THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITON No. 13936 OF 2007

ORDER:

This writ petition is filed seeking to set aside the order dated 10.03.2006 passed by the Associate Manager, Employees Relations-India, second respondent, read with letter dated 21.12.2005 of the H.R. Relationship Manager, Technology & Operations, Standard Chartered Bank, Mumbai, first respondent, as illegal and arbitrary.

2. The brief facts are that petitioner was working as a Manager, Payment Services, Standard Chartered Bank, Somajiguda Branch, Hyderabad. In the year 2004, a complaint of forgery was lodged against him and when the same was referred to the police station for investigation, a case in Crime No.411 of 2004 under Sections 468 and 420 IPC was registered against the petitioner. The substance of the complaint was that the complainant's son married one Najma Sultana and while working in Goa she had developed illegal intimacy with the petitioner and by conspiring with others have fabricated a Will dated 20.02.1997 purported to have been written by his son Md.Arifuddin. Further accused No.1 and the petitioner had withdrawn amounts standing in the name of Md.Arifuddin on the strength of a probate obtained from the Additional Chief Judge, CCC, Hyderabad. Various other omissions and commissions were alleged against the petitioner as well as said Najma Sultana, who was shown as accused No.1. A copy of the complaint was also marked to the various

authorities in the Bank in whose employment the petitioner was working. It is the allegation of the petitioner that the third respondent persuaded him to handover resignation letter with a promise that the same shall be kept with him till the whole issue gets settled. Further, in breach of the understanding the third respondent had processed the resignation letter and thereby petitioner came to be relieved from the services of the Standard Chartered Bank. As a matter of fact petitioner was acquitted from the court case and it is only on account of fraud played by the third respondent and petitioner was deprived of his services and hence, the relieving order dated 21.12.2005 as well as the resignation letter dated 10.03.2006 deserves to be set aside.

3. A counter affidavit is filed on behalf of the Standard Chartered Bank, sworn by the Manager, Wholesale Banking Operations, Hyderabad, wherein a primary objection was taken once again to the maintainability of the writ petition on the ground that the Bank is not discharging any public functions and it is a private Bank and it is not a State within the meaning of Article 12 of the Constitution of India. There is also no allegation of any of the rights of the petitioner having been violated by the respondent Bank and, as such, the invocation of writ jurisdiction is wholly inappropriate and the relationship between the petitioner and the respondent Bank is only that of employer and employee relationship and as such the writ petition itself is not maintainable and deserves to be dismissed. Even on facts in detail it

was set out as to how and in what circumstances the petitioner's resignation letter came to be accepted. It is further asserted that petitioner himself through his letters had sought for settlement of the service benefits and dues.

4. Heard learned counsel for the petitioner and learned counsel appearing for the respondent Bank.

5. Learned counsel for the respondent Bank also relied on the judgments of the Supreme Court in *Federal Bank Ltd., v. Sagar Thomas & Ors* in Civil Appeal No.106 of 2001 dated 26.09.2003, to buttress his argument that no writ would lie against a private bank.

6. The Bombay High Court in the case of *Anupama Naik v. Standard Chartered Bank & Ors.,* in O.O.C.J.Writ Petition No.956 of 2007, who was the party respondent, held as follows:

> "21. The dictum of the Supreme Court in the case of Federal Bank (supra) puts the mater beyond controversy that against a private Bank carrying banking activities simpliciter and in absence of any violation of a statutory obligation, the writ would not lie. The Supreme Court in the case of Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and others {2002 (5) SCC 111} elucidated the principles which would bring an instrumentality or other authorities within the ambit of the expression "State". The fundamental conditions required to be satisfied by the authorities were functions, regulatory control, financial control and the object for which such an instrumentality or Corporation or other body was created. The distinction between an instrumentality or agency of a State and other authorities had to be kept in mind and authority must be an authority *sui juris* to fall within the meaning of expression "other authorities". The Supreme Court held that CSIR in

that case was to be covered under the said expression keeping in view the management and control entirely in the hands of the persons appointed by the Government in accordance with the Rules. There is nothing before us to show that regulatory function or management control is vested in the Board or body nominated and appointed by the Government and they were only carrying on the private business of banking. In the present case as well, there is no material placed before the court and, in fact, is not even the case of the petitioner that there has been violation of any statutory provisions. It cannot be said that an employee has a fundamental right to claim stay of departmental proceedings wherever on similar fact he is being prosecuted in accordance with the provisions of the Criminal Procedure Code. We are unable to accept the contention that in the facts of the present case, the writ would lie against the respondent Bank.

22. In the result, the present writ petition is hereby dismissed, while leaving the parties to bear their own costs. However, we would hasten to issue direction to the respondents to ensure that the departmental proceedings are concluded expeditiously."

7. To the same effect in the context of challenge to the action taken by the respondent therein under the SARFAESI Act, after referring to a large number of cases of the Supreme Court, the Division Bench of this court in W.P.Nos.11760 of 2010 and batch by order dated 26.04.2012, held as follows:

"When there is a direct decision of the Supreme Court on the question whether a private scheduled Bank is a State within the meaning of Article 12 and/or where such private Bank performs public functions by providing banking services is considered the High Court cannot ignore the decision. Any such contra view of the High Court deviating from the ratio laid down by the Supreme Court would be a judgment *per incuriam* (State of U.P. v. synthetics and Chemicals Limited). We do not intend to take such adventurous path. Further, the following observations in *Mardia Chemicals, A.Umarani* *v. Cooperative Societies* (2004) 7 SCC 112, which was also delivered by the same learned Judge who authored *Federal Bank* also supports the petitioners. (para 68 of SCC).

> "The main thrust of the petitioners as indicated in the earlier part of this judgment to challenge the validity of the impugned enactment is that no adjudicatory mechanism is available to the borrower to ventilate his grievance through an independent adjudicatory authority. Access to justice, it is submitted, is the hallmark of our system.... So far as remedy under Article 226 of the Constitution of India is concerned, the submission is that it maynot always be available since the dispute may be only between two private parties, the banking companies, cooperative banks or financial institutions, foreign banks, some of them may not be authortieis within the meaning of Article 12 of the Constitution fo India against whom a writ petition could be maintainable. Thus the positiont aht emerges is that a borrower is virtually left with no remedy. Where access to the court is prohibited and no proper adjudicatory mechanism is provided such a law is unconstitutional and cannot survive. In support of the aforesaid contentions besides others, reliance has particularly been placed upon the case L.Chandra Kumar v. Union of India {(1997) 3 SCC 261} and Survey Dev Rai v. Ram Chander Raiu {(2003) 6 SCC 675}. A reference has also been made to the decision of Kihoto HOllohan v. Zachillhu {1992 Supp (2) SCC 651}. In the case of L.Chandra Kumar, it is held, some adjudicatory process through an independent agency is essential for determining the rights of the parties, more particularly when the consequences which flow from the offending Act defeat the civil rights of a party."

After saying so, in paragraph 80(5) (of SCC) which contains the propositions, the Supreme Court held that

> "As discussed earlier in this judgment, we find that it will bneopen to maintain a civil suit in civil court, within the narrow scope and on the limited grounds on which they are permissible, in the matters relating to an English mortgage enforceable without intervention of the court."

Thus, in a narrow scope on limited grounds, if a suit is still maintainable if the conclusion with regard to the breach of contract by the bank is reached de hors the contract or in an arbitrary

> manner, a writ petition as observed by *Mardia Chemicals* certainly bars against private bank.
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> The counsel brought to the notice of this court an unreported decision of the Division Bench in W.P.No.200 of 2006 dated 27.02.2006 and an unreported Judgment of another Division Bench in W.A.No.412 of 2008, dated 24.09.2009 in support of the contention that a writ would still lie against a private bank. We are afraid we need not deal with this matter in view of the conclusion as above, which are based on binding decisions of the Supreme Court. We accordingly hold that the writ petitions filed against SRCs which are private bodies are not maintainable."

8. In the light of the authoritative pronouncement of a Division Bench of this court, this writ petition is not maintainable inasmuch this court has come to the conclusion that it is unnecessary for this court to enter into the factual aspects which have been set out in the writ petition and which was urged by this court.

9. With the above direction, the Writ Petition is disposed of. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

JUSTICE CHALLA KODANDA RAM

November 30, 2016
LMV