***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 20th January, 2015**

\+ **LPA No.27/2015**

PUNJAB NATIONAL BANK ….. Appellant
Through: Mr. Ajay Shanker, Adv.

Versus

ARTI SHARMA & ORS. ….. Respondents
Through: None.

CORAM:-
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra-court appeal impugns the order dated 28th October, 2014 of the learned Single Judge of this Court of allowing W.P.(C) No.7734/2011 filed by the three respondents, by directing the appellant Bank to defreeze the account of the respondents with the appellant Bank.

2. It is the case of the appellant Bank in the memorandum of appeal:

(i) that M/s Meditreat Pharmaceuticals, a partnership firm with Mr. Aman Sharma and Mr. Nagender Yadav as partners, had in or about March, 2010 availed of a Cash Credit Limit (CCL) from the appellant Bank;

(ii) that the aforesaid Mr. Aman Sharma is the son of the respondents No.1&2 viz. Mrs. Arti Sharma and Mr. S.N. Sharma and the grandson of the respondent No.3 Mrs. Kamla Devi;

(iii) that the said Mr. Aman Sharma in the documents executed by him, as partner of M/s Meditreat Pharmaceuticals, for availing the CCL had given an undertaking that his friends / relatives from whom the partnership firm had raised unsecured long term loans shall provide an undertaking that they shall not withdraw the said loans during the currency of the bank's loan and that he himself shall not allow the said friends / relatives to withdraw the long term loans given by them without prior permission of the appellant Bank;

(iv) that Mr. S.N. Sharma, not only as father of Mr. Aman Sharma but also as an ex employee of the appellant Bank, was very well aware of the said undertaking given by Mr. Aman Sharma;

(v) that though the respondent No.1 Mrs. Arti Sharma, at the time of grant of CCL aforesaid had also stood as third party guarantor and had also created equitable mortgage of her immovable property to secure the said CCL but subsequently on request of the partners of

M/s Meditreat Pharmaceuticals, the security furnished by the respondent No.1 Mrs. Arti Sharma was substituted by the security furnished by Mrs. Sangeeta A. Yadav wife of Mr. Nagender Yadav;

(vi) that immediately after the aforesaid, the partnership firm M/s Meditreat Pharmaceuticals was dissolved vide Dissolution Deed dated 20th December, 2010 and Mr. Aman Sharma aforesaid informed the appellant Bank that he no longer remained liable for the debts of the appellant Bank; the said claim of Mr. Aman Sharma was however rejected by the appellant Bank;

(vii) that the account of M/s Meditreat Pharmaceuticals was thereafter on 13th May, 2011 declared as a Non-Performing Asset (NPA) with an outstanding of Rs.19,84,658/- besides interest etc.;

(viii) that the appellant Bank then, also realized that though the CCL was to be utilized for purchase of stocks etc. but M/s Meditreat Pharmaceuticals had within two weeks of sanction thereof diverted part of the funds thereof to the account of the respondents No.1&2 with other branches of the appellant Bank, in purported repayment of the loans earlier given by the respondents No.1&2 to M/s Meditreat Pharmaceuticals and the respondents No.1&2 had utilized part of the monies so received, for repayment of the overdraft limit availed by them from those branches of the appellant Bank and the remaining monies to make Fixed Deposit Receipts (FDRs) in their names;

(ix) that similarly other funds of the CCL were also soon after sanction thereof diverted to the account of the respondent No.3 with another branch of the appellant Bank and the respondent No.3 also got FDRs of the said amount issued in her name;

(x) subsequently, all the said FDRs were got prematurely encashed and monies transferred to the respective bank accounts of respondents No.1 to 3 who continued to invest the same in other FDRs with the appellant Bank;

(xi) that the appellant Bank, after declaring the account of M/s Meditreat Pharmaceuticals as a NPA and after coming to know of the mis-utilization of the CCL as aforesaid and after tracking the flow of money, requested its branches in which the respondents

No.1 to 3 were having their accounts, to freeze all the credits available in the said accounts so that the respondents No.1 to 3 were not able to avail the same and thereby create hurdles in the way of the appellant Bank recovering its legitimate dues; and,

(xii) that the respondents No.1 to 3 filed W.P.(C) No.7734/2011 aforesaid for quashing of the letter dated 12th October, 2011 of freezing of the account and for a direction for de-freezing of the account and which has been wrongly allowed by the learned Single Judge vide impugned order dated 28th October, 2014.

3. The learned Single Judge, in the impugned order, has reasoned:

(a) that the appellant Bank cannot recover the amounts which are due to it from M/s Meditreat Pharmaceuticals and its partners viz. Mr. Aman Sharma and Mr. Nagender Yadav, from the respondents;

(b) that only if the appellant Bank had any claim against the respondents, could it take action against the respondents and the funds maintained by the respondents with the appellant Bank; and,

(c) that the counsel for the appellant bank however stated that the appellant Bank has no claim against the respondents but has frozen the accounts of the respondents on account of appellant Bank's claim against Mr. Aman Sharma and Mr. Nagender Yadav – this clearly is not permissible.

The learned Single Judge however while allowing the writ petition and directing the appellant Bank to defreeze the accounts of the respondents has clarified that nothing contained in the order shall be construed as an expression of opinion on the merits of the claim of the appellant Bank and that the appellant Bank would be at liberty to institute and / or pursue such proceedings as it may be advised for recovery of its dues.

4. Not finding any error, requiring interference, in the order of the learned Single Judge, we, at the outset, enquired from the counsel for the appellant Bank as to under what right the appellant Bank had frozen the credits in the accounts of the respondents with the appellant Bank.

5. The counsel for the appellant Bank pointed to the undertaking given by Mr. Aman Sharma to the appellant Bank while availing the credit facility

aforesaid to the effect that the long term loans given by his friends / relatives to M/s Meditreat Pharmaceuticals shall not be recalled / allowed to be recalled and that he would also make the said friends / relatives submit undertakings to the said effect to the appellant Bank.

6. We next enquired from the counsel for the appellant Bank whether the respondents, as relatives of Mr. Aman Shrama, had furnished such undertakings to the appellant Bank.

7. The answer is in the negative.

8. We yet further enquired from the counsel for the appellant Bank as to how the respondents, even though relatives of Mr. Aman Sharma, without having furnished any undertaking to the appellant Bank had privity with the appellant Bank for the appellant Bank to freeze their accounts and whether not the grievance of the appellant Bank could only be against Mr. Aman Sharma for breach of the undertaking given by him.

9. The counsel for the appellant has no reply.

10. The appellant Bank, in the memorandum of appeal having merely stated that 'it is taking all steps to ensure its recovery', we further enquired from the

counsel for the appellant Bank whether any steps for recovery of the dues from M/s Meditreat Pharmaceuticals, Mr. Aman Sharma and Mr. Nagender Yadav and / or the respondents have been taken and whether not the entitlement if any of the appellant to freeze / attach the monies lying in the accounts of the respondents with the appellant Bank was by obtaining such an order in the said proceedings.

11. The counsel for the appellant Bank informed that an original application for recovery of dues before the Debts Recovery Tribunal (DRT) has been filed only now and the respondents therein have not even been served as yet.

12. Though we further enquired form the counsel for the appellant Bank as to why the appellant Bank cannot obtain *ex parte* direction for freezing of the said accounts from the DRT but the counsel for the appellant Bank did not answer.

13. We further find it strange as to why, inspite of the account of M/s Meditreat Pharmaceuticals having been declared as NPA as far back as on 13th May, 2011 and the freezing of the accounts having been effected on 12th October, 2011, the appellant Bank did not initiate any proceedings for recovery till now. The counsel for the appellant Bank has also not able to inform

whether the proceedings initiated before the DRT are only against M/s Meditreat Pharmaceuticals, Mr. Aman Sharma and Mr. Nagender Yadav or also against the respondents.

14. Though the bankers, generally, under the documents got executed by them have a general lien and in exercise of which they are entitled to withhold monies due to a person who owes monies to them but in the present case as aforesaid the appellant Bank has failed to disclose any privity whatsoever with the respondents. Merely because the respondents are related to Mr. Aman Sharma who is claimed to be owing monies to the appellant Bank, does not entitle the appellant Bank to withhold the monies of the respondents by freezing the accounts of the respondent.

15. The counsel for the appellant Bank has lastly contended that the bank has merely frozen the accounts and the same be permitted to continue till adjudication by DRT and invokes the plea of, monies due to the appellant Bank being public monies.

16. Undoubtedly so, but it was for the appellant Bank to take due care and which we are sad to note has not been taken by the concerned officials of the appellant Bank. Though it appears to have been a condition for the sanction of

the CCL that the relatives / friends of the partners of M/s Meditreat Pharmaceuticals would not withdraw their loans and their undertakings to the said effect would be filed but no such undertakings were obtained. Thereafter, as aforesaid, there was a long delay in initiating appropriate action.

17. We, therefore, do not find any merit in this appeal which is dismissed. In addition to the clarification already given by the learned Single Judge, we further clarify that nothing contained in the order of the learned Single Judge or in this order shall come in the way of the appellant Bank, if entitled to, also instituting appropriate proceeding against the respondents and obtaining appropriate interim orders therein.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

JANUARY 20, 2015
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