IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8120 OF 2015

M/s.North Kanara Goud Saraswat
Bramhin Cooperative Bank Ltd. …Petitioner
vs.
Ananda Jyotiram Patil & Ors. ....Respondents

AND

WRIT PETITION NO. 8121 OF 2015

M/s.North Kanara Goud Saraswat
Bramhin Cooperative Bank Ltd. …Petitioner
vs.
Ganesh Shankarrao Suryavanshi & Ors. ....Respondents

Mr.Kiran Bapat I/b. Mr.Avinash Hari Fatangare for Petitioner.
Mr.Abhijeet A. Desai for Respondents.

CORAM : S.C. GUPTE, J.

4 MAY 2016

P.C. :

Heard learned Counsel for the parties. Rule. By consent taken up for hearing forthwith.

2 These petitions challenge orders passed by the Labour Court at Kolhapur, which are confirmed in appeal by the Industrial Court at Kolhapur, on applications under Sections 78 and 79 of the Bombay Industrial Relations Act, 1946 ("the Act"). The impugned orders are Part I judgments, holding the inquiry conducted against the Respondent employees to be illegal and the findings of the Enquiry Officer to be

perverse.

3 The Respondents were working as clerk and checking clerk with Shahu Co-operative Bank Ltd., which has since been taken over by the Petitioner in the year 2008. The charge against the Respondents was that whilst working as clerks with the bank, they received more than 3000 third party dividend warrants from one Sainath Co-operative Credit Society ("Sainath") in the current account of the branch where the Respondents were working. These dividend warrants were sent to the head office of the bank for clearance and upon clearance, the amounts were credited to the account of Sainath. Thereafter, Sainath withdrew the amounts from their account. The case of the Petitioner is that apart from the Negotiable Instruments Act and general principles of banking, there is a specific Reserve Bank circular instructing all banks not to accept from their constituents any dividend warrants or cheques, which are in the names of third parties, which the Respondents were well aware of and despite which third party warrants were allowed to be encashed by the Respondents. On a complaint by one of the third parties, whose warrant was illegally encashed on account of the acts of the Respondents, an inquiry was initiated by appointing an Enquiry Officer. During the inquiry, the Enquiry Officer found that three staff members, including the Respondents herein, had in connivance with each other defrauded the bank by accepting and submitting for clearance third party dividend warrants at the instance of the constituent - Sainath Co-operative Credit Society. All the three persons participated in the inquiry. Oral and documentary evidence was led before the Enquiry Officer. The Enquiry Officer found the two Respondents herein guilty of charges levelled against them, whereupon the services of the two Respondents were terminated by the bank. The Respondents filed their respective applications

under Section 78 of the Act before the Labour Court at Kolhapur for reinstatement and continuity in service with full back wages. The Labour Court, by its impugned order and judgment dated 7 July 2012, held that the inquiry conducted against the Respondents was not fair and proper and that the findings of the Enquiry Officer were perverse. This order was challenged by the Petitioner before the Industrial Court in an appeal under Section 84(1)(a) of the Act. The Industrial Court, by its order dated 2 May 2015, dismissed the appeal and confirmed the impugned Part I judgment and order passed by the Labour Court. The Petitioner has challenged the orders of the Labour Court and the Industrial Court in the present writ petition, under Articles 226 and 227 of the Constitution of India.

4 The Enquiry Officer, in his report, after affording adequate opportunity to the chargsheeted employees, and after taking into account documentary and oral evidence submitted before him and arguments advanced on either sides, held all the three chargesheeted employees, including the Respondents herein, guilty of the charges of misappropriation in connivance with the office bearers of Sainath of the sum of Rs.27,71,599.75 by accepting and sending for clearance third party dividend / interest warrants. The conclusion drawn by the Enquiry Officer was based, firstly, on various admissions of the Respondents, namely, that the Respondents worked with the Uma Talkies Branch of the Petitioner bank around the relevant time, respectively, in the post of clerk and checking clerk; that Sainath maintained a current account at the Uma Talkies Branch; and that the Respondents did handle the relevant dividend / interest warrants. Apart from these admissions, it is also an admitted position that the concerned dividend warrants presented by Sainath Co-operative Credit Society were all third party dividend / interest warrants and that these

dividend / interest warrants were crossed warrants. These warrants were accepted by the Respondents even though the payees mentioned therein, namely, the holders of the warrants, had no accounts with the branch of the Petitioner bank. There were criminal complaints filed in respect of misappropriation of amounts of these dividend warrants with the local police station. It is hardly debatable that crossed account payee dividend warrant or cheque in the name of a third party payee who has no account with the bank cannot be accepted by a bank. Apart from this commonplace knowledge, there is a specific circular of the Reserve Bank particularly in respect of dividend / interest warrants that there were many reported instances of thefts of dividend / interest warrants and that these stolen warrants were deposited in the names of parties, who were not payees of the warrants and that the amounts were thereby misappropriated. In the light of this, the Reserve Bank had specifically directed banks not to accept such third party dividend warrants. There is evidence on record that these instructions were communicated by the Petitioner bank to its employees. There are documents on record in the inquiry that the staff of the bank was given specific training in this behalf. The Respondents did not dispute the fact that the third party warrants were accepted by the Respondents at the instance of Sainath, but their defence was that they did so at the instructions of one Mr.D.A. Kadam, Manager of the particular Branch of the Petitioner, who was also one of the chargesheeted employees. The Enquiry Officer, in the first place, held that the instructions of the Manager, which were said to be oral and given in the presence of the Secretary of Sainath, were not proved by the Respondents. The Enquiry Officer particularly noted that the witness, in whose presence the instructions were purportedly given by the Manager, was not examined by the Respondents. Besides, none of the Respondents deposed before the Enquiry Officer. On the basis of the material before him, the Enquiry Officer held in his report that both the Respondents and the Manager of the Branch were jointly responsible for the acceptance and sending for clearance of the third party dividend warrants presented by Sainath. The Enquiry Officer also found that bearer cheques of Sainath were allowed for withdrawal by the Respondent in Writ Petition No.8121/2015. The Enquiry Officer found that both the Respondents ought to have refused to accept the dividend warrants and send them for onward clearance by the head office. They ought to know that under the Negotiable Instruments Act, such third party instruments could not be accepted by them. The Enquiry Officer also found that though the Respondents stated in their defence that the instruments were accepted by them at the instructions of Mr.Kadam, Manager of the Branch, the Respondents ought to have informed the head office about such acceptance and ought to have confirmed the instructions of the Manager with the head office, but that there was no evidence about the same. The Enquiry Officer, in the premises, found the defence of the Respondents without any merit. As for the Respondents' defence that various other employees of the Petitioner bank, including the higher ups in the head office, were responsible for clearance and encashing of third party dividend warrants, the Enquiry Officer found that the other staff members were also issued show cause notices, responses to which were submitted by the concerned employees. The Enquiry Officer held that whether or not these other staff members should be chargesheeted and inquiry instituted against them, was not a matter which came within his purview. In the premises, the Enquiry Officer held the Respondents to be guilty of the charges framed against them.

5 Ordinarily, in disciplinary proceedings, where the Enquiry Officer acts as a quasi judicial body, the Labour Court is not expected to

reappreciate the evidence as if it were a full-fledged appeal court. The Supreme Court in the case of **Usha Breco Mazdoor Sangh vs. Management of Usha Breco Limited**[1] held that in a case where the materials brought on record by the Enquiry Officer fall for consideration by the Labour Court, it should be slow to interfere therewith. It must come to a conclusion that the case was a "proper" one therefor. The Labour Court ought not to interfere with the findings of the Enquiry Officer only because it is lawful to do so or that another view is possible. The Supreme Court held that even assuming that, for all intent and purport, the Labour Court acts as an appellate authority over the judgment of the Enquiry Officer, it would exercise an appropriate restraint. The court held as follows :

> "31. It is one thing to say that the finding of an enquiry officer is perverse or betrays the well-known doctrine of proportionality but it is another thing to say that only because two views are possible, the Labour Court shall interfere therewith. In other words, it is one thing to say that on the basis of the materials on record, the Labour Court comes to a conclusion that a verdict of guilt has been arrived at by the enquiry officer where the materials suggested otherwise but it is another thing to say that such a verdict was also a possible view.
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> 32. For the aforementioned purpose, certain basic principles must be kept in mind viz. even the first appellate court although is entitled to interfere with the findings of a trial court in terms of Section 96 of the Code of Civil Procedure, ordinarily a finding of fact arrived at on the basis of the oral evidence by the trial court should be accepted. In Chinthamani Ammal v. Nandagopal Gounder [(2007) 4 SCC 163], this Court observed: (SCC p. 168, paras 18-19)
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> "18. Furthermore, when the learned trial Judge

1 **(2008) 5 SCC 554**

> arrived at a finding on the basis of appreciation of oral evidence, the first appellate court could have reversed the same only on assigning sufficient reasons therefor. Save and except the said statement of DW 2, the learned Judge did not consider any other materials brought on record by the parties.
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> 19. In Madholal Sindhu v. Official Assignee of Bombay (AIR 1950 FC 21), it was observed: (AIR p. 30, para 21)
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> '21. ... It is true that a Judge of first instance can never be treated as infalliable in determining on which side the truth lies and like other tribunals he may go wrong on questions of fact, but on such matters if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at, the appeal court should not lightly interfere with the judgment."
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> (See also Madhusudan Das vs. Narayanibai.)"

6 In the light of these principles, when we examine the facts of the present case, it is apparent that the Enquiry Officer's finding was clearly sustainable on the basis of the evidence before him. The view taken by the Enquiry Officer on the basis of the material before him is not only a possible view, but a pre-eminently reasonable view to take. Acceptance of the dividend warrants presented by Sainath, all of which were admittedly in the name of third parties, on the part of Respondents, who were respectively working as checking clerk and clerk with the Petitioner bank, cannot but be termed as a misconduct. Apart from the basic principles of the Negotiable Instruments Act, which any bank clerk ought to know, there is a specific circular concerning dividend / interest warrants issued by the Reserve Bank of India notifying all banks that the banks shall not accept any third party dividend warrants. The concerned dividend warrants were crossed account payee warrants and could not have been accepted by the Respondents under

any circumstances. That the Manager of the branch instructed them to accept the warrants is no excuse. As rightly held by the Enquiry Officer, far from accepting such instructions without any remonstrance, the Respondents ought to have sounded the head office and confirmed such instructions from the head office.

7 Learned Counsel for the Respondents submitted that in the case of misappropriation, the onus was on the Petitioner to show actual misappropriation by the delinquent employees of a sum of over Rs.27 lakhs. He submitted that a case of misappropriation does not go hand in hand with the case of negligence. Acceptance of third party cheques at the instance of a constituent and allowing the constituent to withdraw the wrongly collected amounts, which affords no protection to the bank as against the real payees, is nothing but misappropriation. In the minimum, it conveys negligence, but in the face of a decided pattern where more than 3000 such third party warrants were accepted from one particular party, it spells out nothing short of misappropriation. It is a matter of fact that third party dividend warrants presented by the constituent were accepted by the Respondents and sent to the head office for clearance; the amounts realized were allowed to be withdrawn by the constituent by the Respondents. These facts together constitute an adequate basis for a finding of both negligence and misappropriation.

8 Learned Counsel for the Respondents also submitted that the Respondents were merely collectors of these dividend warrants and had no role to play insofar as clearance of these warrants is concerned. The argument is merely required to be stated to be rejected. The gravamen of the charge lies in the very collection of third party dividend warrants at the

instance of the constituent and transmitting the same to the head office for onward clearing. Once the dividend warrant is dispatched to the clearance department of the head office, the clearance department is not expected to check if the payee has an account with the branch from which the dividend warrant was dispatched for the clearance. It is the duty of the accepting branch to ensure that the dividend warrant is accepted only in the account of the payee named therein and not in the account of an altogether different party.

9 One more complaint on the part of the Respondents, which appears to have found favour with the courts below, is that the Enquiry Officer did not direct production of documents, which were necessary to fix the responsibilities of the other officers of the Petitioner bank, including higher ups in the bank. In the first place, the responsibility of other staff members, including higher ups, in the matter is quite beside the point. We are concerned here with the role played by the Respondents in the matter of misappropriation. Secondly, and at any rate, it is for the Respondents to show what relevance did these documents have and whether their non-production had caused any prejudice to the Respondents in the matter of the domestic inquiry. The Respondents never stepped into the box before the Enquiry Officer. They never made out any case that the material sought to be produced before the Enquiry Officer was relevant for the purposes of their defence. The impugned orders of the courts below indicate that these documents have been generally referred to as “documents like books, clearing registers, advice registers, letters received by the bank, complaint from Dr.Mrs.Komal Adarkar, special audit report given by Reserve Bank of India." Reference to production of these documents generally without particulars, and without indicating their specific purpose, may be nothing

but a fishing inquiry, which, in any event, the Enquiry Officer was not expected to undertake. Our Court in the case of **Advani Oerlikon Limited vs. Shashikant M. Sable**[2] relying on the judgments in the cases of **K.L. Tripathi vs. State Bank of India**[3] and **P.D. Agarwal vs. State Bank of India**[4]**,** held that before a domestic inquiry was set aside, the workman must plead and prove prejudice. If there is no material on record to indicate that any element of inquiry, including non-production of documents, has caused any particular prejudice to the delinquent workman, the general plea on his part that the inquiry is vitiated, cannot be accepted. There is, thus, no merit in the objection.

9 In sum, there is no reason whatsoever for the courts below to hold either that the inquiry was vitiated by any illegality or that the finding of the Enquiry Officer was in any way perverse. The courts below have clearly exceeded their jurisdiction and committed a grave error in re-appreciating the entire evidence, that too in a clearly faulty and unsustainable manner, and coming to a totally perverse conclusion. The rule is, accordingly, made absolute in both the petitions and the impugned orders of the courts below are quashed and set aside. There shall be no order as to costs.

(S.C. Gupte, J.)

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2 **2008 I CLR 383**
3 **(1984) 1 SCC 43**
4 **(2006) 8 SCC 776**