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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **22.08.2024**

CORAM :
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Writ Petition No.7154 of 2022
and W.M.P.No.7181 of 2022

Prateek Gupta ... Petitioner

Vs.

1.Indian Bank Ltd.,
Main Branch,
Rajaji Salai,
Chennai – 600 001.

2.Reserve Bank of India,
16, Rajaji Salai, Fort Glacis,
Chennai, Tamil Nadu – 600 001.

3.UIL Hong Kong Ltd.,
Rep. by its Liquidator Mr.Osman Mohammed Arab,
RSM Corporate Advisory (HK) Limited,
29th Floor, Lee Garden Two,
28 Yun Ping Road,
Cuase Bay, Hong Kong. … Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Declaration calling for the records in the file of the 1st respondent leading to the declaration of 'fraud' under the RBI Master Circular dated 01.07.2016 (updated on 03.07.2017), of the third respondent's account, and to quash the same as illegal, arbitrary and unconstitutional; and to

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consequently restrain the 1st respondent from initiating any further action pursuant thereto.

For Petitioner : Mr.Vishnu Mohan

For Respondent 1 : No appearance

For Respondent 2 : Mr.C.Mohan

For Respondent 3 : Not Ready in Notice

For Respondents 8 to 10 : Mr.B.Gopalakrishnan

O R D E R

This writ petition has been filed by the petitioner to call for the records in the file of the 1st respondent leading to the declaration of 'fraud' under the RBI Master Circular dated 01.07.2016 (updated on 03.07.2017), of the third respondent's account, and to quash the same as illegal, arbitrary and unconstitutional; and to consequently restrain the 1st respondent from initiating any further action pursuant thereto.

2. The case of the petitioner is that he is the erstwhile Director of the third respondent company, which is currently undergoing Corporate

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Insolvency Resolution Proceedings. The petitioner is aggrieved by the first respondent's declaration that the accounts of the third respondent is fraud. Hence, the petitioner is filing this present writ petition, seeking a declaration that such an act is arbitrary and unlawful.

3. Learned counsel for the petitioner would submit that the said declaration was made by the first respondent on the basis of the RBI Master Circular. However, the RBI Master Circular makes it clear that before declaring the third respondent as fraud, necessary opportunity has to be given to comply with the principle of natural justice. However, such proceeding is not followed. Without following the proceeding, the third respondent company was declared as fraud vide proceedings dated 08.02.2022 by the first respondent, is not sustainable one and the same came to the knowledge of the petitioner only through paper publication, which was published in the Economic Times Industry on 08.03.2022.

4. Learned counsel for the petitioner would further submit that the issue arises in this writ petition is no longer res-integra and the same was covered by the decision of the ***Hon'ble Apex Court in the case of State Bank of***

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India and others Vs., Rajesh Agarwal and others, reported in 2023 6 SCC. Accordingly, he prayed for allowing this writ petition.

5. Though the name of the first respondent is printed in the cause list, none appeared on behalf of the first respondent.

6. Learned counsel appearing for the second respondent fairly submitted that the issue was covered by the decision of the ***Hon'ble Apex Court in the case of State Bank of India and others Vs., Rajesh Agarwal and others, reported in 2023 6 SCC***. In so far as the principle of natural justice is concerned, the opportunity must be given to the aggrieved parties. If it is complied, it has to be decided on merits.

7. Heard the learned counsel on either side and perused the materials available on record.

8. The facts in the present case is not in dispute. The third respondent

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company, in which the petitioner functioned as a Director, was declared as fraud and challenging the same, the present writ petition was filed. This court perused the impugned proceedings dated 08.02.2022 and the same did not reveal with regard to the opportunity given to the third respondent as well as to the petitioner and the issue arises in the present case is no longer re-integra and the same was covered by the decision of the ***Hon'ble Apex Court in the case of State Bank of India and others Vs., Rajesh Agarwal and others, reported in 2023 6 SCC***. For better appreciation and understanding, the relevant paragraph are extracted hereunder:

> *"98.5. The application of audi alteream partem cannot be impliedly excluded under the Master Directions on Frauds. In view of the time-frame contemplated under the Master Directions on Frauds as well as the nature of the procedure adopted, it is reasonably practicable for the lender banks to provide an opportunity of a hearing to the borrowers before classifying their account as fraud.*
>
> *98.6. The principels of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the conclusions of the forensic audit report, and be allowed to represent by the banks/JLF before their account in classified as fraud under the Master Directions on Frauds. In addition, the decision classifying the borrower's account as fraudulent must be made by a reasoned order."*

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9. On perusal of the impugned proceedings dated 08.02.2022 and the above said decision makes it clear that without providing any opportunity to the third respondent as well as to the petitioner, the first respondent has declared the third respondent company as fraud. Hence the impugned proceeding dated 08.02.2022 is a clear violation of natural justice. Therefore, the impugned proceedings dated 08.02.2022 is liable to be interfered and the same is set aside and the matter is remitted back to the first respondent to decide the issue afresh, after providing necessary opportunity of hearing to the petitioner as well as the third respondent and pass appropriate orders as expeditiously as possible.

10. With the aforesaid observation and direction, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

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

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M.DHANDAPANI,J.

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