

waived the need to give such an undertaking.

2. Mr. Samdhani, learned senior counsel appearing on behalf of the Appellants submitted that said observations are clearly contrary to the law laid down by the Division Bench of this Court in Notice of Motion No. 1327/2006 taken out in Appeal No. 334/2005. It is submitted no direction was given while passing interim order dated 22nd September, 2009. He submitted that in the present case order of status-quo was granted by the learned Single Judge, which was continued from time to time. He submitted that since no undertaking was given by the Respondents, as required under Rule 148 of the Original Side Rules, the impugned order of injunction ought to have been vacated or in the alternative, the directions ought to have been given by the learned Single Judge to the Respondents to give an undertaking in terms of Rule 148 of the Original Side Rules. He invited our attention to the observations made by the Division Bench of this Court in the said matter viz. Notice of Motion No. 1327/2006.

3. On the other hand, Mr. Tushad Cooper, appearing on behalf of the Respondents submitted that order of *status-quo* was

granted on 22nd September, 2009. However, thereafter it was not continued after a particular date. He submitted that there was no observation made by the learned Single Judge directing the Respondents to give undertaking in terms of Rule 148 of the Original Side Rules. He submitted that therefore, the learned Single Judge has correctly held that the question of giving an undertaking does not arise, and urged that the appeal may be dismissed.

4. It is not in dispute that in Notice of Motion No. 3041/2009, an order was passed by this Court on 22nd September, 2009 directing the parties to maintain *status-quo* with regard to the mutual fund Units, as prayed by Respondent No. 1. It is also not in dispute that this order was continued on 25th September, 2009 till the next date and thereafter on 5.11.2009 this Court directed that “ad-interim order should continue till final disposal of the motion”. It is true that when order of *status-quo* was granted, specific order directing Respondent No. 1 to give an undertaking, as required under Order 148 of the Original Side Rules, was not passed.

5. In our view, though specific direction of giving undertaking is not given by the Court while granting interim relief, it

is now well settled that even though a specific direction is not given, such an undertaking under Rule 148 of the Original Side Rules is deemed to be given while interim order is passed. The Division Bench of this Court in ***Gopal L. Raheja & Anr. V. Vijay B. Raheja & Ors.*** [in Notice of Motion No. 1327/2006, judgment dated 15.11.2006] had an occasion to consider this issue, and after taking into consideration Rule 148 of O. S. Rules, and the judgment of the Division Bench of this Court, in the case of - ***Murablack India Ltd. Vs. UBS AG & Ors.*** [(2005) 12 LJ Soft 235], held that even if such a direction is not given, the said undertaking is deemed to have been given. The relevant paragraphs where said issue is considered is to be found in paragraphs 122, 123, 126, 129 read as under:

“122. Mr. Chagla submitted that the Respondents were not bound by the said orders as the Appellants had not complied with Rule 148 of the Original Side Rules of the High Court at Bombay. In this regard, he relied upon a judgment of a Division Bench of this Court in *Murablack India Ltd. v. UBS AG & Ors.*, (2005) 12 LJ Soft 235. In paragraphs 15 and 16, the Division Bench held as under :

"15. Rule 148 of the Original Side Rules of the

High Court at Bombay reads as under :-

"148. A party to whom interim relief has been granted shall, before the order is issued, unless the Court otherwise directs, give an undertaking in writing or through his Advocate to pay such sum by way of damages as the Court may Award as compensation in the event of a party affected sustaining prejudice by such order."

"16. Our reading of the Rule is that this rule would apply in all cases where interlocutory relief ad interim or interim is granted and the Prothonotary & Senior Master should not issue the injunction order under the seal of this Court unless the undertaking stipulated in Rule 148 has been given. In the present case, admittedly such undertaking has not been given. Mr. Thakkar contends that because at the time when the Notice of Motion was moved for ex parte orders, there is an order made saying that leave under Rules 147/148 had been granted by the Court, it should be presumed that the Court has exempted the appellant (original defendant No.1) from giving the undertaking contemplated by Rule 148. In our view, this is a very unsatisfactory way of doing things. That the

undertaking contemplated by Rule 148 applies to all interim reliefs, ex parte or otherwise, is settled law in this Court. (See in this connection the judgment of the learned Single Judge in (Bank of Maharashtra v. M.V. River Ogbese), 1989(3) Bom.C.R. 452 : A.I.R. 1990 Bombay 107, with which we fully agree)."

123. We do not read either Rule 148 or the judgment as absolving parties from obeying interim orders of this Court in the event of the undertaking as per Rule 148 not being furnished. It is indeed unfortunate that even after the judgment, the practice frowned upon by the Division Bench continues. We direct a copy of this judgment and order to be placed before the Prothonotary and Senior Master to take appropriate action in this regard and direct the Prothonotary and Senior Master to submit a compliance report within four weeks from today to Court.

124. The issuance of an order of injunction despite the undertaking as per Rule 148 not being furnished, would not render the injunction inoperative. Indeed, if that were so, almost every order of injunction issued by this Court would be rendered ineffective.

125. The Division Bench itself did not consider the

injunction as inoperative or ineffective on this ground. Had it been so, the Appeal would have been dismissed on that ground alone. The Division Bench,

in fact, giving the Appellant the benefit of doubt, observed that the Appellant may have been misled by the prevailing erroneous practice. Had the Division Bench been of the view that interim orders are inoperative in the absence of such an undertaking, there would have been no question of giving the benefit of doubt to the Appellant.

126. An order of injunction becomes operative the moment it is passed/pronounced. Thus the moment an interim order is passed, parties are bound to observe and obey the same. Thus, even before the

issuance of an interim order by the office, a party, if aware of the order, is bound to obey the same. This is settled law.

127. ...

128. ...

129. However, a party who obtains an interim order, must be held to be bound by an undertaking as required by Rule 148 irrespective of whether or not such an undertaking is given. Where a party obtains an interim order, it will be presumed, unless the Court otherwise

directs, that he is bound by an undertaking to pay such sum by way of damages as the Court may award as compensation in the event of a party affected, sustaining prejudice by such order. A party obtaining advantage of an interim order cannot be heard to contend otherwise.”

6. In view of the above observations of the Division Bench of this Court, in our view, even if no such specific directions was given at the time when interim order was passed, party in whose favour an interim order is passed has to be held to be bound by an undertaking, as required by Rule 148, and therefore, the said undertaking is deemed to have been given after an interim order was passed. In the present case, it is an admitted position that the Respondent has not furnished an undertaking under Rule 148. In our view, what we have observed hereinabove is that though such an undertaking is deemed to have been given by way of amendment, we direct Respondent No. 1 to give fresh undertaking under Rule 148 of the Original Side Rules within 4 weeks from today.

7. An undertaking shall be deemed to have been given from the date on which interim order was passed. To that extent the

impugned order passed by the learned Single Judge is set aside.
Appeal is allowed in the aforesaid terms and is accordingly disposed
of.

Sd/-

[Dr. SHALINI PHANSALKAR-JOSHI, J.]

Sd/-

[V. M. KANADE, J.]

Vinayak Halemath

C E R T I F I C A T E

“I certify that this Judgment / Order is a true and correct copy of
original signed Judgment / Order.”

Uploaded by : Mr. Vinayak P Halemath, Private Secretary;

Uploaded on : 3.9.2015