27.09.2022
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Sl. No. 09
Ct. No. 05

WPA 21490 of 2022
With
IA NO: CAN 1 of 2022

Pranab Kumar Ray
-Versus-
Reserve Bank of India & Ors.

Mr. Chayan Gupta
Mr. Kausik De
Mr. Saptarshi Kr. Mal
Ms. Mohini Majumder
Mr. Raghav Munshi
Mr. Roshan Pathak
..... for the petitioner

Mr. P.C. Bhattacharya
Mr. Chandan Kumar Lal
.....for the respondent nos. 2 & 3

Mr. Subrata Mukhopadhyay
Mrs. Basobi Roy chowdhury
Mr. Bandhu Bratin Bhula
.....for the added respondent

<u>In Re: WPA 21490 of 2022</u>

The petitioner has filed writ petition against the restrictions on debit transactions imposed by the respondent No. 3 Co-operative Development Bank.

Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Ors. applies squarely to the facts of the case since the petitioner has come before the Court for enforcement of its fundamental rights and has also shown a violation of the principles of natural justice in not being given a chance to represent his case before the impugned action was taken against the petitioner.

The point of maintainability, as raised by learned counsel appearing for the respondent Co-operative Bank, is required to be answered first.

According to learned counsel, the petitioner has an efficacious alternative remedy under Section 102(1)(d) of the West Bengal Co-operative Societies Act, 2006. Under the said provision, any dispute concerning two Co-operative Societies or between the Co-operative Societies and a liquidator and including any person having transaction with a Co-operative society shall be filed before the Registrar for settlement. The Registrar has been defined in Section 4(56) as the Registrar of Co-operative Societies appointed under Section 12 of the Act. Counsel further submits that the petitioner may approach the Banking Ombudsman under the Banking Ombudsman Scheme of 2006 for relief.

Upon considering the provisions shown to the Court, it appears that under Section 102(4) of the 2006 Act, there is an express bar of jurisdiction of any Civil Court or any Consumer Dispute Redressal Forum against trying any dispute under Section 102(1) of the Act. As is settled law, any provision ousting the jurisdiction of a Court, particularly a Writ Court under Article 226 of the Constitution, has to be specifically provided for and strictly construed. Section 102 (4) mentions only Civil Courts and the Consumer Dispute

Redressal Forum. There is no mention of a Writ Court under Article 226 of the Constitution. Moreover, 102 (1) (d) indicates that the dispute contemplated between two Co-operative societies or between a Co-operative society and a liquidator of another Co-operative society or between a person and a Co-operative society must be read in conjunction with 102(1), which clarifies the disputes to mean a dispute concerning the management or business or affairs of a Co-operative society other than the dispute relating to election in a Co-operative society. Since the present writ petition is in relation to an alleged freezing of the petitioner's account in a Co-operative society Bank, it is arguable whether the dispute would be covered under Section 102(1)(d).

The other point with regard to the petitioner having liberty of approaching the Banking Ombudsman, is not acceptable since an alternative remedy must also be effective and efficacious. The Banking Ombudsman cannot be expected to give prompt relief to the petitioner and hence the petitioner is free to knock the doors of a Writ Court.

In view of the above, this Court accepts the contention of the petitioner and holds the writ petition to be maintainable.

With regard to the question of merits as to whether the respondent could have taken any action on the petitioner's account, this Court is of the view that the impugned document does not disclose any reason for the impugned action save and except a cryptic message which has been reproduced in the writ petition. The respondent is directed to communicate the reasons for the impugned action to the petitioner within a period of seven days from today.

The submission of counsel appearing for the Bank may be noted namely that the Bank has not freezed the account of the petitioner and has taken the impugned action for the petitioner failing to comply with the minimum balance requirement.

It is made clear that the Court has not gone into the merits of the rival contentions advanced by the parties with regard to the impugned action.

In Re: CAN 1 of 2022

One Sri Tarak Debnath has filed an application for addition as party to the writ petition. The applicant claims to be a sub-contractor who was awarded a sub-contract which was recognized by Mackintosh Burn Limited, Government of West Bengal Enterprise. Learned counsel claims that the work of the sub-contract was entrusted with the company in which the petitioner is a sole proprietor and the applicant paid Rs. 5 lakhs to the petitioner.

Learned counsel appearing for the applicant submits that the petitioner has suppressed the material facts of the matter.

Since the contentions do not directly relate to the merits of the writ petition, no order is being passed in the application for addition of the applicant as a party to the writ petition. This is also by reason of the fact that the Court has not gone into the merits of the matter and simply directed the respondents to implicate the reasons for the impugned action.

Accordingly, WPA 21490 of 2022 and CAN 1 of 2022 are disposed of in terms of the above.

(Moushumi Bhattacharya, J.)