

United Commercial Bank

Vs

Municipal Corporation of Greater Bombay and Others

Civil Appeal No. 1105 of 1986

(B. C. Ray, A. P. Sen JJ)

12.03.1986

ORDER

A. P. SEN, J. -

1. This Court by its order dated August 29, 1985 made a direction to the effect that before making any order of payment of Rs. 21,68,000 to the Municipal Corporation, the learned Judges should address themselves afresh to the question of priority of charges, and the main controversy between the parties in respect of the true scope and effect of Section 212 of the Bombay Municipal Corporation Act, 1888. We are distressed to find that despite the clear direction, the learned Judges should have refrained from going into the question of priority of charges since it involved adjudication of the rival contentions of the parties. Instead of going into the question of priority of charges, they have left the question to be determined in the suit brought by the plaintiff-Bank. We do not think that this is a satisfactory way of dealing with the question remitted. That virtually amounts to decreeing the claim of the Municipal Corporation without a suit being brought. They then proceeded to make the same order as before.

2. We accordingly set aside the order of the Division Bench and remit the matter to the High Court for determination of the controversy between the parties as to whether the Municipal Corporation had a prior right for payment of the aforesaid amount of Rs. 21,68,000 by reason of Section 212 of the Bombay Municipal Corporation Act, 1888.

3. We are informed that the amount of Rs. 21,68,000 is invested with the plaintiff-Bank in a fixed deposit for six months. We think that it would be just and expedient to allow the money to remain with the plaintiff-Bank till the question remitted is determined. The learned Attorney-General appearing for the plaintiff-Bank undertakes that the plaintiff-Bank will keep the money in a fixed deposit for a term of six months in the first instance and renew the same for fresh term of six months each and also agree to pay interest at the rate of 12% per annum with six monthly rest. The learned Attorney-General further undertakes that the plaintiff-Bank will place the money at the disposal of the Receiver and whichever party succeeds would be entitled to the interest accrued thereon. In the event the High Court upholds the contention of the Municipal Corporation, it would recall the money from the plaintiff-Bank irrespective of the term of deposit.

4. The result is, therefore, the appeal succeeds and is allowed. The order passed by the Division Bench of the High Court is set aside and the matter is remitted to the Division Bench for a decision afresh.

5. No costs

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