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ORDER SHEET
WPO No.949 of 2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SUSHIL KUMAR BHANSALI
VERSUS
RESERVE BANK OF INDIA & ORS.

BEFORE
THE HON'BLE JUSTICE AMRITA SINHA
Date : 25th March, 2025.

Appearance:
Mr. Jatinder Singh Dhatt, Adv.
...for the Petitioner.

Mr. D. K. Kundu, Adv.
Mr. Arjun Basu, Adv.
...for the RBI.

Mr. Sayak Ranjan Ganguly, Adv.
Ms. Srijani Ghosh, Adv.
Ms. Indrani Majumdar, Adv.
...for the Respondent Nos.2 & 3.

1. The petitioner is aggrieved by the act on the part of the ICICI Bank in declaring the petitioner's account as fraud without granting any opportunity of hearing to the petitioner. Violation of natural justice has been pleaded. It has been submitted that the direction passed by the Hon'ble Supreme Court in **State Bank of India & Ors. Vs. Rajesh Agarwal & Ors.** reported in **(2023) 6 SCC 1** has not been complied with.
2. Learned Counsel representing the ICICI Bank raises a preliminary issue with regard to maintainability of the writ petition. Reference has been made to the judgment delivered by the Hon'ble Supreme Court on 24th January, 2025 in Special Leave Petition (C) Nos.2625-2627 of 2025 in the matter of **S. Shobha Vs. Muthoot Finance Ltd.** wherein the Court held that normally mandamus is issued to a

public body or authority to compel it to perform some public duty cast upon it by some statute or statutory rule.

3. It has been submitted that there is no public duty or public duty element in the instant case. The Hon'ble Supreme Court clearly laid down that a private company carrying on banking business as a Scheduled bank cannot be termed as a company carrying on any public function or public duty.
4. Merely because a statute or a rule having the force of a statute requires a company or some other body to do a particular thing, it does not possess the attribute of a statutory body. There is no public law element involved in the instant case.
5. Learned advocate representing the petitioner stresses on the fact that the report of the Forensic Auditor which was dismissed by the learned NCLT has been relied upon by the bank for declaration of the petitioner's account as fraud without an opportunity of hearing being granted.
6. It has been submitted that the ICICI Bank is a member of the consortium of banks in respect of which a separate writ petition was moved by the instant petitioner being WPO No.1364 of 2023. The said writ petition was disposed of by the Court on 24th February, 2025.
7. Though the point of maintainability of the writ petition before this Court has been raised by the learned Counsel for the ICICI Bank but at the same time it has been submitted that no opportunity of hearing was given to the petitioner prior to declaration of fraud. However, with regard to declaration of the petitioner as wilful defaulter, all opportunities were provided.

8. The Reserve Bank of India Circular dated 10th March, 2025 being DOS.CO.RPD.No. 14/23.04.001/2024-25 has been placed before this Court. The Reserve Bank of India has made it clear that all regulated entities are required to comply with the Master Directions published by the Reserve Bank of India in respect of treatment of wilful defaulters and fraud and any non-compliance shall be viewed seriously.
9. The Hon'ble Supreme Court, in the matter of Rajesh Agarwal (supra), has reiterated that the principles of *audi alteram partem* is required to be complied with by the bank prior to declaration of the account as fraud. As it appears that there has been a statutory violation by the ICICI Bank as well as violation of the direction passed by the Hon'ble Supreme Court in the matter of Rajesh Agarwal (supra), the Court is minded to interfere in this matter.
10. The ICICI Bank is directed to take steps strictly in terms of the Master Directions published on fraud by the Reserve Bank of India and in line with the judgment delivered by the Hon'ble Supreme Court in the matter of Rajesh Agarwal (supra).
11. Declaration of the petitioner as fraud by the ICICI Bank stands set aside.
12. The writ petition stands disposed of.
13. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(AMRITA SINHA, J.)