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

WRIT PETITION (L) NO. 601 OF 2019

Vimal Shah and Ors.	}	Petitioners
versus		
N.KI.G.S.B. Co.operative Bank	}	
Limited and Ors.	}	Respondents

Mr.Harish Pandya with Mr.Pankaj Bafna for the petitioners.

Mr.S.D.Butala with Mr.Harshad Sathe and Ms.Swati Khot for respondent no.1.

Mr.Parag Kale for respondent no.8.

Ms.P.H.Kantharia-Government Pleader with Ms.Deepali Patankar-Honorary Assistant to the Government Pleader for respondent nos.14 and 15 (State).

Mr.N.C.Walimbe with Mr.Paran S.Patil for respondent no.16.

CORAM :- S. C. DHARMADHIKARI &
G. S. PATEL, JJ.

DATED :- JUNE 12, 2019

P.C. :-

1. Having heard Mr.Pandya at great length and perusing the writ petition and its annexures, we are unable to agree with him that a writ petition under Article 226 of the Constitution of India is the remedy available to the petitioners. In such jurisdiction, we cannot take evidence, much less render a finding and conclusion leading to a decree in favour of the petitioners.

2. The writ petition is founded on the allegation that the bank is seeking to recover from the petitioners a sum of Rs.1.66 crores. This amount has not been directed to be transferred to a third party by the petitioners, but a fraud has been perpetuated on the petitioners and this is an unauthorised transfer from the petitioners' bank account using online banking facilities. Prayer clause (b) of the petition says that the records from respondent nos. 1 to 14 and particularly their website/ on-line portals and other documents may be called for, and which will show that the first respondents unauthorisedly and fraudulently allowed huge aggregate amount to be transferred to third party beneficiaries' bank accounts. The first respondent appears to be the bank with whom the petitioners have an account. That was a cash credit facility. It is at its branch office at Mahim. It is alleged that huge amounts have been transferred to third party beneficiaries' bank accounts maintained by respondent nos. 4 to 12. Then, the petitioner alleges that the second respondent wrongfully and fraudulently deactivated and stopped the petitioner no. 1's mobile number, and this was after the petitioner no.1 received several missed calls from unknown mobile numbers.

3. We do not think that in writ jurisdiction it is permissible to trace the moneys into the hands of another banker alleged to be aiding its own constituent under a transaction that the petitioner claims is fraudulent.

4. Pertinently, the counsel would submit that there is an admission of the liability. Reliance is placed upon Exhibit 'I', which has been now added by an amendment. That document is at page 113 of the paper book. At page 113B is a circular of the Reserve Bank of India (RBI) addressed to all Scheduled Commercial Banks and all Small Finance Banks and Payments Banks. The subject is "Customer Protection". It is to limit the liability of customers in unauthorised electronic banking transactions. Mr.Pandya would submit that this and the further document, namely, the tables or annexures to this primary document, will establish that this is a case where the transfer from the petitioners' account is both unauthorised and fraudulent.

5. We are unable to agree with him for more than one reason. What the first respondent bank seems to be informing is based on a communication of the RBI to Mr. Vimal Shah, copy of which is at page 113K of the paper book. There, the said Vimal Shah sought some information. He wanted copy of FMR-1 as filed by the first respondent bank for a fraudulent transaction report with RBI under the regulation for the period from 1st April, 2018 to 31st March, 2019. The information provided to this Vimal Shah is a copy of FMR-1 filed by the first respondent bank after applying the severability clause under section 10 of the Right to Information Act, 2005 read with section 8(1)(j) of the Act. A copy of the inspection report carried out by the RBI is not available. In regard to "steps taken by the first respondent bank to credit the amount of Mr.Vimal Shah", information is said to be not available. As to "action taken report on filing police complaint", again information is not available. Then the information is with regard to setting up a investigation mechanism for frauds reported in FMR-1 by the respondent no.1 bank.

6. Now, this and the extract or annexures to this document, far from any admission of liability, only says that certain steps were taken by the first respondent after the complaint was made.

7. We do not think that only based on this document and without anything more, can a direction be issued to the bank (first respondent) to trace the money in the hands of several other bankers and recover it and pay it over to the petitioner. Such a relief can be sought only by laying a suit in a competent civil court and proving the collusion and fraud of other bankers, and their constituents with the petitioners' banker.

8. The argument of Mr.Pandya is that such a suit would be barred *ex-facie* given the language of section 61 of the Information Technology Act, 2000, a bare perusal of which would denote that anything which is to be decided or which can be decided by an adjudicating authority appointed under that Act and an appellate tribunal constituted under that Act, cannot be determined or decided by a civil court. We do not think that this would by itself and without anything more bar a civil suit of the nature proposed to be instituted by the petitioners. The petitioners *inter alia* will be suing the bankers and would be insisting on repayment of money or compensation/ damages for the loss caused on account of the wrongful or fraudulent act.

9. Once we say that there is a dispute on facts, we only refer to the communications of the petitioners with their own bank. In the first place, at page 12 of the petition, the assertion is that the petitioners never opted for on-line transactions, far from giving any authority to transfer funds from their accounts by this process. However, in the communications addressed to the petitioners, there is a reference to written instructions for such transactions given on-line. For instance, in the letter of the petitioners' advocate, there is a reference in para 3 that the petitioners, namely, Premix Enterprises, a registered partnership firm, would routinely transfer the required amount for payment. This is from the current account and by giving instructions on-line. The assertion is not to the contrary in that the petitioners never dealt with the bank save and except by issuance of a cheque drawn on it. There is also a charge or allegation in this correspondence that the petitioners do not rule out the involvement of the first respondent bank. It is very clear that they have named one Ms.Radhika as well as Mr.Nadkarni as being responsible for the demand of Rs.1.66 crores siphoned from their account. We do not think that all these allegations, in the absence of oral and documentary evidence, can be accepted by us on the basis of what Mr.Pandya says is an admission. There is no admission of liability which can be culled out from the annexures to the petition. It is, therefore, our view that this petition is not the remedy of the petitioner to recover the amount allegedly siphoned of from their accounts.

10. Needless to clarify that we have only highlighted the controversy between the parties and we have not expressed any firm opinion on the controversy.

11. With the aforesaid observations, the writ petition is rejected.

(G.S.PATEL, J.) **(S.C.DHARMADHIKARI, J.)**