

Kanta Devi Arya vs Reserve Bank Of India & Ors on 3 July, 2020

Author: Jayant Nath

Bench: Jayant Nath

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 3924/2020

KANTA DEVI ARYA

..... Petitioner

Through Mr.Dayan Krishnan, Sr.Adv. with
Ms.Priyadarshini Verma, Mr. Sanjeevi Sheshadri
and Mr. Aarohi Mikkilinen, Adv.

versus

RESERVE BANK OF INDIA & ORS.

..... Respondent

Through Mr.Jitendra Mohapatra with
Mr.Santosh Rout, Adv. for Respondent No-2/Bank
of Maharashtra
Mr.Vipin and Ms.Ekta , Khangawal Adv. for
Bank of India/R-3
Mr.Sidhartha Barua for Respondent No 6/ IDBI
Bank

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% 03.07.2020 This hearing is conducted through Video-Conferencing. CM No.14038-14039/2020 Exemption allowed, subject to all just exceptions. Applications stand disposed of.

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1. Issue notice. Learned counsel appearing for respondents no.2,3 and 6 respectively accept notice. Notice be issued to other respondents returnable on 26.8.2020. Counter-Affidavits be filed within three weeks. Rejoinder, thereto, if any, be filed within three weeks thereafter.

2. The accompanying Writ Petition is filed by the petitioner seeking to quash the circular dated 1.7.2016 issued by respondent No.1. Directions are also sought to set aside the impugned action of respondent No.2 or respondent No.3 if any, in declaring the account of the petitioner maintained

under the name of respondent No.4 as a fraud. Petitioner is the Ex. Director of respondent No.4.

3. It is further stated in the petition that respondent No.4 company was granted consortium limits upto Rs.76.87 crores. Respondent No.2 bank was a consortium leader alongwith Respondents No.3, 5 and 6. On 29.6.2015 respondent No.2 bank declared the account of respondent No.4 as NPA. Thereafter respondents No.3,5 and 6 also declared the account of respondent No.4 company as NPA. An OA was also filed by respondents No.2,3 and 5 before DRT seeking recovery of a sum of Rs.362,46,77,500/- against the respondent No.4 company. The said OA is pending adjudication. On 20.04.2018 the Delhi High Court admitted a winding up petition and appointed the Official Liquidator as the Provisional Liquidator for respondent No.4.

4. It is the case of the petitioner that Bank of India on 6.5.2020 informed the petitioner that Bank of Maharashtra has conducted a forensic audit and has classified the account as fraud on 2.12.2019. The communication also W.P.(C) 3924/2020 Page 2 states that a report has been filed with the Central Fraud Registry and on CRILIC on 3.12.2019.

5. Learned senior counsel for the petitioner submits that the Bank of Maharashtra has till date neither communicated to the petitioner that the account in question has been declared fraud nor issued any show cause notice nor given any hearing to the petitioner before passing an order which has grave civil consequences.

6. Learned senior counsel for the petitioner relies upon an order of this court in the case of WP(C) 306/2019 passed in the case of Apple Sponge and Power Limited vs. RBI dated 16.6.2020 to submit that the facts of this case are virtually identical and this court may pass appropriate interim orders in this case.

7. I may look at the said order dated 16.6.2020 passed in WP(C)306/2019. Relevant portion of the said order reads as follows:-

"CM APPL. 12569/2020(interim relief)

3. This application is filed on behalf of the petitioner Nos. 3 to 5 seeking interim relief to restrain the proposed respondent No.3/SBI from taking any coercive action pursuant to declaring them as 'fraud' in terms of the impugned circular dated 01.07.2016.

4. The case of the petitioners/applicants is that they were availing the credit facilities from PNB/Respondent No.2 and SBI and other consortium bank. The present petition is filed challenging the circular of RBI dated 01.07.2016 being violative of Article 14 of the Constitution of India as it does not provide an opportunity of representation or hearing to an aggrieved party before declaring it as a fraud.

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5. It is further stated that the applicants got knowledge of the order declaring the applicants as fraud passed by SBI when an authorized representative of the petitioner Companies visited the branch office of SBI on 05.06.2020. It was then, petitioners 3 to 5 were informed that they have been declared as fraud and have been reported as fraud upon CRILC platform of respondent No.1. It is pleaded that drastic consequences follow on account of the same. Reliance is placed on the order of this Court dated 15.02.2019 stating that the said interim order was also passed on identical facts and circumstances and on identical orders passed by Respondent No.2 Bank.

6. Learned counsel has entered appearance for SBI. He has pointed out that SBI has already in terms of the circular of RBI dated 01.07.2016 reported the matter to CBI and that nothing further remains to be done by SBI. He further submits that there is a material distinction between the case of SBI and respondent No.2-Bank.

7. I may first look at the order of this court dated 15.02.2019. Relevant paras of the said order read as follows:-

"9. The contentions and counter-contentions notwithstanding, in my prima facie view there clearly appears to be something amiss inasmuch as RBI's Master Directions dated 01.07.2016 relating to classification and reporting of 'fraud' does not contain any provision for issuance of show-cause notice or affording a hearing to the affected party, even though a decision by a bank, whether taken individually or collectively with other banks, to classify an account as 'fraud' is a significant administrative decision taken in the commercial realm, having serious consequences for the account holder. That is to say, while a bank may most certainly report fraudulent transactions in an account to law enforcement agencies under the criminal law regime without issuing a show cause notice or hearing an affected party, but if an account is to be declared 'fraud' by an administrative decision in the W.P.(C) 3924/2020 Page 4 framework of civil law, such action it appears on first principles, cannot be taken without giving to the affected party an opportunity of hearing to show cause against it.

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11. It is noteworthy that while the RBI circular dealing with 'wilful defaulters' provides a mechanism whereby a hearing is given to the affected party, no opportunity of hearing appears to be available in the circular that deals with declaring an account as 'fraud', which latter is a much more serious matter.

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17. To me it prima facie appears that declaring an account as 'fraud' would arise in a case of egregious default on the part of an account holder, something more than the

account holder being a 'wilful defaulter'. For an account to be declared as 'fraud' must entail an element of criminality on the part of the account holder, which ought to be inferred only on the basis of some substantial material which must be put to the errant account holder; and after considering any explanation such account holder has to offer; and not unilaterally by a stroke of the pen.

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19. In the circumstances, without prejudice to the rights and contentions of the parties, all of which are kept open, it is directed that respondent No. 2/bank shall not take any further steps or actions prejudicial to the petitioners based upon the petitioners' account being declared 'fraud' until the next date of hearing."

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8. Clearly, the court while passing the said order dated 15.02.2019 was prima facie of view that RBI's master directions dated 01.07.2016 relating to Classification and Recording of 'fraud' does not contain any provision for issuance of show cause notice or affording a hearing to an affected party, even though a decision by a bank to classify an account as a 'fraud' is a significant administrative decision which has serious consequences. The court also held that reporting of fraudulent transactions to law enforcement agencies under the criminal law regime would not require issuing of a show cause notice or hearing of an affected party. However, the present decision is an administrative decision in the framework of civil law.

9. In my opinion, the facts of the case pertaining to respondent No. 2 against whom the order dated 15.02.2019 was passed and facts as stated in this application are identical. The aforesaid order would clearly apply to the facts and circumstances of the present case also.

10. Without prejudice to the rights and contentions of the parties, all of which are kept open, SBI will not take any further steps or actions prejudicial to the petitioners based on the petitioners' account being declared fraud till the next date of hearing.

11. It is clarified that this interim order does not prevent SBI from issuing a show cause notice to the petitioners and passing a reasoned order after giving a personal hearing to the petitioners. They are free to pass a reasoned order in terms of the circular dated 01.07.2016. This order will also not in any manner hamper any steps or investigations that are sought to be carried out by the concerned criminal investigating agencies including CBI."

8. Keeping in view the facts of this case the above legal position will prima facie apply to this case. The respondents will maintain status quo as of today till the next date of hearing. It is clarified that the Bank of Maharashtra is free to issue a show cause notice to the petitioner and to thereafter on

W.P.(C) 3924/2020 Page 6 receipt of a reply give necessary hearing through video conferencing to the petitioner/her representative. Thereafter a reasoned order, as per law, may be passed.

9. Issue notice. Learned counsel appearing for respondents no.2,3 and 6 respectively accept notice. Notice be issued to other respondents returnable on 26.8.2020.

JAYANT NATH, J

JULY 03, 2020
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