OD 3

WPO/159/2024
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

DIKSHA GREEN PVT. LTD. AND ORS.
VS
PUNJAB AND SIND BANK AND ANR.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 13th March, 2024.

Appearance:
Mr. Suman Dutta, Adv.
Mr. Siddhartha Banerjee, Adv.
Mr. Debmalya Ghosal, Adv.
Mr. D. Basu Ray, Adv.
Ms. Shreya Basu, Adv.
…for the petitioner

Mr. Ramesh Ch. Prusti, Adv.
Mr. Sanjib Das, Adv.
Mr. B. Upadhyay, Adv.
Ms. Alisha Kar, Adv.
Ms. Sunita Kabi, Adv.
…for the respondent

The Court: Learned counsel for the petitioner contends that the petitioners' account has been declared as 'Fraud' under the Master Directions of the Reserve Bank of India for Classification of Accounts as Fraud.

The said decision is challenged primarily on the ground that the documents relied on by the respondents for declaring the petitioner's account to be fraud, particularly the Forensic Audit Report and other documents referred to in the impugned decision, were not served on the petitioner at all. Such non-service, it is argued, vitiates the impugned decision.

Learned counsel cites in support of this contention an unreported judgment of this Court in *WPA 28329 of 2023 (Hemant Kanoria vs. Bank of India).* In the said judgment, the Court, relying on the judgments in *Rajesh Agarwal's case* and *Neptune Overseas Limited's case*, both by the Supreme Court, observed that in case of show cause notices under the Master Directions in question, first a show cause notice is to be issued, enumerating the exact offences alleged against the borrower/director. If any FAR (Forensic Audit Report) or other document forms the basis of the show-cause, the same is to be served along with the show-cause notice.

Learned counsel for the respondent bank argues that the petitioner was well in the know of the facts leading to the petitioner's account being declared as fraud. Particular reliance is placed on the communication made on behalf of the petitioner no.1, annexed at page 52 of the writ petition, where it was mentioned by the said petitioner that it had received a Forensic Investigation Report which was enclosed thereto. The petitioner no. 1 further stated that all necessary investigations had been carried by the insurance company including Forensic Investigation which goes to say that the petitioner no.1 had moved much ahead in the process of claims settlement and were quite hopeful to get justice by realizing the much needed insured amount from the Insurance Company.

Learned counsel for the respondents also places reliance on the averments of the writ petitioner in paragraph nos. 9, 11 and 16 thereof. It is argued that in the said paragraphs, the relevant circumstances leading to the fraud declaration have been enumerated. It is admitted by the petitioner in paragraph no.11 that their account was classified as NPA (Non-Performing Asset) but, it is argued that the petitioners apparently need not take any steps against such classification. It is argued that the petitioners are guilty of fraud, for which the decision impugned herein ought not to be set aside.

Heard learned counsel for the parties.

Even a cursory perusal of the impugned decision declaring the petitioner's account as fraud shows that almost in every paragraph of the bank's comments, which culminated in the conclusion of declaration of fraud, a Forensic Audit Report has been mentioned and relied on specifically.

Even in the concluding portion of the decision, it is observed that pursuant to all facts which were revealed in the Forensic Audit Report, documentary evidence available with the bank, etc., the decision was being taken that the petitioner's account was to be declared as fraud.

Thus, the very plinth of the impugned decision of declaration of fraud was the Forensic Audit Report which has been heavily relied on by the bank for declaring the account of the petitioners as fraud. However, neither the forensic audit report nor the documentary evidence which was admittedly available with the bank was served on the petitioners, thereby vitiating the impugned decision. In *Hemant Kanoria (supra)* it was observed, by placing reliance on two judgments of the Supreme Court, that in cases of declaration of fraud, a show-cause notice is to be issued and any FAR or other document, which forms the basis of the show cause are also to be served along with the show-cause notice.

In *Rajesh Agarwal's case*, the Supreme Court had directed a copy of the audit report to be handed over to the borrower in observance of the principles of natural justice.

In *Neptune Overseas Limited (supra)*, it was held that there should not be a cussedness in handing over mere copies of documents when serious allegations and consequences would flow to the respondents.

As such, it has been the consistent view of this Court and the Supreme Court that in cases where a show cause notice is issued and before declaring a person or an entity to be a fraud, the principle of *Audi Alteram Partem* has to be complied with, not merely in letter but also in spirit. An appropriate opportunity to reply also comprises a full-fledged opportunity to dealt with all the documents which form the very basis of the show cause issued by the authorities and the subsequent considerations.

In the present case, since the FAR and other documents admittedly available with the bank were the basis of the impugned decision but copies of those were never served on the petitioner, it cannot be said that there was compliance of the principle of *Audi Alteram Partem* on the part of the respondents.

The other arguments of the respondents made before this Court are neither here nor there inasmuch as the petitioners being in possession of a purported Forensic investigation report authored by the insurance company is in no way related to the documents which were relied on by the respondents in declaring the petitioners' account to be fraud. At least no reference to such document is made in the impugned decision.

With regard to the NPA classification and the other components of the pleadings of the petitioner, this Court is not sitting in judgment over whether the alleged offences were actually committed or not by the petitioners. At this juncture, it would be premature for the writ court to embark upon an enquiry as to whether the petitioners were actually guilty of any act of fraud as contemplated under the RBI Master Directions. Hence, such futile exercise is not undertaken at all.

In so far as the impugned decision is concerned, which is the sole subject-matter of the present writ petition, the said decision is palpably vitiated due to non-service of the Forensic Audit Report as well as other documents which were available with the respondent but not handed over to the petitioners, although those form the very basis of the impugned decision.

In such view of the matter, WPO/159/2024 is allowed on contest, thereby setting aside the impugned decision declaring the petitioners' account as fraud under the Master Directions of the RBI in that regard.

It is, however, made clear that nothing in this order shall prevent the respondents from issuing a fresh show cause notice to the petitioners and/or, on the strength of the previous show-cause notice, to hand over copies of all the documents including the FAR on which the respondents seek to rely.

Only after service of copies of such documents, the respondents will be at liberty to reinitiate the proceedings of declaration of the petitioners' account as fraud, of course, upon giving an adequate opportunity to the petitioners afresh to file their reply/rejoinder to the reply previously filed by them, dealing with the documents now served on them.

It is made clear that merits of the allegations against the petitioners have not been gone into by this Court.

Since no affidavits were invited, it is also deemed that none of allegations made in the writ petition are admitted by the respondents.

If any steps have been taken by the respondents in the meantime in consequence of the fraud declaration which is impugned herein and is hereby set aside, such consequential action stands automatically reversed. The respondents shall take due steps to ensure that such reversal is given effect to immediately.

Needless to say, nothing in this order shall prevent the respondents from pursuing any recovery proceeding or SARFAESI action if already initiated by the respondents against the petitioner.

(SABYASACHI BHATTACHARYYA, J.)

B.Pal