The learned advocate appearing for the respondent/writ petitioner seeks to sustain this order and direction passed by the learned Single Bench and to support her contention reliance was placed on the decision of the Hon'ble Supreme Court in Kapil Agarwal & Ors. vs. Sanjay Sharma & Ors , (2021) 5 SCC 524, the decision of the High Court of Delhi in Uday J. Desai & Ors. vs. Union of India & Ors. MANU/DE/3599/2023 and the decision of the High Court of Bombay in SS Hemani vs. Reserve Bank of India & Ors., 2023 SCC OnLine Bom. 1226.

9. In Kapil Agarwal & Ors. (supra), the Hon'ble Supreme Court was satisfied that the criminal proceedings amounted to an abuse of the process of law and it amounted to bringing pressure upon the accused and in exercise of the inherent powers of the Hon'ble Supreme Court quashed the criminal proceedings. To be noted that the said decision arose out of a criminal miscellaneous writ petition filed by the writ petitioner before the Allahabad High Court and in the facts and circumstances, the Court has recorded that it is satisfied that there is abuse of the process of law and exercising its inherent jurisdiction, quashed the proceedings. We find the decision to be distinguishable on facts.

10. In Uday J. Desai & Ors. (supra), the Hon'ble Division Bench took note of the decision in Rajesh Agarwal (supra) and set aside the classification of the account as fraud, however, clarified that the order will not preclude the consortium of banks or any bank from independently taking action in accordance with law after affording an opportunity of being heard to the appellant therein. The decision in Uday J. Desai & Ors. (supra) would support the observations made by us in the preceding paragraph.

11. In SS Hemani (supra), the Hon'ble Division Bench took note of the decision of the Hon'ble Supreme Court in Rajesh Agarwal (supra) and in paragraph 11, the Division Bench has ordered the stay of the proceedings to continue till a particular date and it was restricted only to the actions by the bank under the Master Circular in question. Further, the F.I.R., which was de hors the Master Circular, was allowed to proceed further in the matter. The Division Bench also took note of the nature of directions issued by the Hon'ble Supreme Court in Rajesh Agarwal (supra).

12. At this juncture, it would be relevant to take note of paragraph 98 of the decision of Rajesh Agarwal (supra), which is the summary of the conclusion of

the judgment of the Hon'ble Supreme Court. In paragraph 98.1 the Hon'ble Supreme Court has held that no opportunity of being heard is required before an F.I.R. is lodged and registered. In paragraph 98.2, it has been held that classification of an account as fraud not only results in reporting the crime to the investigating agencies but also has other penal and civil consequences against the borrowers.

13. The issue regarding violation of the procedure under the Master Circular is a procedural error, which has been pointed out by the appellants and consequently, the appellants are said to have suffered civil consequences. Therefore, the learned Single Bench was right in setting aside the said proceedings, however, ought to have granted liberty to the appellants/bank to proceed afresh in accordance with law. In the light of the decision of the Hon'ble Supreme Court in *Rajesh Agarwal (supra)*, the orders and directions issued by the learned Single Bench in page 8 of the impugned order directing the appellants/bank to intimate the concerned authorities and the investigating agencies to take steps for reversal of the impugned action is not feasible of compliance as the criminal law has already been set in motion and such directions would be beyond the scope of the writ petition.

14. In the result, the appeal is allowed in part and while sustaining the order passed by the learned writ Court setting aside the classification of the writ petitioner and the company as fraud, liberty is granted to the appellants/bank to proceed afresh in accordance with law.

15. The other direction issued in page 8 to the appellants/bank to take immediate steps for reversal by intimating the concerned authorities including the investigating agencies is set aside. However, it is well open to the writ petitioner to work out his remedies in accordance with law with regard to the criminal proceedings, which have been initiated against him.

16. No costs.

17. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.