IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **26.07.2024**

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.Nos.1771, 2042 & 2413 of 2021
and
C.M.P.Nos.15434, 11048 & 13016 of 2021

State Bank of India,
Stressed Assets Management Branch,
32, Montieth Road,
Egmore,
Chennai - 600 008,
represented by its Deputy General Manager. ... Appellants in all W.A's

Vs.

1. Shankar Varadharajan

2. Reserve Bank of India,
16, Rajaji Salai, Fort Glacis,
Chennai - 600 001. ... Respondents in W.A.No.1771 of 2021

Padmavathy Suresh ... Respondent in W.A.No.2042 of 2021

V.Srinivasan ... Respondent in W.A.No.2413 of 2021

Common Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 29.08.2019 passed in W.P.Nos.13699, 21416 & 16254 of 2019.

For Appellant : Mr.M.L.Ganesh [in all W.A's]

For R1 : Mr.R.Palaniandavan [in all W.A's]

For R2 : Mr.C.Mohan
for Ms.A.Rexy Josephine Mary
for M/s.King and Partridge (for RBI)
[in W.A.No.1771 of 2021]

COMMON JUDGMENT

(Judgment of the Court was made by **S.M.SUBRAMANIAM, J.**)

The writ order dated 29.08.2019 passed in W.P.Nos.13699, 21416 & 16254 of 2019 is sought to be assailed in the present intra-court appeal.

2. The initial question raised before this Court is whether the decision of the Hon'ble Supreme Court in ***State Bank of India Vs. Jah Developers*** Case reported in ***2019 (6) SCC 787*** would have prospective or retrospective application in respect of the cases for declaration of willful defaulter prior to the pronouncement of the Judgment.

3. The second question raised by the respondent would be that a copy of the order passed by the Identification Committee and the Review Committee have not been served on the respondents, which is in violative of the Reserve Bank Master Guidelines and in violation of the Rules of natural justice.

4. Mr.M.L.Ganesh, the learned Counsel appearing on behalf of the appellant/Bank would submit that ***Jah Developers*** case cited *supra* would have only prospective application and the principles have already been reiterated subsequently by the Hon'ble Apex Court. In support of his contention, in the case of ***P.V.George and Ors. Vs. State of Kerala and Ors.*** *r*eported in ***2007 (3) SCC 557,*** the Hon'ble Supreme Court considered the principle regarding the application of ***Jah Developer's Case,*** whether prospective or not. In para.13 of the Judgment, Justice S.B.Sinha, J. reiterated that the legal position is clear that the decision of the Courts will have normally prospectively applied, unless it is specifically directed. Para.13 and 14 of the said Judgment reads as under:

> "*13. The ratio laid down by this Court, as noticed hereinafter, categorically shows the effect of a decision which had not been directed to have a prospective operation. The legal position in clear*

and unequivocal terms was stated by a Division Bench of this Court in M.A.Murthy v. State of Karnataka and Ors. MANU/SC/0662/2003 : [2003] 264 ITR 1 (SC) in the following terms:

> *Learned Counsel for the appellant submitted that the approach of the High Court is erroneous as the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective over-ruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in L.C.Golak Nath and Ors. v. State of Punjab and Anr. In Managing Director, ECIL, Hyderabad and Ors. v. B.Karunakar and Ors., the view was adopted. Prospective over-ruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See Ashok Kumar Gupta v. State of U.P. and Baburam v. C.C.Jacob. It is for this Court to indicate as to whether the decision in question will operate*

prospectively. In other words, there shall be no prospective over-ruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective over-ruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to be consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in Ashok Kumar Sharma's case No.II. All the more so when the subsequent judgment is by way of Review of the first judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision have been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set, aside.

14. The effect of declaration of law, the rue of stare decisis and the consequences flowing from a departure from an earlier decision has been considered in great details by the House of Lords in National Westminster Bank plc v. Spectrum Plus Limited and Ors. (2005) UKHL 41: 2005 (3) WLR 58, opining:

8. People generally conduct their affairs on the *basis of what they understand the law to be. This 'retrospective' effect of a change in the law of this nature can have disruptive and seemingly unfair consequences. 'Prospective overruling', sometimes described as 'non-retroactive overruling', is a judicial tool fashioned to mitigate these adverse consequences. It is a shorthand description for court rulings on points of law which, to greater or lesser extent, are designed not to have the normal retrospective effect of judicial decisions.*

9. Prospective overruling takes several different forms. In its simplest form prospective overruling involves a court giving a ruling of the character sought by the bank in the present case. Overruling of this simple or 'pure' type has the effect that the court ruling has an exclusively prospective effect. The ruling applies only to transactions or happenings occurring after the date of the court decision. All transactions entered into, or events occurring, before that date continue to be governed by the law as it was conceived to be before the court gave its ruling.

10. Other forms of prospective overruling are more limited and 'selective' in their departure from the normal effect of court decisions. The ruling in its *operation may be prospective and, additionally, retrospective in its effect as between the parties to the case in which the ruling is given. Or the ruling may be prospective and, additionally, retrospective as between the parties in the case in which the ruling was given and also as between the parties in any other cases already pending before the courts. There are other variations on the same theme.*

11. Recently Advocate General Jacobs suggested an even more radical form of prospective overruling. He suggested that the retrospective and prospective effect of a ruling of the Europested that of Justice might be subject to a temporal limitation that the ruling should not take effect until a future date namely, when the State had ruling note opportunity to introduce new legislation: Banco Popolare di Cremona v. Agenzia Entrate Ufficio Cremona (Case C-475/03, 17 March 2005), para 72-88.
[See also Lord Rodger of Earsferry - 'A Time for Everything under the Law: Some Reflections on Retrospectivity' (2005) 121 LQR 55.
Lord Nicholls of Birkenhead speaking for the House of Lords clearly held that the power to apply prospective overruling is available to the House of Lords also.

5. In the case of ***Patil Automation Private Limited and Ors. Vs. Rakheja Engineers Private Limited*** reported in 2022 (10) SCC 1, the Hon'ble Supreme Court of India reiterated the said principles in para.77, which reads as under:

> "*77. There is a plea by Shri Saket Sikri, that if this Court holds that Section 12A is mandatory it may be done with only prospective effect. He drew support of the judgment of this Court in, Jarnail Singh and Ors. v. Lachhmi Narain Gupta and Ors. MANU/SC/0104/2022.*
>
> > *35. While interpreting the scope of Article 142 of the Constitution, this Court held that the law declared by the Supreme Court is the law of the land and in so declaring, the operation of the law can be restricted to the future, thereby saving past transactions."*

6. Further, Mr.M.L.Ganesh, the learned Counsel for the appellant/Bank would submit that the said principles are followed by the learned Single Judge of this Court in W.P.No.14667 of 2020 dated 09.01.2024. Para.9 reads as under:

> "*9. This Court is of the considered opinion that the judgment of the Hon'ble Supreme Court in the case of* ***Jah Developers Pvt.Ltd.,*** *would have no retrospective application with*

reference to the present case on hand, since the Identification Committee and the Review Committee had taken the final decision before the date of the judgment. Such decisions taken prior to the judgment of the Apex Court if reopened, would result in opening of Pandora's box and many such wilful defaulters, would come with an application to undo the decision taken by the Identification Committee and the Review Committee. More so, in the present case, the Identification Committee and the Review Committee had given sufficient opportunities to the petitioner to defend their case and thus, the rules of natural justice have been followed. Thus, the judgment of the Hon'ble Supreme Court in the case of ***Jah Developers Pvt.Ltd.,*** *is of no avail to the petitioner for the purpose of assailing the order impugned in the present writ proceedings."*

7. Relying on the above Judgments, the learned Counsel for the appellant/Bank would submit that the legal position is clear that the Judgments will have prospective application unless it is specifically directed by the Courts, otherwise.

8. In order to find out whether the present case would fall under the principles laid down in ***Jah Developers*** Case or the decision was taken by the appellant/bank prior to the Judgement in ***Jah Developers*** Case or not is

necessarily to be considered. In this context, certain facts would be relevant.

9. On 26.11.2013, the account of the Company in which the first respondent was a Director was declared as Non-performing Assest (NPA). On 16.08.2017, notice was issued to the Directors of the Company and the Company for making submissions on willful defaulter. Again on 01.09.2017, 09.10.2018 and 18.12.2018, notices were sent to the Directors of the Company and to the Company. Finally on 27.12.2018, the Identification Committee passed an order. The Review Committee on willful defaulters passed a resolution approving the decision of the Identification Committee on 12.02.2019. Subsequently, the appellant/bank issued notice on 10.04.2019.

10. Admittedly, the Judgment in ***Jah Developers*** Case was delivered by the Hon'ble Supreme Court of India on 08.05.2019, subsequent to the final decision taken by the Identification Committee as confirmed by the Review committee on willful defaulters in the present case. Therefore, procedures or clarifications issued by ***Jah Developers*** Case cannot be applied to the cases of the respondents herein, since the entire process based on the Reserve Bank of India Circular were concluded before the date of Judgment in the case of

Jah Developers cited *supra.*

11. Therefore, the respondents are not entitled to take advantage of the procedures or otherwise contemplated by the Hon'ble Supreme Court of India in ***Jah Developers*** Case. The case of the respondents were concluded in all respects prior to the Judgment. That being so, the learned Single Judge has erred in remanding the matter, which may not serve any useful purpose.

12. Pertinently, the Hon'ble Supreme Court in ***Jah Developers*** Case, considered the consequences of the declaration of a person as "willful defaulter" in para.9 as under:

> "*9. At this stage, it is necessary to mention that serious consequences follow after a person has been classified as a wilful defaulter. These consequences are as follows:*
>
> *(a) No additional facilities to be granted by any bank/financial institution [para 2.5 (a)].*
>
> *(b) Entrepreneurs/Promoters would be barred from institutional finance for a period of 5 years [para 2.5(a)].*
>
> *(c) Any legal proceedings can be initiated, including criminal complaints [para 2.5(b)].*
>
> *(d) Banks and financial institutions to adopt proactive approach in changing the management of the wilful defaulter [para 2.5(c)].*

(e) Promoter/Director of wilful defaulter shall not be inducted by another borrowing company [para 2.5(d)].

(f) As per Section 29-A of the Insolvency and Bankruptcy Code, 2016, a wilful defaulter cannot be a resolution applicant."

13. Mr.R.Palaniandavan, learned Counsel appearing on behalf of the first respondent would oppose by stating that the appellant/bank has not served copy of the orders passed by the Identification Committee and Review Committee. The procedural violations committed by the appellant/bank is incurable. Therefore, the entire willful defaulter proceedings are to be declared as invalid. It is contended that individual reply given by the Directors of the Company, so as to establish they are not personally liable were not considered by the Identification Committee and the Review Committee, while taking final decisions. The liability of the Company is one aspect of the matter and the stand of the Director or their involvement in their capacity ought to have been adjudicated on merits by the Identification Committee and the Review Committee, which had not being done. Thus, the learned Single Judge is right in remanding the matter back for fresh consideration of grounds raised by the respondents individually.

14. Mr.R.Palaniandavan, learned Counsel would further submit that ***Jah Developers*** Case can be applied even retrospectively and the said position can be carved out from the observations made in para.24 of the Judgment.

15. We have carefully gone through para.24 of the Judgment. The mentioning of Master Circular dated 01.07.2013 was for the purpose of emphasizing that the procedure, which was in force prior to the Judgment and its application with reference to certain common procedures. However, the law laid down in ***Jah Developers*** Case cannot have retrospective application but will have prospective application. Therefore, in the absence of any specific direction to apply the principles retrospectively, the Judgments delivered by the Courts are to be applied prospectively at all circumstances.

16. High Court of Gujarat at Ahamedabad in the case of ***Jagdish Prasad Saboo Vs. IDBI Bank Limited*** in R/Letters Patent Appeal No.841 of 2023 dated 06.11.2023 held as follows:

> "*30. Lastly, for the reasoning given by the learned Single Judge in paragraphs 13, 14, 15 and 16, we find that the allegations*

against the appellant are for diversion, routing and siphoning of funds and the appellant was given full opportunity to explain the allegations before the order was passed by the Identification Committee to declare the appellant as a 'willful defaulter in terms of the Master Circular dated 01.07.2015 issued by the RBI. The Identification Committee and the Review Committee both after thorough investigation have found that the appellant, without permission of the lenders, had diverted the funds, which act of his falls under the criteria of 'willful defaulter' as prescribed in the relevant clauses of the RBI Master Circular dated 01.07.2015.

31. The conclusion drawn by the learned Single Judge that while exercising the jurisdiction under Article 226 of the Constitution of India cannot transpose itself as an expert body, sitting in the armchair of the financial experts as to what should have been the business prudence, and it cannot be the subject matter of judicial scrutiny, is perfectly justified. It is settled law that this Court in exercise of power of judicial review cannot substitute with the opinion of the experts in the field of finance and banking and interference by the Writ Court is limited to the demonstrably perverse or illegal action/ orders."

17. While concluding the arguments, Mr.R.Palaniandavan, learned Counsel for the first respondent brought to the notice of this Court that 5 years period has expired. Therefore, the consequences cannot have any

adverse effect to the respondents. Willful defaulter declaration was made on 12.02.2019 and as rightly said by the learned Counsel for the first respondents, the period of 5 years expired. That being so, there is no impediment for the respondents to have their Bank transactions in a normal manner. However, the legal position that the ***Jah Developers*** Case would have prospective application stands reiterated, since the Hon'ble Supreme Court even in other Judgments as cited *supra* settled the principles.

18. The learned Single Judge has remanded the case back to the appellant/Bank, which became unnecessary in our opinion. Therefore, we are inclined to interfere. Accordingly, the impugned order 29.08.2019 passed in W.P.Nos.13699, 21416 & 16254 of 2019 is set aside and the writ appeals stand **allowed**. No costs. Consequently, connected miscellaneous petitions are closed.

[S.M.S., J.] [C.K., J.]
26.07.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

1. State Bank of India,
   Stressed Assets Management Branch,
   32, Montieth Road,
   Egmore,
   Chennai - 600 008,
   represented by its Deputy General Manager.

2. Reserve Bank of India,
   16, Rajaji Salai, Fort Glacis,
   Chennai - 600 001.

S.M.SUBRAMANIAM, J.
AND
C.KUMARAPPAN, J.

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Judgment in
W.A.Nos.1771, 2042 & 2413 of 2021 (3 cases)

26.07.2024