Form No. J.(2)
Item Nos.3 & 4

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 12.03.2025

DELIVERED ON: 12.03.2025

CORAM:
THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

F.M.A. 1201 of 2024
With
I.A. No. CAN 1 of 2024

State Bank of India
Vs.
Sweta Agarwal
With
F.M.A. 1266 of 2024
With
I.A. No. CAN 1 of 2024

State Bank of India
Vs.
Amit Iron Private Limited & Anr.

Appearance:-
Mr. Deblina Lahiri
Mr. Debashis Sarkar
Mr. Mrinmoy Chatterjee
..... For the Appellant

Mr. Deepan Kumar Sarkar
Mr. Suryaksh Manot
......For the Respondents

<u>JUDGMENT</u>

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. Since the identical questions of fact and law are involved in both these appeals, both the appeals are taken up analogously and are decided by this common judgment and order, which will govern the fate of both the

appeals. For the sake of convenience, we take up F.M.A. 1201 of 2024 for discussion.

2. This intra-Court appeal filed by the State Bank of India, the respondent in W.P.A. 10601 of 2024, is directed against the order dated 7th August, 2024. The respondent filed the writ petition challenging an order passed by the appellant/bank declaring her bank account as fraud. The order was put to challenge on the ground of violation of principles of natural justice or in other words, the rule of *audi alteram partem* was not followed. The learned Single Bench after considering the facts of the case, took note of the recent decision of the Hon'ble Supreme Court in the case of ***State Bank of India and Ors. Vs. Rajesh Agarwal & Ors.*** (Civil Appeal No.7300 of 2022 dated 27th March, 2023) and allowed the writ petition not in toto, but by setting aside the declaration of fraud of the writ petitioner's bank account and directing the appellant/bank to furnish the decisions of the ICICI Bank and the Axis Bank to the extent available with the appellant and also the two forensic audit reports to be supplied within a time frame and the respondent/writ petitioner be allowed an opportunity to file an additional reply before the Committee by dealing with those documents and the Committee will then proceed with the matter in accordance with law and pass a reasoned order.

3. The learned advocate appearing for the appellant/bank after elaborately referring to the facts, contended that it is not a case, where there was no opportunity granted to the writ petitioner; at best it can be termed to be a case where adequate opportunity was not granted to the writ petitioner and

in any event, the Writ Court ought not to have interfered with the decision taken by the Committee declaring the writ petitioner's account as "fraud".

4. Further, it is submitted that an opportunity of hearing shall not always be construed to be an opportunity of personal hearing and such interpretation is not in consonance with the decision of the Hon'ble Supreme Court in the case of ***Union of India & Anr. Vs. Jesus Sales Corporation*** reported in ***(1996) 4 SCC 69***.

5. Further, it is submitted that the principles of natural justice cannot be put in a straight-jacket formula and even assuming certain reports were not furnished to the writ petitioner, that by itself will not be a ground to set aside the decision of the appellant/bank as the writ petitioner has to prove prejudice on account of non-supply of the reports and the materials or documents. To support such contention, reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***Managing Director, ECIL, Hyderabad & Ors. Vs. B. Karunakar & Ors.*** reported in ***(1993) 4 SCC 727***.

6. Further, reliance was placed on the decision of the Hon'ble Supreme Court in ***Ganesh Santa Ram Sirur Vs. State Bank of India & Anr.*** reported in ***(2005) 1 SCC 13*** for the same proposition, where the decision in ***Jesus Sales Corporation (supra)*** & ***B. Karunakar & Ors. (surpa)*** were referred to.

7. The learned advocate appearing for the appellant/bank has drawn our attention to the reply given by the respondent/writ petitioner dated 8th February, 2022, the decision taken by the appellant/bank declaring the writ petitioner's account as fraud, as intimated to the writ petitioner vide a

communication dated 13th March, 2024 along with the speaking order and other related documents.

8. The learned advocate appearing for the respondent/writ petitioner submitted that no blanket protection was given to the writ petitioner and a reading of the impugned order will clearly show that the learned Single Bench has remanded the matter back to the appellant with certain directions, which can never said to be prejudiced the rights of the bank. Furthermore, the decision in ***Rajesh Agarwal & Ors. (supra)*** holds the field and the said decision pertains to interpretation of the Master Circular issued by the Reserve Bank of India *qua* declaration of bank account of a borrower as fraud.

9. Furthermore, it has been observed in the said decision that declaration of a bank account as fraud has serious civil consequences and it has been held to be a case of a civil death. Furthermore, it is submitted that the question of waiver would not apply in the light of the authoritative pronouncement of the Hon'ble Supreme Court in the case of ***Rajesh Agarwal & Ors. (supra).***

10. With regard to the reference to the declaration made by ICICI Bank and Axis Bank declaring the writ petitioner's account as fraud, the appellant had no knowledge of the said orders and only after she received the intimation notice dated 13th March, 2024, she became aware of it and so far as the ICICI Bank account is concerned, the same was fully settled during December, 2021 and all securities, which were held by ICICI Bank were released and no dues certificate was also obtained from ICICI Bank and there is a specific averment in paragraph 18(d) of the writ petition, which was not controverted.

11. So far as the declaration of fraud by the Axis Bank Ltd, which has been mentioned in the intimation dated 13th March, 2024, the writ petitioners concerned had no knowledge of the same and after they came to know of the said declaration for the first time in March 20, 2024, they immediately filed a writ petition before this Court in W.P.A. 16247 of 2024 and by order dated 3rd September, 2024, the learned Writ Court had set aside the order, however, making it clear that the order will not prevent the Axis Bank Ltd. from proceeding in accordance with law upon compliance of the requirements, as discussed in the said order.

12. We have elaborately heard the learned advocates for the parties.

13. The decisions, which have been relied on by the learned advocate appearing for the appellant explains the principles of natural justice and the rule of *audi alteram partem*, but in the case on hand, we are specifically concerned about a declaration of an account of the writ petitioners as fraud. Therefore, we are to test the correctness of the decision of the appellant/bank as well as the order passed by the learned Writ Court based on the decision, which is closest to the facts and circumstances of the case and if that be done, then we are to be guided and we are bound to follow the decision of the Hon'ble Supreme Court in ***Rajesh Agarwal & Ors. (supra)*** as the said decision specifically arises out of a challenge to the Reserve Bank of India (Frauds classification and reporting by commercial banks and select Fis) Directions, 2016, which is commonly known as Master Directions on Fraud.

14. Therefore, the learned Single Bench cannot be faulted for having followed the said decision. Conclusions drawn in the said decision are in

paragraph-81. With regard to the procedure to be followed by the lender bank, the Hon'ble Supreme Court has issued directions, which are contained in paragraph 79 of the judgment, which are quoted hereinbelow:-

> *"79.In light of the legal position noted above, we hold that the rule of audi alteram partem ought to be read in Clauses 8.9.4 and 8.9.5 of the Master Directions on Fraud. Consistent with the principles of natural justice, the lender banks should provide an opportunity to a borrower by furnishing a copy of the audit reports and allow the borrower a reasonable opportunity to submit a representation before classifying the account as fraud. A reasoned order has to be issued on the objections addressed by the borrower. On perusal of the facts, it is indubitable that the lender banks did not provide an opportunity of hearing to the borrowers before classifying their accounts as fraud. Therefore, the impugned decision to classify the borrower account as fraud is vitiated by the failure to observe the rule of audi alteram partem. In the present batch of appeals, this Court passed an ad-interim order restraining the lender banks from taking any precipitate action against the borrowers for the time being. In pursuance of our aforesaid reasoning, we hold that the decision by the lender banks to classify the borrower accounts as fraud, is violative of the principles of natural justice. The banks would be at liberty to take fresh steps in accordance with this decision."*

15. As mentioned above, the conclusions are contained in paragraph 81 of the judgment, which is also quoted hereinbelow:-

> *"81. The conclusions are summarized below:*
> *i. No opportunity of being heard is required before an FIR is lodged and registered;*
> *ii. Classification of an account as fraud not only results in reporting the crime to investigating agencies, but also has other penal and civil consequences against the borrowers;*
> *iii. Debarring the borrowers from accessing institutional finance under Clause 8.12.1 of the Master Directions on Frauds results*

> *in serious civil consequences for the borrower;*
>
> *iv. Such a debarment under Clause 8.12.1 of the Master Directions on Frauds is akin to blacklisting the borrowers for being untrustworthy and unworthy of credit by banks. This Court has consistently held that an opportunity of hearing ought to be provided before a person is blacklisted.*
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> *v. The application of audi alteram 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;*
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> *vi. The principles 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 is 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; and*
>
> *vii. Since the Master Directions on Frauds do not expressly provide an opportunity of hearing to the borrowers before classifying their account as fraud, audi alteram partem has to be read into the provisions of the directions to save them from the vice of arbitrariness."*

16. Thus, in terms of the above directions, the writ petitioner was entitled to the copies of the forensic audit reports, which have been referred to. In fact, the writ petitioner in her reply dated 8th February, 2024 has stated about the two forensic audit reports, which were conducted and has also stated that she presumed that the Chartered Accountants, who conducted the forensic audits have submitted their reports to the bank. This clearly

would show that there is no question of waiver on the part of the writ petitioner as the writ petitioner was not privy to the said reports. In any event, as per the directions issued by the Hon'ble Supreme Court, the reports are to be furnished to the respondent/writ petitioner and there is no escape from the said proceedings.

17. As mentioned above, the decisions, which were relied on by the learned advocate appearing for the appellant/bank arises under different statutes and they laid down legal principles with regard to how the doctrine of *audi alteram partem* has to be interpreted.

18. We are required to follow the decision of ***Rajesh Agarwal & Ors. (supra)*** since that concerns an interpretation of the Master Directions on Fraud. Therefore, the learned Single Bench was right in issuing the impugned directions. However, we note that since the account with the ICICI Bank has been fully settled and no dues certificate has been issued by ICICI Bank, the appellant/bank when they proceed further as per the directions of the learned Single Bench, is not required to rely upon the said declaration and so far as the declaration by the Axis Bank is concerned, the same having been set aside in W.P.A. 16247 of 2024 dated 3rd September, 2024, there shall be no reference to the said reports, unless and until the appellant/bank comes to know that fresh action has been initiated by Axis Bank on the writ petitioners.

19. If such is the factual position, then it is needless to state that copies of those proceedings as much as they are available with the appellant/bank should be furnished to the writ petitioner(s).

20. Thus, in the light of the above discussions, we find no good ground to interfere with the impugned order.

21. Accordingly, the appeals fail along with the connected application and are dismissed.

22. No costs.

23. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS) J.)

Pallab/KS AR(Ct.)