

17.08.2026
SL No.1
Court No.12
(gc)

**FMA 716 of 2021
CAN 1 of 2021**

**State Bank of India & Ors.
Vs.
Uday Narayan Ghosh & Uday N. Ghosh & Ors.**

Mr. Ashim Kumar Routh,
Mr. Soudip Pal Chowdhury,
Mrs. Sanchita Dey Pal Chowdhury,
Mrs. Sudha Adak,
Ms. Manishka Dhar,
Mr. Subhayan Barik

.....for the Appellants/SBI.

Mr. Saibal Acharjee,
Mr. Ambu Bindu Chakraborty,
Mr. Swagatam Deb

....for the Respondent No.1.

1. The appeal arises out of a judgment and order dated February 19, 2021, passed by a learned Single Judge in WPA No.11563 of 2020. His Lordship allowed the writ petition, thereby, setting aside the inclusion of the name of the writ petitioner/respondent no.1 in the Caution List of the Indian Banks Association (in short "IBA"). His Lordship further directed the appellants and the Indian Banks Association, the respondent no.2 herein, to pay cost of Rs.25,000/- each to the writ respondent No. 1 for unnecessary harassment, which was caused to him. However, His Lordship directed that the pending suit and the criminal proceedings against the writ petitioner would not be influenced by the judgment impugned before us.

2. Mr. Routh, learned Advocate for the appellants submits that the relationship between the appellants and the writ petitioner was contractual. The writ petitioner was an empanelled Advocate of the State Bank of Bikaner and Jaipur, which ultimately merged with the State Bank of India. He submits that the writ petition was, thus, not maintainable. The bank had every right to empanel and depanel its Advocates, without affording any opportunity of being heard. The private arrangement between the bank and the learned Advocate could not be subject to judicial review. The writ court lacked the jurisdiction to interfere with the internal workings of the bank. According to Mr. Routh, the Reserve Bank of India (RBI) had issued certain circulars with regard to the inclusion of third party entities in the Caution List in order to prevent fraud. There was evidence galore, against the learned Advocate/writ petition which would indicate commission of fraud on the bank. Keeping in view the welfare of the country and the fact that the bank was dealing with public money, the consequential steps taken against the learned empaneled Advocate for misleading the bank and giving erroneous information with regard to the title of the property sought to be mortgaged, the IBA had rightly included the name of the writ petitioner in the Caution List. Inclusion of the

name of the writ petitioner in the Caution List, is not a punitive action. Further opportunity was provided to the writ petitioner to approach the bank with relevant documents in support of his innocence. Thereafter, before any decision could be taken by the bank as a consequence of inclusion of the name of the writ petitioner in the Caution List, the writ petition was filed and the incorporation of the name of the writ petitioner in the caution list was set aside.

3. The power of the IBA emanates from the circular of the RBI and the said circular is still in force. The circular was not challenged before the writ court. It is further submitted that opportunity to explain was given to the writ petitioner, but he did not take advantage of such opportunity. Ultimately, the IBA did not have any option, but to include the name of the writ petitioner in the Caution List. Reliance was placed on various decisions of several High Courts and the Apex Court namely:-

- i) Radhakrishna Agarwal & Ors. Vs. State of Bihar reported at AIR 1977 SC 1496;*
- ii) State of U.P. & Ors. Etc Vs. U.P. State Law Officers Association & Ors. Etc. reported at AIR 1994 SC 1654;*
- iii) The R. Anbazhagan Vs. The Central Bank of India & Anr., being Writ*

Appeal No.728 of 2015 dated 29th April, 2016;

iv) Sunit Kumar Agarwal Vs. The Asst. General Manager & Ors. being WA No.1750 of 2024 dated 14th July, 2026.

4. Mr. Acharjee, learned Advocate appearing for the writ petitioner/respondent no.1 submits that the appeal has become infructuous, inasmuch as, the order of His Lordship had been complied with. The name of the writ petitioner has been removed from the Caution List by the bank. The cost has been paid.
5. Mr. Acharjee relies on a decision of the Hon'ble Apex Court in ***Ajay Vijn Vs. Indian Banks Association & Ors., being SLP No.10787 of 2024 dated 7th July, 2026*** in support of the contention that, inclusion of the name of a third party entity of the IBA was a punitive action. Moreover, the circular of the RBI on which reliance had been placed by the appellants, was issued to prevent fraud against the bank. Mere negligence of the learned Advocate was not covered by the said circular. He further submits that, in view of the civil consequences by the inclusion of the name of the learned Advocate in the Caution List of the IBA, the writ petition was maintainable. Mr. Acharjee relies on various observations and findings of the learned Trial Judge in support of the contention that, the writ

petitioner was not given an opportunity even to understand the reason behind inclusion of his name in the Caution List. He relies on the findings of His Lordship, to substantiate that the writ petitioner had issued several letters to the IBA, calling for documents and reasons on the basis of which his name was included in the Caution List, but the IBA failed to revert back to the writ petitioner.

6. Taking us through the decision of the Hon'ble Apex Court, Mr. Acharjee submits that, on similar facts, the Hon'ble Apex Court had entertained an appeal arising from a writ petition and decided in favour of the learned Advocate who had challenged inclusion of his name in the Caution List of the IBA. In the case before the Hon'ble Apex Court, the High Court had dismissed the writ petition on the ground that IBA was not state within the meaning of Article 12 of the Constitution of India and, therefore, no writ petition would lie. Their Lordships of the Hon'ble Apex Court held that, the concerned High Court had approached the case from a narrow perspective. It was next submitted by Mr. Acharjee that, fraud was required to be pleaded and proved. While the IBA included the name of the writ petitioner in the Caution List, elements of fraud which persuaded the association to include the name of the writ petitioner was found absent in the said list. The

list merely provided that the writ petitioner had submitted a defective Title Investigation Report (TIR), which turned out to be untrue and factually incorrect. According to Mr. Acharjee, this, prima facie, finding of the IBA did not establish fraud.

7. The issue before us is whether the learned Trial Judge exceeded his jurisdiction in entertaining the writ petition and in directing removal of the name of the writ petitioner from the caution list. Moreover, whether the finding that the writ petition was unnecessarily harassed because principles of natural justice had not been complied with before inclusion of his name in the IBA's Caution List, is also to be decided. While dealing with the issue of jurisdiction of the writ court, we find that, in the decision of **Ajay Vijn** (supra), the Hon'ble Apex Court had held that dismissal of the writ petition by the High Court by the order under challenge before the Hon'ble Apex Court, on the ground of non-maintainability, was erroneous. Their Lordships held that the IBA may have been an association, but the inclusion of the name of the concerned learned Advocate in the Caution List with remarks, cast an aspersion on his professional competence and integrity. Thus, the list which was published with the name of the writ petitioner, in our view, involved civil consequences. The moment his name was included in

the list, he suffered a stigma. The learned Trial Judge was of the specific finding that, no opportunity was given to the writ petitioner to explain his stand by the IBA, before inclusion of his name in the Caution List. His Lordship had also come to a specific finding that, the writ petitioner had approached the IBA by writing letters, but those letters went unheeded. In an intra-court appeal, we are not inclined to scan the evidence further and ascertain whether these factual findings of the learned Trial Judge were correct or not. We refer to the relevant paragraphs of the judgment impugned before us to hold that not only was the writ petition maintainable, but the prayers were rightly allowed.

“26. The inability to find relevant records due to delay on the part of the petitioner, as pleaded by the bank, is belied by its prompt production of several documents pertaining to the petitioner’s other disputes with the bank’s Habra branch. There was no occasion for the petitioner to challenge his inclusion in the caution list before the petitioner first came to know of the matter in 2018, since the erstwhile State Bank of Bikaner and Jaipur (at whose behest the petitioner was incriminated by the IBA) had been assigning work to the petitioner till its merger with the respondent no. 1 on April 1, 2017. The merger apparently gave a further handle to the respondent no. 1 to heckle the petitioner due to the past disputes between the two, on the basis of a much prior enlistment of the petitioner in the caution list by

the IBA, which was never disclosed even in the complaints lodged by the respondent no. 1 against the petitioner before several forums.

27. No iota of evidence is found on record to establish, even prima facie, that any prior communication or right of representation/ hearing was given to the petitioner before inclusion of his name in the caution list, apart from such claim being made in the caution list itself. Despite having been given sufficient opportunity in this writ petition, neither the IBA nor the respondent no. 1 have been able to come up with a single piece of incriminating evidence against the petitioner justifying the inclusion of his name in the caution list in 2014 or the recommendation for such inclusion issued by the erstwhile State Bank of Bikaner and Jaipur.”

8. Thus, even if the empanelment of a learned Advocate and consequential allotment of work to the learned Advocate by the bank, falls within the domain of contractual relationship between a principal and agent, the cascading effect of inclusion of the name of the writ petitioner in the IBA's Caution List directly affected his profession and took away his right to a dignified existence. The rights guaranteed under Articles 14, 19(1)(g) and 21 of the Constitution of India were denied by the unilateral and arbitrary inclusion of the name of the writ petitioner in the Caution List, on the ground of furnishing untrue information. The

matter required a deeper by the IBA, and the writ petitioner should have been heard. We hold so, especially because there is a clear finding of the learned Single Judge that the writ petitioner was not furnished with any document, before inclusion of his name in the Caution List. He was not given any opportunity to explain the report, prior to such inclusion.

9. Any administrative decision, must satisfy the test of reasonableness. In this case, the reasons on the basis of which the action was taken by IBA are absent, as we find that the TIR [Title Investigation Report], which is a part of the record, which was furnished by the learned Advocate, stated that the original title deed in respect of the property had been mortgaged earlier, but the Advocate's opinion was that there were no further anomalies and it was a marketable property and could be mortgaged. Whether such comment or legal opinion would satisfy the tests to establish fraud on his part, is now pending trial in the criminal proceeding. Moreover, we rely on the observations of the Hon'ble Apex Court, especially with regard to the scope and object of the Caution List as per the RBI guidelines. Although Mr. Routh has tried to justify the act of inclusion of the name of the learned Advocate in the Caution List, by referring to the regulatory

framework of the RBI dealing with reporting of fraudulent activities of third party entities. We find that the Hon'ble Apex Court had categorically come to a finding that, the regulatory framework of the RBI was designed and intended to prevent fraud and not to extend the said framework to instances of erroneous or negligent legal opinion. We quote the paragraphs of **Ajay Vijn** (supra) for convenience:-

“25. The difficulty, however, arises when a framework intended primarily for fraud prevention is extended to cases involving alleged professional negligence or an erroneous legal opinion rendered by an advocate in discharge of professional duties. The present case does not involve any allegation of fraud, collusion, criminal misconduct, or deliberate facilitation of fraudulent activity by the appellant. The allegation, as borne out from the record, pertains only to negligence in conducting title verification and rendering a legal opinion. There can be no dispute that a bank or financial institution is entitled to internally assess the quality of services rendered by professionals engaged by it and, on that basis, take a decision regarding continuation or discontinuation of empanelment. An advocate has no right to be empanelled with a bank or to be continued so, as the relationship between the bank and the advocate is primarily contractual and also founded upon trust and confidence. Consequently, where a bank is dissatisfied with the services rendered, it is always open to it to discontinue such engagement or decline future empanelment.

26. However, the matter stands on an entirely different footing when banks, followed by the IBA, seek to place the name of an advocate on a Caution List or in a list circulated under the title "Circulation of Names of Third Parties Involved in Frauds", accompanied by remarks touching upon the professional incompetence or negligence of the concerned lawyer. The Caution List may or may not be a public document, but its circulation to all the banking institutions operates as a declaration about (in)competence, as well as the negative character of the advocate, having serious implications on his right to practice his profession. In the present case, a careful scrutiny of the record, particularly the communication dated 27.07.2018 issued by respondent no. 2, reveals that the allegation against the appellant is not one of fraud, collusion, or deliberate wrongdoing, but something relatable to negligence in rendering a title verification opinion.

27. Fraud, by its very nature, imports an element of mens rea and deliberate intention and design to defraud. An erroneous legal opinion or an omission in the course of due diligence, absent any allegation of dishonest intent or deliberate facilitation of illegality, cannot be elevated to the level of fraud. Had appellant been alleged to have committed fraud and subjected to criminal prosecution, entirely different considerations would arise. That, however, is not even the case with the respondents. Their stated object is to caution member banks regarding the alleged inefficiency or professional negligence of the appellant.

28. In our considered opinion, the circulars issued by the RBI in exercise of power under Section 35A to alert member banks against fraudulent transactions, as also fraudulent professionals, cannot be interpreted to authorise banks or the IBA to include cases of alleged negligence or professional (in)competence of an advocate in the said list. While the RBI may issue directions to ensure integrity in banking transactions, such power does not include declaring an advocate professionally negligent by including his name on a Caution List, which is meant to identify fraudulent entities. In the present case, where the allegation against the appellant pertains solely to negligence, the inclusion of his name in the Caution List is unsustainable. In view of the above discussion and analysis, we hold that the respondent Bank and IBA cannot include the name of the appellant in the Caution List. Consequently, we direct them to remove the appellant's name from the Caution List with immediate effect.

10. Their Lordship had opined that a mechanism had been devised with the Bar Council as a disciplinary body, to decide the issue of professional misconduct of learned Advocates and, in such situations, the proper course of action for IBA would have been to refer the matter to the Bar Council. We find from the order impugned before us that, the appellants had referred the matter to the Bar Council of West Bengal, but the learned Advocate was

discharged from the charge of professional misconduct. We further observe that the learned Advocate is not an employee of the bank. Thus, permitting the IBA to refer a finding of fraud before the fraud was actually proved, in our opinion was arbitrary, irrational and premature. We find that a civil suit and criminal proceeding are pending against the writ petitioner.

11. Under such circumstances, in the event the bank is successful in proving fraud and the learned Advocate is found to be guilty of the same in either of the proceedings, the IBA and the other banks are at liberty to proceed in accordance with the RBI guidelines or its circulars. Till such time, the order impugned shall prevail. The suit and criminal proceedings will continue in accordance with law and independently. We do not express any opinion on the merits of those.

12. The judgments relied upon by Mr. Routh deal with contractual relationship between the learned Advocate and the bank and/or public authority, The issues involved therein were either blacklisting or reduction of fees of Advocate or cancellation of the existing panel by the learned legal remembrancer, an appointment of a fresh set of special counsel. They are distinguishable on facts. We have given our reasons as

to why the factual difference in this case permitted the learned Single Judge to interfere with the Caution List, in exercise of his powers of judicial review.

13. Accordingly, the appeal and the connected application are disposed of, with a minor modification in the order of His Lordship.

14. However, there shall be no order as to costs.

15. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Shampa Sarkar, J.)

(Arjun Ray Mukherjee, J.)