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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 14458 of 2023

Oasis Nursing Home &
Polyclinic & Anr.
Vs.
The Bank of Borada & Ors.

Mr. Pappu Adhikari
…for the petitioners

Ms. Kabita Mukherjee,
Mr. Manas Dasgupta,
Ms. Farjana Khatoon
…for the respondent no. 3

Mr. Kishore Dutta,
Mr. Shamba Chakraborty,
Mr. Triptimoy Talukder
…for the respondent no. 4

Affidavit-of-service filed in Court today be kept on record.

Learned counsel appearing for the petitioner argues that the petitioner no. 2 is one of the partners of the partnership firm, which is running a particular nursing home. It is contended that, by virtue of a subsequent deed entered into between the partners, being the petitioner no. 2 and the private respondent, the first party therein (that is, the present petitioner no. 2) is the signatory authority and power-of-attorney of all financial works of the particular shared business.

It is contended that, on the strength of the said clause, the petitioner no. 2 has been operating the bank account held with the respondent bank in the name of the partnership firm.

It is contended that although initially the mode of operation of the account was jointly by the petitioner no. 2 as well as the other partner, subsequently, by virtue of the clause mentioned above, the petitioner no. 2 was empowered exclusively to operate the account.

However, all on a sudden, the respondent-bank has frozen the account, thereby causing immense difficulty to the day-to-day running of the nursing home, including the disbursal of wages to the employees thereof.

Learned counsel appearing for the respondent-bank submits that insofar as the bank is concerned, the account opened in the name of the partnership firm was initially being operated jointly by both the partners. Subsequently, however, on the impression given by the petitioner no. 2 that he was the sole signatory, such mode of operation was altered, thereby permitting the petitioner no. 2 to operate the account solely.

However, thereafter, a complaint was lodged by the private respondent/other partner to the effect that the petitioner no. 2 had changed the modality of operation on the basis of certain forged documents. Hence, in order to protect the account holder, the bank was constrained to freeze the account for the time being.

The learned Senior Advocate appearing for the private respondent submits that the CMOH (Chief Medical Officer of Health) concerned has already directed a closure of the Nursing Home vide order dated February 3, 2023 and, as such, the day-to-day operation of the Nursing Home being stalled due to the freezing of the account is incorrect.

It is further submitted that in view of the dispute prevailing between the two partners of the firm, the bank acted without jurisdiction in altering the mode of operation of the account by granting powers to the petitioner no. 2 to exclusively operate the same. Since the initial modality was joint operation by both the partners, the bank could not have altered the modality at the behest of the petitioner no. 2 unilaterally. As such, it is submitted that the dispute ought to be resolved by the petitioners before the appropriate Forum.

Learned counsel for the petitioner also cites the Reserve Bank of India, Integrated Ombudsman Scheme, 2021 and submits that, even as per the same, a complaint under the Scheme shall not lie unless the complainant had, before making a complaint under the Scheme, made a written complaint to the regulated entity, that is, the Bank. It does not appear from the present case, according to the petitioners, that the said pre-requisite has been resorted to.

That apart, Clause 4 of the relevant Circular of the Reserve Bank of India dated October 21, 2014 regarding the KYC (Know Your Customer) norms, provides that, as regards non-compliance of KYC requirement by the customers, initially the bank should impose a partial freezing on such KYC non-compliant in a phased manner. Prior to so freezing, the bank is required to give a due notice of three months initially upon the customer to comply with the KYC requirement, followed by reminder for further three months. Nothing of that sort has been done in the present case. As such, the freezing of the account, according to the petitioner, is palpably violative of law and natural justice.

It appears from the submission of the parties that the CMOH's order directing closure of the Nursing Home, run by the partnership, was stayed by an order passed in an appeal preferred at the behest of petitioner no. 2.

It is disputed whether the stay is still operational, since the petitioner allegedly did not comply with the condition for the same, which allegation is controverted by the petitioner. However, such issue is not germane in the present case, because the closure of the Nursing Home by the CMOH itself was on an entirely different cause of action, being alleged non-payment of rent by the petitioner no. 2. As such, the same does not have a bearing in the present context.

The crux of the present dispute is that there is a fallout between the petitioner no. 2 and other partner of the Nursing Home and the private respondent has alleged specifically that forgery has been committed in executing the second deed, on the basis of which the petitioner no. 2 had an alteration regarding the modality of operation of the bank account of the partnership firm. Although no criminal court indictment is there against the petitioner no. 2 in that regard, in view of such allegation, the bank cannot be faulted for having fallen back on the original modality, which is joint operation by both the partners.

Hence, it cannot be said in any manner that the bank failed in its duty to take appropriate protective measures in respect of the account, within the contemplation of the Negotiable Instrument Act and other governing laws, in freezing the account temporarily for the purpose of protecting the interest of the account holder, that is, the Nursing Home.

Inasmuch as the modality of operation is concerned, since there is an allegation regarding the alteration of modality on the basis of a document, which allegedly is forged, such action of the Bank cannot be said to be illegal.

However, the relief of the petitioners as well as the private respondent, regarding their internal dispute with regard to their mutual liabilities in respect of the partnership firm, lies before a competent Civil Court.

In such view of the matter, WPA No. 14458 of 2023 is disposed of with the following observations/directions:

i) For the time being, till an order is obtained by either of the private parties from a competent Civil Court, the respondent-bank shall permit both the petitioner no. 2 and the private respondent to jointly operate the account standing in the name of the partnership with the respondent–Bank. However, such operation will be subject to any order or decree which may be passed by a competent court of law,

ii) The petitioner no. 2 as well as the private respondent will be at liberty to approach a competent Civil Court with the disputes raised between them in respect of the partnership, including the operation of the bank account and running of the Nursing Home. If so approached, the Civil Court shall decide such issue in accordance with law, without being influenced in any manner by any of the observations made herein;

iii) In the said suit, if instituted, the parties thereto shall be at liberty to apply for interim reliefs, which the parties deem appropriate. If so filed, the Civil Court shall endeavour to dispose of such application, or at least to consider the ad interim prayer made therein, as expeditiously as possible.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)