IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1943 OF 2024

Rajesh G. Poddar & Ors. .. Petitioners

Versus

Reserver Bank of India & Anr. .. Respondents

Ms.Radhika Nair a/w Keertana Nair i/b Anchal Garg, Advocates for the Petitioners.

Mr.Shyam Kapadia a/w Abdullah Qureshi, Shradha Patil i/b India Law LLP, Advocates for Respondent No.2.

CORAM :B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE : AUGUST 08, 2024

P. C.

1. The above Writ Petition is filed challenging the impugned declaration of fraud of the Petitioners' account under the RBI circular dated 1st July 2016.

2. It is the case of the Petitioners that the copy of such declaration has not been served on the Petitioners. This apart, one of the main grounds to challenge the said declaration is that no hearing was given before the Petitioners' account was declared as 'Fraud'. Further no documents were also furnished. In such circumstances, the argument is that the entire action of the 2nd Respondent Bank in declaring the Petitioners account as fraud, runs in the teeth of the decision of the Hon'ble Supreme Court in the case of ***State Bank of India & Ors. V/S Rajesh Agarwal & Ors. [2023 (6) SCC 1]***.

3. Mr.Kapadia, the learned counsel appearing on behalf of Respondent No.2, fairly conceded that the declaration of the account of the Petitioners as a fraud account is in fact contrary to the judgment of the Hon'ble Supreme Court in the case of ***Rajesh Agarwal (supra)***. He however submitted that no *malafides* can be attached to the actions taken by the 2nd Respondent Bank because the declaration of fraud was done prior to the decision rendered by the Hon'ble Supreme Court in ***Rajesh Agarwal***.

4. Having heard the learned counsel appearing for the parties we are of the view that since the declaration of the Petitioners' account as fraud is contrary to the decision of the Hon'ble Supreme Court in ***Rajesh Agarwal***, the above Petition deserves to be allowed. It makes little difference whether the action taken by the 2nd Respondent Bank is before or after the decision of the Hon'ble Supreme Court in ***Rajesh***

Agarwal. It is not as if the judgment in ***Rajesh Agarwal*** applies only prospectively. In the said decision, the Hon'ble Supreme Court only declared what the law always was and would apply even to actions taken prior to passing of the said judgment.

5. In these circumstances, the declaration of fraud of the Petitioners' account by the 2nd Respondent Bank is hereby quashed and set aside. We however make it clear that criminal proceedings that have been initiated by the 2nd Respondent Bank against the Petitioners shall proceed on its own merits but *de-hors* the Petitioners' account being declared as a fraud account under the Master Circular dated 1st July 2016.

6. We further clarify that since now a new Master Circular has been issued by RBI [regarding fraud declarations] dated 15th July 2024, the 2nd Respondent Bank shall be entitled to initiate fresh proceedings for declaring the Petitioners account as a fraud by strictly following the RBI circular dated 15th July 2024 and the decision of the Hon'ble Supreme Court in the case of ***Rajesh Agarwal***. In the event the account of the Petitioners is once again declared as fraud [by following the due procedure], the 2nd Respondent Bank will not have to file a fresh criminal complaint as contemplated in clause 5 of the RBI circular dated 15th July 2024 and the complaint already filed and pending shall be taken to its logical conclusion.

7. The Writ Petition is disposed of in the aforesaid terms. However, there shall be no order as to costs.

8. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**