FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.307 OF 2017

Vasanti Commodities Ltd. .. Petitioner

vs.

HDFC Bank Ltd. .. Respondent

Mr.Dinesh P. Guchiya for the petitioner
Mr.Rohann Cama a/w Mr.Rupesh Waghe i/b M/s.K.Ashar and Co. for the respondents

CORAM : K. K. TATED, J.
DATE : MARCH 17, 2017

P.C.:

1 Heard the learned counsel for the parties.

2 By this petition, petitioner is seeking direction against the respondent Bank to remove his Account No.00600340023512 from the list of non-withdrawals account and / or any another restrictions like attachment/frozen and petitioner be allowed to operate his account as usual.

3 The learned counsel for the respondent submits that Writ Petition itself is not maintainable, because the respondent is a private banking institution. In support of that he relies on the Apex Court judgment in the matter of ***Federal Bank Ltd. vs. Sagar Thomas & Ors., 2003(10) SCC 733***. He relies on paragraph 31 to 33 of that judgment which reads thus:

"31. The other case which has been heavily relied upon is Andi Mukta (supra). It is no doubt held that a Mandamus can be issued to any person or authority performing public duty, owing positive obligation to the affected party. The writ petition was held to be maintainable since the teacher whose services were terminated by the institution was affiliated to the university and was governed by the Ordinances, casting certain obligations which it owed to that petitioner. But it is not the case here. Our attention has been drawn by the learned counsel for the appellant to paragraphs 12, 13 and 21 of the decision (Andi Mukta)to indicate that even according to this case no writ would lie against the private body except where it has some obligation to discharge which is statutory or of public character."

"32. Merely because the Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided under Section 5(c)(a) of the Banking Regulation Act does not mean that the private companies carrying on the business of or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. Provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for acquiring authority."

"33. For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. A

> private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. Respondent's service with the bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed."

4 On last occasion, matter was adjourned at the request of advocate for petitioner to point out how the present Writ Petition is maintainable. Today, the learned counsel for the petitioner submits that he does not have any other authority to that effect.

5 Considering the submissions made by the learned counsel for the respondent and the judgment of the Apex Court in the matter ***Federal Bank Ltd. vs. Sagar Thomas & Ors.*** (Supra), I do not find any reason to entertain the present Writ Petition. Hence, Writ Petition stands rejected as not maintainable.

JUDGE