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

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Reserved on: 06th July, 2022
Pronounced on: 15th July, 2022

+ **W.P.(C) 9897/2022 and C.M. APPL. 29126/2022, C.M. APPL. 29127/2022, C.M. APPL. 29128/2022 and C.M. APPL. 29129/2022**

JAIN CO-OPERATIVE BANK LTD. Petitioner

Through: Mr. Abhinav Sharma and
Mr. Himanshu Kaushal,
Advocates

versus

**REGISTRAR COOPERATIVE SOCIETIES
& ANR.** Respondents

Through: Mr. Rajeev Aggarwal,
Additional Standing Counsel
for R-1/RCS.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGEMENT

AMIT SHARMA J.

1. The present writ petition under Articles 226 read with 227 of the Constitution of India has been filed by Jain Co-operative Bank Ltd. (hereinafter referred to as petitioner), seeking setting aside of order dated 22.02.2021 in Appeal No. 162/2018 and order dated 18.05.2022 in Review Petition No. 11/2021 passed by the Delhi Cooperative Tribunal under the Delhi Cooperative Societies Act,

2003.

2. Facts necessary for the disposal of the present petition are as follows:

(a) The petitioner is a Cooperative Bank registered under the provisions of Delhi Cooperative Societies Act, 2003. Respondent no. 2 was a member of the petitioner and was one of the Directors in 2016. Subsequently, an FIR No. 420/2016, P.S. Darya Ganj was registered wherein the respondent no.2's involvement was being investigated. The said registration of the FIR and alleged involvement of the respondent no.2 gave rise to proceedings initiated by the petitioner, resulting in submitting a proposal for expulsion of respondent no.2 from membership of the petitioner. The petitioner submitted a proposal to Registrar Cooperative Societies for cancellation of membership of respondent no.2 under Section 40 (iii) of the Delhi Cooperative Societies Act, 2003. Consequent upon which, a show cause notice dated 02.02.2018 was issued to respondent no.2 by the Registrar Cooperative Societies.

(b) The Registrar Cooperative Societies, after receiving the reply by the respondent no.2, and after hearing the arguments of both the parties passed an order dated 05.06.2018, whereby the proposal of the petitioner to expel the respondent no.2 from the membership was approved.

(c) The respondent no.2 being aggrieved by the aforesaid order dated 05.06.2018 filed an appeal under Section 112 of the

Delhi Cooperative Societies Act, 2003 before the Delhi Cooperative Tribunal.

(d) The Delhi Cooperative Tribunal vide order dated 22.02.2021 set aside the order of 05.06.2018 passed by Registrar Cooperative Societies and allowed the appeal filed by respondent no.2 with the following observations:

“25. The allegations which weighted with RCS in passing the order are mentioned in the impugned order under the heading brief facts of the case. What is mentioned here as facts, is only that an FIR has been lodged regarding 09 accounts with fake introductory references and that the Investigating Officer of Delhi Police had given directions to the bank management not to allow to appellant to enter the bank till the finalization of the investigation as he was a master mind of the case. In the impugned order, the ld. Registrar has stated that the appellant had submitted his reply and was represented through his Counsel, but has not discussed any of the contents of the reply or any contentions put forth on behalf of appellant. He has just mentioned that

“I am of the considered view that the bank suffered disrepute from the acts of Sh. Shashank Jain and also his actions/behavior is detrimental to the interest, reputation and proper working of the bank. Therefore, I hereby approve the proposal of the bank for ceasing the membership of Shashank Jain bearing No.26629”.

26. Now, it is an admitted position that although the FIR No.0420 has been registered with regard to opening of nine fake accounts, the same is against unknown persons and the appellant is not named there. Then, as per the documents filed along with the written arguments, the

charge sheet in the case had already been filed on 7.12.17 i.e. six months before passing of the impugned order. As per the charge sheet, five accused persons were charge sheeted to the court and the column meant to name any persons who were suspected but not charge sheeted, is marked as 'NIL'. Although the charge sheet mentions the allegations of suspicion against the appellant based on some confessional statements of the charge sheeted accused persons, the fact of the matter is that even after completion of investigation, the appellant has not been charge sheeted.

27. The position therefore is that although an offence has been committed which had a potential to bring the bank in disrepute, there is no link to connect the appellant with the same.

28. In the absence of any other reasons given by the Id. RCS in the impugned order, we are not able to understand as to how a mere observation by an I.O. made during investigation could be taken as bringing disrepute to the bank even when the I.O. himself has not as yet chosen to charge sheet the appellant in the said case or even to name him in the list of "suspected but not charge sheeted" persons."

(e) Aggrieved by the aforesaid order passed by the learned Registrar Cooperative Tribunal in Appeal No. 162/2018, the petitioner filed a Review Petition No. 11/2021/DCT under Section 115 of the Delhi Cooperative Societies Act, 2003. The review of the order passed in the aforesaid appeal was sought primarily on the ground that in a response to RTI query by the petitioner, it was stated by the Economic Offences Wing of the Delhi Police that "the supplementary investigation is under progress and a

supplementary charge-sheet shall be filed after its completion”. In response to another query specifically with regard to Sh. Shashank Jain, it is mentioned in the reply that “*the supplementary investigation of the case in respect of Sh. Shashank Jain is under progress at different aspect.*” (sic). The said review petition was dismissed by the Delhi Cooperative Tribunal vide order dated 18.05.2022 with the following observations:

“9. After hearing both sides, we tend to agree with the Id. counsel for respondent. Firstly, the response to the RTI query as imposed by the review petitioner, states that Sh. Shashank Jain is being investigated on 'another aspect'. This indicates that his involvement in the case of opening fake accounts could not be verified. Even otherwise, despite the role of Sh. Shashank Jain being under suspension right since 2016, enough evidence has still not been found by the LO. to charge-sheet him. There may be a possibility that he may at the time of filing of supplementary charge-sheet be arrayed as an accused. However, there is also at least an equally strong possibility that he may not be: It cannot therefore be speculated that he shall be found responsible for the alleged act which could bring disrepute to the bank or otherwise detrimental to the working of the bank.”

(f) Aggrieved, the petitioner has filed the present writ petition seeking setting aside of the aforesaid orders.

3. The learned counsel appearing on behalf of the petitioner has submitted that the orders passed by the Delhi Cooperative Tribunal in the appeal as well as the review petition have ignored the fact that the investigation in the said FIR is still continuing and that the aforesaid orders passed by the learned

Tribunal have prejudiced the entire investigation. It is further submitted by the learned counsel appearing on behalf of the petitioner that the respondent no.2 had been absconding and evading the investigation in the aforesaid FIR. The anticipatory bail filed by respondent no.2 had been dismissed and the said order was carried up to the Hon'ble Supreme Court without any relief. It was further submitted, that registration of FIR and the continuation of investigation of alleged involvement of respondent no.2, would be adequate grounds for bringing "disrepute to the petitioner" and therefore expulsion of respondent no.2 by Registration of Cooperative Societies was proper and should not have been interfered with.

4. It is an admitted position that the FIR was registered on 26.12.2016, wherein the respondent no.2 was not named, and the charge-sheet in the said FIR was filed on 07.12.2017, wherein the respondent no.2 has not been arrayed as an accused.

5. The order of expulsion passed, by Registrar Cooperative Societies vide order dated 05.06.2018, was primarily on the ground that the respondent no.2 was being investigated in the said FIR which brought disrepute to the petitioner. It may be further noted that the order, passed by Registrar Cooperative Societies, has not given any other reason except for the alleged involvement of respondent no.2 in the said FIR.

6. The learned Delhi Cooperative Tribunal, in the appeal filed by respondent no.2, has categorically stated that the reasoning given by the learned Registrar Cooperative Societies in the

expulsion order dated 05.06.2018 was not sustainable and that the said order of the learned Registrar Cooperative Societies, is cryptic in nature.

7. After going through the impugned orders dated 22.02.2021 and 18.05.2022 passed by the learned Delhi Cooperative Tribunal, we are satisfied that the same do not suffer from any infirmity. The petitioner has not been able to point out any illegality or any manifest error requiring us to exercise our discretion under Articles 226 read with 227 of the Constitution of India and interfere with the impugned orders as mentioned hereinabove.

8. It is well settled that the jurisdiction under Articles 226 read with 227 of the Constitution of India is to be exercised in cases where it can be established that the orders challenged have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law and justice. The Hon'ble Supreme Court in ***Jai Singh and Ors Vs. Municipal Corporation of Delhi and Anr.*** reported in ***(2010) 9 SCC 385*** as in para 16 has observed as under:

“16. The High Court cannot lightly or liberally act as an appellate court and reappreciate the evidence. Generally, it cannot substitute its own conclusions for the conclusions reached by the courts below or the statutory/quasi-judicial tribunals. The power to reappreciate evidence would only be justified in rare and exceptional situations where grave injustice would be done unless the High Court interferes. The exercise of such discretionary power would depend on the peculiar facts of each case, with the sole objective of ensuring that there is no miscarriage of justice.”

9. For the reasons stated hereinbefore, we dismiss the present writ petition.

10. Accordingly, the writ petition along with pending applications is dismissed.

**AMIT SHARMA
JUDGE**

**SIDDHARTH MRIDUL
JUDGE**

JULY 15, 2022
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