IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Writ Petition No.631 of 2022

Mangesh Shridhar Bhagwat,
Aged 54 years,
Occupation – Advocate & Notary Public,
R/o 26, Dewashish, New Swastik Nagar,
In front of Water Supply Office,
Amrvati-444 607. … Petitioner

Versus

1. Bank of Maharashtra,
through its Zonal Manager,
Regional Office,
Lahanuji Nagar,
Amravati-444606.

2. Bank of Maharashtra,
through General Manager
(Credit Monitoring),
Lokmangal,
1501, Shivaji Nagar, Pune.

3. Indian Banks' Association,
through Chief Executive,
World Trade Centre Complex,
Centre 1, 6th Floor, Cuffe Parade,
Mumbai-400 005. … Respondents

Shri Anil S. Mardikar, Senior Advocate, assisted by Shri R.D. Wakode, Advocate for Petitioner.
None for Respondents, though served.

CORAM : SUNIL B. SHUKRE & ANIL L. PANSARE, JJ.
DATE : 13th OCTOBER, 2022

ORAL JUDGMENT (PER SUNIL B. SHUKRE, J.) :

1. Heard Shri A.S. Mardikar, learned Senior Advocate for the petitioner. Nobody is present for the respondents, though the respondents have been served long back and have been granted

several opportunities by this Court to appear before this Court and file their reply.

2. On the last occasion, i.e. on 15-9-2022, the respondents were absent and even then this Court granted one more chance to the respondents in the interest of justice. While granting additional chance to the respondents, this Court noted that if the respondents failed to file any reply and did not remain present before this Court on the next date, this Court would proceed in the matter, presuming that the respondents did not wish to contest the claim of the petitioner and would accordingly finally decide the petition.

3. The warning given to the respondents had no effect on them. It is now clear that the respondents do not wish to contest this petition and thus it is seen that the respondents have admitted all the material contentions in this petition.

4. Hence, **Rule**. Rule is made returnable forthwith. Heard finally.

5. It is seen from the documents placed on record that no notice and no opportunity of submitting the explanation whatsoever has been issued and granted to the petitioner before putting the name of the

petitioner, who was an empanelled Advocate of the respondent No.1-Bank, in the impugned Caution List dated 21-11-2015 issued by the respondent No.2 and the consequent Caution List dated 4-12-2015 issued by the respondent No.3. Giving of opportunity to submit the explanation is a minimum requirement of the rules of natural justice and this is also embedded in the Procedural Guidelines for Reporting Names of Third Parties Involved in Frauds to IBA for inclusion in the Caution List issued by the Reserve Bank of India vide it's Circular No.DBS.CO.FrMC.BC No.3/23.08.001/2008-09 dated 16-3-2009. These Guidelines also require that the distinction must be made by the Authority, which is the Forum for deciding such cases as per the said Guidelines, between negligence simpliciter and negligence resulting from *mala fide* intention. The relevant Guidelines, which are stated in Para 6, Clauses (g) and (h) of the Circular, are reproduced for the sake of convenience, as below :

> ***"6. Process of evaluation of involvement of TPE and reporting to IBA***
>
> ***g.*** *The Forum will take a considered view when isolated cases of negligence/gross negligence on the part of the TPE is reported as to the desirability of recommending inclusion of the TPE in the caution list. It may not be fair to caution list a TPE for a reported instance of negligence when malafide intentions are not involved.*
>
> ***h.*** *If the Forum feels that the intentions of the TPE were malafide, the Forum will ask the concerned business/operations group to write to the TPE concerned and seek explanation for his/her action."*

6. In the present case, it is also the contention of the petitioner that there was no negligence committed by the petitioner in submitting a search report of the property which was to be mortgaged as a security to the respondent-Bank for sanction of some loan. It is also submitted that in any case, the negligence, if any, was not with *mala fide* intention, as there was no material showing that the petitioner had acted hand-in-glove with the concerned borrower in order to give a distorted picture of the subject-matter. He places reliance upon the view taken by this Court in Criminal Writ Petition No.593 of 2018 in the case of *Abhishek son of Mohan Mudaliar* Vs. *State of Mahrashtra*, decided on 11-12-2018; and Writ Petition No.3616 of 2021 in the case of *Rajan Shrivallabha Deshpande* Vs. *Bank of Baroda and another*, decided on 3-8-2022.

7. On going through the impugned communications and also the fact that all the contentions are admitted by the respondents owing to their meaningful silence in the matter, we have no hesitation to accept the argument of the learned Senior Advocate for the petitioner.

8. The impugned communications do not show that any opportunity of submitting an explanation was afforded to the petitioner. The said communications also do not show that any effort was made by the Forum for determining the nature of alleged

negligence on the part of the petitioner, whether it was negligence simpliciter or negligence with *mala fide* intention. Therefore, the law laid down by this Court in the aforesaid two cases of *Abhishek Mudaliar* and *Rajan Deshpande* would squarely apply to the facts of the present case. The impugned communications are also violative of the mandatory requirement of the principles of natural justice which has also found it's way in the Reserve Bank of India Guidelines of July 2009 in Clauses (g) and (h) of Para 6 thereof.

9. For the reasons stated above, we find that the impugned communications are bad in law and require to be quashed and set aside.

10. The petition is, therefore, allowed in terms of prayer clause (i), which reads as under :

> *"i) Quash and set aside the impugned communications dated 21.11.2015 issued by the respondent no.2, placed at* ***ANNEXURE-L****, and the consequent communication dated 04.12.2015 issued by the respondent no.3, placed at* ***ANNEXURE-M****, in the interest of justice."*

11. Rule in above terms. No costs.

(ANIL L. PANSARE, J.) **(SUNIL B. SHUKRE, J.)**

Lanjewar