IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

<u>Present :-</u>

The Hon'ble Justice Moushumi Bhattacharya.

<u>WPO 515 of 2023</u>

M/s. Gatik Tea and Co. Private Limited & Anr.

vs

Bank of Baroda & Ors.

For the petitioners	:	Mr. Suddhasatva Banerjee, Adv. Mr. Aasish Choudhury, Adv. Ms. Uma Bagree, Adv. Ms. Muskan Bengani, Adv.
For the Bank of Baroda	:	Mr. Dipanjan Datta, Adv. Mr. Subhajit Chowdhury, Adv.
For the respondent no. 3	:	Mr. Ranajit Chatterjee, Adv. Mr. Priyabrata Batabyal, Adv.
For the respondent no. 4	:	Mr. Sutanu Karmakar, Adv. Mr. Souvik Das, Adv.
Last Heard on	:	26.07.2023.
Delivered on	:	04.08.2023.

Moushumi Bhattacharya, J.

1. The writ petitioners have challenged the conduct of the Bank of Baroda in handing over collateral securities to the private respondent no. 4 on a notice, which the writ petitioners say, was issued under section 91 of The Code of Criminal Procedure (Cr.P.C), 1973. The notice dated 11th November, 2022 was issued by the police authorities; the Investigating Officer, Bhaktinagar, Police Station, Siliguri who is the respondent no. 3 in the writ petition. The petitioners seek setting aside of this notice dated 11th November, 2022 and all steps in pursuance thereof.

2. According to learned counsel appearing for the writ petitioners, the petitioners filed a police complaint on 16th February, 2022 for an investigation against the private respondent which led the police to file a charge-sheet under several sections of the Indian Penal Code, 1860. The petitioners also instituted a suit being CS No. 305 of 2022 before this Court claiming various reliefs against the private respondent. Counsel places the challenge on the Notice dated 11th November, 2022 which was apparently issued under section 91 of the Cr.P.C. to the Bank for release of collateral securities in favour of the private respondent.

3. Counsel submits that section 91 of the Cr. P.C. does not authorise the police to direct release of the concerned document in favour of the *de facto* complainant, who in this case is a private respondent. It is submitted that the Bank issued letter dated 18th November, 2022 upon receiving Notice

dated 11th November, 2022 and proceeded to release the collateral securities in favour of the private respondent. According to counsel, the Notice dated 11th November, 2022 is wholly without jurisdiction. The investigating authority and the police did not have authority to request the Bank to hand over the documents to the private respondent. Counsel submits that the Bank's reliance on the Code of Bank's Commitment to Customers is misplaced since the duty envisaged therein lies in favour of the petitioner no. 1 and not the private respondent.

4. Learned counsel appearing for the Bank of Baroda submits that the Bank had no option but to hand over the collateral securities to the private respondent upon receiving Notice dated 11th November, 2022. Counsel places the Code of Commitment of the Bank to say that the Bank in any event could not have held on to the collateral securities after the petitioner closed its credit facilities with the Bank by transferring the entire portfolio to another Bank namely, ICICI Bank Limited.

5. Learned counsel appearing for the private respondent no. 4 submits that the writ petition is not maintainable since the dispute is essentially a private dispute between the petitioners and the respondent no. 4. Counsel submits that the petitioners have already filed a Civil Suit in this Court and have been unable to secure the amount claimed in the said suit. It is submitted that the writ petitioners are hence trying to get that amount in a circuitous manner in the present writ petition. Counsel submits that the action of the petitioners in directing the Bank to hold on to the collateral

securities is wrongful and that once the credit facilities provided by the Bank was closed, it was the Bank's obligation to release the collateral securities to the respondent no. 4. Counsel disputes that the Notice dated 11th November, 2022 is a Notice under section 91 of the Cr.P.C. and refers to three earlier Notices dated 5th August, 2022, 10th October, 2022 and 2nd November, 2022 in this context. Counsel submits that the police officers have a duty to prevent commission of offences under section 23 of The Police Act, 1861 and that the Notice dated 11th November, 2022 was issued in exercise of this power. It is further submitted that the petitioners have the option of taking out an application under section 482 of the Cr.P.C. for challenging the Notice dated 11th November, 2022.

6. The facts and arguments put forth by the petitioners rest on the legality of the Notice issued by the Bhaktinagar Police Station, Siliguri Police Commissionerate to the Branch Manager, Bank of Baroda on 11th November, 2022 and the return of the title deeds to the private respondent. According to the petitioner, this Notice was issued under section 91 of the Cr.P.C and hence it was outside the jurisdiction of the sender to request the Bank for immediate release of the title-deeds mentioned in the said Notice to the private respondent.

7. Section 91 of the Cr.P.C deals with summons to produce a document and empowers the Officer-in-charge of a Police Station to issue a written order to the person in whose possession the document is believed to be in and require the person to produce the document at the time and place

stated in the order. The power of a police officer to issue such order will only apply where the officer considers the production of the document to be necessary for an investigation, enquiry, trial or any other proceeding before the Officer or a Court.

8. The contention of the petitioners is that the respondent no. 3 / Investigating Officer, Bhaktinagar Police Station could, at best, have issued the notice to the Bank for production of the document before the Police but could not have directed the Bank to release the document to the private respondent.

9. The Court has carefully read the Notice dated 11th November, 2022 in order to test the legality of the submissions made on behalf of the petitioners.

10. The Notice refers to an earlier notice issued under section 91, Cr.P.C with a request to furnish the requisite information to the Police. The respondent Bank had however not furnished such information. The Notice further states that the written complaint of the private respondent had been investigated and the earlier notice under section 91 had been sent in the course of such investigation. The Notice also refers to a further investigation made by the Police pursuant to the complaint lodged by the private respondent and that the investigation had revealed closure of the loan account maintained by the Bank in the name of the petitioner no. 1. The sender of the Notice proceeds to make a finding that despite the closure of

the account of the petitioner no. 1, the Bank had continued to hold on to the collateral securities belonging to the private respondent.

11. The Police authorities hence requested the Bank to furnish any order of Court or any other instruction received by the Bank to justify retaining the assets belonging to the de facto complainant / private respondent. The Bank was directed to release the assets mentioned in the Notice to the private respondent in the absence of any such order. It appears that the Police had issued three earlier notices on 5th August, 2022, 10th October, 2022 and 2nd November, 2022 before the impugned notice dated 11th November, 2022. All the 3 notes were issued under section 91 of the Cr.P.C. The notice dated 2nd November, 2022 specifically refers to the earlier 2 notices whereby the Manager of the Bank was requested to produce the documents mentioned in the earlier notices.

12. Hence, it cannot be concluded that the impugned notice dated 11th November, 2022 is a stand-alone notice under section 91 of the Cr.P.C. It would also be correct to presume that the impugned Notice dated 11th November, 2022 was issued in the course of investigation of the complaint filed by the private respondent with regard to the Bank holding on to the deeds and properties of the private respondent without any factual or legal justification.

13. The three earlier notices will further have to be read with the impugned Notice dated 11th November, 2022. The earlier notices issued under section 91 of the Cr.P.C. being clearly stated in the impugned Notice

would dilute the legal submissions made on behalf of the petitioners. There are other undisputed facts which would similarly affect the case sought to be made out by the petitioners, which are as follows.

14. The private respondent had furnished securities in respect of the credit facilities availed of by the petitioner no. 1 from the Bank of Baroda. The private respondent had furnished the collateral deeds as a Director of the petitioner no. 1 at the relevant point of time. All the securities are in the form of title-deeds which are valuable properties of the private respondent. On 29th January, 2020, several parties including the petitioners and the private respondent entered into an agreement for sale and transfer of shares subsequent to which the private respondent resigned as the Director of the petitioner no. 1 and the petitioners issued a letter to the Bank on 5th April, 2021 informing the latter about the execution of the agreement and more significantly, the facts that the existing collateral securities would be replaced by a fresh collateral securities which would be provided by the new Director of the petitioner no. 1. The petitioner no. 1 wrote a fresh letter to the Bank on 18th December, 2021 reiterating its earlier contentions and stating that all guarantees were to be replaced by guarantees provided by the new Director of the petitioner no. 1. The credit facilities in the Bank were thereafter closed by the petitioner no. 1 by transferring the entire port-folio to ICICI Bank.

15. Significantly, however, the petitioners by a letter dated 6th April, 2022 directed the Bank not to release the collateral securities to the private

respondent. The direction was given on the allegation that the private respondent had siphoned off a sum of Rs. 50 lakhs from the account after resigning from the Directorship of the petitioner no. 1. This was followed by a letter from the Bank to the petitioner no. 1 on 4th June, 2022 where the petitioner no. 1 was informed that the private respondent has lodged several complaints for release of the collateral securities.

16. The Bank in fact requested the petitioner no. 1 to advise the Bank with regard to release of the securities to the private respondent. The petitioners' reply dated 21st June, 2022 simply states that the required intimation / Board Resolution will be provided when the matter is resolved and that the collateral securities in the personal name of the private respondent should be kept on hold till then.

17. It is undisputed that the collateral security furnished by the private respondent was specifically in respect of the facility provided by the Bank which was availed of by the petitioner no. 1. This was the sole purpose for which the security was given by the private respondent. Therefore, once the credit facilities provided by the Bank were closed and the parties had entered into the agreement on 29th January, 2022 which provided for replacement of the existing collateral securities by fresh securities, it was the obligation of the Bank to release the collateral securities to the private respondent. This is specifically mentioned under Clause 8.12.1.2 of the Bank Code handed up on behalf of the Bank of Baroda. The position taken by the Bank is also acceptable in that there was no prohibitory order from

any Court of law which debarred the Bank from releasing the title-deeds in favour of the private respondent.

18. The dispute brought to the Court by way of the writ petition filed under Article 226 of the Constitution is clearly in the nature of a private dispute between the petitioners and the private respondent. Framing the reliefs in the writ petition against the Bank of Baroda or the Police Authorities is simply not enough. In matters of this nature the Writ Court has to unravel the facts and get to the bottom of the intended effect of the reliefs prayed for. In this case, the contentions raised make it evident that the petitioners seek restraint on the private respondent from getting back the title-deeds / collateral securities.

19. The real target, so to speak, of the present writ petition is the private respondent and not the Bank or the Police Authorities. Thus, merely because the first three respondents are authorities amenable to writ jurisdiction, would not make the writ petition maintainable under Article 226 of the Constitution unless the petitioners are able to show the acceptable ingredients of maintaining a writ petition. In the facts as urged, the writ petitioners have not been able to succeed on that score.

20. The view of the Court is further strengthened by the fact that the petitioners filed a Civil Suit in this Court – C.S. No. 305 of 2022 against the private respondent with an interim application seeking injunction on the defendant (private respondent) from selling or creating third party rights in

respect of the property, the title deeds of which were deposited as collateral security by the private respondent to the Bank of Baroda.

21. The petitioners can hence take appropriate actions in the suit which would enable the petitioners to restrain the private respondent from utilising the title-deeds. There is nothing on record to show that such relief would be outside the scope of the Civil Suit or the petitioners are prevented from seeking such reliefs for other reasons. It is hence clear that the petitioners are attempting to get a relief by invoking the writ jurisdiction of this Court when the petitioners have not taken any such steps or brought an appropriate action in the pending Civil Suit.

22. The above reasons persuade this Court to hold that the petitioners have not been able to establish a case for recalling or setting aside the impugned notice dated 11th November, 2022 or any steps taken consequent thereto.

23. *State of Punjab vs Davinder Pal Singh Bhullar; (2011) 14 SCC 770* has been cited for the proposition that if the initial action is not in consonance with the law, subsequent proceedings would fall through as illegality strikes at the root of the order. Since this Court is of the view that no circumstances exist to interfere or recall the impugned notice dated 11th November, 2022, this decision does not apply to the facts of the case. The celebrated case of *Maniruddin Bepari vs. The Chairman of Municipal Commissioners, Dacca* was on the fundamental principle of law that a natural person has the capacity to do all lawful things unless his capacity

has been curtailed by some rule of law and that corporation has no power to do anything unless these powers are conferred on it by the statute which creates it is a fundamental of law. The decision however does not assist the petitioners.

24. Since the Court has not found any reason to interfere with the impugned notice dated 11^{th} November, 2022 or any of the consequent actions taken by the respondent nos. 1 – 3, WPO 515 of 2023 is accordingly dismissed. There shall be no order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(**Moushumi Bhattacharya, J.**)