

OD - 3

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

ORIGINAL SIDE

WPO/1672/2023

ARINDAM BANERJEE

-Versus-

RESERVE BANK OF INDIA AND ORS.

BEFORE :
THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA

Date : 19th October, 2023

Appearance :
Mr. Jitendra Singh Dhatt, Adv.
... for petitioner

Mr. Avishek Guha, Adv.
Ms. Akanksha Chopra, Adv.
... for respondent nos.2 and 3.

The Court : Learned counsel for the petitioner contends that the petitioner's name is Arinadam Banerjee and he has a sole proprietorship by the name of SB Enterprise. However, the impugned loan recall notice has been given by the respondent no.2 bank i.e. ICICI Bank Limited, in connection with another proprietorship firm by the same name i.e. SB Enterprise, of which the proprietor is a person different from the petitioner.

It is submitted that upon such mix-up, the bank has issued loan recall notice upon the petitioner whereas the said notice ought to have been issued to the proprietor of the said other SB Enterprise.

Learned counsel points out that although the petitioner has had an excise licence standing in the name of the other enterprise transferred to the petitioner's sole proprietorship, the same per se does not shift the liability of the proprietor of the other SB Enterprise with regard to the loan which is sought to be recalled.

Learned counsel for the ICICI Bank takes a preliminary objection as to maintainability of the writ petition. It is contended that the Reserve Bank of India has been impleaded in the writ petition to confer jurisdiction on this Court and no relief has been claimed against the Reserve Bank of India and the ICICI Bank is not amendable to writ jurisdiction, not coming within the definition of the 'State' under Article 12 of the Constitution of India.

It is argued that in view of the petitioner having acquired the rights in the other partnership firm being SB Enterprise which is evidenced by the acquisition of the excise license, annexed to the writ petition, it is the petitioner to whom the said loan recall notice was rightly issued.

However, on instruction, learned counsel for ICICI Bank submits in his usual fairness that the bank is agreeable to recall the impugned loan recall notice and to undertake the exercise afresh upon giving a hearing to the petitioner, if necessary.

In view of the fair submission of the bank, the issue as to maintainability loses relevance as such. In any event,

the ICICI Bank also discharges functions in the public domain and taking a wider perspective, the said bank also comes within the purview of Article 12 of the Constitution of India. In so far as the dispute as to the matter pertaining to the Original Side or Appellate Side is concerned, either way this Bench has determination and thus the same cannot come in the way of this Court taking up the matter and such objection as to maintainability is not entertained.

In any event since a fair stand is taken by the respondent no.2 bank, i.e., ICICI Bank Limited, WPO 1672 of 2023 is disposed of recording the undertaking of the respondent no.2, i.e., ICICI Bank Limited that the loan recall notice in the present writ petition shall be recalled in writing within a week from date, if not already recalled. Thereafter, the ICICI Bank shall issue a fresh notice of hearing to the petitioner and upon issuance of such notice, give an opportunity of hearing to the petitioner and undertake the exercise of issuance or non-issuance of recall notice afresh, in accordance with law.

Since it is insisted by learned counsel for the petitioner, it is mentioned for the records that reference to the petitioner as having committed wilful default, in the CIBIL rankings, does not pertain to a declaration of a wilful defaulter under the Master Circular by the ICICI Bank in that regard.

It is, however, made clear that the merits of the contentions have not been gone into by this Court and it would be open to the Bank upon hearing the petitioner to take a fresh decision on such score.

No order as to costs.

(SABYASACHI BHATTACHARYYA, J.)