

7th September, 2022
(D/L No.18)
(SKB)

W.P.A. 18833 of 2022

Ram Surat Shaw
-Versus-
The Union of India and others

Md. Karim Warsi,
Mr. Riaz Abedin,
Sk. Saiful Hossain,
Ms. Arpita Mondal,
Md. Rahim Waris
... for the petitioner.

Mr. Shaswat nayak,
Mr. Santosh K. Ray,
Ms. Sannoyee Chakravorty
... for the Bank.

Mr. Shaunak Ghosh
... for the respondent no.1.

The petitioner prays for a direction on the respondent Bank to refund an amount of Rs.13,20,000/- to the petitioner along with interest.

Since the point of maintainability has been taken on behalf of the respondent Bank, this needs to be discussed first.

The respondent, Kotak Mahindra Bank Ltd., is admittedly a private Bank. No facts have been adduced to show that the respondent Bank has any of the characteristics which would change the private status of the respondent Bank to a public authority or entity.

It is well settled that a writ petition under Article 226(1) of the Constitution of India cannot lie against a

private entity. There are several decisions to this effect including a recent decision of the Division Bench of this court in *Vedica Computer Private Limited and another Vs. Kotak Mahindra Bank* (incidentally, the same Bank as in the present writ petition). The said decision relies on *Federal bank Ltd. Vs. Sagar Thomas and others reported in (2003) 10 SCC 733*. In the said judgment, the Supreme Court held that a writ petition can only lie against certain entities, namely, the State (Government), or authority, a statutory body, an instrumentality or agency of the State, a company which is financed and owned by the State, a private body run substantially on the State funding, a private body discharging public duty or positive obligation of public nature, and a person or a body under liability to discharge any function under any statute.

The tests on whether the Bank which was before the Division Bench would be held to be a government or receiving financial assistance providing by the State was also discussed by the Supreme Court in that decision. The same determinative factors would apply to the present case.

The petitioner has not raised any issue of challenging a circular of the Reserve Bank of India nor is it the case that the dispute between the parties is not

a private dispute for recovery of certain amounts of money.

AIR 1989 SC 1607 (Anadi Mukta Sadguru Shree Mukta Vs. V.R. Rudani and others) is also not applicable to the present case, since the petitioner has an adequate alternative efficacious remedy in the form of a civil remedy for pursuing the refund of money.

W.P.A.18833 of 2022 is accordingly found not to be maintainable and is dismissed for the reasons stated above.

There will be no order as to costs.

(Moushumi Bhattacharya, J.)