

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR No.2270 of 2020 (O&M)
Decided on: 09.10.2020**

State Bank of India

....Petitioner

Versus

Neeraj Saluja and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Ms. Munisha Gandhi, Sr. Advocate
with Mr. Nitin Kaushal, Advocate
for the petitioner.

Mr. Anand Chhibber, Sr. Advocate
with Mr. Gaurav Mankotia, Advocate
for respondent No.1.

Mr. Salil Sablok, Advocate
for respondent No.2.

*Service of respondents No.3 to 21 already dispensed with
vide order dated 17.09.2020.*

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for directing the District Judge, Nawanshahar to dismiss the appeal i.e. CMA No.32 of 2019 (Annexure P12) pending before the District Judge, Nawanshahar; vacate the interim relief continuing in favour of respondents No.1 and 2 granted vide order dated 09.08.2019 (Annexure P13) by the Appellate Court and to direct the Appellate Court to dispose of the aforesaid appeal within a period of 04 weeks.

While issuing notice of motion, the following order was passed by this Court on 17.09.2020:-

“Inter alia contends that the present revision petition is directed against the interim order dated

09.08.2019 (Annexure P-13), whereby the District Judge has granted injunction to the respondents No.1 & 2 restraining them from being declared as willful defaulters and for initiating any coercive action against them. It is submitted that the appeal was directed against the order dated 06.08.2019 (Annexure P-11), whereby the Trial Court had dismissed the application under Order 39 Rule 1 & 2 CPC.

It is submitted that the Interim Resolution Professional was appointed on 11.04.2018 (Annexure P-2) and the same was subject matter of challenge in CWP No.9131 of 2018, which was dismissed on 03.05.2018 (Annexure P-4). Vide the said order, it was ordered that the Interim Resolution Professional would not take over the management of the Company till 15.05.2018, so that the statutory appeal could be filed. Thereafter, the SLP of the Company was dismissed on 11.05.2018 (Annexure P-5). However, the interim order was extended by another week.

The Appellate Tribunal dismissed the appeal on 16.10.2019 (Annexure P-6) by upholding the orders dated 11.04.2018 and 19/25.04.2018. It is submitted that CWP No.15685 of 2018 was filed by the brother of respondent No.1, whereby interim order dated 22.06.2018 (Annexure P-8) was passed and in the meantime the civil suit was also filed on 31.08.2018 (Annexure P-9) for permanent injunction. The writ petition filed by Neeraj Saluja, the brother was transferred to the Apex Court and eventually the same was dismissed as withdrawn on 06.09.2019 (Annexure P-14).

It is submitted that the civil suit out of which the appeal arose was dismissed in default on 29.11.2019 (Annexure P-15). The said fact was brought to the notice of the District Judge on 07.12.2019 (Annexure P-20), wherein it was held out that the present

respondent/plaintiff No.1 had moved an application for restoration of the suit. Resultantly, the interim order dated 09.08.2019 was allowed to continue, though the record of the lower Appellate Court had been summoned.

It is submitted that in such circumstances, the application for restoration was also not acted upon the Trial Court. Thereafter, the lower Appellate Court adjourned the proceedings on 21.12.2019 to 18.01.2020 (Annexure P-22) and vide order dated 29.02.2020 continued the interim order by giving directions that the lower Court shall dispose of the application for restoration of the suit within one and half months.

It is, thus, submitted that the plaintiffs are playing ducks and drakes with the Court proceedings.

Notice of motion.

Mr. Anand Chhibber, Senior Advocate alongwith Mr. Gaurav Mankotia, Advocate accepts notice on behalf of respondent No.1. Respondent No.2 be served through Mr. Salil Sablok, Advocate, who was appearing before the Appellate Court, for the said company, on instructions of the Resolution Professional.

Adjourned to 01.10.2020.

Since, the suit has been filed by respondents No. 1 & 2, service upon rest of the respondents is dispensed with, for the time being.”

Brief facts of the case are that Neeraj Saluja and SEL Manufacturing Company Limited (hereinafter referred to as “respondents/plaintiffs No.1 and 2”) filed a civil suit dated 28.08.2018 (hereinafter referred to as “petitioner/defendant No.1”), praying for a decree that the amount of interest subsidy be computed to which plaintiff No.2 is entitled; pass a decree in favour of plaintiff No.2

against defendants No.1 to 17 by adjusting the amount of interest subsidy as per the Government Policy; pass a decree of declaration that defendants No.1 to 17 are bound to comply with the terms of Master Restructuring Agreement (M.R.A.) and release the balance term loan/working capital loan to plaintiff No.2; to compute the amount of balance term/working capital loan; to compute the amount of loss or profit to plaintiff No.2 and adjust the loss along with interest in favour of plaintiff No.2; pass a decree of declaration that defendants cannot send a notice of default to plaintiffs and cannot take coercive proceedings/recovery proceeding and to pass a decree of declaration that the notices of default issued by defendants to plaintiff No.2 – Company, are null and void and further a decree of permanent injunction be granted against issuance of the notice of willful default and recalling of the loan amount.

The plaintiffs also filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure (in short ‘CPC’) praying that during the pendency of the suit, temporary injunction be granted against the notice of default and from taking any coercive/recovery proceedings by the defendants – Banks.

The petitioner – Bank is the primary contesting defendant and by filing a written statement and reply contested the suit.

The trial Court vide its order dated 06.08.2019 (Annexure P11) passed a composite order on the application filed by the plaintiffs under Order 39 Rules 1 and 2 CPC; the application for grant of stay on the notice being issued by defendant No.1 and restraining the

defendants from taking recourse to any illegal or coercive action against the plaintiffs and, after hearing the arguments dismissed the application. The operative part of the said order dated 06.08.2019, reads as under:-

“12. A careful perusal of the pleadings of the parties reveals that admittedly, the applicants had taken a term loan of Rs.2248.70 Crores and working capital loan of Rs.627.78 Crores up till September, 2013 from the consortium banks. As alleged by the applicants, the consortium banks did not disburse the entire amount sanctioned by them due to which heavy losses were suffered by them. It is also pleaded that it was the bank’s duty to obtain TUFSS subsidy for the company however, they failed in doing so which increased the rate of interest of the applicant’s loan by 5% i.e. allegedly almost the double of the effective rate of interest.

13. As discussed above, it has been pleaded by the applicants that all the banks themselves violated the terms of the contract as well the corporate debt restructuring scheme and are now bent upon to take coercive action against the applicants and issuing them show cause notices, recalling the loans and initiating recovery proceedings against the applicants.

14. It is pertinent to mention here that there is no dispute regarding the disbursement of only part of term loan as well as working capital loan to the applicants, then actually sanctioned to them. The respondents have submitted that the applicants had defaulted in fulfilling their obligations under the initial loan agreement and subsequently, under Master Restructuring Agreement MRA dated 30.06.2014, the copy of which is also placed on the file. So, the respondent/defendant Banks had the right to

withdraw the disbursement of remaining loan amount to the applicants, when their account had already been declared as NPA by consortium banks.

15. At this stage, the Court is only to see a prima facie case and balance of convenience lying in favour of the applicants. It is pertinent to mention here that though the applicants are pleading fraud on part of the respondent Banks however, at this stage had failed to prima facie establish any such fact as per the averments made by them in their plaint. It is evident from the pleadings of both the parties that the applicants have defaulted in making repayment of loan to the respondent banks and their account has already been declared as NPA. They are claiming temporary injunction against all the banks from issuing them notices or initiating recovery proceedings against them. This court is of the considered opinion that at this stage the applicants have failed to establish any prima facie case in their favour and have also failed to put forward any circumstances which goes to show that balance of convenience lies in their favour or otherwise they will suffer an irreparable loss and injury which cannot be compensated in terms of money. It is clearly evident from the reply filed by the respondent Banks as well as from the arguments advanced by learned counsel for the appearing respondents, that no coercive action would be taken against the applicants without hearing them and considering their objections on merits.

16. The banks seem to be co-operating with the applicants in every possible manner. This fact is evinced from the execution of the Master Restructuring Agreement dated 30.06.2014, admittedly entered between the parties. The applicants cannot be said to have any prima facie case or balance of convenience lying in their favour on their mere presumption of any adversity. This Court does

not hold any ground to restrain the respondent Banks from issuing any default notices or taking any coercive proceedings/recovery proceedings against the applicants or otherwise asks them to commute the amounts required to be determined for final reliefs. At this stage, applicants/plaintiffs have failed to establish any fraud allegedly committed by all the banks. Thus, in view of the above discussion, the first application under Section 151 read with Order 39 Rule 1 and 2 CPC for grant of temporary injunction & interim injunction, second application for grant of stay on the notices being issued by SBI to the plaintiffs/applicants to declare them as willful defaulters and third application for grant of stay on the notices being issued by Indian Bank to the plaintiffs/applicants to declare them as willful defaulters stands dismissed. Further, since vide above said order application under Order 39 Rule 1 and 2 CPC stands dismissed so, this court doesn't deem necessary for seeking reply to the fourth application for urgently deciding the application filed by the plaintiffs under Order 39 Rule 1 and 2 as the defendants are terrorizing the plaintiffs by adopting one illegal tactic after the other and blatantly flouting their own statements made in court and for directing the defendants that during the pendency of this application no coercive action be taken against the plaintiffs, and same is also ordered to be disposed of accordingly. However, any observation made by me in the above said order would not affect the merits of the case in any manner.”

The respondents/plaintiffs filed an appeal before the Lower Appellate Court and on 09.08.2019, vide impugned order, the Lower Appellate Court passed the following order:-

“Along with appeal, the appellants have also moved

an application under Section 151 read with Order 39 Rules 1 and 2 CPC for grant of interim injunction.

Heard. Notice of the appeal as well as aforesaid application be served upon the respondents on PF/RC already filed for 07.09.2019. Till then the operation of the impugned order dated 06.08.2019 is, hereby stayed and the respondents are restrained from declaring the appellants as willful defaulters and fraud and the respondents are also restrained from initiating any coercive proceedings against the appellants as prayed for till the next date of hearing.”

Learned senior counsel for the petitioner has argued that, in fact in the year 2000, the plaintiff No.1 and his brother Neeraj Saluja, have incorporated plaintiff No.2 – Company and has obtained a huge loan from the financial institutions i.e. the defendants. On 30.01.2014, a Master Restructuring Agreement (M.R.A.) was entered into between the defendant No.1 – Bank and respondent No.2 – Company, in which the Company has acknowledged the liability of Rs.1136,15,67,142/-. Learned senior counsel for the petitioner has further submitted that some of the Banks have merged with defendant No.1 – State Bank of India and respondents No.3 to 17 – Banks are the financial creditors of defendant No.2 – Company. It is further argued that as the plaintiff No.2 – Company defaulted, the petitioner – Bank filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016, which was contested by the defendant No.2 – Company on the ground of non-disbursement of funds under the Master Restructuring Agreement (MRA), non-facilitation by the creditors under the subsidy scheme of Government and by not making any attempt for restructuring the

facilities granted to the Company.

The National Company Law Tribunal (in short “the NCLT”) vide its order dated 11.04.2018 and 25.04.2018 (Annexure P2) appointed an Interim Resolution Professional to manage the plaintiff No.2 – Company.

The orders passed by the NCLT were challenged by the plaintiffs in CWP No.9131 of 2018 titled as “*SEL Manufacturing Company vs Union of India.*” and the Division Bench of this Court vide its order dated 01.05.2018 (Annexure P4) dismissed the writ petition on the ground that the plaintiffs have alternative remedy under Section 67 of the Code; writ petition is not maintainable in a contractual matter and on the ground of constructive *res judicata* for taking same grounds before the NCLT.

The plaintiffs, thereafter, filed an SLP(C) No.11903 of 2018 and the same was dismissed *in limine* by the Hon’ble Supreme Court on 11.05.2018 (Annexure P5).

Learned senior counsel for the petitioner submitted that, thereafter, the plaintiffs filed Company Appeal (AT) (Insolvency) No.226 of 2018 before the Company Law Appellate Tribunal, New Delhi and both the said appeals were dismissed by the Appellate Tribunal vide order dated 16.10.2019 (Annexure P6).

Learned senior counsel for the petitioner has further submitted that thereafter, the plaintiff No.2 filed a second writ petition No.15685 of 2018 before this Court, through another Co-director i.e. brother of plaintiff No.1 Neeraj Saluja. In the said writ petition, vires of Section 35AB of Banking Regulation Act and the RBI Instructions

dated 28.08.2018 and the RBI Circular dated 12.02.2018, was challenged. A Division Bench of this Court, vide order dated 22.06.2018 passed the interim order by keeping CIR process in abeyance.

Learned senior counsel for the petitioner has also submitted that in the second writ petition, the plaintiff No.2 has taken the same grounds, which were available to him in the first writ petition, which was already dismissed. Later on, the second writ petition was transferred to the Hon'ble Supreme Court and was numbered as transfer case No.TC(C) No.16 of 2019 vide order dated 29.11.2018 passed by the Hon'ble Supreme Court.

Learned senior counsel for the petitioner has further submitted that in the meantime, the present civil suit No.697 of 2018 was filed by plaintiff No.1 as one of the Ex-promoter of plaintiff No.2 – Company.

The prayers made in the civil suit are already reproduced above.

As noticed above, the application filed by the plaintiffs was contested by the defendants and ultimately, vide order dated 06.08.2019, the trial Court dismissed the application under Order 39 Rules 1 and 2 CPC.

Thereafter, the plaintiffs filed CA No.32 of 2019 before the District Judge and vide impugned order dated 09.08.2019, the Appellate Court granted *ex parte* stay.

Learned senior counsel for the petitioner has further submitted that in the meantime, the Resolution Professional appointed

by the NCLT filed an application before the Civil Judge, seeking permission to withdraw the suit *qua* plaintiff No.2 and a similar application was moved before the Appellate Court for withdrawing the appeal *qua* plaintiff No.2 and thus, at present only the suit/appeal on behalf of plaintiff No.1 is pending.

Learned senior counsel for the petitioner has also submitted that after the order was passed by the Lower Appellate Court, the plaintiff adopted a novel procedure and absented from the Court proceedings before the trial Court on 30.09.2019 and therefore, the civil suit was dismissed for non-prosecution. It is further submitted that though, the application has been filed under Order 9 Rule 4 CPC for restoration of the suit, however, neither the said application was decided by the Civil Court nor the appeal is decided and the interim order is still continuing in favour of the plaintiffs.

In order to submit that the disposal of the application for restoration and the appeal is delayed, learned senior counsel for the petitioner has highlighted the following reasons:-

(a) The order dated 09.08.2019, was passed by the District Judge without issuing any notice to the petitioner and despite the fact that the application of the plaintiffs was dismissed, the operation of the order dated 06.08.2019 was stayed, which shows total non-application of judicial mind and further, the respondents were restrained from declaring the plaintiffs as willful defaulters or initiating any coercive proceedings.

(b) Despite the fact that plaintiff No.2 – SEL

Manufacturing Company Limited, who was represented by Resolution Professional in accordance with Section 17 of the Code as the control and management of plaintiff No.2 – Company vested with the Resolution Professional w.e.f. 06.09.2019, the civil suit qua plaintiff No.2 was withdrawn on 29.11.2019, when the suit was dismissed for non-prosecution. Therefore, the appeal is not maintainable before the District Judge.

(c) Though on one hand, the Appellate Court without serving advance copy of the appeal, has granted interim injunction for effecting service upon unserved respondents, however, the contesting respondents, on the fact of it, is defendant No.1 – State Bank of India, and therefore, the Appellate Court is making a futile exercise for issuing summons against the unserved respondents/defendants, just to delay the decision of the appeal.

(d) Learned senior counsel for the petitioner has referred to certain orders passed by the Appellate Court in support of her arguments to suggest the Appellate Court is delaying the decision of the appeal.

(e) Learned senior counsel for the petitioner has further submitted that the petitioner/defendant No.1 – Bank has filed an application for vacation of stay before the Appellate Court and the case was adjourned to 21.09.2019 and the interim order was extended. It is also

submitted that in the application for vacation of stay of the orders passed by this Court in two writ petitions as well as the order of the Hon'ble Supreme Court; the order of the NCLT and the order of the Company Law Tribunal, are brought to the notice of the Appellate Court, however, despite passing of one year, the Appellate Court is not deciding the appeal.

(f) Learned senior counsel for the petitioner has further argued that the petitioner filed another application before the Appellate Court on 07.12.2019 informing that the civil suit has already been dismissed for non-prosecution and in the application filed by the plaintiffs for restoration, the defendant has already filed its reply, however, the Appellate Court adjourned the case from time to time and on 07.12.2019, the Lower Appellate Court summoned the original record while extending the interim order.

(g) Learned senior counsel for the petitioner has also referred to the order dated 07.12.2019 passed by the District Judge (Annexure P20) wherein, counsel for the appellant/plaintiff No.2, brought it to the notice of the Appellate Court that under the Resolution Process and moratorium issued by the NCLT, he wants to withdraw the appeal qua appellant/plaintiff No.2 and the same was allowed. In the order, it is also noticed by the District Judge that an objection is raised by the petitioner

– Bank that since the suit is dismissed in default, the appeal is not maintainable, however, the Appellate Court summoned the original record of the trial Court while extending the interim stay.

(h) Learned senior counsel for the petitioner has further submitted that even the trial Court is not deciding the application under Order 9 Rule 4 CPC and is seeking the reply from the defendants, who were not even present when the case was dismissed for non-prosecution and an unnecessary exercise is being done for delaying the disposal of the application under Order 9 Rule 4 CPC.

(i) Learned senior counsel for the petitioner has also referred to another order dated 01.02.2020, passed by the District Judge, wherein it is noticed that the record of the trial Court is not received.

(j) Learned senior counsel for the petitioner has also argued that the seat of the District Judge as well as that of the Civil Judge is in the same building and despite a lapse of two months time, the record was not received, which shows that the Appellate Court is not serious in disposing of the appeal. Learned senior counsel for the petitioner has further referred to the another order dated 29.02.2020, passed by the Appellate Court wherein it is noticed that since the suit is dismissed for non-prosecution, the main appeal is not maintainable

and vide order of even date, the Appellate Court returned the record to the trial Court and directed that the application for restoration be decided in 1½ months.

(k) Learned senior counsel for the petitioner has argued that till date, neither the application for restoration was decided nor the Appellate Court has decided the appeal and despite dismissal of all the claims of the petitioner, the Appellate Court is continuing the stay in favour of the plaintiffs.

Learned senior counsel for the petitioner has relied upon as many as 15 judgments in support of her arguments out of which only 03 judgments are found to be relevant. In “*State of U.P. and others vs Ram Sukhi Devi*”, 2005(9) SCC 733, the Hon’ble Supreme Court has held that while granting interim order, it is impermissible to grant the final relief. It is held, time and again, by the Hon’ble Supreme Court that to deprecate the practice of granting interim orders which practically gives principal relief sought in petition, for no better reason than that of *prima facie* case having been made out, without being concerned about balance of convenience, public interest and a host of other considerations.

Learned senior counsel for the petitioner has also referred to the judgment “*Maria Margarida Sequeira Fernandes and others vs Erasmo Jack De Sequeira (Dead) through LRs*”, 2012(5) SCC 370, wherein the Hon’ble Supreme Court has held that under Order 39 Rules 1 and 2 CPC or Order 20 Rule 12, an *ad interim ex parte* injunction can be granted only for a short period such as two weeks that too in case of

grave urgency. While granting injunction, the Court should carefully examine the entire pleadings and documents and by giving a short notice of the injunction and after hearing the parties, pass an appropriate order.

Learned senior counsel for the petitioner has submitted that Appellate Court on one hand, without giving notice has granted *ex parte* injunction and despite the fact that all the previous orders passed by this Court and the Hon'ble Supreme Court, which were brought to the notice of the Appellate Court and despite a lapse of 09 months, the interim order is continuing.

Learned senior counsel for the petitioner has further relied upon the judgment "***Charanji Lal and others vs Financial Commissioner, Haryana, etc.***", passed in **Civil Misc. No.664 of 1978** and **Civil Writ Petition No.5435 of 1975**, decided on 27.04.1978, wherein a Full Bench of this Court has held that calculated and deliberate suppression of material facts dis-entitled the plaintiff to claim any relief.

The rest of the judgments relied upon by the learned senior counsel for the petitioner, are not relevant in the present controversy and their reference would amount to wastage of time.

Learned senior counsel for the petitioner has lastly referred to the plaint to submit that all the reliefs claimed for in the suit are for and in favour of plaintiff No.2 *qua* whom the suit as well as the appeal, has already been withdrawn and therefore, no cause of action survives in favour of plaintiff No.1 and thus, the suit and the appeal itself,

deserves to be dismissed.

In reply, learned senior counsel appearing for the respondents has argued that since the action of the petitioner – Bank was in violation of Clauses of Master Restructuring Agreement (MRA), the petitioner – Bank is not entitled to issue any notice to the plaintiffs. Learned senior counsel for the respondents has referred to the order dated 22.06.2018 passed in CWP No.15685 of 2018, to submit that some interim relief was granted, however later on, the said writ petition was transferred to the Hon'ble Supreme Court and ultimately, which was dismissed as withdrawn.

Learned senior counsel for the respondents has also submitted that the delay, in deciding the application under Order 9 Rule 4 CPC as well as the appeal, is procedural delay and the plaintiff has no objection, if a time bound direction is issued to the Appellate Court or the trial Court, to decide the case expeditiously.

After hearing the counsel for the parties, I find merit in the present petition and the same deserves to be allowed, for the following reasons:-

(a) A perusal of the plaint in Civil Suit No.697 of 2018, would show that the entire relief prayed for in the suit is for and in favour of plaintiff No.2 – Company and as the NCLT has appointed an interim resolution professional, who has taken over plaintiff No.2 – Company and has even further filed an application for withdrawal of the civil suit, which was allowed by the trial Court on 30.09.2019 as well as before the Appellate

Court, which was allowed on 07.12.2019, therefore, on face of record, no cause of action survives in favour of plaintiff No.1 in the suit. Therefore, by showing total non-application of judicial mind, the Appellate Court is continuing with the appeal as well as the interim injunction.

(b) A perusal of the first order dated 09.08.2019 passed by the District Judge also reflect non-application of judicial mind as the operation of the order dated 06.08.2019 dismissing an application under Order 39 Rules 1 and 2 CPC filed by the plaintiffs, was stayed and simultaneously, further injunction was granted against the petitioner – Bank from proceeding against the plaintiffs, in accordance with law. It is well settled principle of law that if an injunction application filed by the plaintiffs is dismissed by the Civil Court, the Appellate Court unless by recording detailed reason of urgency may grant interim injunction for a short period or in ordinary course, after giving a short notice to the contesting defendants may pass an interim order. Both these principles of law have been ignored by the District Judge.

(c) The Civil Court has passed the order dated 06.08.2019 in the presence of the contesting party i.e. the plaintiff No.1, defendant No.1 – Bank and the counsel representing interim resolution professional of plaintiff

No.2, therefore, the Appellate Court who is adjourning the appeal to serve the remaining unserved defendants, who are not contesting before the Civil Court is nothing but a futile exercise, just to extend the stay in favour of the plaintiffs whereas the service of the remaining defendants could be dispensed with in terms of provisions of Order 41 Rule 3 Proviso added by amendment as applicable to Punjab, Haryana and Chandigarh.

(d) The another reason which show the slackness and disrespect on the part of the Appellate Court is that defendant No.1 – Bank has brought all the previous orders passed by the Writ Court, the Hon'ble Supreme Court, the NCLT and the NCALT and on 07.12.2019, it was also brought to the notice of the Appellate Court that the Civil Court stands dismissed for non-prosecution, however, still the interim stay was extended and no effort was made to dispose of the main appeal.

(e) Even surprisingly, despite the instructions passed by the High Court that the photocopy of the Lower Appellate Court should be summoned so that the proceedings before the Lower Court is not automatically stayed, the Appellate Court summoned the record of the trial Court vide order dated 07.12.2019 and despite the fact that the seat of the District Judge and of the trial

Court is at the same place, till 01.02.2020, the record was not received and in the intervening period, the interim order was ordered to be extended by the Appellate Court.

(f) Even further on 29.02.2020, after noticing that the suit is dismissed for non-prosecution and the petitioner – Bank is stressing that the appeal is not maintainable, the Appellate Court, while returning the record of the trial Court, directed that the application for restoration be decided in a time bound manner i.e. 1½ months, therefore, the intention of the plaintiffs is apparent on record to delay the proceedings either before the District Judge or before the trial Court by not arguing the application for restoration of civil suit.

(g) Thus the District Judge has failed to perform even the administrative duty by not keeping a check on trial Court which has not decided the application for restoration of suit till date i.e. even after lapse of 08 months, in violation of his own order dated 29.02.2020.

The District Judge being the administrative head of the District, is required to keep a check on the subordinate judiciary and the manner in which the order in the civil suit are passed, show that an effort is made to delay the proceedings to enable the plaintiffs to gain time.

(h) Even the trial Court is adjourning the case

for effecting the service on non-contesting respondents and is not deciding the application for restoration of civil suit despite the fact that when suit was dismissed for non-prosecution, the presence of the counsel for defendants was marked and service on defendants can be effected through counsel, to avoid the delay.

(i) The basic principles of law as set down in various judgments to decide the application for restoration of a suit/appeal or likewise setting-aside ex parte order are that if the application is filed within a reasonable time as in the instant case, it was filed within a period of 06 days; a bona fide ground is given, as in this case, the counsel representing the plaintiffs has filed his own affidavit; the general principle that no one should be condemn unheard is not violated and if required, the other party can be compensated by way of costs, thus, majority of such applications are allowed, however, this is not followed by the trial Court.

(j) Based upon such principle, the trial Court could have decided the application immediately without wasting the time to serve the non-contesting respondents. Needless to say that 03 months time was taken by the Appellate Court, in summoning the record of the trial Court, which further delayed the disposal of the application under Order 9 Rule 4 CPC.

(k) It is not understandable as to why the

District Judge/Appellate Court is adjourning the appeal despite the fact that the suit stands dismissed for non-prosecution on 29.11.2019 and the plaintiffs on both counts are seeking adjournments and both the Courts, on face of record are showing undue favour to the plaintiffs.

(l) Once the petitioner – Bank on 07.12.2019 has brought to the notice of the Appellate Court, about all the orders passed by High Court & the Hon'ble Supreme Court as well as the dismissal of the suit in default, there was no justification for the Appellate Court to continue with the stay order, which was obtained by concealing the aforesaid litigation and orders and therefore, continuing with the stay order by ignoring the orders of the High Court and the Hon'ble Supreme Court inter se parties, the District Judge has shown disrespect to orders and, on face of record has shown favour to the plaintiffs to delay the proceedings.

(m) Even otherwise, the grant of ex parte stay and thereafter, continuation of the interim stay for a period of 01 year despite all odds is in violation of the well settled principle of law held by the Hon'ble Supreme Court that injunctions against financial institutions should not be granted casually. The default in payment of public money involved in the case is more than 1100 crores of rupees and therefore, the continuation of the

interim order by the Appellate Court is not at all in public interest.

In view of the above, it would be appropriate to seek an explanation from the District Judge, S.B.S. Nagar, on the points (a) to (m), discussed above.

Ordered accordingly.

The explanation of the District Judge, S.B.S. Nagar, shall be submitted before this Court through the Registrar General of this Court, within a period of 30 days from the date of receipt of certified copy of this order and be placed before the learned Administrative Judge for S.B.S. Nagar along with a copy of this order.

In exercise of jurisdiction under Article 227 of the Constitution of India read with Section 24 CPC, the Civil Appeal No.32 of 2019, is ordered to be transferred from the Court of District Judge, S.B.S. Nagar to the Court of Mr. Randhir Verma, Additional District Judge, S.B.S. Nagar.

The District Judge, S.B.S. Nagar is directed to send the case file forthwith to the Court of Mr. Randhir Verma, Additional District Judge, S.B.S. Nagar, immediately.

The Transferee Court will decide the appeal within a period of 03 weeks, from the date of receipt of the case file from the Court of District Judge, S.B.S. Nagar, either by virtual or actual hearing, by dispensing with the service of other respondents/defendants.

It will be open for the parties to submit their written submissions, if so advised.

The trial Court is also directed to decide the application under Order 9 Rule 4 CPC, within a period of 03 weeks from the date of receipt of the certified copy of this order, either by virtual or actual hearing, by dispensing with the service of other respondents/defendants.

In case, the suit is restored, the trial Court will further pass an order within a period of 03 weeks thereafter, regarding maintainability of suit by assessing the averments "***only in the plaint***" (in terms of Order 7 Rules 10 and 11 CPC), if any cause of action survive in favour of plaintiff No.1, after the suit stands dismissed as withdrawn *qua* plaintiff No.2. In view of the settled principle of law, the trial Court will only look into the contents of the plaint and no other documents will be considered for the same.

With the aforesaid observations, the present petition is allowed.

The Registry is directed to supply a copy of this order to Mr. Amrinder Singh Grewal, District Judge, S.B.S. Nagar; to Mr. Randhir Verma, Additional District Judge, S.B.S. Nagar, and to the concerned trial Court, for compliance, at the earliest.

(ARVIND SINGH SANGWAN)
JUDGE

09.10.2020

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Whether speaking/reasoned Yes/No

Whether reportable: Yes/No