

(2024) 01 BOM CK 0097
In the Bombay High Court
Case No : Writ Petition No.14373 Of 2018

Shailesh Vishwanath Jambhale

APPELLANT

Vs

General Manager And Others

RESPONDENT

Date of Decision : 30-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2024) 01 BOM CK 0097

Hon'ble Judges : A. S. Chandurkar, J;Jitendra Jain, J

Bench : Division Bench

Advocate : Vilas B. Tapkir, Mrunmayi Khambete, Abhijeet Joshi, Advait Vajaratkar, Varsha Sawant

Final Decision : Allowed

Judgement

Jitendra Jain, J

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.
2. By this petition under Article 226 and 227 of the Constitution of India, the Petitioner seeks appropriate writ directing the Respondent Nos.2- Indian Banks' Association to remove his name from the "caution list".

Narrative of the events:-

(i) The Petitioner is practicing Advocate. In the year 2012, the Petitioner was empanelled as Panel Advocate of State Bank of Hyderabad now merged with Respondent No.1 (State Bank of India). The Respondent No.1 entrusted work to the Petitioner for obtaining Search and Title Report of the properties on which loan was to be sanctioned.

(ii) On 14th October 2014, 11th November 2014 and 9th December 2014, 3 Search and Title Reports with respect to 3 different properties were given by the Petitioner to the Respondent No.1. The Respondent No.1, thereafter, sanctioned loan on these properties of which the search report was given by the Petitioner.

Subsequently, a fraud came to be unearthed with regard to the loan sanctioned by the Respondent No.1 against the security of these properties.

(iii) In view of above, on 26th June 2015 and 30th June 2016, the Respondent No.1 issued a show cause notice to the Petitioner directing the Petitioner to give his comments on the lapses in furnishing the Title and Search Report without due care and caution. The Petitioner vide letters dated 7th July 2015 and 11th July 2016 replied to the said show cause and denied the allegations alleged in the said show cause notice.

(iv) On 1st August 2018, the Respondent No.2 replying to the Petitioner's Advocate stated that the Petitioner's name has been placed on the "Caution List" in accordance with the guidelines dated 27th August 2009 issued by the Respondent No.2. The Respondent No.2 further advised the Petitioner to approach the Respondent No.1 for removing his name from the "Caution list".

3. The reasons given for placing the Petitioner's name on the "Caution List" are as under:-

"(a) The advocate had failed to obtain certified copies of link documents and compare them, with the documents submitted by the borrower. Subsequently, the title deeds turned out to be fake.

(b) He admitted that he examined the photo copies only as against the extant guidelines to examine original documents.

(c) He failed to properly compare the documents provided to him with the records of Sub-Registrar's office.

(d) The advocate's gross negligence in verification of documents resulted to preparation of a fraud of Rs.4.69 Crores in respect of 6 Housing/Mortgage loans at SBH's Sinhgad Road Branch, Pune and resulted in huge loss to State Bank of Hyderabad."

4. It is on this backdrop, the Petitioner has approached this Court seeking direction to the Respondent Nos.1 and 2 to remove his name from the "Caution List".

Submission of the Petitioner:-

5. The Petitioner submitted that he has discharged his duties in submitting the Title and Search Report with due care and after examining the documents submitted by the Respondent No.1. The Petitioner submitted that the allegation of negligence in submitting these reports are incorrect. The Petitioner has also taken us through the report and submitted that he has taken due care and precaution in discharging his professional duties. The Petitioner submitted that since 2012, he has been engaged by Respondent No.1 and on various occasions given a negative report in favour of Bank to protect the interest of the Bank. The Petitioner further submitted that he has been placed on "Caution List" since 2016 and has already suffered on account of professional work for last 8 years. The

Petitioner further relied upon the decision of the Nagpur Bench of this Court in the case of Rajan Shrivallabha Deshpande Vs. Bank of Baroda & Anr. Writ Petition No.3616 of 2021 and the decision of this Court in the case of Mohana Raj Nair Vs. CBI 2013 SCC Online Bom 1279. The Petitioner, therefore, prayed that his name be removed from the "Caution List" as prayed for.

Submission of the Respondents:-

6. The Respondent No.1 opposed the petition and supported the action taken of placing the Petitioner's name on the "Caution List", since the Petitioner was negligent in discharging his professional duties. The Respondent No.1 further relied on Affidavit-in-reply dated 2nd February 2022 filed in the present proceedings and prayed that the petition be dismissed.

7. We have heard learned counsel for the Petitioner and the Respondent Nos.1 and 2 and with the assistance of the counsel have perused the pleadings, documents annexed thereto, reply and rejoinder.

8. The short point which arises for our consideration is whether the Petitioner could be held to be negligible so as to be placed in the "Caution List" by Respondent Nos.1 and 2. The Search and Title Report issued by the Petitioner on 14th October 2014, 11th November 2014 and 9th December 2014, expressly states that the documents scrutinised for the report are photocopies. These photocopies are given by the Respondent No.1-Bank to the Petitioner for carrying out the title and search report, therefore, the Respondent No.1 was very well aware at the time of receiving the report that the Search and Title Report are not based on certified copies, but are based on the photocopies. Therefore, the Respondent No.1 cannot now turn around and allege negligence against the Petitioner of the fact which they themselves were made aware by the Petitioner in the report itself. In the said report, the Petitioner has stated the process followed by him for giving his opinion on title and no fault is found in the procedure by Respondent No.1. The Petitioner has categorically stated in the report that prior to the mortgage, NOC from the society should be obtained. The Petitioner also expressly stated that original documents should be deposited for mortgage and intimation of the mortgage should be given to the Sub-registrar within 30 days from the date of notice. The Petitioner has also stated that his search report is based on the records available at the office of Sub-registrar and on the computer placed at JDR Office, Pune. In our view, the Petitioner as an Advocate has expressed his opinion and expressly stated the steps to be taken by the Respondent No.1 before sanctioning the loan i.e. by deposit of original documents, etc. If subsequently, title deeds are found to be faked, then the Petitioner cannot be held to be negligent since based on a perusal of the report, he can be said to have taken reasonable care and due diligence in discharging his duties.

9. It is important to note the guidelines issued by the Respondent No.1 to its branches with respect to Title cum Search investigation report. Clause 5 of the

said guidelines expressly states that branch officials should independently inspect the property to be mortgaged and enquire into the possession of the property, tenancy rights, ownership, litigation, etc. in respect of the property and no loan should be released without completing independent physical inspection of the property offered as security. Clause 6 of the said guidelines further provides that a notarised affidavit is to be obtained to the effect that the property proposed to be mortgaged is free from charges, incumbrances, litigation, attachment, etc. and that the mortgager has full an absolute powers to mortgage. In our view, the reasons given for placing the Petitioner on Caution List were really the responsibility of the officials of Respondent No.1 as per these guidelines, which appears to have not been observed by the officials of Respondent No.1. These responsibilities, now post unearthing of the fraud, cannot be shifted to the Petitioner to pass the buck.

10. It is also important to note that the aforesaid Circular dated 25 th February 2013 is addressed by the Respondent No.1 to its branches and there is no material shown to us that this was brought to the notice of the Petitioner at the time of empanellement. Therefore, the allegation that certified copies should be obtained by the Panel Advocate (as stated in the Circular), who shall compare the contents with the original documents and the Petitioner having not done so is guilty of negligence would not be correct. The said guideline also requires the branch of Respondent No.1 to take periodical inspection and obtain encumbrance certificate in respect of mortgage property. This was also responsibility of Respondent No.1 and not the Petitioner.

11. The Circular dated 18th November 2015 issued by the Respondent No.1 to its branches in continuation of its 2013 Circular requires the branches to review the performance of Advocate every year. Prior to 2015, there does not appear to be any adverse remark against the performance of the Petitioner. The Petitioner has also stated that on many occasions, he has given a negative report in favour of the Bank against sanction of loan which has not been disputed by Respondent No.1. The Respondent No.1 in its reply has stated that in addition to 3 Title reports against which show cause notices were issued, there were other 4 cases of the Petitioner's issuing title report, where the fraud was unearth. However, the Respondent No.1 could not produce any document with respect to the said 4 Title reports against the Petitioner. Nothing stopped Respondent No.1 to issue show cause notice if similar fraud was found against the Petitioner. This also indicates that the Petitioner cannot be found to be negligent in discharging his duty.

12. With respect to title report dated 9th December 2014 in connection with Row House No.C at village Baner, Pune, Respondent No.1 issued the demand draft in favour of the seller and on behalf of the borrower on 29th November 2014 itself. The Respondent No.1 did not even wait for the title report before making the demand draft, therefore, the allegation of negligence against the Petitioner on this count fails by the conduct of Respondent No.1 itself.

13. The Respondent No.1 in paragraph 5(ee) of its affidavit-in-reply has admitted

that the Petitioner is not involved in the fraud or in sanction or disbursement of the loan. In the said reply, the Respondent No.1 has also stated that the Petitioner is not hand in gloves with the borrower, but the only ground is on account of professional negligence which has observed above, according to us is not correct. There is no criminal proceedings initiated against the Petitioner by Respondent No.1 which also justifies the stand taken by the Respondent No.1 in their reply referred to hereinabove.

14. There is no rebuttal to the Petitioner's rejoinder wherein it is stated that in annual review meeting, Respondent No.1 did not point out about obtaining certified copies and comparing the same with the original. The Respondent No.1 has obtained certified copies of title documents only after the fraud took place which clearly indicates that the Respondent No.1 themselves were granting loan without following the procedure laid down in their Circular.

15. It is also important to note that since 2016, the Petitioner has been placed on the Caution List by the Respondent No.2 and this has resulted into none of the Banks giving professional work to the Petitioner till today. The Petitioner, assuming any case is made out for negligence (which according to us is not so) still, the Petitioner has already suffered for last 8 years and further the Petitioner has made a statement before us that he does not wish to get empanelled on the Panel of the Respondent No.1-Bank. In our view, it would be too harsh to keep Petitioner on "Caution List" forever. In our view, this would also justify the prayer sought to be made by the Petitioner in the present petition.

16. The Petitioner is justified in placing reliance on the decision of this Court in the case of Rajan Shrivallabha Deshpande (supra) to which one of us (Justice A. S. Chandurkar) is a party. On a very similar facts, the Coordinate Bench has in a detailed order after referring to the Supreme Court decisions have quashed the show cause notice. In our view, this decision would apply with equal force to the facts of the present Petitioner. The Petitioner is also justified in placing reliance upon the decision of this Court in the case of Smt. Mohana Raj Nair (supra), wherein criminal proceedings initiated against an Advocate on similar fact situation was quashed by this Court.

17. To conclude, in our view, the action of Respondent No.2 in placing the Petitioner on "Caution List" is liable to be quashed since there is no element of fraud involved even according to the Respondent Nos.1 and 2 coupled with the fact that the Petitioner is sought to be held negligent disregarding the opinion expressed by him in the title search reports. The Respondent Nos.1 and 2 would thus be required to delete the name of the Petitioner from the said "Caution List".

18. Petition is allowed in terms of prayer clause (a), which reads thus:-

"a. This Hon'ble Court be pleased to issue writ of mandamus or any other appropriate writ or order in the nature of writ and be pleased to call for Record and Proceeding from Respondent Nos.1 and 2 and after going through the same, be pleased to direct Respondent No.2 herein to remove the name of the

Petitioner from the Caution List forthwith.”

19. No order as to costs.