OD-1

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/192/2023
IA NO: GA/1/2023
STATE BANK OF INDIA AND ORS.
VS
MADHUMITA CONSTRUCTION AND OTHERS

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 21st DECEMBER, 2023.

Appearance :
Mr. S. K. Sinha, Adv.
Mr. S. Pal Choudhuri, Adv.
Ms. Diya Nandi, Adv.
..for appellants.

Mr. Amit Kumar Pan, Adv.
...for respondents.

The Court :- This intra-court appeal by the respondent in WPO/1436/2023, namely, the State Bank of India is directed against the order dated 11th October, 2023. In the said writ petition the respondent herein had questioned the adverse report which was drawn by the appellant bank forwarded to the Reserve Bank of India and uploaded in the Central Fraud Registry Portal with regard to a caution advice dated 8th December, 1998. The learned single Bench by the impugned order held the action of the appellant bank be not sustainable and, accordingly, the same was quashed. The learned single Bench while entertaining the writ petition and granting an interim order on 2nd August, 2023 took note of the decision of the Hon'ble Supreme Court in State Bank of India & Ors. vs. Rajesh Agarwal & Ors., reported at [2023] 6 SCC 1 wherein the Hon'ble Supreme Court held that principles of natural justice can be read into a statute or a notification where it is silent on granting an opportunity of hearing to a party, whose rights and interests are likely to be effected by orders that may be passed. The decision of the Delhi High Court in Tirupati Buildings and Offices Pvt. Ltd. vs. Reserve Bank of India and that of the Bombay High Court in S.S. Hemani vs. the Reserve Bank of India and Ors. were taken note of. The operative portion of the interim order is as follows :

> "Accordingly, the alleged entry of fraud in the Central Fraud Registry Portal against the petitioners, issued by the Reserve Bank of India, shall not be prejudicial and/or would not create any bar and/or impose any bar on extension, enhancement or grant of credit facility or loan facility in favour of the petitioners and/or its group companies by any bank, financial institution, etc. till disposal of the writ petition."

As pointed out earlier, ultimately, the writ petition has been allowed under normal circumstances. The court will be very reluctant to entertain in such matters more particularly, when it has been brought to the notice of the Reserve Bank of India that serious irregularities were committed by one of the clients of bank involved in the conduct of operation and accounts and in the instant case the respondent and their group companies with regard to the fake Letters of Credit. The case of the appellant bank is that several of its officers and award staff were involved in the process by which fraud was committed and disciplinary action has been initiated against the officers and award staff, some of whom have been dismissed from service and some of whom have been reverted to a lower post. However, the normal decision which has been brought out before us as well as in the impugned order by the learned single Bench convinces us to take a little different stand. It is not in dispute that the caution advice no.339 was issued by the Reserve Bank of India on 8th December, 1998 notifying that major irregularities have been reported with regard to the respondent and their group companies with regard to the conduct and operation of the accounts and relating to the availment of various credit facilities. The said caution advice was challenged by the respondent/writ petitioner by filing WP No.2067[W]/1999.

The learned writ court considering the balance of convenience and inconveniences observed that no interim order is called for. However, it is made clear that the caution advice will not prevent and prejudice any banking companies to entertain the application of the writ petitioners for granting fresh loan or opening any account acting in terms of the advice given by the Reserve Bank of India. It would be open for the bank concerned to allow the writ petitioner to open account in favour of the writ petitioners in accordance with law. Subsequently, the writ petition was finally disposed of by order dated 18th August, 2005 confirming the interim order. The appellant bank had filed a suit being CS/445/1998. In the said suit, the writ petitioners herein filed an application which was assigned as T. No.933 of 1999 wherein they sought for setting aside the circular issued by the Reserve Bank of India dated 8th December, 1998; to direct the State Bank of India to allow the writ petitioner to operate their bank account in normal course of business without any interference and also for stay of the circular of the Reserve Bank of India dated 8th December, 1998. The said application was disposed of by an order dated 19th May, 1999 taking note of the order passed in the writ petition dated 22nd September, 1998. The said order reads as follows :

"T. No. 933 of 1999
G.A. No. of 1999
C.S. No. 445 of 1998
In the High Court at Calcutta
Ordinary Original Civil Jurisdiction

State Bank of India
Vs.
Madhumita Construction Pvt. Ltd.
(MCPL) & Others

Present:
The Hon'ble Justice

Sujit Kumar Sinha
19th May, 1999

Dictated Order

The Court : By this application, the defendant no.1 has challenged the circular dated December 8, 1998, issued by the Reserve Bank of India restraining the said defendant from operating any account with any Bank. It appears that in writ proceedings, Ghosh J. had by his order dated September 22, 1998, permitted the said defendant to open a Current Account with any Bank other than the State Bank of India, the Plaintiff in this suit. The said order is still subsisting despite the said order, the Reserve Bank of India has issued the said Circular.

In the above view of the matter, I pass the same order which has been passed by Ghosh J. as an ad-interim order on this application.

The said circular dated December 8, 1998, issued by the Reserve Bank of India shall not have effect, if the defendant no.1 in terms of the said order dated September 22, 1998 in the writ proceedings and this ad-interim order opens any current account with any Bank other than the State Bank of India.

If the said defendant opens a Current Account with any Bank other than the State Bank of India, then the said defendant shall maintain proper accounts of its dealings in the said Current Account and submit copies of the same at the end of each month to the Advocate-on-record of the plaintiff-Bank in sealed cover.

This application is made returnable on May 21, 1999.

Leave is given to the defendant no.1 to serve copies of this application and the Notice of Motion upon the Reserve Bank of India.

All parties including the Reserve Bank of India shall act on a signed Xerox copy of this dictated order on the usual undertakings.

On behalf of the plaintiff, stay of this order is asked for. Such prayer for stay is refused.

Sd/- Illegible
21/5/99

Sd/- Sujit Kumar Sinha

Sd/- Illegible
21/5/99.
Assistant Registrar
High Court, O.S. Calcutta"

Both the aforementioned orders have become final as could be seen from the above orders, though the caution notice issued in the year 1998 was not set aside, the court permitted the writ petitioner to open a bank account in another bank. Based on such orders, the writ petitioners have been successfully opening an account with the Punjab National Bank, Ekdalia Branch. In the normal course of business the writ petitioner sought for enhancement of limits from Rs.30 lakhs to Rs.100 lakhs in their overdraft accounts. This request was processed by the Punjab National Bank and by communication dated 15th March, 2023 refused to accept the request for enhancement of the limit on the ground that upon due diligence it was observed that fraud no.SBI9804-0001 showing in Central Fraud Registry portal against the writ petitioner group companies reported by the State Bank of India. Type of fraud showing as fake LC. The fraud is opened as on date as per the CFR report. Therefore, the proposal or request for enhancement of the limit was rejected. The respondent/writ petitioner submitted a representation to the Punjab National Bank on 21st July, 2023 pointing out about the orders passed by this court and requesting them to reconsider their case taking note of the observations made in the order passed in the writ petition as well as in the application filed in the suit. However, it appears that the Punjab National Bank did not reconsider the matter. Thereafter, the writ petitioner submitted a representation through its lawyer to the State Bank of India raising all contentions and requesting for rescinding or setting aside the CFR entries against the respondent and group companies. The writ petitioner referred to the decision of the Hon'ble Supreme Court in Rajesh Agarwal. The writ petitioner specifically submitted that if their request is not complied with within seven days they will be compelled to initiate legal action. Since the State Bank of India did not comply with the request made in the said representation dated 21st July, 2023, which is titled as “demand for Justice”. The writ petitioner approached this court and filed the instant appeal.

Considering the facts of the case we are of the view that the learned single Bench was fully right in allowing the writ petition as the appellant bank had failed to take note of the orders passed by this court in the earlier writ petition as well as in the application filed in the suit. Admittedly, on the day when the caution advice was issued the regulations which were framed by the Reserve Bank of India were all different and the appellant bank seeks to take umbrella under the regulations, which have been framed by the Reserve Bank of India, called Reserve Bank of India [Fraud Classification and Reporting by Commercial Banks and Selected FIs] Direction, 2016. If that be so, in all fairness the State Bank of India should have mentioned about the orders which have been passed by this court in the writ petition and in the suit. This is so because the uploading of information based on the 2016 Regulation has, in fact, diluted the effect of the order passed in the writ petition and the suit prejudicial to the writ petitioner and it has been done so without notice to the respondent/writ petitioner.

Therefore, we are of the view that in the peculiar facts and circumstances of the case, the writ petitioner was entitled for an appropriate relief which the learned writ court has rightly granted. However, taking note of the decision of the Hon'ble Supreme Court in Rajesh Agarwal, the writ petitioner was entitled to an opportunity. It is so because the writ court in the earlier writ petition filed by the respondent has to quash the caution advice dated 8th December, 1998 but there was an order to the effect that the same will not prevent the writ petitioner from opening a bank account with any other bank. Therefore, for all purposes, the caution advice issued in the year 1998 cannot be said to have been effaced by virtue of an order passed by this court in the earlier writ petition or in the suit. Therefore, if at this juncture, the appellant bank seeks to keep the issue alive, more particularly, when there has been large scale involvement of the officers and award staff of the appellant bank as well then it goes without saying that the respondent/writ petitioner is entitled for an opportunity.

Thus, for all the above reasons, we do not find any good ground to interfere with the order passed by the learned single Bench. Accordingly, the appeal is dismissed. However, liberty is granted to the appellant, State Bank of India to issue a show cause before proceeding further against the appellant.

The direction issued by the learned single Bench shall be implemented by the Reserve Bank of India within a period of six weeks from the date of receipt of the server copy of this order.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA,J.)

pkd.