

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7049 OF 2013

Bank of Maharashtra .. Petitioner.
v/s.
Mr. Ravindra B. Gunale & Others .. Respondents.

WITH
WRIT PETITION NO. 7050 OF 2013

Bank of Maharashtra .. Petitioner.
v/s.
Mr. Trupti P. Sawant .. Respondent.

Mr. Rupesh Lanjekar, for the Petitioner, in both the Petitions.

CORAM: M.S.SANKLECHA, J.
DATE : 31st OCTOBER, 2017.

P.C:-

These two Petitions under Article 227 of the Constitution of India challenge two orders, both dated 20th February, 2013 passed by the Adjudicating Officer under Sections 46 and 47 of the Information Technologies Act, 2000 (the Act). By the impugned orders, it was held that the Petitioner had failed to prevent offence under Section 43 of the Act read with Section 85 of the Act, resulting in a loss to Respondent No.1 in both the Petitions. Consequently, the impugned order in Writ Petition No.7049 of 2013 directed the Petitioner to pay damages of Rs.15,000/- by way of compensation to the Respondent No.1. The other impugned order relating to Writ Petition No.7050 of 2013 directed the Petitioner to pay damages of Rs.73,500/- by way of compensation under Section 43 of the Act read with Section 85 of the Act, to Respondent No.1 in that Petition.

2 On 5th September, 2013, a notice was issued to the Respondent before admission in both Petitions. None appears for the Respondent, although served.

3 This Petition was filed and notice was issued even though an alternative remedy was available under the Act to the Cyber Appellate Tribunal under Section 48 of the Act from the impugned orders dated 20th February, 2013, as the same could not be exercised. This in view of the fact that the office of the Cyber Appellate Tribunal under the Act, was vacant.

4 Mr. Lanjekar, learned Counsel appearing for the Petitioner very fairly states that an appeal would now lie under Section 48 of the Act to Appellate Tribunal under the Act as it is functional. Therefore, he seeks to withdraw this appeal with liberty to prosecute the appellate remedy available under the Act.

5 The ad-interim relief granted by the order dated 5th December, 2013 in Writ Petition No.7050 of 2013, staying the impugned order, is continued. Mr. Lanjekar, learned Counsel further states that in Writ Petition No.7049 of 2013, although no separate order of stay was granted, no proceedings for executing the same have been initiated by the Respondent.

6 In the above view, Respondents are restrained from adopting any coercive proceedings for a period of eight weeks from today to enable the Petitioner to file the two appeals from the two orders before the Appellate Tribunal under the Act. This on the condition that the Petitioner files its appeal and an application for stay within a period of

four weeks from today. The stay of the impugned order would continue for a further period of four weeks from the date of filing of the appeal and the stay application till the disposal of the stay application or expiry of eight weeks from today, whichever is earlier. Needless to state that the Tribunal will entertain the appeals filed and not dismiss it as time barred as the Petitioners were bona fide prosecuting these Petitions against the impugned orders.

7 Both **Petitions disposed of as withdrawn.** No order as to costs.

(M.S.SANKLECHA,J.)