

SUPREME COURT OF INDIA

National Securities Depository Limited

Vs.

Vimal Mittal

C.A.No.....of 2005

(Mrs.Ruma Pal and C. K. Thakker JJ.)

07.02.2005

JUDGMENT

Ruma Pal, J.-

1. Leave granted.
2. The question is whether the delay should have been condoned by the National Commission in entertaining the appellant's appeal. The subject matter of controversy arises out of the alleged negligence said to have been committed by respondent No.2 Bank relating to the conversion of shares submitted by respondent No. 1 to respondent No.2, into dematerialized form.
3. On the complaint that the conversion was belatedly done causing loss to the respondent No.1, the respondent No.1 approached the State Commission under the Consumer Protection Act. The State Commission found that the respondent No.2 had delayed in the dematerialisation of the shares as alleged by the respondent No .1. In the circumstances, keeping in view the provisions of Section 16 of the Depositories Act, 1996, it was directed that the loss occasioned to the respondent No. 1 by reason of such delay was to be indemnified by the appellant and after the appellant indemnified the respondent No.1, it had the right to recover the same from the participant Bank, namely, respondent No.2.
4. The respondent No.2 preferred an appeal from the order of the State Commission to the National Commission. A stay was granted of the operation of the State Commission's order on 1st November, 2001.
5. According to the appellant, since its liability, even according to the State Commission's order, was dependent upon the finding of negligence on the respondent No.2's part, the appellant did not prefer a separate appeal. On 9th April, 2002 the National Commission clarified that the order dated 1st November, 2001 granting stay would continue vis-a-vis the respondent No.2 Bank only. In these circumstances, the respondent No.1 took out proceedings to execute the order of the State Commission against the appellant. The

appellant sought to withstand the execution on the ground that its liability would arise only if the loss was attributable to the respondent Bank and unless the respondent Bank's negligence was established in the pending appeal, the appellant could not be called upon to pay any amount. The Executing Court, however, rejected the appellant's plea on the ground that there was no order staying the operation of the State Commission's order as far as the appellant was concerned. The matter was accordingly adjourned to 24.10.2002 by the Executing Court in order to enable the appellant to obtain the necessary stay order.

6. On 23.10.2003 the appellant approached the National Commission together with an application for condonation in which the aforesaid facts have been set out. The National Commission, however, rejected the appeal on the ground that the delay was of 358 days for which no sufficient cause had been showed.

7. It was also said that the impugned decision of the State Commission was still operating against the appellant "subject to Section 16 of the depositories Act, 1996" and that the question of the applicability of Section 16 of the Depositories Act, 1996 would be gone into in the appeal filed by the respondent Bank.

8. We are of the view that the National Commission should have condoned the delay having regard to the fact that the liability of the appellant under the State Commission's order was conditional upon negligence being established against the respondent No.2. Since that issue was the subject matter of the pending appeal, there was no question of the State Commission's order being operative against the appellant. If indeed Section 16(2) was to be the subject matter of decision in the pending appeal, the National Commission could not have rendered such decision an academic exercise by refusing to entertain the appeal of the appellant. It is true that the respondent No.2 and the appellant are two separate entities. However, they represent but one interest namely, the liability of the respondent No.2 for negligence. It was, therefore, only in the fitness of things that the delay should have been condoned and the appellant's appeal admitted. We find some support for this conclusion in the decision of this Court in

9. Nevertheless, the respondent No. 1 is correct in contending that the appellant should have technically at least, filed a separate appeal. In that view of the matter, we allow these appeals and set aside the impugned decision of the National Commission subject to the appellant's paying an amount of Rs.5000/- in each appeal by way of costs.

10. We do not think it appropriate to direct the appellant to deposit any amount at this stage. That issue may be considered if and when the appellant moves for stay of the execution of the decree against the appellant. The amount of costs shall be paid within a period of four weeks from date.