

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

and

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 01ST DAY OF MARCH 2021 / 10TH PHALGUNA, 1942

WP(C).No.9400 OF 2020(S)

PETITIONER/S:

SUO MOTU
THE COURT ON ITS OWN MOTION - SUO MOTU PROCEEDINGS -
COVID - 19 - PANDEMIC

BY ADVS.
SUO MOTU
SHRI.P.VIJAYAKUMAR, ASG OF INDIA

RESPONDENT/S:

1 STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN 695 001.

2 STATE BANK OF INDIA,
REPRESENTED BY ITS ASSISTANT GENERAL MANAGER,
STRESSED ASSETS RECOVERY BRANCH (SARB)
LMS COMPOUND, OPPOSITE CORPORATION OFFICE,
PALAYAM, VIKAS BHAVAN PO, THIRUVANANTHAPURAM,
PIN 695 033.

IMPLEADED AS ADDL. R2 PER ORDER IN I.A.1/2020 DATED
1.3.2021

3 ADDL.R3.THE CANARA BANK
REPRESENTED BY ITS CHIEF MANAGER,
ARM BRANCH, ERNAKULAM, KOCHI-35.

IMPLEADED AS ADDL. R3 AS PER ORDER IN IA 3/2020 DATED
1.3.2021.

R1 BY ADV. SRI.RANJITH THAMPAN,ADDL.ADVOCATE GENERAL
R1 BY SRI.SUMAN CHAKRAVARTHY, SENIOR GOVT.PLEADER
R2 BY ADV. JAWAHAR JOSE

R3 BY ADV. M.GOPIKRISHNAN NAMBIAR
R3 BY ADV. SRI.K.JOHN MATHAI
R3 BY ADV. SRI.JOSON MANAVALAN
R3 BY ADV. SRI.KURYAN THOMAS
R3 BY ADV. SRI.PAULOSE C. ABRAHAM
R4 BY ADV. SRI.SAIJO HASSAN
R4 BY ADV. SRI.BENOJ C AUGUSTIN
R4 BY SHRI V.K.RAFEEL, CGC
R4 BY ADV. SRI.U.M.HASSAN
R4 BY ADV. SMT.P.PARVATHY
R4 BY ADV. SMT.SURYA P SHAJI
R4 BY ADV. SHRI.MANAS P HAMEED

OTHER PRESENT:

SRI. RANJITH THAMPAN, ADDL. AG AND SRI. SUMAN
CHAKRAVARTHY, SR GP FOR R1,
SRI.GEORGE THOMAS MEVADA(SR) AND SRI.JAWAHAR
JOSE, FOR R2
SRI.GOPIKRISHNAN NAMBIAR, FOR R3

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 01.03.2021, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 1st day of March, 2021

S.Manikumar, C.J.

Taking note of the Covid–19 Pandemic situation and the lockdown ordered throughout the country on 24.3.2020, this court suo motu instituted W.P.(C)No.9400 of 2020 and after hearing Mr.Ranjith Thampan, learned Additional Advocate General, Kerala, Mr.Suman Chakravarthy, learned Senior Public Prosecutor representing the State, Mr.P. Vijayakumar, learned Assistant Solicitor General, representing the Government of India and Public Sector Undertakings owned and controlled by the Government of India, Mr.V.Manu, Senior Government Pleader and Mr.R.Lakshmi Narayan, the then President of the Kerala High Court Advocates' Association, on 25.3.2020, we passed the following order:

“1. On 24th March, 2020, the Hon'ble Prime Minister of India announced a complete lock down throughout the Country and consequently, the Ministry of Home Affairs, Government of India, issued a Notification No.40-3/2020-DM-I(A) dated 24th March, 2020, enclosing the guidelines on the measures to be taken by the Ministries/Departments of the Government of India, State/Union Territory Governments, for containment of COVID-19 epidemic in the Country.

2. Having regard to the public announcement of imposing a total lock down in the wake of outbreak of pandemic Corona Virus, resulting in immobilization of public at large, and total stoppage of public transport, litigants would find it difficult to approach the Courts to vindicate their grievances. Therefore, we deem it proper to issue directions in the instant *suo motu* writ petition.

3. On request, Shri Ranjith Thampan, learned Additional Advocate General, Kerala, Shri Suman Chakravarthy, learned Senior Public Prosecutor representing the State, Shri P. Vijayakumar, learned Assistant

Solicitor General, representing the Government of India and Public Sector Undertakings owned and controlled by the Government of India, and Shri V. Manu, Senior Government Pleader were present. On behalf of the Kerala High Court Advocates' Association, its President Shri R. Lakshmi Narayan was also present.

4. We are informed that the High Court as well as the Courts in the District Judiciary and Tribunals have granted interim orders for a limited period and inasmuch as the litigants, their respective counsel, will not be in a position to approach the Courts/Tribunals for filing an application for extension, during this total lock down period of 21 days, necessary orders have to be issued, so as to enable the litigants not to suffer on account of their inability to approach the Courts in the Districts/Tribunals, as the case may be. Therefore, in exercise of the powers conferred under Articles 226 and 227 of the Constitution of India, all the interim orders passed by all the Courts/Tribunals upon which High Court exercises supervisory jurisdiction under Article 227, which are due to expire during the lock down period of 21 days, are extended by this Court by one month from today.

5. We also make it clear that, if any application is filed for extending/vacating an interim order and pending for orders in this Court, the interim orders will be extended for one month.

6. In so far as recovery proceedings under the State Laws are concerned, Shri Ranjith Thampan, learned Additional Advocate General submitted that, in all recovery matters, such as electricity, water, Abkari and other matters, Council of Ministers, Government of Kerala has already taken a decision that payment will be deferred upto 30.04.2020, and therefore, no recovery proceedings would be initiated or recovery proceedings already initiated, would not be proceeded further until 30.04.2020. The submission of the learned Additional Advocate General is placed on record.

7. Shri V. Manu, learned Senior Government Pleader expressed the view of the Bar Council of Kerala and the Bar Council of India that, in the wake of the outbreak of the pandemic in the country and the consequent lock down notification issued by the Government of India, there should be a total shut down of Courts during this lock down period. The submission is placed on record.

8. In so far as recovery proceedings by the Government of India and Public Sector Undertakings owned or controlled by the Government of India, attention was invited to an order of this Court passed in W.P.(C) No.8231 of 2020 dated 19.03.2020, which was taken on appeal by the Union of India in Special Leave Petition (Civil) Diary Nos.10669/2020, wherein, the Hon'ble Supreme Court of India on 20.03.2020 has passed the following orders:

"The Registry is directed to accept these special leave petitions against the judgment and order(s) passed by the High Court of

Judicature at Kerala, Ernakulam Bench in Writ Petition (Civil) No. 8231/2020 and of the High Court of Judicature at Allahabad, Allahabad Bench in Writ Petition(Civil) No.7014/2020.

Permission to file special leave petitions is granted.

Issue notice.

In the meantime, there shall be ex-parte ad-interim stay of the impugned judgment and order(s) passed in the aforesaid writ petitions and of further proceedings before the High Court(s), in view of the stand taken by the Government of India through learned Solicitor General, before us, that the Government is fully conscious of the prevailing situation and would itself evolve a proper mechanism to assuage concerns and hardships of every one."

9. The learned Assistant Solicitor General of India submitted that the order of the Hon'ble Supreme Court dated 20.03.2020 would implicitly be adhered to by Government of India and above-said Public Sector Undertakings.

10. Taking note of the submission of the Government of India before the Hon'ble Supreme Court that a proper mechanism will be evolved, in exercise of the powers under Articles 226 and 227 of the Constitution of India, we also deem it fit to state that until such time, we hope that no action would be taken.

11. In so far as Criminal matters are concerned, we are also informed by Shri Suman Chakravarthy, learned Senior Public Prosecutor that High Court/Sessions Courts would have granted anticipatory bail for a limited period, which may expire during this lock down period, and inasmuch as the High Court/Sessions Courts are not functioning, orders have to be issued by the High Court in exercise of the powers conferred under Articles 226 and 227 of the Constitution of India and under the inherent powers of the High Court under Sec.482 Cr.P.C.

12. Having regard to the above said submissions, orders of bail or anticipatory bail, restricted for a limited period, which may expire in the lock down period, have to be extended. Therefore, in exercise of the powers conferred under Articles 226 and 227 of the Constitution of India and Sec.482 Cr.P.C., interim orders in the above matters will stand extended for one month from today.

13. Attention of this Court was also invited to the order of the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No.1/2020 In Re: Contagion of COVID 19 Virus in Prisons dated 23.03.2020, wherein, after considering the outbreak of COVID-19, hardships faced by the litigants/lawyers, staff in the Courts, convict prisoners, as well as under-trials, the Hon'ble Supreme Court, taking note of Article 21 of the Constitution of India, has issued the following directions:

"We direct that each State/Union Territory shall constitute a High

Powered Committee comprising of (i) Chairman of the State Legal Services committee, (ii) the principal Secretary (Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.

The Undertrial Review Committee contemplated by this Court In re Inhuman Conditions in 1382 Prisons, (2016) 3 SCC 700, shall meet every week and take such decision in consultation with the concerned authority as per the said judgment.

The High Powered Committee shall take into account the directions contained in para no.11 in Arnesh Kumar V. State of Bihar, (2014) 8 SCC 273."

14. Apart from the above, Shri Suman Chakravarthy, learned Senior Public Prosecutor submitted that, Government of Kerala have already constituted a High Powered Committee comprising of (1) Executive Chairman of the State Legal Services Authority; (2) the Principal Secretary (Home/Prisons) as the case may be; (3) Director General of Prisons to adhere to the directions issued by the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No.1/2020.

15. While passing orders in the Suo Motu Writ Petition, the Hon'ble Supreme Court has made it clear that, State/Union Territories could consider release of persons who are convicted or undertrial, for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

16. The Hon'ble Apex Court has also made it clear that, it is open to the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or

the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.

17. In so far as the above directions are concerned, the Government of Kerala have issued a Notification dated 25.03.2020, which is extracted below:

“(Emblem)
GOVERNMENT OF KERALA

Abstract

Home Department – Prisons – Outbreak of Covid 19 pandemic – Controlling of overcrowding – Directives of the Hon’ble Supreme Court – Implemented – Orders issued.

HOME (B) DEPARTMENT

G.O.(Rt)No. 970/2020/HOME Dated, Thiruvananthapuram
25/03/2020

Read 1. Order of the Hon’ble Supreme Court Suo motu Writ
Petition (C) No.1/2020 dtd 23/03/2020.

2. Letter No. WP2-7212/2020/Pr.HQ dtd. 23.03.2020 of
the Director General of Prisons and Correctional
Services.

ORDER

As per the order read as 1st paper above the Hon’ble Supreme Court of India ordered all State Governments and UTs to take urgent measures to reduce overcrowding in Prisons across the Country to control the outbreak of pandemic Covid 19. The Director General of Prisons and Correctional Services also vide letter read as 2nd paper above requested Government to implement certain measures for reducing overcrowding in Prisons.

Government have examined the matter in detail and are pleased to order as follows.

1) A High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Additional Chief Secretary (Home & Vig) (iii) Director General of Prison(s), is hereby constituted, to determine which class of prisoners can be released on parole or on interim bail.

a) The committee shall consider and recommend to Govt. the release of prisoners who have been convicted or are under-trial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the

maximum.

b) High Powered Committee shall determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate and forward such recommendation to Govt.

2) Physical presence of all the undertrial prisoners before the Courts shall be stopped forthwith and recourse to video conferencing for all purposes.

3) The transfer of prisoners from one prison to another for routine reasons must not be resorted except for decongestion to ensure social distancing and medical assistance to an ill prisoner. Also, there should not be any delay in shifting sick person to a Nodal Medical Institution in case of any possibility of infection is seen.

3) The Director General of Prisons & Correctional Services shall develop Prison specific readiness and response plans in consultation with medical experts. "*Interim guidance on Scaling-up Covid-19 Out break in Readiness and Response Operations in camps and camp like settings*" jointly developed by the International Federation of Red Cross and Red Crescent (IFRC), International Organisation for Migration(IOM), United Nations High Commissioner for Refugees (UNHCR) and World Health Organisation (WHO), published by Inter-Agency Standing Committee of United Nations on 17 March, 2020 may be taken into consideration for similar circumstances.

4) A monitoring team consist of Deputy Inspector General in the respective Zone, Superintendents of Prisons in the respective Prisons and Medical officer in the respective Prison is constituted to ensure that the directives issued in item (3) with regard to prison and remand homes are being complied with scrupulously.

5) The Under-trial Review Committee contemplated by the Apex Court *In re Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700, shall meet every week and take such decision in consultation with the concerned authority as per said judgment.

6) The Director General of Prisons and Correctional Services is empowered to grant Ordinary leave to eligible prisoners in a single spell of 60 days, subject to all other conditions of leaves, in relaxation to rule 397 (b) of Kerala Prisons and Correctional Services (Management) Rules 2014 to reduce the number of prisoners in prisons.

7) Due to the lack of public transport system as the prisoners cannot report back in prison after the expiry of their period of leave in time, such

overstayal period upto April 15 shall be considered as bail (shall not be considered as sentence undergone), provided that such prisoners shall report to the police station nearby and the Station House Officer shall report the position to prison authorities concerned.

The Director General of Prisons and Correctional Services shall implement item(6) of this order with immediate effect.

(By order of the Governor)

DR. VISHWAS MEHTA
ADDITIONAL CHIEF SECRETARY"

18. As regards bail applications of convicts and under-trial prisoners, the High Court, on the administrative side, had taken a decision to hear applications seeking bail/anticipatory bails/suspension of sentence, as the case may be, and posted some of the cases for hearing tomorrow (26.03.2020). Now, the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No.1/2020 has issued directions to the State Governments/Union Territories to constitute a High Powered Committee in respect of bail matters, which has already been done. Hence, this Court deems it fit that those applications need not be taken up for hearing and it is left to the High Powered Committee to decide.

19. In the interim order of the Hon'ble Supreme Court, there is no reference to the anticipatory bail applications. On instructions, Shri Ranjith Thampan, learned Additional Advocate General submitted that, in view of the National lock down for 21 days declared by the Hon'ble Prime Minister, and the difficulties expressed by the staff and Law officers attached to the Office of the Advocate General, they may not be able to attend the office or Courts. It is the further submission that it is not possible to get instructions from the officers concerned, and therefore, the learned Additional Advocate General, by letter dated 25.03.2020, has requested the Registrar General, High Court of Kerala that all the proceedings have to be postponed.

20. Representing the Advocates, Shri R. Lakshmi Narayan, President of the Kerala High Court Advocates' Association reiterated that, same difficulty and hardship is faced by the staff attached to the learned counsel, litigants, and having regard to the right of personal liberty guaranteed under Article 21 of the Constitution of India, a general order, as regards anticipatory bail applications, is required to be passed.

21. Therefore, taking note of the above said situation, we are of the firm view that, right of personal liberty guaranteed under Article 21 of the Constitution of India should not, at any rate, be infringed by arresting an accused, except in matters where arrest is inevitable.

However, the State is at liberty to take appropriate decision in respect of heinous/serious offences and in rest of the cases, State may act accordingly.

22. In the event of any arrest, the Constitutional obligation under Article 20(2) shall be followed in letter and spirit. Over-crowding in prisons is one of the issues taken up by the Hon'ble Supreme Court in *Suo Motu Writ Petition (C) No.1/2020*. Therefore, learned Magistrates/Judges before whom the accused is produced, depending upon the nature of offence, shall consider as to whether judicial/police custody is required or not. Needless to state that, bail is the rule and jail is an exception. We make it clear that, the above said directions stand excluded to subjects relating public order/law and order and any action taken by the State Government to combat the outbreak of COVID-19 and actions taken thereof.

23. Shri Ranjith Thampan, learned Additional Advocate General also submitted that, in so far as Local Self Government Institutions are concerned, Government have issued instructions not to take any coercive action. It is sincerely expected that, due to the outbreak of COVID-19, State Government, LSG Institutions, Government of India, and Public Sector Undertakings owned and controlled by the State/Central Governments that no coercive action be taken since there is no opportunity to the persons to approach the Courts at present.

24. A copy of this order shall be published in the official website of the High Court of Kerala. Copy shall be sent to the District Courts and Tribunals, through e-mail. Copy of this order be sent to all concerned. The order be communicated to the media, both print and visual, for information to the public."

Thereafter, we passed periodical orders, extending the interim order dated 25.3.2020.

2. During the course of hearing on 7.9.2020, submission was made by Mr.E.K.Nandakumar, learned Senior Counsel and Mr.Jawahar Jose, learned counsel appearing for the Banks that interim applications for directions (I.A.No.2 of 2020 and I.A.No.4 of 2020) have been filed and that inasmuch as loan accounts, have already been declared as NPA prior to the declaration of lockdown, banks may be permitted to proceed

further. On the above submission, we directed the Central Government to file appropriate response taking note of the subsequent events, in the Hon'ble Supreme Court and also ascertain the status of the Special Leave Petition (Civil) Diary No.10669 of 2020. While extending the interim order, we directed the Registry to post the matter on 23.9.2020.

3. On this day, when the matter came up for further hearing, inviting the attention of this court to the suo motu proceedings initiated by the Madras High Court in W.P.No.7413 of 2020 and the final orders passed on 6.11.2020, decision of the Gujarat High Court in R/Writ Petition (PIL)No.42 of 2020 and connected case, decision of the Bombay High Court in Suo Motu Writ Petition (ST)No.93432 of 2020 dated 9.12.2020 between High Court On Its Own Motion and the State of Maharashtra and the additional affidavit dated 2.10.2020 filed on behalf of the Union of India (respondent No.1 in W.P.(C)No.825 of 2020) on the file of the Hon'ble Supreme Court, Mr.Jawahar Jose, learned counsel for the Banks submitted that taking note of the restoration of normalcy in the functioning of High Courts/Subordinate Courts/Tribunals and other Forums, where recovery proceedings initiated were pending, prayed for, discontinuation of the interim orders passed periodically in the instant Suo Motu Writ Petition (C)No.9400 of 2020.

4. Mr.Ranjith Thampan, learned Additional Advocate General

appearing for the State acknowledges the said submission.

5. Mr.Thomas Abraham, learned counsel appearing for the Kerala High Court Advocates' Association has not made any counter statement.

6. Let us consider relevant portions of the additional affidavit filed by Union of India, orders passed by various High Courts, the Hon'ble Supreme Court, on recovery and Covid-19:

"2. I respectfully state and submit that the Respondent is filing this additional affidavit in respectful compliance of the order dated 10.09.2020 passed by this Hon'ble Court in the captioned matter and also to apprise this Hon'ble Court about various mitigating steps taken by the Central Government to deal with the problems arising out of the global financial situation post COVID. By way of this affidavit, I also beg to place the decision taken by the respondent UOI, after careful consideration of facts and the implication of the decision being taken, with regard to the question of waiver of interest on interest.

3. I state and submit that the question of compound interest and other issues raised in the batch of writ petitions is required to be examined in the context of the larger financial constraints faced by the country in particular and the world in general. It is submitted that as a part of effective fiscal planning, which is being done at a stage where nobody is aware as to the time till when the present situation may continue, with either more or less gravity, a delicate balancing act is required by Government in dealing with the financial impacts of the pandemic. It has to conserve financial resources for a long and uncertain battle on the public health front, which has its own huge financial implications. Businesses need to survive. Lending institutions too must survive and promises made to depositors have to be honoured. Jobs and livelihoods need to be safeguarded and every attempt made to bring back economic growth. Therefore, use of public resources for any category of stakeholders must be carefully calibrated. Unintended consequences can arise and financial stability itself could be imperilled, if due consideration is not given to all relevant aspects.

4. I state and submit that right from the initial entry of the pandemic in our country, which started facing its effect (including the financial impact), the Central Government has proactively taken steps either itself or through RBI, which already had their financial impact, which was/is required to be kept into consideration while taking further

decisions either while granting moratorium which, in fact, is deferment (and not waiver) as well as while taking the present decision regarding relief in compounding of interest. The following steps taken by the Central Government have their own financial impacts which would require the Central Government to rationalise any kind of waiver at this stage as going any further than what is stipulated hereunder may be detrimental to the overall economic scenario, and the economy and the nation or the banking sector may not be able to take the financial constraints resulting therefrom.

5. The following facts are given only to satisfy this Hon'ble Court that there already exists substantial financial burden in the form of various reliefs granted by the Central Government not only to deal with the economic problems for the post pandemic period but also to deal with several other issues including health infrastructure etc. The following figures, however, reflect only the part of the fiscal measures taken by the Central Government through the Ministry of Finance. Other financial expenditure in health sector etc would be manifold.

(a) Pandemic related relief from Government: It is a fact that the pandemic has caused stress to large and small businesses and to individual borrowers who have lost jobs and livelihoods. They need relief which will help them get back on their feet. This has necessitated multi pronged relief. The first element of the relief has been through the Garib Kalyan package and the Aatma Nirbhar package announced by Government. The Gari Kalyan package was for Rs 1.70 lakh crore involving free food grains, pulses, and gas cylinders and cash payment to women, poor senior citizens and farmers. More than 42 crore poor people received financial assistance of Rs. 65,454 crore under the package. The Aatma Nirbhar package was for Rs. 20 lakh crore involving support to Micro, Small and Medium enterprises (MSMES), Non-Banking Finance Companies, agriculture, sectors allied to agriculture, contractors, street vendors, State Governments relief in provident fund contribution, extension of subsidy on home loans, etc.

(b) Measures taken by RBI: The second element of the relief has been a series of steps by the Reserve Bank of India (RBI) which enhanced availability of liquidity for lenders, reduced interest (repo) rates, extended timelines for implementation of previously approved resolution plans, and announced a moratorium for borrowers and a framework for restructuring of existing loans for borrowers impacted by COVID-19. The framework provides adequate flexibility for waiving penal interest as well as compound or even simple interest on a case by case basis, as warranted. The framework for resolution provides distinct windows for MSME accounts as well as for accounts other than MSMEs, which were up to 30 days overdue as on 1.3.2020, while retaining the prudential framework of 7.6.2019 under which cases not covered under the 6.8.2020 circular can get

relief. All personal, MSME and corporate loan accounts are therefore generally covered under one or the other circular.

6. Before dealing with the question of interest on interest, it is submitted that the word "moratorium" is categorically defined by the RBI while issuing various circulars. The relevant circulars of RBI show that "moratorium" was never intended to be "waiver of interest" but "deferment of interest". In other words, if a borrower takes benefit of the moratorium, his liability to make payment of contractual interest (both normal interest and interest on interest) gets deferred for a period of three months and subsequently three months thereafter. This decision was taken keeping the larger economic scenario in mind, more particularly the burden which would otherwise fall upon the banks which will have to perforce pass it on to the depositors and/or upon the Government which will have its own detrimental impact on other welfare measures. After a very careful and major consideration of several fiscal and financial criteria, its inevitable effects and keeping the uncertainty of the existing situation in mind, the payment of interest and interest on interest was merely deferred and was never waived.

7. It may not be out of place to mention at this stage that the borrowers have understood the difference between the waiver in the interest on loan and the deferment of payment of instalments for that loan and, therefore, a majority of the borrowers have in fact not taken benefit of the moratorium which is nothing but deferment of payment of instalments. Though it may not be possible to give the exact percentage of the borrowers who have not availed of the moratorium and have deposited payment instalments, approximately such class would be more than 50 per cent.

IMPACT OF WAIVER OF INTEREST

8. If the Government were to consider waiving interest on all the loan and advances to all classes and categories of borrowers corresponding to the six-month period for which the moratorium (ie, deferment of payment of instalment) was made available under the relevant RBI circulars, the estimated amount is more than Rs. 6 lakh crore.

9. In other words, if the interest is waived on all the loans and advances, with regard to all classes and categories of borrowers, the amount to be foregone would be more than Rs. 6 lakh crore.

10. If the banks were to bear this burden, it would necessarily wipe out a substantial and a major part of their net worth, rendering most of the banks unviable and raising a very serious question mark over their very survival. This was one of the main reasons why waiver of interest was not even contemplated and only payment of instalments

was deferred.

11. To illustrate - in case of State Bank of India alone (which is the largest bank in the country), waiver of six months' interest would completely wipe out over half of the bank's net worth which has accumulated over nearly 65 years of its existence. Continued payment of interest [including interest on interest] to depositors is not only one of the most essential banking activities but is a huge responsibility that can never be compromised as most of the depositors are bound to be small depositors, pensioners etc. surviving on the interest from their deposits.

12. Lending activity of any bank is always enabled by the deposits that depositors/customers hold in the lending banks. Such depositors are much more in number than the number of borrowers. It is estimated that in the Indian banking system for every loan account there are about 8.5 deposit accounts'. The banks can pay interest to depositors only because borrowers pay interest to the bank. This transaction of depositors / banks / borrowers is inevitably a part of a chain that can never be permitted to be broken. This would satisfy this Hon'ble Court that for this reason the contractual interest on all outstanding advances will have to be charged even during the period of deferment and if this compounding interest is not received from the borrowers for any particular period, a commensurate denial of interest to customers holding deposits is inevitable and unimaginable and would obviously be unacceptable considering the categories of depositors.

13. It is submitted that keeping all the aforesaid facts in mind, after examining the possible fiscal scenario in case of a complete/partial waiver and after gathering the material details for reaching the decision-making process, and while keeping in mind the interest of particular class of borrowers during the unprecedented period the country is facing, the following decisions have been taken. These decisions are a part of fiscal policy decisions taken after an elaborate exercise of gathering of facts and after careful assessment of the said facts and after considering various alternatives, keeping in mind the economic impact on financial strength of stakeholders and all other relevant factors (more particularly (i) during the pandemic when the global fiscal scenario is equally bad; and (ii) the fact that it is uncertain as to till what date the present global and national economic stress will continue). The decision of the respondent UOI in this regard is as under:-

COMPOUND INTEREST

14. The relief to all borrowers in respect of compounding of interest during the period of moratorium would be admissible to the categories specified hereinafter irrespective of whether the borrower

had availed of moratorium or not. Government will seek due authorisation from Parliament for making appropriate grants in this regard. This endeavour shall be over and above the support of Rs. 3.7 lakh crore to MSMEs, Rs. 70,000 crore for home loans, etc. already extended through the Garib Kalyan and Aatma Nirbhar packages announced by Government earlier.

Relief to distressed borrowers in the form of waiver of compound interest

15. It is submitted that waiving compound interest would result in very substantial and significant financial burden. There are several categories of banks, like Private Sector Banks, Small Finance Banks, Regional Rural Banks, Cooperative Banks, NBFCS etc. The classes and categories of borrowers also varies throughout the nation, and these can be broadly classified as big borrowers and small borrowers.

16. It is submitted that it is impossible for banks to bear the burden resulting from waiver of compound interest without passing on the financial impact to the depositors or affecting their net worth adversely, which would not be in the larger national economic interest.

17. The only solution, under the circumstances, is that the Government bear the burden resulting from waiver of compound interest. This Hon'ble Court would be satisfied that the Government bearing this burden would naturally have an impact on several other pressing commitments being faced by the nation, including meeting direct costs associated with pandemic management, addressing basic needs of the common man and mitigating the common man's problems arising out of loss of livelihood.

18. In view of the aforesaid cumulative circumstances, after careful consideration and weighing all possible options, the respondent UOI has decided to continue the tradition of handholding the small borrowers. The Government, therefore, has decided that the relief on waiver of compound interest during the six-month moratorium period shall be limited to the most vulnerable category of borrowers. This category of borrowers, in whose case, the compounding of interest will be waived, would be MSME loans and personal loans up to Rs. 2 crore of the following categories:

- (i) MSME loans up to Rs. 2 crore
- (ii) Education loans up to Rs. 2 crore
- (iii) Housing loans up to Rs. 2 crore

- (iv) Consumer durable loans up to Rs. 2 crore
- (v) Credit card dues up to Rs. 2 crore
- (vi) Auto loans up to Rs. 2 crore
- (vii) Personal loans to professionals up to Rs. 2 crore
- (viii) Consumption loans up to Rs. 2 crore

In other words, any individual/entity whose loan amount is more than Rs. 2 crore will not be eligible for waiver of the compounding of interest, which shall be confined to only the above referred categories of borrowers.

DOWNGRADING OF NPAs

19. A concern has also been expressed regarding possible downgrading of loan accounts from Standard to Non Performing Asset (NPA) and consequent impact on ratings. The Resolution framework announced by RBI provides that loan accounts which slip into NPA between invocation and implementation may be upgraded as Standard on the date of implementation itself. To illustrate, if a borrower had defaulted on, say, 10 February 2020, such borrower would be eligible for invoking restructuring as the account was less than 30 days overdue on 1 March 2020. Invocation of restructuring is now done on, say, 9th October 2020 and completed by, say, 9th November 2020. Even if the account slips to NPA on 10th October 2020, it could be Standard on 9th November 2020. Thus, any account becoming Non performing even due to the bank's or any other delay, need not suffer from being labelled as NPA.

DOWNGRADE OF CREDIT RATING

20. There has been an apprehension that credit rating agencies may record a downgrade to NPA for defaults during the moratorium. The Securities and Exchange Board of India (SEBI) has already issued a circular on 30th March 2020 providing for relaxation from recognition of default due to the moratorium. On 31 August 2020, it has further specified that in cases of restructuring, the same may not be considered a default by rating agencies. A copy each of the circulars dated 30.03.2020 and 31.08.2020 of SEBI is annexed hereto and marked as Annexure R-1 and Annexure R-2 respectively. In case of any follow-up decisions being required in this regard, Government would engage with SEBI, for a holistic and humane view in resolving issues.

21. Regulatory relief: Concerns have been raised seeking further relief or/and regulatory dispensation for business other than MSMEs.

Government has already suspended the operation from 25th March 2020 of Sections 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016 (IBC) to protect corporate borrowers impacted by the COVID-19 crisis. The Kamath Committee set up by RBI has recommended financial parameters for debt restructuring of 26 sectors affected by COVID-19. For corporate accounts (other than MSMEs with up to Rs 25 crore exposure) which were up to 30 days overdue as on 1 March 2020, the framework of 6th August 2020 provides lenders and borrowers various ways of ensuring viability. At the same time, the prudential framework of 7th June 2019 continues to be available for cases not covered under the 6th August 2020 framework. Active engagement of Government with RBI, which is the regulator of banks, for follow-up decisions on the restructuring framework or on regulatory dispensation, for a holistic and humane view in resolving issues would continue.”

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) NO. 42 of 2020
With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2020
In R/WRIT PETITION (PIL) NO. 42 of 2020
With
R/WRIT PETITION (PIL) NO. 45 of 2020
With
R/WRIT PETITION (PIL) NO. 46 of 2020

=====
SUO MOTU
Versus
STATE OF GUJARAT & 2 other(s)
=====

Appearance:
SUO MOTU(25) for the Applicant(s) No. 1
for the Opponent(s) No. 1,2,3
=====

CORAM: HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH
and
HONOURABLE MR.JUSTICE ASHUTOSH J. SHASTRI

Date : 20/03/2020
COMMON ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH)

1. We have heard learned counsels Shri Vishwas Shah, Masoom Shah and Shri B.V.Shah appearing for the petitioners in Writ Petition (PIL) No.46 of 2020; learned counsel Shri K.R.Koshti for petitioners in Writ

Petition (PIL) No.45 of 2020; learned counsels Shri Vishal J. Dave and Shri Hiral U. Mehta, for applicants appearing in Civil Application 1 of 2020; learned counsel Shri Ramnandan Singh appearing for Indian Railways; learned counsels Shri Siddharth Dave and Shri Parth H. Bhatt appearing for Central Government; learned counsel Shri Bhadrish S. Raju, appearing for Airports Authority of India; Shri Kamal Trivedi, learned Advocate General assisted by Ms. Manisha L. Shah, learned Government Pleader and Shri Mitesh Amin, learned Public Prosecutor with learned Assistant Government Pleaders Ms. Krina Calla, Shri J.K.Shah, Ms. Nisha Thakore, Ms. Vrunda Shah and Ms.Aishvarya Gupta, appearing for State authorities, Shri Mihir Thakore, learned Senior Advocate assisted by Shri Salil Thakore, Shri Yatin N. Oza, Senior Advocate assisted by learned counsel Shri Marfatiya and learned counsel Shri Brijesh Trivedi appearing as amicus curiae. Shri Nipun Singhvi, the applicant in Civil Application No.1 of 2020 is present in the Court.

WRIT PETITION (PIL) NO. 42 OF 2020:

2. Pursuant to our order dated 13th March,2020, the State has filed an affidavit in reply duly sworn by the Joint Secretary, Health & Family Welfare Department, Sachivalaya, Gandhinagar (sworn on 19th March,2020). A further affidavit on behalf of the respondent-State by the same deponent has also been filed, which has been sworn on 20th March, 2020.

3. In sum and substance, in the above two affidavits, the State has responded by placing on record various measures taken by it in compliance to not only the directions issued by this Court vide order dated 13th March, 2020 but also in compliance to various Advisories issued by the Central Government as also the State of Gujarat. We are not reproducing all the contents of the affidavits, but having perused the same, we record that adequate measures have been substantially taken by the State to deal with the pandemic of Corona Virus (COVID-19). However, it would be unfair to the State if we do not mention few of the salient features pointed out in the two affidavits, which are detailed below:-

(A) In exercise of powers conferred under [sections 2,3 and 4](#) of the Epidemic Diseases Act, 1897, vide Notification dated 13th March, 2020 (referred to as "Regulations, 2020" for short), the State Government has framed Regulations, titled as "Gujarat Epidemic Diseases, COVID-19 Regulations, 2020" (Annexure:R-1). N-COVID-19 has been declared as epidemic disease and accordingly, provisions have been made for dealing with the said epidemic. In brief, the Regulations of 2020 provide:

(i) Dedicated helpline 104 has been provided for facilitating to call in a matter relating to Corona Virus (N-COVID-19).

(ii) Sealing of the geographical area.

(iii) Barring entry and exit of population from the containment area.

(iv) Closure of schools, offices and banning public gatherings.

(v) Banning vehicular movement in the area.

(vi) Initiating active and passive surveillance of n- COVID-19 cases.

(vii) Hospital isolation of all suspected cases.

(viii) Designating any Government / Private building as containment unit for isolation of the cases.

(ix) Staff of all Government departments will be at disposal of District administration of the concerned area for discharging the duty of containment measures.

(x) Any other measure as directed by Department of Health & Family Welfare.

(B) A Circular dated 13rd March, 2020 (Annexure:R-2) is issued, inter alia, announcing checks and precautionary measures for the entire State requiring the Govt. offices and institutions to suspend all activities of organizing any kind of workshops, seminars or conferences and to keep them on hold till 31st March, 2020.

(C) Additional instruction dated 14th March, 2020 is issued to all District Development Officers, all Medical Officers of all the Districts and Medical Officers of all Municipal Corporations to be authorized persons under the Regulations and to admit any person who requires isolation in case he or she has a history of visiting any area where N-COVID-19 is endemic and symptomatic. (Annexure:R-3).

ORDER (D) The State Government has further published N- COVID-19 Guidelines dated 14th March, 2020 for raising level of awareness and knowledge of Surveillance Officers. (Annexure: R-4). (E) Vide Circular dated 15th March, 2020, all schools, colleges, I.T.Is., polytechnics, auditoriums, swimming pools, tuition/coaching classes with immediate effect till 29th March, 2020. It further provides that spitting in public would entail a fine of Rs.500/-.

(F) Further, vide Circular dated 19th March, 2020, the Government directed closure of all gymnasiums, water parks, auditoriums, amusement parks, party plots till 31st March, 2020.

(G) A further communication dated 19th March, 2020 was addressed to the Ports and Transport Department as well as Gujarat State Roads and Transport Corporation Ltd., whereby the transport activities from Gujarat to Maharashtra have been kept in abeyance till 31st March, 2020.

(H) Special Secretary (Appeals) as also the Gujarat Revenue Tribunal and all Revenue Courts of the State to defer the ongoing matters till 31st March, 2020 and no ex-parte decision to be taken in the absence of any party. The above circulars have been collectively filed as Annexure:R-5. (I) In para-4.6 it has been stated that large number of instructions have been issued for spreading awareness about maintenance of cleanliness and precautions to be taken by one and all

through pamphlets, handbills, radio announcements, television and other means of media.

(J) Paragraphs-5,6,7,8,9 and 10 deal with compliance of the directions contained in our order dated 13th March, 2020. Paragraph-11 of the affidavit in reply gives details of the infrastructure development for providing treatment at the Govt. hospitals, creation of isolation beds, quarantine facilities, personal protective kits, N-95 Masks, triple layer masks and gloves being made available to the attending staff.

(K) Paragraph-12 of the affidavit contains that at the District/Corporation level in the entire State, the Senior Medical Officers have convened about 61 meetings with the Indian Medical Association,, Refresher Course/training have been imparted to about 3700 private medical practitioners for dealing with treatment of infected patients. (L) Paragraphs-14 and 15 contain further assurance given by the State for dealing with all kinds of situation prevailing and that may arise in future.

4. In the further affidavit of the State, which is sworn today, paragraph-2 mentions about three cases detected positive after confirmed reports were received from the National Institute of Virology, Pune; one in Rajkot, one in Surat and one in Ahmedabad. Paragraph-3 of the said affidavit states that what is most important is that anyone coming from outside who does not show any symptoms at the Airport is allowed to go home after giving self declaration/undertaking that they would do home quarantine of 14 days. However, the above three persons who were tested positive did not honour their self-declaration/undertaking, which resulted into their travelling from one place to other and possibly having passed the virus to a large number of persons.

5. Having referred to the two affidavits, Shri Kamal B. Trivedi, learned Advocate General, upon instructions stated that the current status of positive cases in Gujarat has risen to 5. He, however, submitted that the State is fully geared up to tackle this epidemic disease and for which, all possible precautions are being taken and infrastructural development to deal with the same has been created.

CIVIL APPLICATION NO. 1 OF 2020 IN WP (PIL) NO. 42 OF 2020:

6. This is an application filed by one Nipun Pravin Singhvi through Advocate Shri Vishwash Dave and Ms. Hiral Mehta, praying for appropriate directions to respondent Nos. 4 and 5 to the application, i.e. Gujarat Real Estate Regulatory Authority,Gandhinagar and Gujarat Real Estate Appellate Tribunal, Gandhinagar to implement the direction issued by order dated 13th March, 2020 in the above Public Interest Litigation and further directing the said respondents to defer the hearings except urgent matters till 31st March, 2020.

7. We have heard the learned counsel for the applicant and Shri Nipun Pravin Singhvi who is present in the Court.

8. Shri Kamal B. Trivedi, learned Advocate General, upon instructions stated that appropriate directions have already been issued to both the respondents, i.e. Gujarat Real Estate Regulatory Authority, Gandhinagar and Gujarat Real Estate Appellate Tribunal, Gandhinagar to strictly follow the directions. He further stated that the Court be rest assured that RERA or its Appellate Tribunal would not in any manner violate the letter and spirit of the directions contained in the order dated 13th March, 2020 and also that only extremely urgent matters would be taken up and all other matters adjourned beyond 31st March, 2020.

9. In that view of the matter, this application stands disposed of.

WRIT PETITION (PIL) NO. 45 OF 2020:

10. This Public Interest Litigation has been filed by an Advocate of this Court having sufficient standing Shri Khemraj R. Koshti, praying for the following reliefs:

"[A] Your Lordships may be pleased to allow the present writ petition (P.I.L.)

[B] Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ/order/direction and direct the respondent authorities to provide all the service of diagnosis, laboratory investigation and further treatment of COVID-19 to all the persons free of cost to affected or suspected of the said pandemic disease.

[C] Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ/order/direction and direct the respondent no.2 to 4 to provide all the services of diagnosis, laboratory investigation and further treatment of COVID-19 to all the persons free of cost to affected or suspected of the said pandemic disease in their territorial jurisdiction.

[D] Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ/order/direction and direct the respondent no.1 to issue press release as well as the same may be put in public domain on the web site and other means of communication to people of the State about the prevailing situation on the basis of IDSP report compiled at the State level every day by way of interim relief.

[E] Any other and further relief/s may kindly be granted in the interest of justice."

11. In effect, the relief claimed is two-fold, firstly that the State Government to provide all services of diagnosis, laboratory analysis and treatment of Corona Virus (COVID-19) free of cost to the persons affected or suspected of being infected with Corona Virus (COVID-19) in their territorial jurisdiction. The other relief is for appropriate directions to the respondent-State to issue Press release and also to

put the same on public domain including the website and other means of communication about prevailing situation on the basis of IDSP Report at the State level everyday.

12. Shri Ramnandan Singh, Advocate has appeared for the Divisional Railway Manager, Western Railway, Ahmedabad (Respondent No.4) and upon instructions has stated that the checking at the railway stations of passengers arriving at Ahmedabad and in the entire State at railway stations where inter-state trains are arriving has begun from yesterday, i.e. 19th March, 2020. He also placed before us the instructions received from the Additional Divisional Railway Manager (Infra), Western Railway, Ahmedabad regarding measures taken for prevention and spread of Corona Virus (COVID-19). Following points are stated in the instructions, which read as under:

1. Blankets are removed from all AC Coaches based at ADI divn. Blankets are being supplied only on demand by passenger.
2. Curtains have been removed from all the AC Coaches.
3. During cleaning of coaches, all the passenger interface areas, such as handles, hand rest, etc. are being cleaned frequently and thoroughly using disinfectant.
4. At Railway stations, passenger interface area like booking windows, door handles, bench handles, light switches, etc. are being cleaned frequently using disinfectant.
5. Thermal screening of volunteered passengers has been started at ADI Railway station.
6. Staff having passenger interface have been provided with mask and sanitizer.
7. Isolation ward with 8 bed facility has been arranged at Sabarmati Railway Hospital.
8. To discourage unwanted persons from railway stations, Platform ticket cost has been increased to Rs.50/-
9. Few trains have been cancelled in view of mass cancellation by passengers.
10. Public announcement is being done at all railway stations regarding measures to be taken for prevention of COVID-19.
11. Video clips showing method for prevention of COVID-19 is being displayed on TVs provided at Railway Stations.

12. At Railway stations posters/banners showing preventive measures to be taken are being provided."

13. Shri Trivedi, learned Advocate General, upon instructions from the learned Government Pleader Ms. Manisha Lavkumar Shah, stated that the investigation, laboratory tests and treatment of the suspected and affected persons is done at the cost of the State. No amount is being charged from such affected or suspected persons. According to him the above statements takes care of the first relief claimed by the petitioner.

14. Insofar as the second relief is concerned, Shri Trivedi submitted that in order to avoid any kind of fake news being published or circulated in social media or digital media or print media, the Government of India has already set up an App named COVID-19, which is continuously updated with all relevant information with respect to the entire country. This has been done by the Government of India to avoid unnecessary panic being crated by fake and incorrect messages by unscrupulous and irresponsible persons. This, according to him, takes care of the second relief claimed by the petitioner. In view of the above, this Writ Petition (PIL) No. 45 of 2020 is disposed of.

WRIT PETITION (PIL) NO. 46 OF 2020:

15. The above Public Interest Litigation has been preferred by Consumer Protection and Analytic Committee, said to be registered society, praying for the following reliefs:

"(A) Be pleased to issue Writ of Mandamus or writ in nature of mandamus and or any other suitable Writ and direction to State of Gujarat to instruct District Magistrates and Mamlatdars not to resort to Section 14 Securitization measures under Securitisation and Reconstruction of Financial Assets and [Enforcement of Security Interest Act](#), 2002 (Act no.54 of 2002) or any other law and also not to undertake eviction / demolition under any law, till 31.03.20 or any such date as Hon'ble Court may deem fit and proper.

(B) Be pleased to issue Writ of Mandamus or writ in nature of mandamus and or any other suitable Writ and direction to Banks and Financial institutions operating in State of Gujarat not to take measures for Auction/Recovery under Securitisation and Reconstruction of Financial Assets and [Enforcement of Security Interest Act](#), 2002 (Act no.54 of 2002) or any other law till 31.03.20 or such time as Hon'ble Court may deem just and fit.

(C) Pending hearing and admission of this Petition, ad-interim relief in terms of Para 12 A and 12 B, may be granted in the interest of justice.

(D) Costs of this Petition be awarded.

(E) Such further and other relief, order or direction which may be just, fit, proper and equitable in the facts and circumstances of the Petition."

16. A perusal of the above reliefs refers to suspension of auction by the District Magistrates and Mamlatdars under section 14 of the Securitization measures under Securitisation and Reconstruction of Financial Assets and [Enforcement of Security Interest Act, 2002](#) ("[SARFAESI Act](#)" for short) till 31st March, 2020 or any such date as may be thought fit by this Court. The second relief is for appropriate directions to the Banks and Financial Institutions, operating in the State of Gujarat, not to take measures for auction/recovery under the [SARFAESI Act](#) till 31st March, 2020 or such other date as the Court may deem fit.

17. Shri Viswas Shah, learned counsel for the petitioner, referring to the prevailing crisis on account of pandemic of Corona Virus (COVID-19), submits that the High Court, subordinate courts and other revenue courts having already been restricted to hearing of urgent matters and in view of the precautionary measures as advised by the Central Government and the State Government, the relief claimed may be granted.

18. Shri Kamal B. Trivedi, learned Advocate General, upon instructions stated that the first relief relating to suspension of action under [section 14](#) of the [SARFAESI Act, 2002](#) by the District Magistrate and Mamlatdar is concerned, appropriate directions would be issued by the State not to proceed till 31st March, 2020, as such precautionary measures have been made applicable till 31st March, 2020 only. Future extension of such suspension of action under [section 14](#) of the [SARFAESI Act, 2002](#), according to Shri Trivedi, learned Advocate General would be reviewed at the appropriate time.

19. Insofar as the other part of the prayer not to undertake eviction/demolition under any law till 31st March, 2020 is concerned, Shri Kamal B. Trivedi, learned Advocate General stated that for this aspect also appropriate instructions have been issued by the State Government.

20. Shri Siddharth Dave and Shri Parth Bhatt, Advocates appearing for the Central Government stated that Debt Recovery Tribunal and its Appellate Tribunal would not publish the daily board from 23rd March, 2020 and would defer all other matters except urgent mentioned matters beyond 31st March, 2020.

21. Insofar as the banks and financial institutions are concerned where prayer has been made for restraining them from taking measures for auction/recovery under the [SARFAESI Act, 2002](#) is concerned, both the learned counsels stated that they are not in a

position to make any statement, however, if the Court directs, the same would be ensured by the respective banks/financial institutions.

22. Shri Vishvash Shah, learned counsel for the petitioner drew our attention to Annexure:B, an order dated 18th March, 2020 passed by a Division Bench of Allahabad High Court in the case of [Darpan Sahu vs. State of U.P.](#) and 3 others in Writ Petition (C) No. 704 of 2020, wherein one of the directions issued was to the effect that all the recovery proceedings at the end of the District Administration, Financial Institutions and other administrative bodies/authorities/agencies and at the end of the instrumentalities of the State shall be deferred for a period of two weeks till 6th April, 2020. The directions issued in the said order are as under:

[a] All the recovery proceedings at the end of the district administration, financial institutions and other administrative bodies / authorities / agencies and otherwise at the end of the instrumentalities of the State shall be deferred for a period of two weeks i.e. till 6.4.2020.

[b] All the auction proceedings, if any pending or initiated in the meanwhile, shall remain deferred for a period of two weeks i.e. till 6.4.2020.

[c] The District Magistrates and the Administrative Authorities are also restrained from issuing any directions for presence of any person or persons in connection with any pending or any other proceedings for a period of two weeks i.e. till 6.4.2020.

[d] No demolition exercise shall be carried out at the instance of District Administration or any authorities under the State Government / local bodies for a period of two weeks i.e. till 6.4.2020.

[e] No eviction or dispossession exercise against anyone be undertaken for a period of two weeks i.e. till 6.4.2020."

23. We have been informed that the Supreme Court, by an order passed today in SLP (Civil) Diary No(s) 10669 of 2020, [Union of India vs. P.D.Sunny and others](#), has stayed the directions issued by the Allahabad High Court vide above order and also similar order passed by the High Court of Kerala. As such, we are not inclined to grant this relief. It is for the Central Government, Ministry of Finance to take a call on the same and no blanket order can be granted. Thus, this WP (PIL) No. 46 of 2020 also stands disposed of in view of the above.

24. Shri Mihir Thakore and Shri Yatin Oza, learned Senior Advocates submitted that the National Company Law Tribunal (NCLT), Ahmedabad, despite the fact that the High Court has taken cognizance of the crisis created on account of the pandemic of COVID-19 has suspended the Board and is only taking up urgent

matters, the NCLT, Ahmedabad is proceeding to hear matters and pass adverse orders in the absence of the counsels. He also stated that Special Secretary, Revenue Department and Deputy Collectors are conducting land matters when there is no such urgency and the said Secretary is not honouring the directives of this Court. According to him, even the Charity Commissioner is also conducting the matters. He also stated that Sessions Court, Ahmedabad city, is recording evidence where witnesses are present and lastly he informed that the Debt Recovery Tribunal at Ahmedabad is also functioning on account of the fact that orders are being passed by the District Magistrates/Chief Judicial Magistrates under Section-14 of the SARFAESI Act and further that banks and financial institutions are continuing to e-auction properties. It was submitted that considering the present crisis prevalent in the country on account of pandemic of COVID-19 and the various measures taken by the Central Government, the State Government, the Supreme Court and the High Court for controlling the spread of such pandemic, the above authorities be also directed to defer all matters at least to 31st March, 2020 or any other date as the situation may demand.

25. We have already recorded above in the earlier part of this order the statement given by Shri Siddharth Dave and Shri Parth Bhatt, learned counsels appearing for the Central Government that NCLT, Ahmedabad, would not be issuing the list from Monday i.e. 23rd March, 2020 and only extremely urgent matters upon mention would be taken up. Insofar as the Special Secretary, Revenue Department and the Deputy Collectors are concerned, Shri Kamal Trivedi, learned Advocate General appearing for the State of Gujarat has stated that appropriate steps have already been taken. Insofar as working of Charity Commissioner's office is concerned, if not already curtailed, the State would take appropriate steps and issue necessary directions to follow in principle what is being followed by the Supreme Court, the High Courts and the District Courts. The Sessions Court, Ahmedabad, recording evidence could be in a stray case as we are also conscious of the fact that circulars have been issued to all the Principal District Judges and Principal Judges to deal only with urgent matters.

26. Insofar as the functioning of the Debt Recovery Tribunal, the District Magistrates/Chief Judicial Magistrates functioning under Section-14 of the SARFAESI Act, 2002 and the e-auction of immovable properties by the banks and financial institutions are concerned, we have already observed above and therefore, no further orders are required.

27. Shri Yatin Oza, President, GHAA, stated that Bar room, tea room and library of High Court have been shut down completely. Messages have been circulated on all groups to advocates not to come to Court unless in cases of extreme urgency.

28. Shri Brijesh Trivedi, Advocate submitted that advocates should not come to High Court at all. There should be a total shut down of High

Court. Advocates may move notes and if Hon'ble Judge finds urgency, then concerned Advocate may be contacted on telephone.

29. Learned Senior Counsels assisting the Court also submitted that the whole idea behind these measures to check, prevent and control the pandemic of COVID-19 is that first and foremost public gatherings should be avoided. In continuation of the same, it was submitted that although official and semi-official programmes and gatherings have been suspended but in place of religious worship apart from a few where such religious places have been closed and only seva/puja/aarti/namaz/gurbani and service is being carried out by the management, there are many which are still open and people are collecting in large numbers to offer their prayers whatever be their religion.

30. Some of the temples in the State of Gujarat which on their own, voluntarily, have taken decision to not allow entry to outside worshippers namely, (1) Ambaji, Banaskantha, (2) Dakor, Kheda, (3) Shamlaji, Arvalli (4) Shrinathji, Rajasthan and (5) Palitana as to avoid public gathering.

31. Since the spread of Corona Virus is contagious, gathering of large numbers has to be strictly avoided without fail. If people out of their sentiments continue to gather in large number at places of worship, the entire efforts to take precautionary measures for the spread of COVID-19 would be frustrated.

32. We would therefore request one and all to refrain from visiting their places of worship and offer their prayer/puja/service from home instead of gathering at the place of worship.

33. The Government may also take an appropriate decision in this regard and issue necessary circular to all the District Magistrates/Commissioners of Police and Superintendents of Police of all the districts and quarters of the State of Gujarat to ensure that no gathering takes place at any of the places of worship in the State. We however do not mean that the daily puja/aarti/service/offering of prayer (namaz) may be stopped in such places of worship but the management of all the religious places of worship may perform it without making it open to public.

34. We also provide that the State would continue with its endeavor to check, prevent, control and treat the affected or suspected persons of the COVID-19 in strict sense and file a status report within a week by the next date which we fix as 27th March, 2020 on the top of the Board .

35. In addition to the above, the Court is of the firm view that all and any measures taken by Central Government, the State Government, the Superior Courts, be it the Supreme Court or the High Courts of different States would not successfully and effectively contain the pandemic of COVID-19 unless and until the public at large, the citizenry of the State who have to be conscious of the threat looming

large should avoid unnecessary movement out of their house, gatherings, functions, parties or pleasure trips in and outside the State. To make them aware although wide spread measures have been taken by the State, organizations linked with the State and not linked with the State, the print and digital media, social media, but still more needs to be done and that too at the grassroot level where such facilities of print and digital media, or social media may not be available or for those who are deprived of such facilities. The Government of Gujarat may therefore take such measures to sensitize and make aware the residents of the suburban, semi-rural, rural and tribal areas of this pandemic and the precautionary measures they need to take.

36. We expect that the State of Gujarat will do the needful and apprise this Court on the next date by ensuring the above directions utilizing its massive infrastructure of all departments which cover the suburban, semi rural, rural and tribal areas.

37. Further, we have been informed by the Member Secretary, Gujarat State Legal Services Authority that upon receipt of the advisory issued by the Government of Gujarat vide letter dated 6th March, 2020, the Gujarat State Legal Services Authority issued directions to all District Legal Services Authorities to organize various programmes in order to sensitize and bring awareness amongst all. The different steps taken by the different District Legal Services Authorities in the State as intimated by the Member Secretary is reproduced below :-

1. DLSA, Gandhinagar has organized a workshop at School for Blinds, Sector 16, Gandhinagar and raised awareness regarding COVID-19. (Press Cutting Annexed).
2. DLSA, Vadodara had raised awareness by sign boards containing preventive measures for COVID-19 for general public. (Photographs annexed).
3. DLSA, Rajkot has organized Legal Awareness programme for preventive measures of COVID- 19 and distributed Homeopathic Medicines free of charge. (Photographs Annexed).
4. DLSA, Vadodara had printed, published and distributed pamphlets for raising awareness containing preventive measures for COVID-19 for general public. (Photographs Annexed).
5. TLSC Jetpur, DLSA, Rajkot organized Awareness Programme for preventive measures of CORONA virus at Yellow School Jetpur. (Photographs Annexed).
6. DLSA, Surat has organized a workshop at Primary School No.144, Surat and raised awareness regarding COVID-19. (Press Cutting Annexed).

7. DLSA, Ahmedabad (Rural) organized Legal Awareness Programme on Spreading Awareness of preventive measures for Corona Virus at Govt. School Asarva, Ahmedabad. (Photographs Annexed).
8. TLSC Gondal, DLSA, Rajkot organized Awareness Programme on preventive measures for CORONA Virus at Sub jail Gondal.
(Photographs Annexed).
9. DLSA, Kachchh @ Bhuj organized a programmes of distribution of Herbal brew, for prevention against Corona Virus spread. (Photographs Annexed).
10. DLSA, Gandhinagar has raised awareness regarding COVID-19 by affixing banners in court premises. (Photographs Annexed).
11. DLSA, Rajkot organized an Awareness Programme for preventive measures of CORONA Virus at Central Jail Rajkot.
(Photographs Annexed).
12. DLSA, Panchmahals @ Godhra organized a program for protection from and prevention of Corona virus at campus of District Court Panchmahals @ Godhra and distributed Herbal Brew (UKALO) and Arsenic 30 tablet to public, Lawyers, Staff members and Officers of Godhra. (Photographs Annexed).
13. DLSA Ahmedabad (Rural) organized Door to Door campaign at Mahij village and distributed pamphlets to help Marginalized people of society-spreading awareness for maintaining hygiene for protection from Corona Virus. (Photographs Annexed).
14. DLSA, Rajkot provided guidance for production of MASK to the Jail Inmates of Central Jail, Rajkot and also provided guidance to maintain hygiene for protection from COVID-19. (Press note Annexed).
15. DLSA, Rajkot organized Awareness Programme regarding preventive measures of CORONA Virus at Rajkot Airport, i.e. for Airlines, loader, CISF and AAI of Rajkot. (Photographs Annexed).
16. DLSA, Junagadh organized awareness program at District Jail, Junagadh in co-ordination with Health Department and raised awareness to maintain hygiene for protection from COVID-19. (Photographs Annexed).
17. DLSA, Porbandar organized a program of distribution of Herbal brew, for prevention against Corona Virus spread. (Photographs Annexed).
18. TLSC & DLSA, Mehsana organized awareness program at District Jail, Mehsana in co- ordination with Health Department and raised awareness to maintain hygiene for protection from COVID-19 and pamphlets distributed. (Photographs Annexed).

19. DLSA, Bharuch organized a camp for Herbal brew distribution, temperature check and pamphlet distribution for prevention against Corona Virus spread done at District Court Complex, Bharuch. (Photographs Annexed).
20. TLSC, Halvad of DLSA, Morbi in co-ordination with Health Department organized awareness program to maintain hygiene for protection from COVID-19.

38. Appreciating the steps already taken, we further direct the Member Secretary to continue with the endeavor and follow up with all the District Legal Service Authorities in the State to carry on with their sensitization and awareness programme on regular basis covering each and every corner of their respective districts. Further status report may be placed by the Member Secretary by the next date fixed in the matter.

39. Registry to send copy of this order to all concerned including print and digital media today itself by fax, email, WhatsApp or by special messenger.

Sd/- VIKRAM NATH, CJ

Sd/- ASHUTOSH J. SHASTRI, J

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
[COMMERCIAL DIVISION]

COMMERCIAL SUIT NO.LD-VC-7 OF 2020

ALONG WITH

INTERIM APPLICATION NO. LD-VC-7 (IA) OF 2020

Ideal Toll & Infrastructure Pvt. Ltd.,

Mumbai and Anr.

.... Plaintiffs-Applicants

V/s.

ICICI Home Finance Co. Ltd.,

Mumbai & Anr.

.... Defendants

Mr. Vikram Nankani, Senior Counsel, with Mr. Sumeet Nankani, Mr. Ameet Naik and Ms. Madhu Gadodia, i/by Naik & Naik Co., for the Plaintiff-Applicant.

Mr. Ranjit Shetty, with Mr. Rahul Dev and Ms. Avina Karnad, i/by Argus Partners, for the Defendants.

Ms. Aditi Joshi, with Mr. Aniruddh Gambhir and Ms. Preeti Mishra - Representatives of the Defendants.

CORAM : A.K. MENON, J.
DATE : 7TH APRIL 2020.
[THROUGH VIDEO CONFERENCE]

P.C. :

1. This hearing is convened on the video conferencing facility provided by the registry in view of restrictions placed on personal hearings in a court room and in view of the social distancing requirements resulting from the COVID-19 pandemic. The matter has been listed today at the request of the plaintiffs' Advocate and considering the urgency mentioned.

2. Mr. Nankani, learned senior counsel for the plaintiffs-applicants, on instructions, undertakes to ensure that the suit will be properly lodged immediately upon the lock-down is lifted and registry functioning and comply with all office objections within a period of four weeks from such lodgment. The Advocates for the defendants and their representatives named in the appearances have participated in this hearing by video conference.

3. This suit has been filed by the plaintiffs against the defendants for a declaration that invocation of the pledge in favour of defendant no.1 in respect of pledged shares of one MEP Infrastructure Developers Limited, as detailed in Exhibit-B to the plaint is invalid; for a permanent injunction restraining the defendants from giving effect to certain e-mails including that of 31 st March 2020 and thereby nullifying the sale of pledged shares, for re-crediting the pledged shares to the plaintiffs' demat account; for a temporary injunction restraining the defendants from alienating, selling or transferring the pledged shares and also to withdraw orders for sale of the pledged shares pursuant to the loan sanction letter dated 14 th January 2019, annexed at Exhibit-A to the plaint.

4. Defendant no.1 has sanctioned a line of credit by way of term loan for a sum of Rs.5 crores for a period of 12 months with an option to renew the same on terms and conditions set out in the Sanction Order. Plaintiff no.1 has pledged 14 lakhs shares of MEP Infrastructure Development Limited ('suit shares'). The suit shares effectively constitute the security for the suit term loan. Defendant no.2 is a depository participant, with whom the suit shares are lying. Defendant no.1 claims that the plaintiffs herein and the plaintiff in companion Commercial suit no.LD-VC-8 of 2020 were liable to pay a sum of approximately Rs.4.72 crores to the defendant no.1 as of 20 th January 2020 and being in default of the said amount, the defendant no.1 notified the plaintiffs that they would be invoking the security and liquidating the suit shares. Repeated e-mails have been sent by defendant no.1 to the plaintiffs to this effect and in the process, sale of shares commenced. It is not in dispute that a total of 1,52,413 shares were sold in two tranches particularly on 4 th March 2020 and on 31 st March 2020.

5. According to the plaintiffs and as canvassed by Mr.Nankani, the defendant no.1 has ignored the fact that BSE Sensex had fallen by 9878.71 points from 1 st March 2020 and as a result, the price of the suit shares had also dropped. At all material times, he submitted that the shares were valued @ between Rs.40/- to Rs.37.50 per share and on 2 nd March 2020, the shares were trading @ Rs.35/- per share, but on 1 st April 2020, the shares value had crashed to Rs.11.55 per share. The sharp decline was caused by the effect of the lock- down announced throughout the country, as a result of which road traffic came to a standstill and the only source of income of the plaintiffs-company and MEPDIL also was badly affected.

6. Mr. Nankani's submitted that the Reserve Bank of India had issued a Press Release dated 27 th March 2020, annexed at Exhibit-CC to the plaint declaring the RBI's 'Statement on Developmental and Regulatory Policies' as a result of the financial condition caused by Covid-19. It inter alia contemplates a moratorium on term loans. Mr.Nankani has relied upon paragraph 5 of the said policy statement, which provides that all commercial banks and lending institutions, including the defendant no.1, were permitted to allow a moratorium of three months on payment of installments in respect of all term loans outstanding as on 1 st March 2020 and the repayment schedule of subsequent due dates was permitted to be shifted by three months. He submitted that despite this moratorium being announced, defendant no.1 has proceeded to sell the shares and had not extended time for payment.

7. Vide a further circular addressed to all relevant financial institutions, the RBI had announced a "Covid-19-Regulatory Package" Mr.Nankani relied upon the provisions of paragraph 2 thereof to state that the term loan granted by defendant no.1 must be subjected to a three month moratorium and in that view of the matter, sale of shares could not be permitted. Mr. Nankani submitted that the total value of the shares pledged forming part of this and its companion suit at its lowest value as on date is over Rs.6 crores and therefore the defendant no.1 is substantially protected. He submitted that the benefit of the moratorium must be extended to the plaintiffs especially in view of the RBI guidelines and RBI instructions, as also the fact that other courts have considered these aspects. He referred to the decision of the Delhi High Court in the case of Anant Raj Ltd. Vs. YES Bank Ltd. in Writ Petition (C) Urgent No.5/2020, in which case the Court by an order dated 6 th March 2020 granted time to make payments having formed a prima facie view that the account of the petitioner therein could not have been classified in NPA; directing status-quo ante and restoring the account classification as is stood on 1 st March 2020. He therefore submitted that the effect of the RBI circular is also to prevent affected borrowers from being declared NPA. At this stage, he submitted that he is entitled to relief in terms of prayer clauses (c) and (d) of the suit.

8. The application is opposed on behalf of the 1 st defendant-bank by

Mr.Shetty who submits that as between the plaintiffs in this suit, filed by the Ideal Toll & Infrastructure Pvt. Ltd and one of its Directors, as on date a total 28,97,587 shares have been pledged to the 1 st defendant. In the companion suit filed by a different individual and Director, 29,94,357 shares have been pledged. Mr.Shetty submits that the outstanding amount due from the plaintiffs in this suit as on 12 th January 2020 was a sum of Rs.1.71 crores. He further submits that in the second suit filed an individual Director, the amount outstanding was Rs.3.01 crores and therefore a total sum of Rs.4.72 crores is due from the plaintiffs in both the suits. He was instructed to state that if this amount was overdue as of 12 th January 2020 and was unaffected by the moratorium, which in any event would apply to loan repayments due after 1 st March 2020. Due dates of installments payable from and after 1 st March 2020 would therefore be required to be postponed; whereas, the amounts payable by the plaintiffs were overdue as of January, 2020 itself. It is, therefore, submitted that the moratorium does not apply. He further submitted that if by 13 th April 2020, the account is not regularized by payment of Rs.1.71 crores the plaintiffs' account would have to be declared as a NPA. He therefore opposed grant of relief.

9. Having heard learned counsel for the parties and having considered their respective submissions, I am of the view that the protection sought to be availed of by the plaintiffs by virtue of the RBI circulars would clearly apply to all amounts due after 1 st March 2020. In the instant case, the plaintiffs were liable to pay Rs.1.71 crores as of 12 th January 2020. There is no doubt that defendant no.1 has a vested right to sell the pledged shares. The sale of shares at this moment would appear to be prompted by anxiety to recover the amount of Rs.1.71 crores that is overdue from the plaintiffs. In view of the willingness of the plaintiffs to regularize the account and considering the fact that the RBI has clearly opined that the moratorium can be granted for three months on payment of all installments, it would appear that it is only the installments falling due between 1 st March 2020 and 31 st May 2020 that are contemplated under the Covid-19 Regulatory Package, as seen from paragraph 2 of RBI Circular dated 27 th March 2020, annexed at Exhibit-DD to the plaint. The Press Release dated 27 th March 2020 on 'Statement of Developmental and Regulatory Policies' seems to suggest that moratorium would apply in respect of payment of installments of terms loans outstanding "as of 1 st March 2020". That would seem to include even the amounts due to the 1 st defendant from the plaintiffs in this suit but the Statement of Developmental and Regulatory Policies is only a Press Release setting out the policies to address stress in financial conditions caused by Covid-19. They do not constitute the directions to the banks.

10. In my view the directions to the banks and financial institutions is to be found in the RBI Circular No.RBI/2019-20/186 (DOR No.BP.BC.47/21.04.048/2019-20) dated 27 th March 2020. This is the effective circular directing the banks to grant benefit of Covid-19 Regulatory Package. This circular issued directions in detail for

rescheduling of term loan payments and working capital facilities, easing of working capital financing, classification as Special Mention Accounts and Non-Performing Assets. It is this and certain other conditions that came into effect as on 27 th March 2020. The instructions in paragraph 2 reads as follows :-

"2. In respect of all terms loans (including agricultural term loans, retail and crop loans), all commercial banks (including regional rural banks, small finance banks and local area banks), co- operative banks, all-India Financial Institutions and NBFCs (including housing finance companies) ("lending institutions") are permitted to grant a moratorium of three months on payment of all installments 1 falling due between March 1, 2020 and May 31, 2020. The repayment schedule for such loans as also the residual tenor, will be shifted across the board by three months after the moratorium period. Interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period."

(Emphasis supplied)

11. The footnote to clause 2 reads as follows ` Instalments will include the following payments falling due from March1, 2020 to May 31, 2020: (i)principal and/or interest components; (ii) bullet repayments; (iii) Equated Monthly instalments; (iv) credit card dues. " It is therefore clear that the grant of moratorium of three months would apply to the payment of all installments falling due between 1 st March 2020 and not those installments which were due prior thereto. I am therefore unable to agree with the submissions of Mr. Nankani that the amount admittedly due as of January would be covered by the moratorium. This moratorium would however cover the amounts claimed by defendant no.1 in the companion suit filed by the individual Director viz. Commercial Suit No.LD-VC-8 of 2020. In the present suit, therefore, I am of the view that both the parties' rights are entitled to be protected and with that intention, I am of the view that the order that I propose to pass will meet the ends of justice.

12. Considering the fact that the plaintiffs' income stream now stands seriously depleted, the fact that the defendants cannot dispute, I pass the following order :-

- (i) Plaintiffs shall pay to the defendant no.1 a sum of Rs.30 lakhs on or before 18th April 2020.
- (ii) Plaintiffs shall pay a further sum of Rs.70 lakhs to defendant no.1 on or before 30th April 2020.
- (iii) The balance amount of Rs.71 lakhs, along with accrued interest on overdue amount as of 12th January 2020 till date of payment shall be paid over to defendant no.1 on or before 15th May 2020.
- (iv) In the meanwhile none of the pledged shares, excluding those that have already been sold at the close of trading

today, shall be sold by the defendants.

- (v) Till a default is committed, the plaintiffs suit loan account shall not be declared a Non-Performing Asset. In the event of any default in payment of any of these amounts, the defendant no.1 shall be at liberty to sell shares pledged by the plaintiffs in Commercial Suit No.LD-VC-8 of 2020 to the extent required to recover the balance due as on the date of default in Loan Account No.120000002080 pursuant to sanction letter dated 14 th January 2019, annexed at Exhibit-A to the plaint without further reference to court.
- (vi) Since certified or authenticated copies may not be available for some time, all concerned shall act on a copy of this order digitally signed by the Personal Secretary of the Court and transmitted by email to the Advocates concerned.

(A.K. MENON, J.)

"IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2020

CORAM :

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Suo Motu W.P.No.7413 of 2020

- 1.The High Court of Judicature at Madras,
Represented by its Registrar General,
High Court of Madras,
Madras – 600 104.
- 2.The Government of Tamil Nadu,
Represented by the Chief Secretary,
Secretariat,
Chennai – 600 009.
- 3.The Government of Tamil Nadu,
Represented by its Principal Secretary,
Home Department,
Secretariat,
Chennai – 600 009.

4.The Government of Tamil Nadu,
Represented by its Principal Secretary,
Law Department,
Secretariat,
Chennai – 600 009.

5.The Revenue and Disaster Management Authority of Tamil Nadu,
Represented by its Commissioner,
Ezhilagam,
Chennai – 600 005. ... Respondents

For Respondents : Mr.V.Jayaprakash Narayanan
State Government Pleader

ORDER

(Order of the Court was made by M. SATHYANARAYANAN, J.)

This Court, in continuation and in conjecture with the earlier orders, is passing the following order :

2.Mr.V.Jayaprakash Narayanan, learned State Government Pleader, on instructions, would submit that, now normalcy has almost restored and the interim order, especially with regard to the eviction of encroachments and demolition of unauthorised construction also, creates some difficulty, and would pray for appropriate orders.

3.In the light of the fact that almost all activities are permitted subject to compliance of Covid-19 norms/Standard Operating Procedure, this Court is of the considered view that there is no need to extend the interim orders, already passed.

Therefore, this suo motu writ petition is closed.

(M.S.N., J.) (R.H., J.)

06.11.2020”

**“IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

WRIT PETITION (CIVIL) NO.825 OF 2020

GAJENDRA SHARMA

...PETITIONER(S)

VERSUS

UNION OF INDIA AND ANR. ...RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN, J.

By this writ petition filed under Article 32 of the Constitution, the petitioner has prayed for directions declaring the notification dated 27.03.2020 issued by Reserve Bank of India as ultra vires to the extent it charges interest on the loan amount during the moratorium period.

2. The petitioner's case and the pleadings in the writ petition briefly noted are:-

2.1 The petitioner has availed a home loan of amount of Rs.37,48,000/- from the ICICI Bank. After declaration of Coronavirus (COVID-19) as a pandemic by World Health Organisation, the National Disaster Management Authority exercising the jurisdiction under Section 6 of the Disaster Management Act, 2005 to take effective measures to prevent the spread of COVID-19 across the country and for mitigation of the threatening disastrous situation has issued notification dated 27.03.2020 directing the Ministry, Departments of Government of India, State Governments and the State authorities to take measures for ensuring social distancing so as to prevent the spread of COVID-19 in the country. Necessary guidelines were also issued under Section 10(2)(1) by the National Executive Committee.

2.2 The Reserve Bank of India on 27.03.2020 issued Statement of Development and Regulatory Policies where inter alia certain regulatory measures were announced to mitigate the burden of debt servicing brought about by disruptions on account of COVID-19 pandemic and to ensure the continuity of viable businesses. The notification dated 27.03.2020 was issued by the Reserve Bank of India for rescheduling of payments – Term Loans and Working Capital Facilities. Relevant part of the notification relevant for the present case is as follows:-

“(i) Rescheduling of Payments – Term Loans and Working Capital Facilities

2. In respect of all term loans (including agricultural term loans, retail and crop loans), all commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks, all- India Financial Institutions, and NBFCs (including housing finance companies) (“lending institutions”) are permitted to grant a moratorium of three months on payment of all instalments falling due between March 1, 2020 and May 31, 2020. The repayment schedule for such loans as also

the residual tenor, will be shifted across the board by three months after the moratorium period. Interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period.”

- 2.3 The petitioner’s case in the writ petition is that when all the means of livelihood have been curtailed by the Government of India by imposition of complete lockdown pan India, due to worldwide spread of COVID-19 pandemic, the petitioner has no way to continue to his work and earn livelihood. The petitioner’s case is that imposition of interest during the moratorium period is ultra vires and shall defeat the purpose of permitting the moratorium of loans.
- 2.4 Referring to notification dated 27.03.2020, petitioner pleads that Reserve Bank of India has by the notification made it clear that interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period. Petitioner’s case is that the above action of imposition of interest during the moratorium period is completely devastating and causes hindrance and obstruction in right to life guaranteed by Article 21 of the Constitution. Petitioner’s case is that the additional interest burden for three months’ moratorium period is also equally divided in all future EMIs, which is to increase the monthly bill of the customer.
- 2.5 The petitioner’s case is that the notification qua payment of interest violates the principle of natural justice as the Government on one hand ceased the working of the individuals and on other hand asking to pay the loan interest during moratorium. The petitioner’s case is that although the initial lockdown was for a period of three weeks but it was extended further. The Reserve Bank of India by a subsequent notification dated 23.05.2020 due to the extension of the lockdown and due to disruption on account of COVID-19 has directed all commercial banks to extend the moratorium by another three months, i.e., from 01.06.2020 to 31.08.2020 on payment of all installments in respect of term loans. The notification dated 23.05.2020 directed for repayment schedule for term loans as also the residual tenor will be shifted across the board. Notification further stated that “interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period”.
- 2.6 The petitioner in the writ petition has prayed for following reliefs:-
 - a) Issue an appropriate Writ, Order or Direction in the nature of mandamus or any other appropriate writ or Direction declaring the portion of impugned Notification dated 27.03.2020 issued by Respondent No.2 as ultra vires to the extent it charges interest on the loan amount during the moratorium period, which create hardship to the Petitioner being borrower and creates hindrance and

obstruction in "right to life" guaranteed by Article 21 of the Constitution of India; and

- b) Issue a Writ, Order or Direction in the nature of Mandamus thereby directing the Respondents to provide relief in repayment of loan by not charging interest during the moratorium period declared by Notification dated 27.03.2020; and/or
- c) Pass any other order or orders which may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice."

2.7 Notices were issued in the writ petition. While hearing the matter on 17.06.2020 the submission of the learned counsel for the petitioner have been noted to the following effect:-

"We have heard learned counsel for the petitioner(s).

Learned counsel for the petitioner(s) submits that under the Disaster Management Act, 2005, the Central Government has ample power and jurisdiction to grant relief with regard to loan which is specifically provided for. It is submitted that the circular of the Reserve Bank of India dated 27.03.2020 although grant moratorium but substantially no relief is given to the borrowers. The two-fold submissions have been made by learned counsel for the petitioner(s). It is submitted that if moratorium is being granted for a period of three months, the entire amount payable including principal and interest should not be charged during moratorium 3 period. Secondly, at least the demand of interest on interest should not be made and these reliefs can be extended by the Central Government and the Reserve Bank of India."

2.8 In the writ petition, affidavits have been filed both by the Union of India as well as the Reserve Bank of India. In the affidavits filed on behalf of the Union of India, it was pleaded that the Central Government is fully conscious of the difficulties faced by the various sectors and the stakeholders of various sectors within the purview of the Ministry of Finance and other Ministries. It is further pleaded that Finance Ministry, after the outbreak of the COVID-19 pandemic globally, has taken several measures of relief dealing with the potential problems faced by several sectors and in several spheres of all financial worlds. In the affidavit filed dated 31.08.2020, details of number of measures to mitigate financial suffering have been enumerated. It has been further pleaded that Finance Ministry took the initiative and interacted with Reserve Bank of India requesting the Reserve Bank of India to provide for various measures of relief to the borrowers. The affidavit also enumerates different reliefs and measures taken by Reserve Bank of India with regard to moratorium. Reference has been made to two circulars dated

06.08.2020 issued by Reserve Bank of India facilitating revival of real sector activities and mitigating the impact on the ultimate borrowers by enabling lenders to grant concessions to borrowers for COVID-19-related stress in personal, MSME and corporate loans. The Union of India has filed further affidavits dated 09.10.2020, 23.10.2020 and 17.11.2020.

2.9 The Reserve Bank of India has also filed a counter affidavit, a consolidated counter affidavit dated 09.10.2020, additional affidavit dated 09.10.2020 and further additional affidavit dated 01.11.2020. Indian Bank Association has also filed affidavits bringing on record various circulars issued by Reserve Bank of India, State Bank of India etc.

3. We have heard Shri Rajiv Dutta, learned senior counsel for the petitioner. Shri Tushar Mehta, learned Solicitor General, Shri V. Giri, learned senior counsel and Shri Ramesh Babu M.R., learned counsel appearing for the Reserve Bank of India and some of the counsels, who had appeared for intervenors.

4. Hearing of this writ petition took place alongwith other writ petitions on different dates. When the matter was heard on 19.11.2020, learned counsel on behalf of the petitioner, Shri Rajiv Dutta submitted that in view of the affidavits, which have been filed in the present writ petition by the respondent No.1, this writ petition be disposed of. We, thus, proceed to decide the Writ Petition (C) No. 825 of 2020.

5. In course of hearing of these petitions, learned senior counsel for the petitioner, Shri Rajiv Duta has expressed satisfaction on the measures taken by the Government of India with respect to borrowers in which category the petitioner belongs. Learned senior counsel for the petitioner submits that the decision of the Central Government to forego interest on eight specified categories of loans paid upto Rs.2 Crores has come as a great relief.

6. Shri Tushar Mehta, learned Solicitor General submits that the Central Government is fully conscious of the difficulties faced by the various sectors and the stakeholders of various sectors and the Finance Ministry, after the outbreak of COVID-19, has taken several measures of reliefs dealing with the potential problems faced by several sectors and in several spheres of all financial worlds. Shri Mehta has referred to number of measures taken by the Central Government to mitigate the financial suffering as detailed in its affidavits as noted above. In its affidavit dated 23.10.2020, it is stated that the decision taken by the Central Government for granting various reliefs for the COVID-19 pandemic for benefit of waiver of interest upto Rs.2 Crores in eight categories has been approved by the Union Cabinet in its meeting dated 21.10.2020 and Ministry of Finance has issued directions dated 23.10.2020 on the subject, which has been brought on record alongwith the affidavit. Shri Mehta submits that in pursuance of circular dated 23.10.2020, as a follow-up towards the implementation of the aforesaid decision, the State Bank of India has informed that as on 13.11.2020, as per provisional, unaudited information received so far from various lending institutions, such

lending institutions have released ex-gratia amount of an aggregate exceeding Rs.4,300 Crores in over 13.12 Crore accounts of borrowers covered under the Scheme.

7. Shri Giri also submits that Reserve Bank of India has also taken follow-up action in pursuance of the policy decision taken by the Finance Ministry. He submits that the Reserve Bank of India has issued Circular dated 26.10.2020 to all commercial banks, all primary co-operative banks and all All India Financial Institutions and all non-banking financial companies and were advised to be guided by the Scheme announced by the Government of India dated 23.10.2020.

8. We have considered the submissions of the learned counsel for the parties and have perused the records.

9. The pandemic COVID-19 has not only caused serious threat to the health of the people but has also cast its shadow on the economic growth of the country as well as other countries in the entire world. Due to lockdown imposed by the Government of India in exercise of powers under the Disaster Management Act, 2005, there can be no denial that most of the businesses including private sector as well as public sector has been adversely affected. For several months, large number of industries were not allowed to function and exemptions were granted only to few of the industries to run and carry on its activities, which were found essential and necessary in the fact situation. Although, gradually, due to Unlock- 1, 2 and 3, the industries and other business activities have been restored and the economy of the country is on track although at a slow pace. The moratorium period as granted by the Reserve Bank of India vide orders dated 27.03.2020 and 23.05.2020 have continued from 01.03.2020 to 31.08.2020, i.e., for the period of six months. As submitted by the learned Solicitor General and reflected by the affidavits filed on behalf of the Union of India, it is clear that Central Government was fully conscious of the difficulties faced by the various sectors and the stakeholders of various sectors and different measures by Finance Ministry have been taken in the above reference, which has been detailed in the affidavits dated 31.08.2020, 09.10.2020 and 23.10.2020.

10. For the purposes of the present case, it is relevant to notice paragraphs 3 and 4 of the affidavit dated 23.10.2020 filed on behalf of the Union of India in which following has been stated:-

"3. I state and submit that as submitted in the previous affidavits, the Central Government took many Policy decisions for granting various reliefs for the Covid pandemic which is a 'disaster' within the meaning of the Disaster Management Act, including a policy decision whereby the following borrowers were declared eligible for the benefit of waiver of 'interest on interest':

- (i) MSME loans up to Rs. 2 crore
- (ii) Education loans up to Rs. 2 crore
- (iii) Housing loans up to Rs. 2 crore
- (iv) Consumer durable loans up to Rs. 2 crore

- (v) Credit card dues up to Rs. 2 crore
- (vi) Automobile loans up to Rs. 2 crore
- (vii) Personal loans to professionals up to Rs. 2 crore
- (viii) Consumption loans up to Rs. 2 crore

It is submitted that the preparation of the Scheme in this behalf was under contemplation and it was also necessary to formalise the said policy decision by following certain mandatory procedure required by law.

4. I state and submit that the aforesaid decision taken by the Ministry of Finance Government of India, has been approved by the Union Cabinet in its meeting held on 21.10.2020. Pursuant to approval by the Union Cabinet, the Ministry of Finance has issued Scheme providing for, broadly, the following mechanism,

(a) The eligible borrowers mentioned in the previous Affidavit [and described in detail in clause 4 of the Scheme annexed herewith and marked as Annexure R-1] will be "eligible beneficiaries" under the Scheme.

Under the Scheme, all lending institutions [as defined under clause 3 of the Scheme] shall credit the difference between compound interest and simple interest in the respective accounts of eligible borrowers for the period between 1.3.2020 to 31.8.2020.

This amount shall be credited by each of the lending institutions referred to in clause 3 of the Scheme, irrespective of whether such eligible borrowers have fully availed or partially availed or have not availed of the moratorium viz. deferment in payment of instalments as per the Circulars dated 27.3.2020 and 23.5.2020 issued by RBI.

(b) After crediting the said amount in the respective accounts of eligible borrowers, the lending institutions would claim reimbursement from the Central Government through the nodal agency of State Bank of India as stipulated under the Scheme.

It is submitted that the aforesaid decision is taken after careful consideration, keeping in mind the overall economic scenario, the nature of borrowers, impact on the economy and such other factors as a policy decision earmarking the above referred class of borrowers for grant of benefits."

11. The case of the present petitioner, who has taken housing loan is fully covered by the decisions of the Union of India as noted above, since the benefit has been extended to the housing loan upto Rs.2 Crores, i.e., in pursuance of the aforesaid decisions of the Government of India, the Ministry of Finance had issued order dated 23.10.2020 – Operational Guidelines with regard to COVID-19 Reliefs, details of order dated 23.10.2020 contains a heading "COVID-19 Relief", relevant portion of the Scheme is to the following effect:-

**"COVID-19 Relief
Scheme for grant of ex-gratia payment of difference
between compound interest and simple interest for**

six months to borrowers in specified loan accounts (1.3.2020 to 31.8.2020)**Operational Guidelines****1. Name of the scheme**

This scheme shall be called "**Scheme for grant of ex-gratia payment of difference between compound interest and simple interest for six months to borrowers in specified loan accounts (1.3.2020 to 31.8.2020)**".

2. Object of the scheme

In view of the unprecedented and extreme COVID-19 situation, the object of the Scheme is to provide *ex-gratia* payment of difference between compound interest and simple interest by ways of relief for the period from 1st March 2020 to 31st August 2020 to borrowers in specified loan accounts. Such payment does not constitute a contractual, legal or equitable liability of the Central Government and is only an *ex-gratia* payment to the following designated class of borrowers in view of the COVID-19 pandemic.

3. Applicability of the scheme

This scheme shall apply to all lending institutions, which must be either a banking company, or a Public Sector Bank, or a Co-operative Bank [i.e., an Urban Cooperative Bank or a State Co-operative Bank or a District Central Co-operative Bank], or a Regional Rural Bank, or an All India Financial Institution, or a Non-Banking Financial Company or a Housing Finance Company registered with Reserve Bank of India (RBI) or National Housing Bank as the case may be. A Non-Banking Financial Company—Micro Finance Institution should be a member of a Self-Regulatory Organisation (SRO) recognised by RBI.

4. Eligibility criteria under the scheme

(1) Borrowers in the following segments/classes of loans, who have loan accounts having sanctioned limits and outstanding amount of not exceeding Rs. 2 crores [aggregate of all facilities with lending institutions] as on 29.2.2020, shall be eligible under the Scheme:

- (i) MSME loans
- (ii) Education loans
- (iii) Housing loans
- (iv) Consumer durable loans
- (v) Credit card dues
- (vi) Automobile loans
- (vii) Personal loans to professionals
- (viii) Consumption loans

Any borrower whose aggregate of all facilities with lending institutions is more than Rs. 2 crores (sanctioned limits or outstanding amount) will not be eligible for ex-gratia

payment under this scheme.

xxxxxxxxxxxxxxxxx”

12. The decision of the Government of India dated 23.10.2020 has also been communicated to all the banks and other financial institutions. The Reserve Bank of India has also issued necessary instructions in the above regard. In the affidavit filed on 17.11.2020 on behalf of the Union of India, in paragraphs 3 and 4 following has been stated:-

“3. It is submitted that as a follow-up towards the implementation of the aforesaid Scheme, the nodal agency, i.e. State Bank of India, has informed that as on 13.11.2020, as per provisional, unaudited information received so far from various lending institutions, such lending institutions have released *ex-gratia* amount of an aggregate exceeding Rs. 4,300 crore in over 13.12 crore accounts of borrowers covered under the said Scheme. The data received is subject to final reconciliation and audit. Information from some remaining lenders are still being received.

4. It is further submitted that various lending institutions have put in place Board-approved policies for restructuring of accounts as per RBI circular dated 6.08.2020. Restructuring/resolution of eligible accounts are being undertaken by lending institutions on case-by-case basis. Resolution plans in respect of eligible personal, MSME and corporate loans are to be invoked by 31.12.2020, and time is still available to the account holders for such invocation.”

13. Learned Solicitor General referring to above measures taken by the Union of India submits that above measures have been taken by the Government of India in exercise of jurisdiction under the Disaster Management Act, 2005 to mitigate the hardships and miseries of few sectors. Shri Mehta submits that with regard to other specified sectors, different other measures have been taken, which we need not note for the purposes of this case and which shall be separately considered while considering writ petitions raising such issues.

14. As noted above, Shri Rajiv Dutta, learned senior counsel for the petitioner has expressed its satisfaction on the measures taken by the Government of India redressing grievances of the petitioner to the extent as noted above. The Union of India having taken specific measures vide its circular dated 23.10.2020, which has been brought on the record and follow-up measures have also been taken in consequence thereof, we dispose of the present writ petition with directions to the respondents to ensure that all steps be taken to implement the decision dated 23.10.2020 of the Government of India, Ministry of Finance so that benefit as contemplated by the Government of India percolates to those for whom the financial benefits have been

envisaged and extended. All IAs, impleadment applications stand disposed of.

(ASHOK BHUSHAN)

(R.SUBHASH REDDY)

(M.R. SHAH)

New Delhi,
November 27, 2020.”

“IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SUO MOTU WRIT PETITION (ST) NO. 93432 OF 2020
(Writ Petition Urgent No.2 of 2020)

High Court On Its Own Motion }
(Letter dated 26 th March, 2020 }
sent by five Senior Advocates) } Petitioner

versus
The State of Maharashtra } Respondents

WITH

INTERIM APPLICATION (ST) NO. 93433 OF 2020
IN
SUO MOTU WRIT PETITION (ST) NO. 93432 OF 2020

Pimpri Chinchwad Municipal Corporation } Applicant
Versus
Sarang Yadwadkar and Ors. } Respondents

WITH

INTERIM APPLICATION (ST) NO. 94157 OF 2020
IN
SUO MOTU WRIT PETITION (ST) NO. 93432 OF 2020

Yash Developers } Applicant
Versus
Deputy Collector, Slum

Rehabilitation Authority and Ors. } Respondents

WITH

INTERIM APPLICATION (ST) NO. 97299 OF 2020
IN
SUO MOTU WRIT PETITION (ST) NO. 93432 OF 2020

Bombay Slum Redevelopment
Corporation Private Limited } Applicant
Versus
Deputy Collector (WS), Slum
Rehabilitation Authority and Ors. } Respondents

CORAM:- DIPANKAR DATTA, CJ.,
A.A.SAYED, S.S.SHINDE &
K.K.TATED, JJ.

Present:-

Mr.G.H.Keluskar for the applicant in IAST/93433/2020.

Mr.Vishwanath Patil for respondent no.5 in IAST/93433/2020.

Mr.Ranbir Singh i/b. Prakash and Co. for the applicant in
IAST/94157/2020 and IAST/97299/2020.

Mr.Jagdish G.Aradow (Reddy) for respondent no.1 in
IAST/94157/2020 and IAST/97299/2020.

Mr.Sujit Shelar for respondent no.2 in IAST/94157/2020
and for respondent nos. 2 and 3 in IAST/97299/2020.

Mr.P.P.Kakade-Government Pleader with Ms.R.A.Salunkhe-
AGP for State.

ORDER
(December 9, 2020)

1. This Court had taken sou motu cognizance of the difficulty, inconvenience and hardship faced by litigants in accessing justice because of the pandemic and the consequent lock-down and, accordingly, passed protective orders whereby public authorities were restrained from evicting/dispossessing parties against whom administrative or judicial orders to that effect were passed. Public authorities were further restrained from giving effect to orders of demolition that might have been passed in respect of unauthorized buildings/construction. Also, orders were passed restraining public authorities from giving effect to any orders that might entail civil consequences to the citizens.

2. The situation has improved since then. The High Court as well as district judiciary, except the judiciary in Pune, has resumed physical hearings, and the impediments to access justice have since been removed.

3. In such view of the matter, we are of the opinion that this suo motu writ petition need not be kept pending any further. However, to ensure that the citizens faced with orders passed by public authorities or judicial fora adverse to their interest may access justice by pursuing legal remedies in accordance with law in the forthcoming days, we direct that the protective interim orders passed on this suo motu writ petition shall continue till 31 st January, 2021 and not beyond. We make it clear that if any party has, in the meanwhile, challenged an order adverse to his interest before a competent court of law and failed to obtain an order of stay or if the proceeding initiated by him stands terminated without any order being passed protecting his interest, he shall not be entitled to reap the benefit of this protective order. We also make it clear that after 31 st January, 2021, the public authorities shall be at liberty to enforce orders, passed against parties adverse to their interest, in accordance with law.

4. With the aforesaid directions, this suo motu writ petition stands disposed of. All pending applications also stand disposed of, accordingly.

5. This order will be digitally signed by the Private Secretary/Personal Assistant of this court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

Sd/- CHIEF JUSTICE

Sd/- JUSTICE A.A.SAYED

Sd/- JUSTICE S.S.SHINDE

Sd/- JUSTICE K.K.TATED''

7. Having regard to the orders passed by the Hon'ble Supreme

Court, various High Courts in suo motu proceedings, restraining recovery proceedings already initiated and normalcy being almost restored in the High Court and various Forums, we deem it fit that there is no need to retain this suo motu proceedings and to continue the interim orders passed from time to time.

8. Accordingly, interim order dated 25.3.2020, and the subsequent orders passed in this suo motu proceedings, are vacated. In fact, as per the *suo motu* proceedings dated 25.3.2020, certain benefits were granted to the prisoners on parole, under-trial prisoners, and in the matter of consideration of bail applications. Since normalcy have almost been achieved, and the lock down restrictions are relaxed, we are of the opinion that such orders are also to be vacated and, therefore, whatever orders granted, as regards the criminal matters, would also stand vacated. However, taking note of the fact that some of the prisoners would be on parole, we are of the view that reasonable time is to be granted for such prisoners to report back to the appropriate prison. In that view of the matter, all the prisoners, who are on parole, and taken the benefit of the orders issued, shall report back, within four weeks from the date of receipt of a copy of this judgment.

9. Consequently, Banks/authorities can initiate/continue the proceedings and act in accordance with the provisions. We make it clear

that any decision to be taken by the Banks/authorities should be in accordance with the decision of the Hon'ble Supreme Court in W.P. (C)No.825 of 2020 and as per the statutory provisions.

In the light of the above, instant suo motu writ petition is closed.

Pending interlocutory applications, if any, shall stand closed.

Sd/-

**S.Manikumar
Chief Justice**

Sd/-

**C.T.Ravikumar,
Judge**

Sd/-

**Shaji P.Chaly
Judge**

vpv

/TRUE COPY/

P.A. TO JUDGE