

Purewal & Associates and another

Vs

Punjab National Bank and others

Civil Appeal No. 2258 of 1992

(M. N. Venkatachaliah, K. Ramaswamy JJ)

09.03.1992

JUDGMENT

1. This special leave petition is directed against the order dated 1st November, 1991 in Civil Review No. 12/1991 (in Writ Petition No. 447/1991) by which the earlier order of the 13th August, 1991 disposing of the writ petition on consent terms was recalled and the writ petition restored. The order dated 13th August, 1991 disposing of the writ petition proceeded on the concession made on behalf of the respondent-Bank to the following effect :

"Mr. Chhabil Dass says that respondent No. 1, the Punjab National Bank, though denying the statement of facts made in the writ petition, has no objection to rendering normal banking services to the petitioners, including facilities pertaining to local guarantees, not involving foreign exchange, and letters of credit, subject to the rules and regulations framed by the Bank and the Reserve Bank of India. However, these facilities will not include advancing of any loan or concession to the petitioners and will also be subject to the rights of the Bank to exercise its lien as lawfully available to it. He further clarifies that the day-to-day deposits of the petitioners made in respect of normal banking facilities, will not be adjusted towards the lien."

Later, it would appear, the Bank urged that the concession had been made as a result of a misconception of the legal position as to the Bank's right to a lien. Thereupon, the High Court reviewed the earlier order dated 13th August, 1991 and set it aside. The result was that the writ petition was restored and is now binding decision.

2. We have heard learned counsel on both sides. Special leave granted. In view of some transitional arrangements that we indicate in this order, we think any final pronouncement on the question raised in the appeal becomes unnecessary. Accordingly, this order disposes of the pending writ petition in the High Court as well.

3. We may briefly refer to the controversy in the writ petition before the High Court. The appellants, who manufacture watches and clocks are aggrieved by the denial of banking services to them by the respondent Bank. The denial was on the ground that the appellants who allegedly owe large sums of money to the Bank, have failed and neglected to repay the same. The appellants allege that the monopolist Nationalised Banking Sector has virtually made it impossible for the appellants to avail themselves of the normal banking services and operations such as furnishment of letters of credit for import purposes, payment of statutory outgoings, taxes, wages and salaries, payment to suppliers of raw-materials etc. This refusal of the services is sought to be denied on the authority of certain Reserve Bank instructions and inter-Bank arrangements. Respondent-bank would, however, say that

the incidents of a banker's lien would extend to all accounts of the debtor-constituent and, the banker would be entitled to appropriate any funds to the credit of the constituent in the hands of the banker under any account whatsoever. Learned counsel for the appellants says that the problem presented does not really relate so much to the scope or the incidents of the banker's lien as to the question whether a constituent can be denied banking services by all Banks - even those to which it does not owe money. Appellants allege that as a result of this attitude made manifest by the Banks in terms of discipline of the Reserve Bank of India, appellants cannot survive at all as normal banking activity is indispensable for day-to-day business even at subsistence levels. Appellants say that they are stifled by these coercive measures and the Bank is applying these procedures to coerce repayment of yet unadjudicated disputed claims. It is submitted that some interim arrangements should have to be made in this behalf till the respondent-Bank proceeds to have its claims adjudicated which, according to the appellants, the respondent-Bank is reluctant to do but is resorting to the coercive pressures by a total denial of banking services to the appellants by all the Banks. Appellants say that it is open to the respondent-Bank to recover the dues claimed by it in accordance with and in the manner known to law.

4. But, for the present, it appears to us that leaving all the contentions of the parties open, the respondent-Bank may not deny banking facilities to the appellants for operation of a current account to enable them to keep their business going. It would be to nobody's benefit that as a result of a total denial of banking facilities/services, the business of appellants should come to a grinding halt. We, therefore, direct that without prejudice to the respective contentions of the parties, the respondent shall allow the operation of one current account, which will be free from the incidents of the banker's lien claimed by the respondent, so as to enable the appellants to carry on its normal day to day business transactions, to obtain letters of credit at full margin and to enable payment of statutory outgoings, taxes, wages, salaries, raw-materials etc. which are the usual business requirements of a manufacturing unit. There shall be no obligation on the part of the Bank to provide any credit facility in this account. However, inputs of money into this account shall not be subjected to or appropriated under the lien claimed by the Bank. In consideration of and as a condition for this facility the Bank shall be entitled to receive towards its old account a sum of Rs. 75,000/ every month. Appellants shall remit to the Bank a sum of Rs. 75,000/ - towards the amounts claimed by it and these payments of Rs. 75,000/- per month shall be entitled to be appropriated against such dues as may be determined against the appellants in appropriate legal proceedings. The amounts so held will ultimately carry a countervailing interest at the same rate as the respondents-Bank levies on the dues from the appellants. This arrangement shall be to preserve the rights of both parties in status quo till the Bank's claims are finally adjudicated. The sum of Rs. 75,000/- per month mentioned above shall be paid by the appellants to the respondent by 20th day of each calendar month as undertaken by the appellants. The first payment shall be made on or before the 20th April, 1992 whereupon the facilities indicated above shall commence.

5. Respondent-Bank shall be at liberty to institute a suit or other appropriate proceedings against the appellants for recovery of its alleged dues. The arrangements that we have indicated in this order would govern the parties till such proceedings are instituted by the Bank. It is open to the parties to urge before the forum where such legal proceedings are commenced by the Bank for appropriate further interlocutory directions.

6. The appeal as well as the writ petition No. 447 of 1991 in the High Court are disposed of accordingly. Order accordingly.

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