SUPREME COURT OF INDIA

Prestige Lights Ltd

Vs.

State Bank of India

C.A.No.3827 of 2007

(C.K. Thakker and Altamas Kabir JJ.)

20.08.2007

JUDGMENT:

C.K. THAKKER, J.

1. Leave granted.

2. The present appeal is directed against the judgment and order dated March 29, 2005 passed by the High Court of Uttaranchal at Nainital in Writ Petition No. 293 of 2005 by which the petition filed by the petitioner (present appellant) was dismissed in limine.

3. To appreciate the controversy, few relevant facts may be noted.

4. Appellant herein is a Private Limited Company engaged in manufacturing bulbs, chokes and fittings. The factory of the appellant is situated at Dhalwala Industrial Area, Rajpur Road, Dehradun, Uttranchal. In 1992, the appellant obtained a loan of Rs. 85 lakhs from State Bank of India, Commercial Branch, Radha Palace, Rajpur Road, Dehradun respondent herein. The Company mortgaged its land and building with the respondent-Bank. According to the appellant, till 2001, the business of the appellant was comparatively good and it had no problem in depositing the interest accrued towards credit facilities. In or about 2001-02, however, because of heavy slump in the market due to arrival of cheaper Chinese Products, the appellant suffered huge losses and could not deposit the interest-amount with the respondent-Bank. The respondent-Bank, therefore, issued a notice on October 16, 2004 under sub-section (2) of Section 13 of the Securitization, Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to "the Act") alleging therein that the appellant failed to pay a sum of Rs.87,64,549.42 P. It was stated that the appellant had created security by equitable mortgage of land, bearing Khasra No. 550/3 and 550/4 admeasuring 10,036 sq. ft. situated at village Jagjitpur, Pargana Jwalapur, Tehsil and District Haridwar. The notice also sought to invoke personal guarantee given by M.P. Goel, Sudha Goel and Abhinav Goel. The appellant was called upon to deposit the amount mentioned in the notice with interest, expenses and costs within sixty days failing which the Bank would exercise power under sub-seciton (4) of Section 13 of the Act. It was also stated that the appellant should not transfer by sale, lease or otherwise the secured assets detailed in Schedule to the notice. The notice was served on the appellant-Company on October 19, 2004. It is the case of the appellant that it submitted a representation on October 20, 2004 wherein it was stated that the appellant had proposed to pay dues of the Bank after selling the land and building of the Factory. It was further stated that the

appellant had proposed to regularize assets of the Company as per fixed plan. If the respondent-Bank would continue working in a healthy spirit, the appellant was confident that it would be able to regularize the assets of the Company as per the proposal. It was also stated that the Bank had a second charge on the assets of the Company and the dues to be paid to Uttar Pradesh Financial Corporation were very small and the substantial sale proceeds of the assets of the Company would automatically go to the Bank and the Bank need not take any hasty action by invoking the provisions of the Act.

5. It may be stated at this stage that it is the case of the respondent-Bank that it had not received any such representation said to have been sent by the appellant on October 20, 2004. According to the appellant-Company, without considering the representation of the appellant, dated October 20, 2004, the respondent-Bank in purported exercise of the power under sub-section (4) of Section 13 of the Act, threatened the appellant to take over residential premises of the Directors of the appellant-Company by a communication, dated February 8, 2005. On March 19, 2005, the respondent-Bank issued a notice to take over possession of the residential house of the Director. Being aggrieved by all these illegal actions and 'dispossession-notice', the appellant approached the High Court of Uttranchal at Nainital on March 24, 2005 by invoking writ jurisdiction of the Court under Article 226 of the Constitution. The High Court, however, dismissed the petition in limine on March 29, 2005 which constrained the Company to challenge the action of the respondent-Bank in this Court under Article 136 of the Constitution.

6. It appears that a mention was made to the Court on April 28, 2005 and the Court ordered Registry to list the matter 'as notified'. Stay of dispossession was, however, granted. On May 6, 2005, notice was issued and interim relief was granted on certain terms and conditions which we will refer to at an appropriate stage. Affidavits and further affidavits were filed and the Court directed the Registry to place the matter for final hearing. Accordingly, the matter has been placed before us.

7. We have heard the learned counsel for the parties.

8. The learned counsel for the appellant contended that the action of the respondent-Bank was wholly illegal, unlawful and against the provisions of the Act. It was also in violation of the law laid down by this Court in Mardia Chemicals Ltd. v. Union of India & Ors., (2004) 4 SCC 311. It was submitted that once a representation was made, it was incumbent on the respondent-Bank to consider the same, to extend an opportunity to the appellant to enable the Company to pay-off the amount and in case of rejection of such representation, to inform the appellant about such decision by recording reasons. Nothing had been done by the respondent. The orders passed by the Bank, therefore, were totally illegal and unsustainable. A grievance was also made that the respondent-Bank which is 'State' within the meaning of Article 12 of the Constitution has acted arbitrarily and unreasonably. It ought to have appreciated the difficulties of the appellant that it was doing business in manufacturing electric goods and because of availability of Chinese Products at a cheaper rate, it suffered huge losses. Had the respondent-Bank shown sympathetic attitude and adopted constructive approach, the situation could have been avoided and the appellant- Company would have been able to pay-off the dues. No such opportunity had been granted and high-handed action was taken. A complaint was also made that the High Court was wholly wrong in summarily dismissing the writ petition when several questions of power, authority and jurisdiction of respondent-Bank had been raised which required a detailed judgment. It was stated at the time of hearing that even now the appellant is prepared to pay the amount if time is granted by the respondent-Bank. But if the respondent-Bank is not prepared to show grace, this Court may set aside the action of the Bank by

granting time and allowing the appellant-Company to pay-off the entire amount.

9. The learned counsel for the respondent-Bank, on the other hand, supported the action taken by the Bank and the order passed by the High Court. It was stated that there was suppression of material facts by the appellant and it has not come with clean hands. Only on that preliminary ground, this Court may decline to hear the appellant and may refuse to enter into merits. It was also submitted that no representation dated October 20, 2004 said to have been made by the appellant had been received by the respondent-Bank. According to the counsel, it was an after-thought and only with a view to take benefit of observations in Mardia Chemicals, such a case had been put forward by the appellant-Company. Grievance was also raised that apart from failure to pay regular instalments, the appellant-Company has not complied with the order passed by this Court. This is, therefore, not a fit case to exercise discretionary jurisdiction in favour of the Company and the appeal deserves to be dismissed.

10. Having considered the rival contentions of the parties and going through the records and proceedings of the case, in our view, no case has been made out by the appellant-Company to claim any relief from this Court. It is clear from what is stated above that the appellant took a credit facility from the respondent-Bank to the extent of Rs. 85 lakhs. It is not disputed even by the appellant that no regular re-payment of loan was made by the Company. The respondent-Bank was, therefore, within its power to take appropriate action in consonance with law. Accordingly, a notice came to be issued on October 16, 2004 which was received by the Company on October 19, 2004. So far as the representation said to have been made by the appellant on October 20, 2004 is concerned, it is the case of the respondent-Bank that no such representation was made by the appellant and such stand was taken belatedly by the Company with a view to get benefit of Mardia Chemicals. In this connection our attention has been invited by the learned counsel for the respondent-Bank to an affidavit-in-reply, dated September 5, 2005 filed by D.K. Rudola, Chief Manager wherein it was stated that though the appellant had asserted that it submitted a representation on October 20, 2004 in terms of Section 13(3A) of the Act, the Bank had never received the 'alleged representation'. A letter dated October 20, 2004 written by the appellant-Company had been received by the Bank. That letter, however, did not refer to the notice and was not in reply to the notice issued by the Bank. There was no reference of notice in the said letter. In fact, it was expressly stated that the letter was with reference to 'telephonic talks' held on that day, i.e. on October 20, 2004.

11. The Counsel also referred to an order passed by this Court on October 24, 2005 which inter alia read as under

"It is stated by learned counsel appearing for the respondent, as supported by the counter affidavit that the alleged representation stated to have been made at page 55 to the respondent by the petitioner had never in fact been received by the respondent. No rejoinder has been filed. The statement made in the counter affidavit therefore till today stands unrebutted.

One week's time granted to file rejoinder affidavit".

(emphasis supplied)

12. It is interesting to note that though the affidavit-in-reply was filed on September 5, 2005, wherein it was explicitly stated that no representation dated October 20, 2004 said to have been

submitted by the appellant had been received by the respondent-Bank, there was no rejoinder by the appellant-Company. The said fact was pressed in service by the respondent-Bank at the time of subsequent hearing of the case and was reflected in the order dated October 24, 2004 extracted hereinabove. It was only thereafter that a rejoinder affidavit was filed on November 5, 2005 in which it was asserted by the Company that the representation dated October 20, 2004 was made and was sent through courier "First Flight Couriers Ltd." a reputed courier company having its office at 414-415, 2nd Floor, Sahara Trade Centre, Faizabad Road, Lucknow. Thus, there is a word against word. Moreover, this Court cannot be oblivious of the fact that it was only after the order dated October 24, 2005 passed by this Court that in rejoinder- affidavit filed in November, 2005, such a statement was made. The respondent-Bank, in the circumstances appears to be right in contending that in spite of notice issued under Section 13 (2) of the Act, neither payment was made nor a representation was submitted by the Company and only with a view to take benefit of Mardia Chemicals, as an afterthought it was alleged that in pursuance of notice issued by the respondent-Bank under sub-section (2) of Section 13 of the Act, the appellant-Company had forwarded a representation, it ought to have been considered by the respondent-Bank, a decision ought to have taken thereon by recording reasons and such decision ought to have been intimated to the appellant-Company.

13. It is pertinent to note at this stage that in Mardia Chemicals, constitutional validity of certain provisions of the Act had been challenged. Section 13 was one of them. It was contended that no adjudicatory mechanism for resolution of disputes had been provided by the Legislature under the said section and the provision was, therefore, ultra vires and unconstitutional.

14. Partly accepting the argument of the petitioner, this Court stated;

"45. In the background we have indicated above, we may consider as to what forums or remedies are available to the borrower to ventilate his grievance. The purpose of serving a notice upon the borrower under sub-section (2) of Section 13 of the Act is, that a reply may be submitted by the borrower explaining the reasons as to why measures may or may not be taken under sub-section (4) of Section 13 in case of non-compliance of notice within 60 days. The creditor must apply its mind to the objections raised in reply to such notice and an internal mechanism must be particularly evolved to consider such objections raised in the reply to the notice. There may be some meaningful consideration of the objections raised rather than to ritually reject them and proceed to take drastic measures under sub- section (4) of Section 13 of the Act. Once such a duty is envisaged on the part of the creditor it would only be conducive to the principles of fairness on the part of the banks and financial institutions in dealing with their borrowers to apprise them of the reason for not accepting the objections or points raised in reply to the notice served upon them before proceeding to take measures under sub-section (4) of Section 13. Such reasons, overruling the objections of the borrower, must also be communicated to the borrower by the secured creditor. It will only be in fulfillment of a requirement of reasonableness and fairness in the dealings of institutional financing which is so important from the point of view of the economy of the country and would serve the purpose in the growth of a healthy economy. It would certainly provide guidance to the secured debtors in general in conducting the affairs in a manner that they may not be found defaulting and being made liable for the unsavoury steps contained under sub-section (4) of Section 13. At the same time, more importantly we must make it clear unequivocally that communication of the reasons not accepting the objections taken by the secured borrower may not be taken to give an occasion to resort to such proceedings which are not permissible under the provisions of the Act. But communication of reasons not to accept the objections of the borrower, would certainly be for

the purpose of his knowledge which would be a step forward towards his right to know as to why his objections have not been accepted by the secured creditor who intends to resort to harsh steps of taking over the management/business of viz. secured assets without intervention of the court. Such person in respect of whom steps under Section 13(4) of the Act are likely to be taken cannot be denied the right to know the reason of non- acceptance and of his objections. It is true, as per the provisions under the Act, he may not be entitled to challenge the reasons communicated or the likely action of the secured creditor at that point of time unless his right to approach the Debt Recovery Tribunal as provided under Section 17 of the Act matures on any measure having been taken under sub-section (4) of Section 13 of the Act.

46. We are holding that it is necessary to communicate the reasons for not accepting the objections raised by the borrower in reply to notice under Section 13(2) of the Act more particularly for the reason that normally in the event of non-compliance with notice, the party giving notice approaches the court to seek redressal but in the present case, in view of Section 13 (1) of the Act the creditor is empowered to enforce the security himself without intervention of the Court. Therefore, it goes with logic and reason that he may be checked to communicate the reason for not accepting the objections, if raised and before he takes the measures like taking over possession of the secured assets etc".

The Court concluded;

"80.

1. Under sub-section (2) of Section 13 it is incumbent upon the secured creditor to serve 60 days notice before proceeding to take any of the measures as provided under sub-section (4) of Section 13 of the Act. After service of notice, if the borrower raises any objection or places facts for consideration of the secured creditor, such reply to the notice must be considered with due application of mind and the reasons for not accepting the objections, howsoever brief they may be, must be communicated to the borrower. In connection with this conclusion we have already held a discussion in the earlier part of the judgment. The reasons so communicated shall only be for the purposes of the information/knowledge of the borrower without giving rise to any right to approach the Debt Recovery Tribunal under Section 17 of the Act, at that stage".

15. It may also be stated that after the above decision of this Court, Parliament amended the Act and after sub-section (3) of Section 13, sub-section (3-A) was inserted by Act 30 of 2004 with effect from November 11, 2004. The said provision reads thus;

(3A) If, on receipt of the notice under sub- section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A."

16. The submission of the learned counsel for the respondent-Bank appears to be well-founded that

taking clue from the decision in Mardia Chemicals, the appellant-Company, as an afterthought alleged that it had made a representation in pursuance of notice issued by the respondent-Bank under Section 13(2) of the Act.

17. But, there is an additional factor also as to why we should not exercise discretionary and equitable jurisdiction in favour of the appellant. It is contended by the learned counsel for the respondent-Bank that having obtained interim order and benefit thereunder from this Court, the appellant-Bank has not paid even a pie. The appellant is thus in contempt of the said order. The Company has never challenged the condition as to payment of amount as directed by this Court. Thus, on the one hand, it had taken benefit of the order of interim relief and on the other hand, did not comply with it and failed to pay instalments as directed. Neither it raised any grievance against the condition as to payment of instalments nor made any application to the Court for modification of the condition. It continued to enjoy the benefit of stay ignoring and defying the term as to payment of money. The Company is thus in contempt of the order of this Court, has impeded the course of justice and has no right of hearing till it has purged itself of the contempt.

18. As already noted, stay of dispossession was granted by this Court on mention being made on April 28, 2005. The matter was then notified for admission- hearing on May 6, 2005. A two-Judge Bench of which one of us was a party (C.K. Thakker, J.) passed the following order;

"Permission to file additional documents is granted.

Issue notice.

Subject to the petitioner's depositing an amount of Rs.20 lakhs per month in this Court, there will be stay of the operation of the impugned order. First of such payment shall be made by 6th June, 2005 and the subsequent payments by 6th of each succeeding month. In default of payment of any one instalment, the stay will stand vacated."

19. From the above order, it is clear that notice was issued to the other side and stay granted earlier was ordered to continue on the appellant's depositing a sum of Rs. 20 lakhs per month in this Court. It was also made clear that first of such payment should be made by 6th June, 2005 and subsequent payments by 6th of each succeeding month. A default clause was also introduced in the order that if such payment would not be made, the stay would stand vacated. It is an admitted fact that the order has not been complied with and no payment as per the order has been made by the appellant-Company to the respondent-Bank. The said fact has also been reflected in the order of this Court passed on July 25, 2007, wherein it was stated;

"It is recorded that the stay is transgressed by reason of the admitted non- compliance with the order dated 6th May, 2005".

20. The original order was of May, 2005 and the matter was heard finally in May, 2007. Thus, about two years had passed and the order has been thwarted with impunity. In our opinion, therefore, the learned counsel for the respondent-Bank is right that such appellant does not deserve sympathy from the Court.

21. An order passed by a competent court interim or final- has to be obeyed without any reservation. If such order is disobeyed or not complied with, the Court may refuse the party violating such order

to hear him on merits. We are not unmindful of the situation that refusal to hear a party to the proceeding on merits is a 'drastic step' and such a serious penalty should not be imposed on him except in grave and extraordinary situations, but some time such an action is needed in the larger interest of justice when a party obtaining interim relief intentionally and deliberately flouts such order by not abiding the terms and conditions on which a relief is granted by the Court in his favour.

22. In the leading case of Hadkinson v. Hadkinson, (1952) 2 All ER 567, the custody of a child was given to the mother by an interim order of the court, but she was directed not to remove the child out of jurisdiction of the Court without the prior permission of the Court. In spite of the order, the mother removed the child to Australia without prior permission of the Court. On a summons by father, the Court directed the mother to return the child within the jurisdiction of the Court. Meanwhile, an appeal was filed by the mother against that order. A preliminary objection was raised by the father that as the appellant was in contempt, she was not entitled to be heard on merits.

23. Upholding the contention and speaking for the majority, Romer, L.J. observed;

"I am clearly of the opinion that the mother was not entitled, in view of her continuing contempt of court, to prosecute the present appeal and that she will not be entitled to be heard in support of it until she had taken the first and essential step towards purging her contempt of returning the child within the jurisdiction.

24. In a concurring judgment, Denning, L.J. also stated;

"The present case is a good example of a case where the disobedience of the party impedes the course of justice. So long as this boy remains in Australia, it is impossible for this court to enforce its orders in respect of him. No good reason is shown why he should not be returned to this country so as to be within the jurisdiction of this Court. He should be returned before counsel is heard on the merits of this case, so that, whatever order is made, this court will be able to enforce it. I am prepared to accept the view that in the first instance the mother acted in ignorance of the order, but nevertheless, once she came to know of it, she ought to have put the matter right by bringing the boy back. Until the boy is returned, we must decline to hear her appeal."

(emphasis supplied)

25. That, however, does not mean that in each and every case in which a party has violated an interim order has no right to be heard at all. Nor the court will refuse to hear him in all circumstances. The normal rule is that an application by a party will not be entertained until he has purged himself of the contempt. There are, however, certain exceptions to this rule. One of such exceptions is that the party may appeal with a view to setting aside the order on which his alleged contempt is founded. A person against whom contempt is alleged must be heard in support of the submission that having regard to the meaning and intendment of the order which he is said to have disobeyed, his actions did not constitute a breach of it.

26. In Gorden v. Gorden, (1904) 73 LJ 41 : 90 LT 597 : 16 Dig 90, 1128, Cozens Hardy, L.J. put the principle succinctly in the following words; ".I desire expressly to limit my judgment to a case in which the [party in contempt] is saying that the order complained of is outside the jurisdiction of the court, as distinguished from the case of an order which, although it is within the jurisdiction of the court, ought not, it is said, to have been made."

27. Lord Denning made the following pertinent observations in Hadkinson;

"It is a strong thing for a court to refuse to hear a party to a cause and it is only to be justified by grave considerations of public policy. It is step which a court will only take when the contempt itself impedes the course of justice and there is no other effective means of securing his compliance."

28. There is still one more reason why the appellant-Company should be denied equitable relief under Article 136 of the Constitution. According the respondent-Bank, the appellant has not come with clean hands before the Bank. It has suppressed and concealed material facts from the Court.

29. It is not in dispute that when the loan was taken by the appellant-Company from the respondent-Bank, certain immovable properties including residential premises of the Director of the Company had been mortgaged with the Bank and a document to that effect had been executed in favour of the Bank. The owner/Director Sudha Goel had filed an affidavit dated February 16, 1996. In the said affidavit, it was, inter alia, stated as under:

"That I/We declare and say that I/We have not created any mortgage charge, or encumbrance of any kind or nature whatsoever on or in respect of the said property. I/We further declare and say that the said property is free from all encumbrances, claims or demands of any kind or nature whatsoever.

I/We shall not sell, charge, encumbrance, lease, dispose off or deal with any of my/our property in any manner whatsoever until such time all the liabilities under the various facilities granted to M/s. Prestige Lights Ltd. has been paid in full by the said M/s. Prestige Lights Ltd. and the deponent has got the discharge confirmed in writing".

30. In spite of the above declaration, undertaking and affidavit, encumbrance has been created by the deponent and the Company over the property in respect of which such undertaking has been furnished.

31. It was also alleged by the respondent-Bank that the appellant-Company had shifted machinery to other place and stock statements were not supplied to the respondent-Bank. On August 4, 2004, the Central Excise and Custom Officials attached the Plant and Machinery of the Company for recovery of its dues. On August 25, 2004, Uttar Pradesh Financial Corporation issued a notice under Section 29 of the State Financial Corporation Act, 1951 for taking over physical possession of the assets of the appellant-Company. On May 16, 2005 a collusive suit was got filed by one Yashpal in Haridwar Court wherein the plaintiff had asserted that he was the tenant of Sudha Goel in respect of mortgaged property in question and he should not be dispossessed. A summons of the said suit was issued to the respondent-Bank. On May 24, 2005, the respondent-Bank received another summons from a Court that one Vijendra Singh Tyagi claimed himself to be the tenant of the aforesaid mortgaged premises.

32. It is thus clear that though the appellant- Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed

before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

33. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in R v. Kensington Income Tax Commissioners, [(1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136], in the following words: "(I)t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should made a full and fair disclosure of all the material facts facts, not law. He must not misstate the law if he can help itthe Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside, any action which it has taken on the faith of the imperfect statement". (emphasis supplied)

34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

35. In the case on hand, several facts had been suppressed by the appellant-Company. Collusive action has been taken with a view to deprive the respondent- Bank from realizing legal and legitimate dues to which it was otherwise entitled. The Company had never disclosed that it had created third party's interests in the property mortgaged with the Bank. It had also shifted machinery and materials without informing the respondent-Bank prejudicially affecting the interest of the Bank. It has created tenancy or third party's right over the property mortgaged with the Bank. All these allegations are relevant when such petitioner comes before the Court and prays for discretionary and equitable relief. In our judgment, the submission of the respondent-Bank is well-founded that appellant is not entitled to ask for an extraordinary remedy under Article 226 of the Constitution from the High Court as also equitable remedy from this Court under Article 136 of the Constitution. A party, whose hands are soiled, cannot hold the writ of the Court. We, therefore, hold that the High Court was not in error in refusing relief to the appellant-Company.

36. For the foregoing reasons, we hold that by dismissing the petition in limine, the High Court has neither committed an error of law nor of jurisdiction. The appellant-Company is not entitled to any relief. Though the respondent-Bank is right in submitting that the appellant has suppressed material facts from this Court as also that it has not complied with interim order passed by the Court and it has, therefore, no right to claim hearing on merits, we have considered the merits of the matter also and we are of the considered view that no case has been made out for interference with the action taken by the respondent-Bank or the order passed by the High Court.

37. The appeal, therefore, deserves to be dismissed and is accordingly dismissed with costs.