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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2227 OF 2021

Randhir Shivajirao Naik & Anr. …Petitioners
Versus
Reserve Bank of India & Ors. … Respondents

Dr Birendra Saraf, Senior Advocate *with Adv. Ranjeev Carvalho alongwith with Adv. Umang Mehta, i/b Taurus Legal, for the Petitioners.*
Mr Prasad Shenoy *a/w. Aditi Phatak, i/b Udwadia & Co, for the Respondent No.1.*
Mr Y. S. Jahagirdar, **Senior Advocate** *with Mr VS Kapse, Anoushka Goyal, for the Respondent No.2.*
Mr Nitin Thakkar, Senior Advocate *a/w. Mr Rohit Gupta and Ruturaj Bankar for the Respondent No.3.*

CORAM : G.S. Patel & Madhav J. Jamdar, JJ.

DATED: 16th November 2021

ORAL JUDGMENT (*per G.S. Patel, J*):

1. Rule. Respondents waive service. By consent, rule is made returnable forthwith and taken up for final disposal.

2. The Writ Petition under Article 226 of the Constitution of India is brought by three individuals who erstwhile Directors on the board of the 3rd Respondent Company, Shivaji Cane Processors Ltd.

3. The challenge in this petition is, firstly to a show cause notice dated 2nd February 2021 issued by the 2nd Respondent, Shree Warana Sahakari Bank Ltd. and to an impugned order passed by the 2nd Respondent Bank on 9th June 2021. The 1st Respondent to the Petition is the Reserve Bank of India.

4. Prayer clauses (a) to (d) of the Petition at pages 44 and 45 read thus:-

> (a) That this Hon'ble Court be pleased to pass a writ of mandamus or any other writ, order or direction in the nature of mandamus commanding the Respondent No.1 to forthwith issue necessary guidelines/instructions restraining Respondent No.2, from undertaking the process of identification, adjudication and declaration of wilful defaulters and/or from acting in pursuance of the Master Circulars dated 1st July 2014 and 1st July 2015;
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> (b) That this Hon'ble Court be pleased to issue a writ of certiorari and any other writ, order or direction in the nature of certiorari calling for the papers and proceedings which is culminated into the issuance of the impugned show cause notice dated 2nd February 2021 and after examining the

> legality, validity and proprietary thereof be pleased to quash and set aside the same;
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> (c) That this Hon'ble Court be pleased to issue a writ of certiorari and any other writ, order or direction in the nature of certiorari calling for the papers and proceedings which is culminated into the issuance of the impugned order dated 9th June 2021 and after examining the legality, validity and proprietary thereof be pleased to quash and set aside the same;
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> (d) That this Hon'ble Court be pleased to hold and declare that the Master Circulars dated 1st July 2014 and 1st July 2015 are not applicable to the Respondent No. 2 as they are a Non-Scheduled Cooperative Bank;”

5. The matter was first moved on 28th June 2021 (S.C. Gupte and M.S. Karnik, JJ.). This is the order that came to be passed on that day:-

> “ Heard learned Counsel for the Petitioners and learned Counsel for Respondent No.2-bank as well the Resolution Professional, representing Respondent No.3-company.
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> 2. The Petitioners were Directors on the board of Respondent No.3-company. They have been suspended from acting as directors, being classified as wilful defaulters by Respondent No.2-bank as per Reserve Bank of India (RBI) guidelines. It is, principally, the case of the Petitioners that RBI guidelines used by Respondent No.2 for the impugned action do not apply to non-scheduled urban banks. Learned Counsel for Respondent No.2

seeks time to take instructions and file, if necessary, a suitable reply to the petition.

3. In the meantime, learned Counsel for Respondent No.2, on instructions from his client, offers not to publish the status of the Petitioners as wilful defaulters till the next date. The immediate controversy, for which the Petitioners have moved this court, concerns revival of Respondent No.3 before NCLT. The Resolution Professional, representing Respondent no.3 in the present petition, is in the process of receiving proposals for such revival. The Petitioners themselves are interested in such revival and intend to submit a proposal for the same to the Resolution Professional. Learned Counsel for Respondent No.3 submits that as of now the Resolution Professional has decided to accept the proposal, if any, emanating from the Petitioners for reconstruction of Respondent No.3-company, but that the same shall be subject to further orders that may be passed by this court as well as NCLT. Considering the stand adopted by Respondent No.3, through the Resolution Professional, and the statement made by Respondent No.2, no further orders need to be passed at this stage.

4. We, accordingly, stand over the petition to 12 July 2021 to enable Respondent no.2 to take instructions and file reply, if any.

4. Issue notice to Respondent No.1-Reserve Bank of India returnable on 12 July 2021. Humdast permitted. In addition to court notice, Respondent No.1 may be served through a private notice and an affidavit to that effect may be filed in court by the next date."

6. Affidavits in Reply have been filed by all the Respondents. There is some discrepancy in the page numbering in the Court record.

7. The facts have been briefly noted in the order of 28th June 2021. Although we do not think a longer delineation is necessary, we will refer to the relevant dates.

8. The 2nd Respondent is admittedly a Non-Scheduled Urban Co-operative Bank or UCB. On 2nd February 2021 it issued a show cause notice to the Petitioners calling upon them to show cause within 30 days why they should not be classified as wilful defaulters according to RBI guidelines. The Petitioners replied and showed cause. In that reply on 9th March 2021, the Petitioner specifically raised the question of whether the 2nd Respondent could even issue such a notice.

9. In the meantime, the 3rd Respondent found itself before the NCLT. A moratorium was imposed on it under section 14 of the Insolvency and Bankruptcy Code 2016. In those NCLT proceedings, on 30th April 2021 a second meeting of the Committee of Creditors was held. The Resolution Professional appointed of the 3rd Respondent asked the representatives of the 2nd Respondent bank if they are already declared the

Petitioners as defaulters. Apparently, the 2nd Respondent's officers said that they have not done so until then but might do so shortly after. This was before the Petitioners were given any hearing.

10. On 9th June 2021, a wilful defaulter Identification Committee of the 2nd Respondent bank proceeded to declare the Petitioners as wilful defaulters.

11. This Petition was filed in June 2021.

12. The statutory regularity conspectus is governed by Reserve Bank of India's Master Circulars. One is dated 1st July 2014 and two are dated 1st July 2015. Copies of these are annexed inter alia to the Petition as also to the affidavit in reply of the Reserve Bank of India, which has copies of the correctly applicable circulars. They are at Exhibits I, II and VI of the RBI affidavit. The RBI is also represented before us today by Mr Shenoy.

13. We will first turn to the averments made by the RBI in the affidavit that it has filed. In paragraph 8, the RBI says that the 1st July 2014 master circular is applicable to (a) All Scheduled Commercial Banks (excluding RRBs and LBBs) and (b) All India Notified Financial Institutions. The latest master circular on wilful defaulters dated 1st July 2015 is applicable to

(a) All Scheduled Commercial Banks (excluding RRBs) and (b) All India Notified Financial Institutions.

14. Nobody before us challenges these circulars, as indeed none can.

15. Then, also in paragraph 8, the RBI has stated that instructions on reporting of information pertaining to Wilful Defaulters to RBI have been issued to "Scheduled Co-operative Banks". This has been done by circulars dated 30th June 1999, 1st August 2002 and 24th June 2008 (copies of which are also annexed).

16. These instructions, according to the RBI, have been consolidated in paragraph 5.4 of the Master Circular on Management of Advances which is dated 1st July 2015 and a copy of which is at Exhibit VI. We turn to that immediately. Paragraph 5.4 deals with collection and dissemination of information on cases of wilful default of Rs.25 lakhs and above. Clause 5.4.1 speaks of, and only of "Scheduled UCBs". This is why RBI on affidavit and through its counsel, Mr Shenoy, before us today maintains that the provisions of clause 5.4 for declaration a person as wilful defaulter only apply to Scheduled UCBs and not to Non-Scheduled UCBs like the 2nd Respondent.

17. Mr Jahagirdar for the 2nd Respondent evidently has a difficult task before him. He has to carefully negotiate the tightrope between defending his clients' position on the one hand and avoid antagonising the top-most banking regulator, the RBI, on the other. His clients have interpreted the RBI circulars as being applicable to them, although they are Non- Scheduled UCBs. The 2nd Respondent clearly cannot go against the RBI for reasons they are self-evident. Once, therefore, the RBI has said that these master circulars are not applicable to Non-Scheduled UCBs such as the 2nd Respondent, the matter must surely end at that and the Petition must succeed.

18. But since Mr Jahagirdar has placed additional points, we will consider them. He draws attention to clauses 5.3.3, 5.3.4 and 5.3.7 of the same circular. Clause 5.3.3 is a requirement that that all UCBs are required to submit a quarterly list of suits filed of accounts of Rs.1 Crore and above, classified as doubtful or loss, to CIBIL and/or any other credit information company which has obtained CoR from RBI and of which the UCB is a member. But this is a matter of reporting information and is not the same as being empowered to decide or adjudicate whether a person is wilful defaulter.

19. Similarly clause 5.3.4 says that all UCBs are required to submit a list of suit filed accounts of wilful defaulters of Rs. 25 lakhs and above as at the end of four quarters to CIBIL or any other credit information company etc. Again this is an information-gathering process. It cannot be read to invest a Non-Scheduled Bank with declaratory powers.

20. Clause 5.3.7 then says that banks may make enquiries, if any, about the defaulters from the reporting bank/financial institution. But to ask is one thing; to decide is quite another.

21. Finally, Mr Jahagirdar seeks to draw support from the provisions of penal measures in clause 5.4.4. We fail to appreciate how this can possibly assist the 2nd Respondent in its submission that it is in fact invested with the necessary declaratory powers.

22. As we noted earlier, now that the RBI has made its stand abundantly clear, it is impossible to sustain the actions by 2nd Respondent either in issuing the show cause notice or in issuing the order that followed.

23. In view of this, we need not go into any question of whether the rules of natural justice were or were not followed.

24. The Petition succeeds. It is made absolute in terms of prayer clauses (b), (c) and (d).

25. It is clarified that the reference in prayer clauses (a) and (b) is also to the second Master Circular at Exhibit VI to the RBI affidavit being the Master Circular on Management of Advances dated 1st July 2015.

26. Mr. Jahagirdar is needlessly concerned that this order will affect other recovery proceedings under, for instance, the Maharashtra Co-operative Societies Act. Obviously it cannot. We have only interpreted the RBI circular and the assumption of our declaratory power by the 2nd Respondent. We have not addressed the merits of the 2nd Respondent's claim nor compromised in any way its statutory remedies. All those contentions are kept open.

27. The Petition is disposed on in these terms, with no order as to costs.

28. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J) **(G. S. Patel, J)**