IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-18470-2023
Date of decision: 23.08.2023

MANPREET SINGH ......Petitioner

VERSUS

RESERVE BANK OF INDIA AND ANOTHER ....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: - Mr. Rakesh Bhatia, Advocate
for the petitioner.

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VINOD S. BHARDWAJ, J. (Oral)

The present petition has been filed for seeking quashing of the order dated 06.07.2023 (Annexure P-9) passed by respondent No.1-Reserve Bank of India dismissing the representation dated 09.11.2022 (Annexure P-5) submitted by the petitioner whereby the other partners of M/s National Finance Corporation National Financers (Regd.) and National Motor General Financers (Regd.) Moga are alleged to be illegally operating 03 current accounts bearing No. 555510100111173, 72, 74 with the respondent No.2-Bank without proper authority and in violation of partnership agreement.

2. The petitioner claims that he is one of the partners of M/s National Finance Corporation M/s National Financers (Regd.) and M/s

National Motor General Financers (Regd.) as per the partnership deed dated 01.04.1998 which is registered before the Registrar of Firms vide Diary No. 2234 of 1997-98 (Annexures P-3 and P-4). As per essential terms of the partnership deed, nobody could operate the bank account without the mutual consent of all the partners. Despite the above clause, the other partners are operating the bank account of the partnership without consent of the petitioner. The respondent bank was apprised of the said violation and illegality committed by the other partners but to no avail. Resultantly the representation was submitted to the RBI to take action against the Bank which was not enforcing the law. However, the RBI, instead of ensuring enforcement of its master circular, dismissed the complaint and has thus allowed an illegality to continue.

3. He has further submitted that above said complaint was dealt with by the Reserve Bank of India and the following orders were passed:-

> *"Please refer to your complaint against UNION BANK OF INDIA filed through the CMS portal/email/letter with the Ombudsman.*
>
> *In the matter of the complaint, the regulated entity (RE) has informed that the complainant is not an authorized signatory in the current account of M/s National Finance Corporation Moga, as claimed in the complaint. The RE has all mentioned referred three accounts have only two authorized signatories in which the complainant is not an authorized signatory. In view of the foregoing, no deficiency in service can be attributed to the RE. The complaint is closed.*

4. In support of his arguments, counsel for the petitioner refers to the Partnership deed executed between the parties on 01.04.1998, the relevant clause relied by the petitioner reads thus:-

"11. That the Bank account or accounts, if any, shall be opened in the name of the firm and all the parties to this deed shall be entitled to operate upon the same as per their mutual consent."

5. Reliance is also placed on provision of Section 19 Sub Clause 2 of the Indian Partnership Act, 1932 which reads thus:-

Section19 IMPLIED AUTHORITY OF PARTNER AS AGENT OF THE FIRM.

Xx xxxx xxx xxx xxx xxx xxx xxx

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to –

(a) submit a dispute relating to the business of the firm to arbitration,

(b) <u>open a banking account on behalf of the firm in his own name</u>,

(c) compromise or relinquish any claim or portion of a claim by the firm,

(d) withdraw a suit or proceeding filed on behalf of the firm,

(e) admit any liability in a suit or proceeding against the firm,

(f) acquire immovable property on behalf of the firm,

(g) transfer immovable property belonging to the firm, or

(h) enter into partnership on behalf of the firm.

6. Referring to the aforesaid Clauses, learned counsel appearing on behalf of the petitioner submits that there is no implied authority of the partners as agent of the firm empowering them to open a Bank Account and

to operate the same and that a specific clause to the said effect has already been provided for in the partnership deed executed between the parties. Resultantly, the other partners could not have operated the account on their own without the petitioner being the signatory to the same.

7. I have heard learned counsel appearing on behalf of the petitioner and have also gone through the clauses of the Partnership Deed as well as the Indian Partnership Act, 1932 relied upon by the counsel for the petitioner.

8. The entire case of the petitioner is based on the extracted clause of the partnership deed and Section 19(2) of the Partnership Act. A perusal of the said clause, on a plain reading suggests that all parties shall be entitled to operate the same as per mutual consent, hence, the entitlement of the parties to operate the account was subject to mutual consent. Hence, the parties could agree to any other mode of operating the accounts. The same would thus be the express consent of the parties. The contemporaneous evidence or documents thus ought to have been placed on record to establish that the mutual consent was that all moved operate the account. The said issue is hence a disputed question of fact.

9. Insofar as Section 19(2) of the Partnership Act, 1932 is concerned, even the said clause refers to an implied authority of all petitioners. The said provision also vests an implied authority and does not prohibit an express authority by act or conduct of the parties.

10. Apparently, it is a dispute which is a private dispute between the petitioner and his partners alleging breach of the terms and conditions of the Partnership Deed, if any, and seeking protection of the consequential civil rights arising therefrom. The dispute between the parties is a private

dispute not involving public authority and against which a writ petition would not be entertainable.

11. Counsel for the petitioner has not placed on record the Account opening form and the persons who were authorized in the Account Opening Form to operate the said Bank Account. An implied authority/power arrangement amongst the partners can be annulled/superseded at the stage of Account Opening Form. The intention of the parties having been reflected at the stage of their Account Opening would thus ex-facie override the implied authority.

12. The issues involved in the present case thus give rise to disputed questions of fact amongst private parties which would require adjudication only by leading evidence. I find that there is no prima-facie illegality in the impugned order passed by the Reserve Bank of India.

13. The present petition is accordingly dismissed. The petitioner may, if so advised, take recourse to the alternative remedy available to him in accordance with law.

(VINOD S. BHARDWAJ)
AUGUST 23, 2023 **JUDGE**
Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No