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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 15835/2023**

RELIGARE FINVEST LIMITED

..... Petitioner

Through: Mr. Ashish Dholakia, Sr. Advocate
with Mr. Vipin Tyagi, Mr. Lakshya
Khanna and Ms. Kanak Malik,
Advocates.

versus

STATE BANK OF INDIA

..... Respondent

Through: Mr. Rajiv Kapur and Mr. Akshit
Kapur, Advocates.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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18.12.2023

1. The petitioner in the instant writ petition has prayed for the following reliefs:

“a) Issue any appropriate writ, order or direction in the nature of certiorari quashing the Respondent’s decision of classifying the Petitioner’s account as ‘fraud’ and including the Petitioner’s account on RBI’s Central Fraud Registry, constituted under the Reserve Bank of India (Frauds Classification and Reporting by Commercial Banks and Select FIs) Directions, 2016, as per the concerns raised in the Minutes of Meeting 03.04.2023 and 08.06.2023;

b) Issue any appropriate writ, order or direction in the nature of mandamus for directing the Respondent to remove Petitioner’s name from the fraud list under RBI’s Central Fraud Registry, constituted under the Reserve Bank of India (Frauds Classification and Reporting by Commercial Banks and Select FIs) Directions, 2016, as per the concerns raised in the Minutes of Meeting 03.04.2023 and 08.06.2023”

2. This court *vide* order dated 08.12.2023 directed for service of notice



on the respondent. On 14.12.2023, the matter was taken up and the learned counsel for the respondent was directed to take instructions on the limited aspect as to whether the petitioner was provided the opportunity of hearing before the impugned decision of declaring the petitioner as a fraud was taken by the respondent.

3. Learned counsel appearing on behalf of the respondent submits that in the instant case, as per his instructions, the opportunity of hearing was not extended to the petitioner before the account was declared as fraud by the respondent.

4. He also submits that the principle of law laid down in the case of ***State Bank of India and Ors. v. Rajesh Agarwal and Ors***¹ would not have any application as the said decision has been rendered by the Hon'ble Supreme Court on 27.03.2023, whereas, the impugned decision was taken prior to the pronouncement of the decision by the Hon'ble Supreme Court.

5. The parties also submit that the account of the petitioner has been settled and no due certificate has also been issued to the respondent.

6. I have considered the submissions made on behalf of the learned counsel appearing on behalf of the parties and perused the record.

7. Similar objection with respect to prospective applicability of the decision in the case of ***Rajesh Agarwal and Ors. (supra)*** has been considered by this court in ***W.P.(C) 9302/2022***. The relevant paragraphs of ***W.P.(C) 9302/2022*** read as under:

“7. A perusal of the entire counter affidavit would not even remotely suggest that the principles of natural justice have been followed in the instant case. It is the respondent-Bank's contention that the decision of Rajesh Agarwal (supra) will not have application in the instant case.

¹ 2023 SCC online SC 342.



However, a careful scrutiny of *Rajesh Aggarwal (supra)* reveals that the Hon'ble Supreme Court has clarified that the RBI Master Circular bearing No. DBS.CO.CFMC.BC.No.1/23.04.001/2016-17 dated 01.07.2016 should adhere to the principles of natural justice.

8. It is also to be noted that the Hon'ble Supreme Court in *Asstt. Commissioner v. Saurashtra Kutch Stock Exchange*², held as under that:

“35. In our judgment, it is also well settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the court to pronounce a “new rule” but to maintain and expound the “old one”. In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood. 36. Salmond in his well-known work states: “The theory of case law is that a judge does not make law; he merely declares it; and the overruling of a previous decision is a declaration that the supposed rule never was law. Hence any intermediate transactions made on the strength of the supposed rule are governed by the law established in the overruling decision. The overruling is retrospective, except as regards matters that are res judicatae or accounts that have been settled in the meantime. “

*37. It is no doubt true that after a historic decision in *Golak Nath v. State of Punjab*, (1967) 2 SCR 762 this Court has accepted the doctrine of “prospective overruling”. It is based on the philosophy: “The past cannot always be erased by a new judicial declaration.” It may, however, be stated that this is an exception to the general rule of the doctrine of precedent.”*

(emphasis supplied)

9. In view of the abovementioned legal position, it is clear that the effect of *Rajesh Aggarwal (supra)* will have full application in the instant case as it does not alter the scope of RBI Master Circular bearing No. DBS.CO.CFMC.BC.No.1/23.04.001/2016-17 dated 01.07.2016, rather it interprets the circular in tune with the intention behind it and included principles of natural justice in the implementation of the circular. Thus,

² 2008 14 SCC 171



this Court finds no merit in the respondent-Bank's contention. Irrespective of the fact whether the decision is taken post Rajesh Aggarwal (supra) or pre Rajesh Aggarwal (supra), the principles enshrined in Rajesh Aggarwal (supra) will full have application in the instant case."

8. It is thus seen that in view of the principles laid down in the case of ***Rajesh Agarwal and Ors. (supra)***, the impugned action of the respondent deserves to be set aside.

9. Accordingly, the respondent's action of declaring the petitioner's account as fraud is hereby set aside.

10. The respondent, however, is at liberty to take an appropriate action in accordance with law, if so necessitated.

11. The petition stands disposed of accordingly.

12. The respondent is at liberty to take necessary steps to correct the record.

PURUSHAINdra KUMAR KAURAV, J

DECEMBER 18, 2023/p

[Click here to check corrigendum, if any](#)