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

Decided on: 28th March, 2016

\+ **LPA 140/2016 & CM No.7802/2016** *(stay)*

STATE BANK OF PATIALA ..... Appellant

Through: Mr. Rajiv Kapur, Adv.

Versus

M/S SUHAS ENTERPRISES & ORS ..... Respondents

Through: Mr. Kunal Verma with Mr.Yugandhara Pawan Jha, Advs. for R-1.
Ms. Monika Arora, CGSC with Mr. Harsh Ahuja, Adv. for UOI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
28.03.2016

Ms.G.ROHINI, CHIEF JUSTICE (ORAL)

1. This appeal is preferred against the order of the learned Single Judge dated 29.05.2015 in W.P.(C) No.4711/2015.

2. The writ petitioner/State Bank of Patiala is the appellant before us.

3. The brief facts are as under.

4. The respondent No.1 herein filed a complaint being Complaint No.26/2013 before the Adjudicating Officer, Government of Maharashtra appointed under Section 46 of the Information Technology Act, 2000, alleging that the mobile phone of the respondent No.1 was blocked by Vodafone Essar Limited/respondent No.2 herein and unauthorized access was given to the unknown persons to the account of the complainant which

resulted in transfer of Rs.79,26,000/- vide eight transactions and claiming damages of Rs.56,95,000/- together with interest and costs from the banks with which the respondent No.1 had the account. The said banks included the writ petitioner/State Bank of Patiala. After due inquiry, the Adjudicating Officer passed an order dated 12.01.2015 directing the writ petitioner/State Bank of Patiala to pay damages to the tune of Rs.7,50,000/- to the respondent No.1 observing that the Bank had failed to adhere to the prescribed norms to prevent cyber crime and also violated the circular regarding Money Mule Accounts by not taking sufficient precautions. Similar directions for payment of damages were issued against the State Bank of India, Dhanalaxmi Bank Limited and Punjab National Bank.

5. Challenging the order of the Adjudicating Officer, the writ petitioner/State Bank of Patiala as well as the other banks filed appeals before the Cyber Appellate Tribunal, New Delhi established under Section 48(1) of the Information Technology Act, 2000. Having found that the Cyber Appellate Tribunal is not functional due to non-availability of the Chairperson and Judicial Member, the writ petitioner/State Bank of Patiala filed W.P.(C)No.4711/2015 seeking a direction to appoint a Chairperson to the Cyber Appellate Tribunal and also to quash the order dated 12.01.2015 passed by the Adjudicating Officer in Complaint No.26/2013 or in the alternative to stay the operation of the order of the Adjudicating Officer dated 12.01.2015 till the disposal of the appeal by the Tribunal. While entertaining the petition, this Court passed an interim order dated 21.05.2015 staying the order of the Adjudicating Officer subject to the condition of

furnishing bank guarantee for a sum of Rs.7,50,000/- in the name of the Registrar General of this Court.

6. The other banks which were also directed by the Adjudicating Officer to pay damages to the respondent No.1 herein also filed writ petitions with similar prayers and one of the writ petitions being W.P.(C) No.4484/2015 filed by Dhanalaxmi Bank Limited was disposed of by this court by order dated 06.05.2015 with the following directions:-

> "(i) The petitioner will furnish a bank guarantee in the sum of Rs. 18 lacs in favour of Registrar General of this court, within one week from today.
>
> (ii) Based on the assurance of the counsel for the petitioner that the needful will be done, the impugned order will remain stayed. This protection shall operate till the disposal of the appeal.
>
> (iii) The appeal filed by the petitioner with the Cyber Appellate Tribunal (in short the Tribunal) will be prosecuted. The bank guarantee furnished with the Registrar General of this court, will abide by the orders of the Tribunal.
>
> (iv) Respondent no.3, will have the liberty to take recourse to the money reflected in the bank guarantee, which the petitioner will furnish, by moving an appropriate application before the Tribunal. In case the Tribunal is not made functional within a reasonable period of time, respondent no.3 will have the liberty to approach this court to take recourse to bank guarantee, which the petitioner is required to furnish as per clause (i) above.
>
> (v) In case respondent no.3 either does make an endeavour for release of the money as reflected by the bank guarantee in issue or is unsuccessful in such an attempt, the petitioner will keep the bank guarantee alive till its appeal is disposed of by the Tribunal and for a period of three weeks thereafter."

7. Following the said order dated 06.05.2015, W.P.(C) No.4711/2015 filed by the appellant herein/State Bank of Patiala was also disposed of with similar directions on 29.05.2015. Subsequently, the respondent No.1 herein filed C.M.No.32632/2015 seeking permission to withdraw Rs.7,50,000/- for which the State Bank of Patiala had furnished bank guarantee pursuant to the order dated 21.05.2015 along with the interest accrued thereon stating that appropriate security to the satisfaction of the Registrar General of this Court would be furnished without prejudice to the rights and contentions of the parties.

8. The said application was disposed of by the learned Single Judge by order dated 23.12.2015 directing the Registrar General to invoke the bank guarantee furnished by the State Bank of Patiala/appellant herein and to release the amounts realised thereunder in favour of the respondent No.1 herein subject to the respondent No.1 furnishing security to the satisfaction of the Registrar General for refund of the said amount in the event of the appeal filed by the State Bank of Patiala being allowed and the Bank being held by the Cyber Appellate Tribunal not liable to pay any amount to the respondent No.1.

9. Assailing the said order dated 23.12.2015 as well as the order dated 29.05.2015 disposing of W.P.(C) No.4711/2015, the present appeal has been preferred by the State Bank of Patiala.

10. It is vehemently contended by the learned counsel for the appellant/State Bank of Patiala that permitting the respondent No.1 to withdraw the amount while the appeal is still pending before the Appellate Tribunal is unjustified. It is also submitted that the direction to furnish bank

guarantee for Rs.7,50,000/- itself is unwarranted since the financial stability of the appellant, which is a Nationalized Bank is not in dispute.

11. We have also heard the learned counsel appearing for the respondent No.1.

12. Under Section 48 of the Information and Technology Act, 2000, the Cyber Appellate Tribunal has been constituted to hear the appeals against the orders of the Adjudicating Officer. Though such Tribunal has been constituted, admittedly the Tribunal is non-functional as of today. The learned Standing Counsel appearing for the Union of India, Ministry of Communication and Information Technology/respondent No.8, on instructions, submitted that it may take some more time for appointing the Chairperson and the Judicial Member.

13. It is no doubt true that the appeal is yet to be heard by the Appellate Tribunal. However, having regard to the fact that the Appellate Tribunal is not functional, the learned Single Judge while disposing of the writ petition by order dated 29.05.2015 granted liberty to the respondent No.1 to approach this Court to take recourse to the bank guarantee furnished by the appellant herein. C.M.No.32632/2015 was thus moved by the respondent No.1 in terms of the liberty granted by this Court. Moreover, the respondent No.1 had expressed its willingness to furnish appropriate security to the satisfaction of the Registrar General. The learned Single Judge, therefore, thought it fit to direct the amount covered by the bank guarantee to be released to the respondent No.1.

14. It is brought to our notice by the learned Counsel appearing for the respondent No.1 that in compliance with the order of the learned Single Judge dated 23.12.2015 the respondent No.1 had already furnished bank guarantee

dated 05.03.2016 in favour of the Registrar General of this Court which is valid upto 31.03.2019. A copy of the same has been placed before us and we found that it is an irrevocable and unconditional bank guarantee.

15. Having regard to the fact that steps are still in progress to make the Cyber Appellate Tribunal functional and that the respondent No.1 has furnished bank guarantee which is valid upto 31.03.2019, according to us, the balance of convenience lies in favour of the respondent No.1. We are also of the view that the impugned direction to release the amount in favour of the respondent No.1 in no way causes prejudice to the appellant bank.

16. In the peculiar facts and circumstances of the case, we are of the view that the direction to release the amount in question to the respondent No.1 is justified and that the discretion exercised by the learned Single Judge cannot be held to be erroneous or improper on any ground whatsoever. Hence, the order under appeal cannot be held to have suffered from any infirmity. However, we make it clear that the release of the amounts in favour of the respondent No.1 shall be without prejudice to the rights and contentions of both the parties in the appeal pending before the Cyber Appellate Tribunal and that the respondent No.1 shall not claim any equities in the event of the said appeal being held in favour of the appellant bank.

17. Accordingly, the appeal is disposed of.

CHIEF JUSTICE

JAYANT NATH, J.

MARCH 28, 2016
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