

GAHC010188682023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/2553/2023

THE UCO BANK AND 5 ORS
HEAD OFFICE AT 10, BTM SARANI (BRABOURNE ROAD), KOLKATA-1

2: THE EXECUTIVE DIRECTOR
UCO BANK
HEAD OFFICE AT 10
BTM SARANI (BRABOURNE ROAD)
KOLKATA-1

3: THE ASSTT. GENERAL MANAGER
UCO BANK CUSTOMER SERVICE CELL
HEAD OFFICE AT 10
BTM SARANI (BRABOURNE ROAD)
KOLKATA-1

4: THE ZONAL MANAGER
UCO BANK
ZONAL OFFICE- JORHAT
T.N. SHARMA PATH
NEHRU PARK
JORHAT-785001 (ASSAM)

5: THE REGIONAL MANAGER
UCO BANK
JORHAT REGIONAL OFFICE
T.N. SHARMA PATH
NEHRU PARK
JORHAT-785001 (ASSAM)

6: THE CHIEF MANAGER
UCO BANK
TEZPUR BRANCH
TEZPUR-78400

VERSUS

M/S INDRAPRASTH ROLLER FLOUR MILLS AND 2 ORS.
A PROPRIETORSHIP ENTITY OF MR. RITESH KUMAR TIBREWAL HAVING
ITS FACTORY AT DOLABARI NO. 1, N.H. 37, TEZPUR-784001 REPRESENTED
BY ITS PROPRIETOR SRI RITESH KUMAR TIBREWALA, AGED ABOUT 52
YEARS, S/O SRI JUGAL KISHOR TIBREWALA, R/O GANESH MILL
BUILDING, P.O. AND P.S.-TEZPUR-784001, ASSAM

2:M/S INDRAPRASTH ROLLER FLOUR MILLS
A PROPRIETORSHIP ENTITY OF SMTI. TRIPTI TIBREWAL
HAVING ITS FACTORY AT DOLABARI NO. 1
N.H. 37
TEZPUR-784001 REPRESENTED BY ITS PROPRIETOR SMTI. TRIPTI
TIBREWALA
AGED ABOUT 45 YEARS
W/O SRI RITESH KUMAR TIBREWALA
R/O GANESH MILL BUILDING
P.O. AND P.S.-TEZPUR-784001
ASSAM

3:THE ENFORCEMENT DIRECTORATE (ED)
GOVT OF INDIA
REPRESENTED BY THE DEPUTY DIRECTOR
HOUSE NO. 20
RAJGARH ROAD
BYE LANE NO. 1
CHANDMARI
GUWAHATI
PIN-781003

Advocate for the Petitioner : MR. M SHARMA

Advocate for the Respondent : MR. M K CHOUDHURY

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

13.10.2023

Heard Mr. M. Sarma, learned counsel for the applicant and Mr. A. Parvez, learned counsel for the opposite parties-writ petitioners.

2. The opposite party nos. 1 & 2 as writ petitioners, had preferred the writ petition, W.P. [C] no. 4844/2021.

3. This Court rendered the judgment in the writ petition, W.P.[C] no. 4844/2021 on 24.07.2023. The relevant excerpts from the operative part of the judgment is quoted hereinbelow :-

“32..... In such view of the matter, the case in hand is a fit case wherein a direction in the nature of mandamus is clearly called for. Therefore, having regard to the balance outstanding dues position as on 28.02.2018, as certified by the respondent Bank in its letter dated 16.03.2018, and the position that the financing bank is not authorized to apply any interest in the subsidy, admissible to the borrowers, kept in the Subsidy Reserve Fund Account it is ordered that the respondent Bank authorities shall take necessary steps to transfer the amount of ₹ 53,32,800/-, already received on 24.01.2003 under the Capital Investment Subsidy Scheme and stood credited in the Subsidy Reserve Fund Account maintained at its Tezpur Branch, to the Term Loan account of the petitioner no. 1 and adjust the same against the balance outstanding dues of the petitioner no. 1 in an expeditious manner, but not later than a period of 1 [one] month from today. The respondent Bank authorities are further directed to take the final decision, with due communication to the petitioners, as regards closure of the loan accounts of the petitioners and return of the security documents by taking into purview the findings and observations recorded hereinabove and after such final decision, to complete the requisite formalities as per the prescribed procedure also within the same outer limit of 1 [one] month from today. It is further observed that in the event the transfer and adjustment of the subsidy amount of ₹ 53,32,800/- is not made within a period of 1 [one] month from today, then the said amount will carry interest, payable to the petitioner no. 1, @ 9% per annum from 28.02.2018 till the date of such transfer and adjustment.”

4. The applicants have preferred the instant interlocutory application on 22.08.2023,

which has been registered on 29.08.2023, with the following prayer :-

In the premises aforesaid, the applicants pray that Your Lordship may be pleased to pass appropriate/necessary order[s] by extending the time frame mentioned in the Judgment and Order dated 24.07.2023 passed in W.P.[C] no. 4844/2021, enabling the applicant bank to take appropriate steps as per the prescribed procedure applicable upon the applicant bank and/or pass such other further order/orders as Your Honour may deem fit and proper in the interest of justice.

5. While seeking the above prayer, the applicants have *inter alia* averred as under :-

8. *That the applicants state that in order to facilitate conciliation, collection as well as collating of the datas, all relevant / requisite / necessary documents which were taken into custody by the Central Bureau of Investigation [CBI] as well as Enforcement Directorate [ED] are required.*

9. *That the applicants state that as all relevant / requisite / necessary documents are still in the custody by the Central Bureau of Investigation [CBI] as well as Enforcement Directorate [ED], which are very much necessary for facilitating conciliation, collection as well as collating of the datas, wherein after, the same can be placed before the appropriate authority of the applicant bank for perusal and examination and as such, the applicant bank is not in position to take the final decision as well as to complete the requisite formalities, as per the prescribed procedure, within the time frame allotted by this Hon'ble High Court in Judgment and Order dated 24.07.2023 passed in W.P. [C]. no. 4844/2021.*

6. Mr. Sarma, learned counsel for the applicants as referred the provision contained in Section 148, Code of Civil Procedure [CPC], 1908 and a decision of the Hon'ble Supreme Court of India in **D.V. Paul vs. Manisha Lalwani**, reported in [2010] 8 SCC 546. Section 148, CPC has provided for enlargement of time. It is provided therein that where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, not exceeding thirty days in

total, even though the period originally fixed or granted may have expired. In **D.V. Paul** [supra], it has been held that the scope and exercise of the jurisdiction to grant time to do a thing, in the absence of a specific provision to the contrary curtailing, denying or withholding such jurisdiction, the jurisdiction to grant time would inhere in its ambit the jurisdiction to extend time initially fixed by it. The Court also referred to the principle of equity to observe that when circumstances are to be taken into account for fixing a length of time within which a certain action is to be taken, the Court retains itself the jurisdiction to re-examine the alteration or modification which may necessitate extension of time. The decision is rendered in the context of Section 148, CPC.

7. On perusal of the statements and averments made in the interlocutory application, this Court has not found that the instant application is for extension of the period of time *simpliciter*. The applicants have sought extension of time to enable them to take appropriate steps as per the prescribed procedure applicable upon the applicant Bank without indicating any time frame. The applicants have mentioned about proceedings initiated by the Central Bureau of Investigation [CBI] and the Enforcement Directorate [ED] as impediments for adhering to the timeline mentioned in the Judgment dated 24.07.2023. The pleadings of those proceedings on the issues involved in the writ petition, W.P.[C] no. 4844/2021 have already been gone into in detail in the Judgment dated 24.07.2023. Thus, such reasons mentioned in the instant application for not being able to adhere to the timeline are not found of relevance. It has been held in **State Bank of India and others vs. S.N. Goyal**, reported in [2008] 8 SCC 92, that a Judge becomes functus officio when he pronounces, signs and dates the judgment [subject to Section 152 and power of review]. As the instant interlocutory application is neither for review of the Judgment nor for extension of time *simpliciter*, the application is found not maintainable and the same is accordingly, dismissed.

JUDGE

Comparing Assistant